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IN THE SUPREME COURT OF THE STATE OF IDAHO

ISAAC JOSEPH RINKE,)	
)	
Petitioner-Appellant,)	NO. 44724-2016
)	
v.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

BRIEF OF APPELLANT

**Appeal From The District Court Of The Fourth Judicial
District Of The State Of Idaho, In And For The
County Of Ada**

**Honorable Samuel Hoagland
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Appellant Isaac Joseph Rinke was charged with four felony charges in his underlying criminal case in Ada County, Idaho. He eventually pled guilty to two charges, Felony Domestic Battery and Attempted Strangulation. Mr. Rinke filed a Petition For Post-Conviction Relief against his appointed counsel. The District Court summarily dismissed Mr. Rinke's Petition.

Statement of the Facts and Course of Proceedings

Mr. Rinke was charged on September 12, 2013 with four felony charges, Felony Domestic Battery (I.C. §18-918(2)), Attempted Strangulation (I.C. §18-923), Aggravated Assault With a Deadly Weapon or Instrument (I.C. §18-905(a)), and Second Degree Kidnapping (I.C. §18-4501). The State also filed a sentencing enhancement for Use of a Deadly Weapon in the Commission of a Felony (I.C. §19-2520).

The Court appointed the Ada County Public Defender's Office to represent Mr. Rinke. Mr. Rinke was represented in the case by attorneys Ann Cosho, Reed Smith and Anthony Geddes of the Ada County Public Defender's Office. Mr. Smith acted as lead counsel. Ms. Cosho only represented Mr. Rinke at the Magistrate Court level, for Mr. Rinke's preliminary hearing (which was waived). Mr. Geddes only represented Mr. Rinke at his sentencing hearing, as Mr. Smith was unavailable for the hearing date.

Mr. Rinke suffered from significant mental health issues during the pendency of his case. (*See* R. 382 (Tr. p. 75, l. 5 to p. 76, l. 12)). He was never comprehensively evaluated for mental health status or competency or for his ability to assist in his own defense.

Mr. Rinke pled guilty on October 10, 2013 to two charges, Felony Domestic Battery and Attempted Strangulation. The State dismissed the remaining charges and the sentencing enhancement.

The District Court Judge, Michael Wetherell, sentenced Mr. Rinke to a maximum term of ten years on the Felony Domestic Battery charge, and a maximum term of fifteen years on the Attempted Strangulation charge. The District Court ordered the sentences to run consecutively to each other, for a total term of twenty-five years imprisonment, with ten years determinate and fifteen years indeterminate. Mr. Rinke is currently incarcerated at the Idaho State Correctional Institution in Boise, Idaho.

Mr. Rinke appealed from the judgment of conviction to the Idaho Supreme Court. (Docket Number #41696-2013). The Idaho State Appellate Public Defender's Office represented Mr. Rinke on the direct appeal. The Idaho Court of Appeals denied Mr. Rinke's appeal, and affirmed the judgment and sentence imposed therein. The Court of Appeals issued its remittitur in the appeal to the District Court on August 26, 2014.

Mr. Rinke filed his Petition For Post-Conviction Relief on June 25, 2015. He subsequently filed an Amended Petition For Post-Conviction Relief on August 2, 2016. Mr. Rinke filed numerous documents, affidavits and records in support of his post-conviction petition.

The State filed a motion for summary dismissal of Mr. Rinke's post-conviction case. The matter proceeded to hearing on October 11, 2016. Judge Samuel Hoagland presided over the proceedings, as Judge Michael Wetherell had retired in the interim.

The District Court issued its opinion on November 21, 2016, in which it granted summary dismissal of Mr. Rinke's post-conviction petition. The Court issued Judgment in favor of the State and against Mr. Rinke on November 23, 2016.

Mr. Rinke filed this appeal on December 23, 2016.

ISSUES PRESENTED ON APPEAL

1. Whether the District Court committed reversible error by summarily dismissing Mr. Rinke's Post-Conviction Petition?

ARGUMENT

I. The District Court Committed Reversible Error By Summarily Dismissing Mr. Rinke's Petition For Post-Conviction Relief.

A. Introduction

An application for Post-Conviction Relief ("PCR") under Idaho Code §19-4901 *et seq.*, initiates a special proceeding, which is civil in nature, and is an entirely new proceeding, distinct from the criminal action which led to the conviction. *Paradis v. State*, 110 Idaho 534, 536 (1986); *Reynolds v. State*, 126 Idaho 24, 27 (Ct. App. 1994). In a post-conviction proceeding, the burden is on the petitioner to establish grounds for relief by a preponderance of the evidence. *Cosio-Nava v. State*, ___ Idaho ___ (2016)(2016 Opinion No. 119, ps. 3-4, Nov. 2, 2016); *Martinez v. State*, 126 Idaho 813, 816 (Ct. App. 1995); *Reynolds, supra*; *Odom v. State*, 121 Idaho 625, 626 (Ct. App. 1992).

Ineffective Assistance of Counsel

The petitioner's claim of ineffective assistance of counsel may be brought under the post-conviction procedure act. *Eddington v. State*, ___ Idaho ___ (Ct. App. 2017)(2017 Opinion No. 25, p. 4, May 8, 2017); *Goodwin v. State*, 138 Idaho 269, 272 (Ct. App. 2002).

The Sixth Amendment guarantees a defendant the effective assistance of counsel at "critical stages of a criminal proceeding", including when the defendant enters a guilty plea. *Jae Lee v. U.S.*, 582 U.S. ___, ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (2017)(issued June 23, 2017)(citing *Lafler v. Cooper*, 566 U.S. 156, 165, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012); *Hill v. Lockhart*, 474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)).

The United States Supreme Court issued its landmark ruling on ineffective assistance of counsel claims in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052,

80 L.Ed.2d 674 (1984). In *Strickland*, the United States Supreme Court first defined the right to counsel contained within the Sixth Amendment as the right to the effective assistance of counsel. *Id.*, 466 U.S. at 686 (citing *McMann v. Richardson*, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)). Counsel can deprive a defendant of the right to effective assistance of counsel simply by failing to render “adequate legal assistance.” *Id.* (citing *Cuyler v. Sullivan*, 446 U.S. 335, 344, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980)). The purpose of the right is, simply, to ensure a fair trial. *Id.* “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Id.*

The *Strickland* case established a two-prong test for analyzing ineffective assistance of counsel claims. To prevail on a claim for ineffective assistance of counsel, the Petitioner must demonstrate (1) that trial counsel’s performance was “deficient”, and (2) that the Petitioner was prejudiced by counsel’s performance. *Strickland*, 466 U.S. at 687. This standard has been applied word-for-word by the Idaho appellate courts. *See, e.g., Wurdemann v. State*, ___ Idaho ___ (2017)(2017 Opinion No. 24, p. 4, Feb. 28, 2017); *Estrada v. State*, 143 Idaho 558, 561 (2006).

To establish that trial counsel’s performance was deficient, the petitioner must show that the attorney’s representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688; *LaBelle v. State*, 130 Idaho 115, 118 (Ct. App. 1997). The proper measure of attorney performance is “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688; *Wurdemann, supra*, p. 10. The petitioner must overcome a presumption that the attorney’s conduct falls within a

wide range of reasonable professional assistance and sound trial strategy. *Strickland*, 466 U.S. at 689; *Estrada*, 143 Idaho at 561.

Proving “prejudice” requires a showing that “there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *Saykhamchone v. State*, 127 Idaho 319, 323 (1995)(citing *Strickland, supra*); *Parrott v. State*, 117 Idaho 272, 275 (1990). A “reasonable probability” is defined as “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *Booth v. State*, 151 Idaho 612, 618 (2011)(citing *McKay v. State*, 148 Idaho 567, 570 (2010) and *Strickland*, 466 U.S. at 694).

In summary, in cases like Mr. Rinke’s where the petitioner pleads guilty and then asserts a PCR claim, the "prejudice requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. at 59.

The *Strickland* decision outlines specific duties that trial counsel must honor in representing criminal defendants. Counsel must assist the defendant as part and parcel of counsel’s duty of loyalty to the defendant. *Strickland*, 466 U.S. at 688. Counsel’s “overarching duty” to advocate the defendant’s cause includes the duty to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course” of the case. *Id.* Counsel has a duty to make “reasonable investigations” regarding the case. *Id.*, 466 U.S. at 691. Counsel has a duty to “bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.” *Id.*, 466 U.S. at 688.

The United States Supreme Court has declared that the “ultimate focus of the inquiry must be on the fundamental fairness” of the proceedings throughout the case. *Id.*, 466 U.S. at 696. They further declared that

“In every case, the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.” *Id.*

B. Standard of Review

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the appellate court will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file. *Wheeler v. State*, ___ Idaho ___ (2017)(2017 Opinion No. 72, p. 3, June 21, 2017) (citing *Workman v. State*, 144 Idaho 518, 523 (2007)(further citations omitted). A claim for post-conviction relief may only be summarily dismissed if it does not present a genuine issue of material fact. *Id.* (citing 19-4906(b); *Baldwin v. State*, 145 Idaho 148, 153 (2008)); *Thomas v. State*, __ Idaho __, 389 P.3d 200 (Ct. App. 2017)(2017 Opinion No. 6, p. 3, Jan. 27, 2017).

Over questions of law in post-conviction summary dismissal, the courts are to exercise free review. *Ash v. State*, __ Idaho __ (Ct. App. 2017)(2017 Opinion No. 27 p. 4, June 7, 2017)(citing *Rhoades v. State*, 148 Idaho 247, 250 (2009) and *Downing v. State*, 136 Idaho 367, 370 (Ct. App. 2001)).

The Idaho Supreme Court has addressed the matter of uncontroverted allegations in post-conviction claims. Although courts need not accept the petitioner’s ultimate conclusions, courts are required to accept the petitioner’s un rebutted allegations as true. *Saykhamchone, supra* (citing *Kraft v. State*, 100 Idaho 671, 674 (1979)); *Bure v. State*,

126 Idaho 253, 254 (Ct. App. 1994). The Court’s language in the referenced cases leaves no doubt that this is a mandatory, rather than discretionary, determination. If the petitioner’s allegations are un rebutted, they must be accepted as true and accurate, and treated as same by the court. Further, “ ... the courts must liberally construe the facts and draw reasonable inferences in favor of the petitioner.” *Wheeler, supra* (citing *Charboneau v. State*, 140 Idaho 789, 792 (2004)).

C. Rinke was only required to show a prima facie case to avoid summary dismissal.

At the summary judgment stage of the proceedings, Mr. Rinke was not required to prove his case by a preponderance of the evidence. Rather, for purposes of surviving summary judgment or summary dismissal, Mr. Rinke was only required to establish a *prima facie* case of ineffective assistance of counsel. *Ash, supra*, at 3; *Schultz v. State*, 153 Idaho 791, 796 (Ct. App. 2012). Mr. Rinke respectfully asserts that the District Court erred by requiring Mr. Rinke to show more than a *prima facie* case at the summary judgment stage.

Mr. Rinke provided evidence to support each of his claims, as discussed in detail below. Mr. Rinke recognized that while the parties and the District Court may have disagreed about the strength of that evidence, the District Court erred by not conceding that Mr. Rinke had clearly provided evidence on each claim in his PCR Petition. In doing so, Mr. Rinke laid out a *prima facie* case of ineffective assistance of counsel, and therefore, summary dismissal was simply inappropriate. *See Payne v. State*, 159 Idaho 879, 883 (Ct. App. 2016); *Charboneau*, 140 Idaho at 792. Since a genuine issue of material fact had been presented with supporting evidence, the District Court should have denied summary dismissal and conducted an evidentiary hearing to resolve the factual

issues. *Takhsilov v. State*, ___ Idaho ___, 389 P.3d 955 (Ct. App. 2016)(2016 Opinion No. 136, p. 4, Nov. 23, 2016)(citing *Goodwin, supra*, 138 Idaho at 272).

The District Court erred by granting summary judgment and failing to allow Mr. Rinke an evidentiary hearing. This Court should remedy that error.

D. The Petitioner Provided Sufficient Evidence in Support of His Post-Conviction Petition To Avoid Summary Judgment.

In order to avoid summary judgment and move on to an evidentiary hearing in his PCR case, Mr. Rinke was required to present evidence making a *prima facie* case on each element of his claims. *Ash, supra; Schultz, supra; Payne*, 159 Idaho at 883. Mr. Rinke met his burden, as discussed in detail below.

1. Evidence in support of First Cause of Action

Mr. Rinke's first cause of action focused on errors and omissions of his trial court counsel during the "pre-trial phase" of his criminal case. (*See* R. 008-09, 280-82). Mr. Rinke alleged that his counsel failed to adequately prepare Mr. Rinke's defense for trial, failed to spend sufficient time with and confer with Mr. Rinke regarding trial strategies and defenses, and failed to investigate information, important evidence, and potential witnesses, to bolster Mr. Rinke's chances of establishing a viable defense to the charges against him. (*Id.*). Mr. Rinke's claims were based on the directive of the U.S. Supreme Court in *Strickland*, requiring trial counsel to "conduct reasonable investigations" as part of his mandated duties in representation of criminally-accused persons. *See Strickland*, 466 U.S. at 691.

The District Court rejected these claims, basically on the grounds that Mr. Rinke failed to inform the Court of any issues at his plea colloquy (R. 498-99). Regarding the

failure to investigate and interview witnesses, the Court ignored the evidence offered in support of these claims and instead offered cursory legal conclusions. (R. 500). Regarding counsel's failure to obtain physical evidence, the Court again ignored relevant evidence in support of these claims, and instead offered the legal conclusion that Mr. Rinke failed to raise a genuine issue of material fact. (R. 501). Most importantly, it appears that the District Court did not follow the appropriate standard, and required Mr. Rinke to show more than a *prima facie* case at the summary judgment stage of the PCR proceedings. *See Ash, supra*, at 3; *Blackburn v. State*, __ Idaho __, 391 P.3d 654 (Ct. App. 2017)(2017 Opinion No. 12, p. 3, Feb. 9, 2017).

Rinke provided evidence and proof in support of the claims comprising his first cause of action, in the form of his sworn statements in his initial PCR petition and in his two affidavits. (*See* R. 008-09, 280-282, 300-07, 315-319).

Mr. Rinke's affidavits outlined and explained these allegations in detail, including the specific witnesses and evidence he requested that his counsel pursue in his defense. (*See* R. 303-305, 314-20).

Concerning his claim that his attorney failed to investigate evidence and witnesses in his defense, Mr. Rinke also submitted evidence in the form of affidavits from potential defense witnesses Rebecca Goodwin, Yurek Hansen, Jonathan Scaggs and Jim Moison. (*See* R. 350-65).

Ms. Goodwin's affidavit and Mr. Hansen's affidavit provided crucial information regarding their respective conversations with the complaining witness after the alleged events that led to Mr. Rinke's arrest and charges. Mr. Rinke alleged that these versions differed significantly from the version of events which the complaining witness provided

to investigating officers and to the Court, creating ripe grounds for cross-examination and impeachment of the State's only witness. Mr. Rinke testified that he requested that his counsel contact these witnesses and interview them regarding this crucial evidence. (*See* R. 303-04). Counsel failed to do so. This allegation was not controverted by the State.

Mr. Moison's affidavit provided potentially valuable impeachment evidence against the State's only eyewitness and complaining witness. Mr. Rinke's counsel could have utilized this evidence to attack the veracity and credibility of the State's key witness, and frame her character for untruthfulness, pursuant to Idaho Rule of Evidence 608, significantly bolstering Mr. Rinke's defense. Counsel failed to contact this witness or pursue this evidence, according to Mr. Moison. This was not disputed by the State.

These affidavits confirmed counsel's failure to contact these important witnesses and obtain this crucial evidence, despite direct requests from his client to do so. In providing these affidavits in support of his claims, Mr. Rinke raised a genuine issue of material fact, meeting his burden to defeat summary dismissal on this count. *See McKinney v. State*, __ Idaho __ (2017)(2017 Opinion No. 64, p. 4, June 20, 2017); Idaho Code §19-4906(c). The District Court erred by ruling otherwise.

Mr. Rinke filed a second Affidavit which outlined and explained these allegations in more detail, and included the specific documents which he requested his counsel obtain in his defense. (*See* R. 314-65).

In Mr. Rinke's second affidavit, he provided additional evidence to support his claim regarding his counsel's failure to obtain physical evidence in Mr. Rinke's defense, in the form of phone and work records. (*See* R. 314-43). Mr. Rinke's second affidavit outlined the importance of this evidence, and how it could have been utilized by his

counsel to attack the State's only witness' credibility and bolster a defense against the charges. Again, this constituted substantial proof in support of his claims, and satisfied the initial threshold for overcoming summary disposition.

In addition, Mr. Rinke alleged that his counsel failed to request a comprehensive mental health evaluation in the case, and provided no notice to the Court of Mr. Rinke's depreciated mental status, despite his awareness that Mr. Rinke was experiencing serious mental health issues and may have lacked the capacity to assist in his own defense or enter a valid plea. Mr. Rinke provided direct evidence of this claim through his PCR Petition as well as his Affidavit in support. (*See* R. 282-83, 305-09). Notably, Mr. Rinke's counsel *conceded* that they were aware of his ongoing mental health issues, in counsel's own statements to the District Court at sentencing. (*See* R. 382 (Tr. p. 75, l. 5 to p. 76, l. 12)(stating that "from the very beginning", Mr. Rinke's counsel and the prosecuting attorney were aware of and concerned with Rinke's mental health status)).

Mr. Rinke provided substantial additional evidence to support this particular claim, in the form of the report of Dr. Clay H. Ward, PhD, a respected Boise neuropsychologist. Dr. Ward's report provided crucial evidence regarding Mr. Rinke's mental state and mental health status during the pendency of the case. (*See* R. 392-99)(consisting of Dr. Ward's *Neuropsychological Evaluation of Isaac Rinke*). Dr. Ward indicated that the

"records suggest he started decompensating mentally in response to a combination of work and relational stress, marijuana use, and his spouse having a miscarriage. There is strong evidence he was experiencing an acute mental health exacerbation and crisis when incarcerated on his current offenses. I saw no evidence in the record that his mental state was stabilized prior to his legal proceedings." *Id.* at p. 8.

For purposes of attempted summary dismissal by the State, the report provided more than ample evidence to support Mr. Rinke's PCR claim, and demonstrated that Mr. Rinke was entitled to a hearing on the merits. *See Garza v. State*, __ Idaho __ (Ct. App. 2017)(2017 Opinion No. 7, p.4, Feb. 2, 2017); *Schultz v. State*, 155 Idaho 877, 881, 318 P.3d 646, 650 (Ct. App. 2013)(holding that when "a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues").

Mr. Rinke provided additional evidence to support this claim in the form of an affidavit from his acquaintance, Jonathan Scaggs. Mr. Scaggs' affidavit provided insight and information regarding Mr. Rinke's rapidly declining mental health state during the days leading up to the events in question. (*See* R. 362-63). This sworn testimony provided further evidence that Mr. Rinke's claim had merit and should not have been summarily dismissed.

Based on a thorough review of the totality of the circumstances, Mr. Rinke had a clear argument that, his counsel's errors, omissions, and failure to conduct reasonable investigations in Rinke's case affected the plea process and strongly influenced Mr. Rinke to plead guilty and "cut his losses" rather than proceed to trial without effective counsel to help defend him. Mr. Rinke himself testified that he would have insisted on going to trial if his attorney had pursued the witnesses and evidence he requested, and took the time and effort to help build Mr. Rinke's defense. (*See* R. 305, 320-21).

As discussed herein above, in cases like Mr. Rinke's where the petitioner pleads guilty and then asserts a PCR claim, the "prejudice requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would

not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. at 59. In this regard, Mr. Rinke meets the *Hill v. Lockhart* standard.

In summary, Rinke has set forth a *prima facie* case of Ineffective Assistance of Counsel on the First Cause of Action in his Petition. Mr. Rinke’s attorney’s deficient performance fell below objective standards of reasonableness (*see Strickland*, 466 U.S. at 687). Under well-established Idaho post-conviction law, defense counsel had a duty to conduct a reasonable, prompt, and thorough investigation in every case. *Mitchell v. State*, 132 Idaho 274, 280 (1998); *Eddington, supra*, p. 11. In analyzing a claim that counsel had neglected that duty, the courts are to consider not only the evidence known to counsel, but also whether that "known evidence would lead a reasonable attorney to investigate further." *Murphy v. State*, 143 Idaho 139, 146 (Ct. App. 2006). Mr. Rinke’s attorney did not investigate further. Mr. Rinke set forth sufficient evidence that his attorney failed in these specifically-delineated duties under post-conviction precedent. Based thereon, summary dismissal was not appropriate, and the District Court erred.

2. Evidence in support of Second Cause of Action

Mr. Rinke’s second cause of action focused on errors and omissions of his trial court counsel during the “plea and pre-sentencing phase” of his underlying criminal case. (R. 284-86). Mr. Rinke alleged that his attorney failed to investigate Rinke’s mental health state or request a mental health examination, despite admitting to having clear knowledge of Mr. Rinke’s severe, debilitating and ongoing mental health issues. Counsel allowed Mr. Rinke to proceed with an entry of a guilty plea under the same circumstances, despite having information that the plea may not have been knowing, voluntary, intelligent and with a complete understanding of its consequences.

In his second cause of action, Mr. Rinke further alleged that his counsel made assertions to Mr. Rinke regarding the proposed plea agreement, which either were not accurate or were not placed on the record at the hearing in which Mr. Rinke pled guilty. Mr. Rinke detrimentally relied upon these statements when he made the decision to plead guilty to two serious felony charges, and waived his right to a jury trial. Additionally, Mr. Rinke was sentenced to a harsher sentence based in part on the prosecuting attorney's recommendations, which counsel misrepresented to Mr. Rinke.

The District Court rejected these claims by claiming that Mr. Rinke failed to raise a genuine issue of material fact (R. 496-97) and by declaring that the Court itself had cured any error or omission by counsel (R. 504).

Most importantly, it appears that the District Court did not follow the appropriate standard, and required Mr. Rinke to show more than a *prima facie* case at the summary judgment stage of the PCR proceedings. *See Ash, supra*, at 3; *Blackburn, supra*, at 3; *Garza, supra*, at 3.

Mr. Rinke provided evidence in support of his second cause of action in the form of sworn testimony from his affidavit and PCR petition, as set forth in more detail below.

First, Mr. Rinke alleged that his trial counsel failed to seek a comprehensive mental health evaluation of Rinke, despite his awareness of Rinke's severe, ongoing mental health problems. Mr. Rinke alleged that his counsel allowed him to proceed with an entry of a guilty plea under the same circumstances, despite having information that the plea may not have been knowing, intelligent and voluntary, and despite admitting to having knowledge of Mr. Rinke's declining mental state.

Rinke provided proof of this claim in his sworn petition and in his (first) sworn affidavit in support. (*See* R. 284-85, 305-07). As stated above, Mr. Rinke's counsel conceded that they were aware of his ongoing mental health issues, in counsel's own statements to the Court. (*See* R. 382 (Tr. p. 75, l. 5 to p. 76, l. 12))(stating that "from the very beginning", counsel and the prosecuting attorney were aware of and concerned with Mr. Rinke's mental health status). In simplest terms, counsel was well aware of Mr. Rinke's debilitated mental health state, yet did nothing to protect his client's interests or ensure Mr. Rinke was proceeding in a knowing and informed manner.

Again, Mr. Rinke provided substantial additional evidence to support this particular claim, in the form of the Neuropsychological Evaluation performed on Mr. Rinke by Dr. Clay Ward. The report provided crucial evidence regarding Mr. Rinke's mental state and mental health status during the pendency of the case. For purposes of attempted summary dismissal by the State, the report provided more than sufficient evidence to raise a genuine issue of material fact. (*See* R. 392-99)(consisting of Dr. Ward's *Neuropsychological Evaluation of Isaac Rinke*). As noted herein above, Dr. Ward indicated that Mr. Rinke was very likely experiencing "an acute mental health exacerbation and crisis" during the pendency of his case, with "no evidence in the record that his mental state was stabilized prior to his legal proceedings". *Id* at p. 8.

Additionally, Mr. Rinke provided additional evidence to support this claim in the form of an affidavit from Jonathan Scaggs. (R. 362-63). Mr. Scaggs' affidavit outlined his personal observations of Mr. Rinke's declining mental state just prior to Rinke's incarceration in his criminal case.

As discussed herein above, the District Court gave little consideration to Mr. Rinke's evidence on this claim, especially the report from a respected neuropsychologist. The evaluation report constituted significant evidence in support of Mr. Rinke's PCR claims, and raised a *prima facie* case of a genuine issue of material fact. However, it appears the Court improperly held Mr. Rinke to a higher standard, requiring him to prove the allegation altogether rather than simply making an initial *prima facie* showing. The District Court erred by doing so. *See Ash, supra; Schultz*, 153 Idaho at 796.

Second, Mr. Rinke alleged that his counsel made representations to Rinke regarding the proposed plea agreement, which either were not accurate or were not placed on the record at the plea hearing, in order to protect Mr. Rinke's due process rights at sentencing. Mr. Rinke alleged that he detrimentally relied upon these statements in deciding to plead guilty to two serious felony charges, and waiving his right to a jury trial.

Mr. Rinke provided proof of this claim in his sworn petition and in his (first) sworn affidavit in support. (*See* R. 286, 307-09).

Additionally, Mr. Rinke provided additional explanation of his problems and concerns regarding the plea entry process, and his comments or lack thereof to the Court. (*See* R. 320-21). Mr. Rinke explained why he did not alert the Court to the mental distress he was experiencing and his concerns regarding entering pleas of guilty despite his confusion. (*Id.*) Curiously, the District Court completely ignored this evidence, and instead summarily declared that Mr. Rinke had failed to raise a genuine issue of material fact without explaining why Mr. Rinke's evidence fell short of meeting that standard. (*See, generally*, R. 494-97).

The United States Supreme Court has held that the Sixth Amendment right to effective assistance of counsel extends to the plea bargaining process. *Missouri v. Frye*, 566 U.S. 134, 140, 132 S.Ct. 1399, 1405 (2012); *Fortin v. State*, 160 Idaho 437, 445 (Ct. App. 2016). Counsel had a duty to provide effective assistance of counsel to Mr. Rinke during the plea process. Mr. Rinke has provided evidence on each of his claims concerning the plea process.

In summary, Rinke provided evidence and proof to support each of his claims in his second cause of action. The parties disagree over those facts, creating a material issue of fact for the Court's resolution. See *Wheeler, supra*; (2017 Opinion No. 72, p. 3); *Baldwin*, 145 Idaho at 153; *Thomas, supra*, (2017 Opinion No. 6, p. 3). Summary dismissal simply was not appropriate, under prevailing Idaho case law. The District Court erred by granting summary dismissal of Mr. Rinke's PCR claim.

3. Evidence in Support of Third Cause of Action

Mr. Rinke's third cause of action focused on errors and omissions of his trial court counsel during the "sentencing phase" of the case. (See R. 286-90). Mr. Rinke alleged that

"Counsel heedlessly disregarded Mr. Rinke's legitimate interests and committed legal error by failing to inform the Court that a mental health evaluation was necessary for sentencing purposes, which later led to Mr. Rinke being sentenced more harshly by the District Court." (*Id.* at 286).

Mr. Rinke further alleged that his attorney failed to advise Mr. Rinke of his ongoing right to remain silent during the pre-sentence investigation and domestic violence evaluation process, pursuant to *Estrada v. State*, 143 Idaho at 561. (*Id.* at 288). During those processes, Mr. Rinke did not exercise his right to remain silent, and instead

made several damaging statements which the District Court relied upon in declaring that Mr. Rinke was minimizing his actions. Mr. Rinke asserted that based on those statements, the District Court imposed a harsher sentence.

Finally, as to the third cause of action, Mr. Rinke alleged that his counsel failed to take action to correct factually inaccurate statements offered by the Court at his sentencing hearing. The District Court misstated and over exaggerated the extent of the complaining witness' injuries during the sentencing hearing. Mr. Rinke's attorney failed to object to those statements and failed to take any action to remedy the problem. The record reflects that the District Court relied upon that inaccurate information to impose a harsher sentence upon Mr. Rinke. (*See, generally*, R. 386-87 (Tr., p. 92, l. 20 to p. 93, l. 16).

The District Court rejected these claims, summarily claiming that Mr. Rinke failed to raise a genuine issue of material fact as to the mental health issue (Tr. 496-97), that the Court cured any potential omission or error by counsel on the *Estrada*-related claim (Tr. 505) (*See Estrada v. State*, 143 Idaho 558 (2006)), and that Mr. Rinke should have raised the other issues on appeal (Tr. 503).

Again, Mr. Rinke asserts that the District Court held him to a higher standard than simply establishing a *prima facie* case at the summary judgment stage of the PCR proceedings. *See Ash, supra; Blackburn, supra; Garza, supra.*

Rinke provided evidence to support his petition's third cause of action, in the form of sworn testimony from his affidavit and petition, as set forth in more detail below.

First, Mr. Rinke alleged that his counsel heedlessly disregarded Rinke's legitimate interests and committed legal error by failing to inform the Court that a mental health

evaluation was necessary for sentencing purposes. Mr. Rinke further asserted that this failure led to a much harsher sentence from the District Court. Mr. Rinke provided proof of this claim in his sworn petition and in his (first) sworn affidavit in support. (*See* R. 286-88, 305-07). Again as noted above, counsel conceded that they were aware of Mr. Rinke's ongoing mental health issues, in counsel's direct statements to the District Court at Mr. Rinke's sentencing hearing. (*See* R. 382 (Tr. p. 75, l. 5 to p. 76, l. 12)). Mr. Rinke provided further support that a mental health evaluation was necessary, and should have been requested by his counsel, through Dr. Ward's report, as discussed herein above. (*See* R. 392-99)(consisting of Dr. Ward's *Neuropsychological Evaluation of Isaac Rinke*).

Idaho Code §19-2522 provides that a mental health evaluation is mandatory if there is reason to believe that the mental condition of the defendant will be a significant factor at sentencing and for good cause shown. *State v. Coonts*, 137 Idaho 150, 152 (Ct. App. 2002); *State v. McFarland*, 125 Idaho 876, 879 (Ct. App. 1994). Despite having full knowledge that their client's mental condition was a substantial factor at sentencing, Mr. Rinke's counsel took no steps to ensure that a comprehensive mental health evaluation was performed. In doing so, counsel disregarded established Idaho sentencing law and procedure.

Second, Mr. Rinke alleged that his counsel failed to advise Mr. Rinke of his ongoing right to remain silent during the PreSentence Report and the Domestic Violence Evaluation processes. Mr. Rinke further alleged that he subsequently made several incriminating statements which the District Court relied upon in imposing a much harsher

sentence. Mr. Rinke provided proof of this claim in his sworn petition and in his (first) sworn affidavit in support. (*See* R. 288, 309-10).

Mr. Rinke alleged that his counsel failed to object to improper statements made by the District Judge at the Sentencing Hearing, which the Court relied upon in imposing a harsher sentence on Rinke. Specifically, Mr. Rinke alleged that the District Court misstated and over exaggerated the extent of the complaining witness' injuries in its ruling, and his counsel failed to object or correct the record. Mr. Rinke provided proof of this claim in his sworn petition and in his (first) sworn affidavit in support, and by submission of the sentencing hearing transcript. (*See* R. 289, 311, 386-87 (Tr., p. 92, l. 20 to p. 93, l. 16).

The District Court erred when it ignored Mr. Rinke's claim of error on the issue of his counsel's failure to object to the District Judge's ignorance of the facts of the case and improper reliance of false information in sentencing. The District Court instead attempted to toss this aside as an overlooked appeal issue. In doing so, the District Court missed the point. Mr. Rinke was arguing that his counsel performed deficiently by failing to object to, or correct the record regarding, the Judge's gross misstatement of the facts. The District Court simply glossed over the issue, focusing on "judicial misconduct" (*see* R. 503) rather than addressing Mr. Rinke's argument of ineffective assistance of counsel. The District Court failed to recognize that Mr. Rinke had provided evidence to support his claim entitling him to an evidentiary hearing on the issue, and therefore summary dismissal was inappropriate. *See Payne*, 159 Idaho at 883; *Charboneau v. State*, 140 Idaho at 792. Because Mr. Rinke had created a genuine issue of material fact with supporting evidence, an evidentiary hearing should have been

conducted to resolve the factual issues. *Takhsilov, supra*, (2016 Opinion No. 6, p. 4); *Goodwin v. State*, 138 Idaho at 272. The District Court erred by granting summary dismissal on this issue.

CONCLUSION

Mr. Rinke raised genuine issues of material fact in his PCR petition. Under clearly-established Idaho law, summary judgment was not appropriate and Mr. Rinke was entitled to an evidentiary hearing. The District Court committed reversible error by summarily dismissing Mr. Rinke's PCR case and entering judgment against him.

Mr. Rinke respectfully requests that this Court correct that error, by reversing the District Court and remanding the case for further proceedings.

DATED this 29th day of September, 2017.

Paul E. Riggins
PAUL E. RIGGINS
Attorney for Appellant Isaac J. Rinke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 2017, I served a true and correct copy of the foregoing document, by delivering a copy thereof in the method indicated below, to the following persons:

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