

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

8-10-2017

### Turner v. State Appellant's Brief Dckt. 44911

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"Turner v. State Appellant's Brief Dckt. 44911" (2017). *Not Reported*. 4169.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/4169](https://digitalcommons.law.uidaho.edu/not_reported/4169)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>CRYSTAL ELIZABETH</b>	)	
<b>TURNER,</b>	)	<b>NO. 44911</b>
	)	
<b>Petitioner-Appellant,</b>	)	
	)	<b>TWIN FALLS COUNTY NO.</b>
<b>v.</b>	)	<b>CV42-16-286</b>
	)	
<b>STATE OF IDAHO,</b>	)	<b>APPELLANT’S BRIEF</b>
	)	
<b>Respondent.</b>	)	
_____	)	

---

**BRIEF OF APPELLANT**

---

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

---

**HONORABLE G. RICHARD BEVAN  
District Judge**

---

**ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555**

**KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534**

**JENNY C. SWINFORD  
Deputy State Appellate Public Defender  
I.S.B. #9263  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR  
PETITIONER-APPELLANT**

**ATTORNEY FOR  
RESPONDENT**

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	5
ARGUMENT .....	6
The District Court Erred When It Summarily Dismissed Ms. Turner’s Amended Petition For Post-Conviction Relief .....	6
A. Introduction .....	6
B. Post-Conviction Jurisprudence & Standard Of Review .....	6
C. The District Court Erred In Summarily Dismissing Ms. Turner’s Claims Of Ineffective Assistance Of Counsel Relating To Her Coerced Guilty Plea .....	8
CONCLUSION .....	13
CERTIFICATE OF MAILING .....	14

**TABLE OF AUTHORITIES**

Cases

*Charboneau v. State*, 144 Idaho 900 (2007).....6, 7, 8

*Dunlap v. State*, 126 Idaho 901 (Ct. App. 1995) .....7

*Goodwin v. State*, 138 Idaho 269 (Ct. App. 2002).....8

*Grube v. State*, 134 Idaho 24 (2000).....6

*Hill v. Lockhart*, 474 U.S. 52 (1985) .....7

*McKeeth v. State*, 140 Idaho 847 (2004).....7

*McMann v. Richardson*, 397 U.S. 759 (1970).....7

*Muchow v. State*, 142 Idaho 401 (2006).....8

*Pratt v. Stae*, 134 Idaho 581 (2000) .....7

*State v. Dunlap*, 155 Idaho 345 (2013) .....6

*Strickland v. Washington*, 466 U.S. 668 (1984) .....4, 7

*Vavold v. State*, 148 Idaho 44 (2009).....7

Statutes

I.C. § 18-4004.....2

I.C. § 19-4903.....6

I.C. § 19-4906(b), (c) .....7

Rules

I.R.C.P. 8(a)(1) .....6

Constitutional Provisions

U.S. Const. amend. VI.....6

## STATEMENT OF THE CASE

### Nature of the Case

Crystal Elizabeth Turner appeals from the district court's judgment summarily dismissing her amended petition for post-conviction relief. On appeal, she contends the district court erred by dismissing her petition because an evidentiary hearing was necessary to resolve genuine issues of material fact on two of her related ineffective assistance of counsel claims. She respectfully requests that this Court vacate the district court's judgment and remand this case for an evidentiary hearing.

### Statement of Facts and Course of Proceedings

In April of 2015, the State charged Ms. Turner with aiding and abetting first degree murder and conspiracy to commit robbery. (R., pp.162–64 (Information), pp.158–60 (Amended Information).) Her co-defendant was identified as William McGrath, who actually carried out the murder by shooting the victim. (R., pp.163, 159.) There was another unknown third party identified in the charging documents as participating in the crime. (R., pp.163, 159.)

On September 9, 2015, pursuant to a Rule 11 plea agreement, Ms. Turner pled guilty to aiding and abetting first degree murder. (R., p.141 (Entry of Plea Tr.,<sup>1</sup> p.19, Ls.11–24), p.147 (Entry of Plea Tr., p.24, L.25–p.25, L.6), pp.153–54 (plea agreement).) The State dismissed the other charge. (R., pp.155–56 (second Amended Information).) As part of the agreement, Ms. Turner agreed “to provide truthful testimony, if required to do so by the State, as to the involvement in this crime of William Dean McGrath, and the Third Party to this crime.” (R., p.153.) In addition, the agreement stipulated to a sentence of life imprisonment, with ten

years fixed. (R., p.153.) *See also* I.C. § 18-4004 (mandatory minimum of life, with ten years fixed, for first degree murder).

In accordance with the plea agreement, the district court sentenced Ms. Turner to life in prison, with ten years fixed. (R., p.120 (Sent. Tr., p.22, Ls.4–9).) The judgment of conviction was filed on November 20, 2015. (R., pp.94–97.) Ms. Turner did not appeal. (*See* R., pp.7, 153 (plea agreement appeal waiver).)

On January 27, 2016, Ms. Turner filed a pro se verified petition and affidavit for post-conviction relief. (R., pp.6–9, 11–12.) Relevant here, she alleged that she was pressured to accept the plea agreement. (R., p.7.) In her affidavit, she stated, “I was told that if I did not accept the deal my attorney would withdrawal from case.” (R., p.11.) Ms. Turner also moved for the appointment of counsel, which the district court granted. (R., pp.19–21, 23, 24.)

On June 2, 2016, Ms. Turner filed an amended petition for post-conviction relief. (R., pp.59–62.) She again alleged that her guilty was coerced:

The guilty plea was not made freely and voluntarily. Your Petitioner insisted on a jury trial; however, trial counsel threatened to withdraw from your Petitioner’s case if she did not enter into the proposed plea agreement. Your Petitioner was put under a great deal of pressure by trial counsel and became confused and did not have enough time to consider her options or consider obtaining new counsel.

(R., pp.60.) She also alleged:

Ineffective assistance of counsel. Co-Defendant William McGrath threatened to [sic] your Petitioner with bodily harm at the site of the crime and also threatened that he would harm my children. There is a letter with such threats that I provided to trial counsel, yet they were never used in my defense or in mitigation. Additionally, I informed trial counsel that a gun was pointed at my head at the scene of the crime but such facts were not used in my defense or mitigation. Such admissions constitute ineffective assistance of counsel.

---

<sup>1</sup> The entry of plea and sentencing transcripts are contained in the Clerk’s Record. As such, citations to these transcripts refer to the page in the Clerk’s Record and then, parenthetically, the page and line number of the transcript.

(R., pp.60–61.) Ms. Turner referenced her original affidavit in support of these claims. (R., p.61.) She did not incorporate her original petition, however.

The State answered and moved for summary disposition.<sup>2</sup> (R., pp.67–68, 69–70, 72–88.) Ms. Turner responded in opposition. (R., pp.189–95.) She also included another affidavit that stated:

William McGrath is the co-defendant in my criminal case. Attached hereto is a short note from him making threats to me. There is also a longer letter wherein he made threats against myself and my family. The threats were to the effect that if I talked that he would kill me and my family and that he had friends outside of jail that could do that. These threats were made while I was incarcerated prior to the entry of a plea and sentencing.

It was these threats that forced me to enter into a plea agreement out of fear for my and my family's lives.

If such threats had not been made to me, I would not have entered the plea agreement as offered.

When being questioned by the court when entering my plea and thereafter at sentencing, I was very hesitant and yet maintained my silence and went along with the plea because the threats were still fresh and I was afraid of William McGrath.

I gave Detective Lockwood and the guards at the jail as well as my trial attorney copies of the letter.

Additionally, my trial attorney threatened to withdraw from my case if I did not accept the plea deal. This just added more confusion to my overwhelming situation.

R., pp.196–97.) Mr. McGrath's note said, "Crystal[,] remember what I said[,] I don't leave any witnesses behind." (R., p.199.)

On January 30, 2017, the district court held a hearing on the State's motion. At the hearing, the district court summarily dismissed Ms. Turner's amended petition. (Tr., p.21, Ls.7–9.) With respect to the two claims at issue here, the district court ruled:

---

<sup>2</sup> The State also moved for judicial notice of the entire court file in the underlying criminal case. (R., pp.92–93.) The district court implicitly granted this motion because it referenced certain documents from the underlying criminal case in its ruling on the State's motion for summary dismissal. In an abundance of caution, Ms. Turner has filed a Motion for Judicial Notice with this Court contemporaneously with this brief.

She argues or asserted that her guilty plea was not made freely and voluntarily, and she insisted on jury trial, and that her trial counsel threatened to withdraw from her case if she did not enter into the plea agreement. As was pointed out, that issue was referenced by Judge Stoker directly and in detail, not only on the record, but also in the plea form that is submitted where she submits under oath that what she is saying is accurate, and thereby that had not been threatened by counsel. And the record, therefore, belies her claims now that Mr. Roark's indication that he would withdraw if she didn't take the plea is reason to set this aside. Under *Strickland*,<sup>3</sup> there's no showing been made to my satisfaction that even if Mr. Roark made comment that "You're either going to take the deal or I'm out of here" was sufficient to change this, particularly, with her language that she gave to Judge Stoker on the record.

....

The third claim is for threats from codefendant William McGrath. I, again, find that the record belies that in terms of what Judge Stoker brought out from her, but also the *Strickland* prong of a different result is simply belied by the logic of the alleged threats, that, in fact, if she were being threatened to keep her mouth shut, pleading guilty was the last thing that she would probably do in that situation. And rather than going to trial, if she is threatened that she was not to take a plea, it doesn't seem that any harm came to her from taking this plea and thereby receiving the very minimum sentencing that she could receive.

(Tr., p.21, L.18–p.22, L.13.) The district court entered a judgment dismissing the petition with prejudice on February 3, 2017. (R., p.209.) Ms. Turner timely appealed. (R., pp.211–12.)

---

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

ISSUE

Did the district court err when it summarily dismissed Ms. Turner's amended petition for post-conviction relief?

## ARGUMENT

### The District Court Erred When It Summarily Dismissed Ms. Turner's Amended Petition For Post-Conviction Relief

#### A. Introduction

Ms. Turner contends the district court erred when it summarily dismissed her petition because an evidentiary hearing was necessary to resolve genuine issues of material fact. Specifically, there were genuine issues as to whether Ms. Turner's trial counsel was ineffective for failing to investigate her co-defendant's threats, for allowing her to enter a guilty plea after being threatened by her co-defendant and, finally, for coercing her to plead guilty by threatening to withdraw from the case. Ms. Turner submits that the district court should have held an evidentiary hearing on these interrelated claims.

#### B. Post-Conviction Jurisprudence & Standard Of Review

A petition for post-conviction relief is civil in nature. *State v. Dunlap*, 155 Idaho 345, 361 (2013).

Like a plaintiff in a civil action, the applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based. *Grube v. State*, 134 Idaho 24 (2000). Unlike the complaint in an ordinary civil action, however, an application for post-conviction relief must contain more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant. I.C. § 19-4903. The application must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included. *Id.*

*Charboneau v. State*, 144 Idaho 900, 903 (2007).

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. "[T]he right to counsel is the right to the effective assistance of counsel." *Strickland v.*

*Washington*, 466 U.S. 668, 686 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). To succeed on an ineffective assistance of counsel claim, the petitioner must generally show that (1) his attorney’s performance did not meet “an objective standard of reasonableness,” and (2) his attorney’s deficient performance prejudiced him. *Id.* at 687–88. “Although *Strickland* concerned an allegation of ineffective assistance in a sentencing proceeding, the same standard applies equally to claims arising from the plea process.” *McKeeth v. State*, 140 Idaho 847, 850 (2004) (citing *Hill v. Lockhart*, 474 U.S. 52, 56 (1985)).

The district court can summarily dismiss or grant a petition for post-conviction relief if “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” I.C. § 19-4906(b), (c). “In considering summary dismissal of an application for post-conviction relief, the trial court must accept as true verified allegations of fact in the application or in supporting affidavits, no matter how incredible they may appear, unless they have been disproved by other evidence in the record.” *Dunlap v. State*, 126 Idaho 901, 909 (Ct. App. 1995). The district court is “required to accept the petitioner’s un rebutted allegations as true, but need not accept the petitioner’s conclusions.” *Charboneau*, 144 Idaho at 903. Any disputed facts are construed in favor of the non-moving party, and “all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party.” *Vavold v. State*, 148 Idaho 44, 45 (2009). A petition for post-conviction relief based on a claim of ineffective assistance of counsel will “survive a motion for summary dismissal if the petitioner establishes: (1) a material issue of fact exists as to whether counsel’s performance was deficient; and (2) a material issue of fact exists as to whether the deficiency prejudiced petitioner’s case.” *Pratt v. State*, 134 Idaho 581, 583 (2000). If a genuine issue of material fact is presented, an evidentiary

hearing must be conducted to resolve the factual issues. *Goodwin v. State*, 138 Idaho 269, 272 (Ct. App. 2002).

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party.

*Charboneau*, 144 Idaho at 903. Because the evaluation of a motion for summary disposition does not involve the finding of contested facts by the district court, it necessarily involves only determinations of law. Accordingly, an appellate court reviews a district court's summary dismissal order de novo. *Muchow v. State*, 142 Idaho 401, 402–03 (2006).

C. The District Court Erred In Summarily Dismissing Ms. Turner's Claims Of Ineffective Assistance Of Counsel Relating To Her Coerced Guilty Plea

Ms. Turner raised two ineffective assistance of counsel claims related to her coerced guilty plea. First, she claimed her attorney coerced her to enter the plea agreement by threatening to withdraw from the case if she did not plead guilty. (R., p.60.) Second, she claimed her attorney was ineffective for failing to investigate her co-defendant's threats made during and after the commission of the crime. (R., pp.60–61.) These related claims establish that Ms. Turner's trial counsel pressured her plead guilty (or else he would withdraw) despite knowing that her co-defendant had threatened her not only during the commission of the crime, but also while she was in jail. Ms. Turner submits an evidentiary hearing was necessary to resolve the genuine issues of material fact with regard to these claims.

Construing all facts and inferences in her favor, Ms. Turner established a prima facie case of ineffective assistance of counsel. She first asserted that her guilty plea was not "freely and voluntarily" made because her trial counsel threatened to withdraw from the case if she did not

plead guilty. (R., p.60.) She averred that she was pressured by trial counsel to plead guilty, “became confused,” and did not have enough time to consider her options or new counsel. (R., p.60.) These statements are consistent with her original petition’s affidavit, wherein she stated that her attorney told her he would withdraw from the case if she did not accept the plea agreement. (R., p.11.) Second, Ms. Turner asserted that her trial counsel was ineffective because he knew that her co-defendant threatened her during the commission of the crime and while she was incarcerated. (R., pp.60–61.) She explained that she told her trial counsel of a potential defense because her co-defendant “held a gun to her head” during the crime. (R., pp.60–61.) Moreover, she explained that she gave her trial counsel one of Mr. McGrath’s letters containing threats to her and her family while she was incarcerated. (R., pp.60–61, 196–97.) Despite this information of Ms. Turner’s coercion or duress during the commission of the crime and the threats to her and her family after the crime, her trial counsel still threatened to withdraw from her case if she did not plead guilty. (R., pp.60, 196–97.) This constitutes deficient performance.

Further, Mr. Turner was prejudiced by her trial counsel’s deficient performance. She stated in her affidavit, “If such threats had not been made to me, I would not have entered the plea agreement as offered.” (R., p.196.) She also stated in her amended petition that “she insisted on going to trial,” but entered the plea agreement due the coercion from her trial attorney and her co-defendant, Mr. McGrath. (R., pp.60–61, 196–97.) Moreover, she stated her affidavit, “When being questioned by the court when entering my plea and thereafter at sentencing, I was very hesitant and yet maintained my silence and went along with the plea because the threats were still fresh and I was afraid of William McGrath.” (R., p.197.) Ms. Turner established that, but for her trial counsel’s deficient performance, she would not have pled guilty and would have insisted on going to trial.

Contrary to the district court's ruling, Ms. Turner's claims are not belied by the record in the underlying criminal case. Rather, the record shows that there are genuine issues of material fact requiring an evidentiary hearing. At the entry of plea hearing, Ms. Turner agreed that she was not coerced or unduly influenced by anyone to take the plea agreement. (R., p.130 (Entry of Plea Tr., p.8, Ls.5–10).) She also denied that her trial counsel told her accept the plea. (R., p.131 (Entry of Plea Tr., p.9, Ls.23–25).) She again denied any force, coercion, or threats to enter the plea. (R., p.132 (Entry of Plea Tr., p.10, Ls.1–11).) Her trial counsel clarified that “there may have been some threats within the jail involving another defendant, but they aren't threats to plead guilty, and that's what had my client somewhat confused.” (R., p.132 (Entry of Plea Tr., p.10, Ls.11–16).) The district court then asked if someone was making threats to Ms. Turner on unrelated matters. (R., p.132 (Entry of Plea Tr., p.10, Ls.17–19).) Trial counsel told the district court, “I would not say unrelated. I would say that the threats did not go to the impetus behind accepting the plea agreement.” (R., p.132 (Entry of Plea Tr., p.10, Ls.20–22).) In response, the district court told Ms. Turner, “It's very important that you're making a voluntary decision here today. If somebody has threatened you, and you don't want to do this, then I guess I need to know about that.” (R., pp.132–33 (Entry of Plea Tr., p.10, L23–p.11, L.2).) She answered, “Well, I'm okay with the plea.” (R., p.133 (Entry of Plea Tr., p.11, L.3).) She also said that she understood that she was giving up any defenses to the charges by pleading guilty. (R., pp.134–35 (Entry of Plea Tr., p.12, L.23–p.13, L.4).) However, when explaining the crime to the district court, Ms. Turner stated that the unknown third party “had a gun to me” and told her “don't move or don't say anything” right before Mr. McGrath shot the victim. (R., pp.144–45 (Entry of Plea Tr., p.22, L.24–p.23, L.13).) Then, at sentencing, Ms. Turner's trial counsel told the district court that Ms. Turner told the presentence investigator she was coerced to enter her

plea. (R., pp.101–02 (Sent. Tr., p.3, L.24–p.4, L.6.) Her trial counsel opined that Ms. Turner was referring to the effect of the felony murder rule. (R., pp.102–03 (Sent. Tr., p.4, Ls.7–p.5, L.20.) The district court asked Ms. Turner if her plea was voluntary, and she said it was. (R., pp.105–06 (Sent. Tr., p.7, L.6–p.8, L.8.) Shortly thereafter, the district court had the following colloquy with Ms. Turner:

THE COURT: I know you have been frustrated with the fact you've been sitting in jail. I think you actually wrote me a letter, which I sent copies to counsel, can't we get on with this, so to speak, and I heard that you've made other statements that you're going to do this and do that and change your mind and withdraw your plea and on and on and on. Is that your frame of mind today, or were those simply frustration letters?

THE DEFENDANT: I can't tell you.

THE COURT: Okay. Do you want to withdraw your plea of guilty in this case?

THE DEFENDANT: I do, but I don't. You know? I think ten years is good, but plus life, I think, you know, life with parole is a little hard. Considering all parties know that I didn't intend for him to die.

THE COURT: Well, and I understand that. My question is --

THE DEFENDANT: But I'm afraid that I'll get added time. That's my fear, that if I withdraw, I'll get added time, and I don't want to spend the rest of my life in prison.

THE COURT: Okay. So what you're telling me, you don't particularly like this plea agreement, but you are wanting to continue to accept it, recognizing that it could be worse for you?

THE DEFENDANT: Yeah.

THE COURT: Okay. I'll ask you again, as you sit here right now, do you want to withdraw your plea of guilty in this case?

THE DEFENDANT: No, Your Honor.

(R., p.110–11 (Sent. Tr., p.12, L.12–p.13, L.4.) These transcripts, when compared with Ms. Turner's amended petition and affidavits, establish genuine issues of material fact. On the

one hand, Ms. Turner informed the district court at the entry of plea and sentencing hearing that she voluntarily entered her plea and did not wish to withdraw it. On the other hand, she averred that she was coerced to enter her guilty plea. She also alleged that these threats and her confusion caused her not to speak out about the coercion during the entry of plea and sentencing hearings. As such, there is a genuine issue as to whether Ms. Turner was, in fact, coerced to enter her plea and still under the influence of that coercion at the time of these hearings. What is more, the transcripts actually bolster her post-conviction claims because they verify that Ms. Turner contemplated withdrawing her guilty plea, reported that she felt coerced, and was threatened by her co-defendant. The extent of her coercion, the precise threats made by her co-defendant and trial counsel, and Ms. Turner's credibility are all questions for an evidentiary hearing.

Ultimately, an evidentiary hearing is necessary to resolve these genuine issues of material fact. In summarily dismissing her petition, the district court reasoned that the record, such as Ms. Turner's statements during the entry of plea and sentencing hearings, disproved her claims. Ms. Turner, however, does not dispute that she made these contrary statements at the hearings. But the question remains whether she was under the influence of the threats, either by her co-defendant or trial counsel, when she made those statements. This question requires an evidentiary hearing. At the summarily dismissal stage, all disputed facts and inferences should have been construed in Ms. Turner's favor, and the district court erred in making credibility determinations and weighing the evidence against her. Therefore, Ms. Turner asserts the district court erred by summarily dismissing her amended petition.

CONCLUSION

Ms. Turner respectfully requests that this Court vacate the district court's judgment and summary dismissal of her amended petition for post-conviction relief and remand this case to the district court for an evidentiary hearing.

DATED this 10<sup>th</sup> day of August, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10<sup>th</sup> day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CRYSTAL ELIZABETH TURNER  
INMATE #117206  
PWCC  
1451 FORE ROAD  
POCATELLO ID 83205

TIM J WILLIAMS  
ATTORNEY AT LAW  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCS/eas»