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

|                              |   |                            |
|------------------------------|---|----------------------------|
| <b>ISAAC JOSEPH RINKE,</b>   | ) |                            |
|                              | ) | <b>No. 44724</b>           |
| <b>Petitioner-Appellant,</b> | ) |                            |
|                              | ) | <b>Ada County Case No.</b> |
| <b>v.</b>                    | ) | <b>CV-PC-2015-10847</b>    |
|                              | ) |                            |
| <b>STATE OF IDAHO,</b>       | ) |                            |
|                              | ) |                            |
| <b>Defendant-Respondent.</b> | ) |                            |
| <hr/>                        |   |                            |

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE SAMUEL A. HOAGLAND  
District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Isaac Joseph Rinke appeals from the district court's summary dismissal of his petition seeking post-conviction relief.

### Statement Of The Facts And Course Of The Proceedings

The state initiated the underlying criminal case against Rinke by filing a complaint on September 12, 2013, charging Rinke with felony domestic violence, attempted strangulation, and aggravated assault. (#41696 R., pp. 5-7.<sup>1</sup>) Less than two weeks later, on September 25, 2013, the state amended its complaint to charge felony domestic violence, attempted strangulation, aggravated assault, second-degree kidnapping, and a deadly weapon enhancement. (#41696 R., pp. 28-30.) Rinke waived his preliminary hearing and was bound over on the charges. (#41696 R., pp. 23, 31-36.) The charges were based on his wife's report that he had twice attacked her: the first time he had slammed her head against a wall repeatedly, choked her, and hit her with a water bottle, and the second time he had destroyed her property, threatened to kill her, and held a broken shard of glass to her throat and again threatened to kill her. (#41696 PSI, pp. 3-4, 66-67.) On October 10, 2013, Rinke pled guilty to felony domestic violence and attempted strangulation, and the state dismissed the remaining charges and enhancement. (#41696 R., p. 41.) The district court imposed consecutive sentences of 10 years determinate for domestic violence and 15 years indeterminate for attempted strangulation, for an aggregate sentence of 25

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<sup>1</sup> The district court took judicial notice of the record in the underlying criminal case. (R., p. 489 n. 1.) The state is filing, contemporaneously with this brief, a motion for the Court to take judicial notice of the file in Docket Number 41696, the appeal from the criminal judgment challenged by Rinke's post-conviction petition.

years with 10 years determinate. (#41696 R., pp. 50-54.) The Idaho Court of Appeals affirmed the sentence on appeal. State v. Rinke, Docket No. 41696, 2014 Unpublished Opinion No. 659 (Idaho App., August 12, 2014).

Rinke filed a petition for post-conviction relief challenging his convictions and sentences for felony domestic violence and attempted strangulation, asserting that his trial counsel had been ineffective in preparing for trial, in relation to the guilty plea, and at sentencing. (R., pp. 6-17.) Rinke subsequently filed an affidavit setting forth his factual averments. (R., pp. 62-75.)

The state filed an answer generally denying that counsel was ineffective. (R., pp. 25-29.) The state also moved for summary disposition, asserting the petition “fail[ed] to raise a genuine issue of material fact, is bare and conclusory, [and] contrary to the record and law.” (R., p. 77; see also R., pp. 105-19 (brief in support of motion).) Attached to the motion was State’s Exhibit 1, a transcript of the entry of plea and sentencing hearings in the underlying criminal case. (R., pp. 79-104.)

Rinke responded with briefing (R., pp. 39-61, 158-69), affidavits (R., pp. 171-276), and an amended petition (R., pp. 278-96). The state answered and moved to dismiss the amended petition on the same general grounds as its first motion. (R., pp. 443-80.)

The district court granted the state’s motion. (R., pp. 489-506.) The district court found that Rinke’s claims were either disproved by the record or were bare and conclusory. (R., pp. 494-506.) Rinke timely appealed from the entry of the judgment. (R., pp. 508-14.)



## ISSUES

Rinke states the issue on appeal as:

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

(Appellant's brief, p. 8.)

The state rephrases the issues as:

1. Did Rinke fail to present a viable claim of ineffective assistance of counsel relating to his guilty plea?
2. Did Rinke fail to present a viable claim of ineffective assistance of counsel in his sentencing?

## ARGUMENT

### I.

#### Rinke Failed To Present A Viable Claim That His Guilty Plea Was A Result Of Ineffective Assistance Of Counsel

##### A. Introduction

Rinke alleged that his guilty plea was the result of his attorney's failure to provide effective assistance of counsel. Specifically, he claimed counsel "failed to adequately prepare Mr. Rinke's defense to the criminal charges," which led him to "having no choice but to plead guilty" (R., pp. 280-82); "failed to request a competency examination or mental health evaluation," which would have led to evidence he was "experiencing an acute mental health exacerbation and crisis" that resulted in him entering a plea that "may not have been knowing, voluntary [and] intelligent" (R., pp. 282-83, 284-86); failed to "adequately inform" him of "the elements of the offenses" he pled guilty to, which resulted in him pleading guilty despite having "affirmative defenses" (R., pp. 283-84); and made statements about the proffered plea agreement that "were not accurate or were not placed on the record" (R., p. 286). Review of the record and application of the correct legal standards shows the district court properly dismissed these claims as either disproved by the record or being bare and conclusory.

##### B. Standard Of Review

"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 ...." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Rinke Has Shown No Error In The Summary Dismissal Of His Claims Of Ineffective Assistance Of Counsel Related To His Guilty Plea

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq.* Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, in response to a party's motion or on the court's own initiative, if the applicant "has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). "Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law." Workman, 144 Idaho at 522, 164 P.3d at 802.

In order to establish a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). With respect to the deficient performance prong, the United States Supreme Court has articulated the defendant's burden under Strickland as follows:

To establish deficient performance, a person challenging a conviction must show that counsel's representation fell below an objective standard of reasonableness. A court considering a claim of ineffective assistance must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. The challenger's burden is to show that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment.

Harrington v. Richter, 562 U.S. 86, 104 (2011) (citations and quotations omitted). To establish prejudice, a defendant must show a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Richter,

562 U.S. at 104. When the alleged deficiency involves counsel’s advice in relation to a guilty plea, “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. 52, 58 (1985) (footnote and citations omitted).

Application of these standards shows no error in the district court’s order summarily dismissing Rinke’s claims of ineffective assistance of counsel related to the guilt-phase of the underlying criminal proceedings.

1. Rinke’s Ineffective Assistance Of Counsel Claims For Inadequate Consultation And Investigation Were Meritless And Properly Dismissed

Rinke alleged counsel “failed to spend sufficient time” with him and failed to “adequately confer” with him prior to Rinke pleading guilty to felony domestic violence and attempted strangulation. (R., p. 280.) He alleged counsel failed to inform him of the elements of the crimes to which he ultimately pled. (R., pp. 283-84.) He presented an affidavit claiming his attorney met with him “approximately three times”—once for an hour and one-half and twice for a “few minutes”—and spoke with him on the phone “approximately 2 times” with one call lasting “approximately 20 minutes.” (R., pp. 63-64.) Rinke asserted counsel failed to advise him of “the actual elements of the offenses,” and “the specific details of the complaining witness’ allegations,” stating instead that they “talked in general terms about the charges and the facts.” (R., p. 64.) As to prejudice, he asserted: “Had I known the specific elements of the offenses, and specifically that Felony Domestic Battery required evidence that I inflicted a ‘traumatic injury’ (*Idaho Code* §18-918(1)(b), (2)(a)), and Attempted Strangulation required a specific intent to choke or strangle (*Idaho Code* §18-923(3)), I would never have pled guilty.” (R., p. 65.)

The district court concluded that, at the plea colloquy, Rinke, under oath, represented to the court that he was pleading guilty because he was in fact guilty; that his attorney had informed him of his rights, defenses and the possible consequences of his plea; that he was satisfied with his attorney's performance; that he had fully discussed pleading guilty with his attorney; and that he had "enough time to discuss these matters with his attorney." (R., pp. 498-99 (citing #41696 Tr., p. 15, L. 25 – p. 16, L. 22; p. 17, Ls. 1-8; p. 19, Ls. 17-24).) Thus, the record established that Rinke "was advised at length of his constitutional rights and he knowingly, voluntarily and intelligently waived those rights when he pled guilty." (R., p. 499.) The court then determined, "assuming" counsel spent inadequate time consulting with Rinke, Rinke had failed to present evidence of how this "affected the outcome of [the] case and why [Rinke] would have insisted on going to trial." (R., p. 500.) Moreover, the record affirmatively disproved Rinke's claim he was unaware of the elements of the crimes to which he pled guilty. (R., p. 501.)

The record supports the district court's analysis. At his plea colloquy, Rinke stated he understood "the nature of the charges" against him (#41696 Tr., p. 10, Ls. 13-17); stated he understood the consequences of pleading guilty (#41696 Tr., p. 10, L. 13 – p. 12, L. 11); denied pleading guilty "just to get it over with, even though [he believed he's] innocent" (#41696 Tr., p. 13, Ls. 13-15); stated the reason he was pleading guilty was because he was guilty (#41696 Tr., p. 15, L. 25 – p. 16, L. 5); and acknowledged he "fully discuss[ed] the matter of pleading guilty with [his] attorney," felt he "had enough time to discuss these matters with [his] attorney," and stated that his attorney had, to his satisfaction, advised him of his rights, defenses, and the possible consequences of pleading guilty (#41696 Tr., p. 16, L. 12 – p. 17, L. 8). The court explained to Rinke, as part of the plea colloquy, what

facts the state would have to prove beyond a reasonable doubt for a jury to convict Rinke of the two charges, including that the state would have to prove he “inflicted a traumatic injury” on the victim and that he “did willfully and unlawfully choke or attempt to strangle” the victim, and Rinke stated he understood. (#41696 Tr., p. 18, L. 6 – p. 20, L. 4.) Rinke specifically admitted that he committed the offense of domestic violence by throwing a water bottle at the victim, which ricocheted off a wall and “smashed into her head,” and answered “yes” to whether the victim “in fact” received injuries of “swelling and redness in the head.” (#41696 Tr., p. 21, Ls. 8-20.) He admitted he committed the offense of attempted strangulation by “grab[bing] her while she was lying in bed and squeez[ing] her around the throat.” (#41696 Tr., p. 21, L. 21 – p. 22, L. 2.)

Rinke claimed in post-conviction that his attorney failed to spend sufficient time consulting with him, but he stated in his plea colloquy that his attorney had spent sufficient time with him. Rinke claimed in post-conviction that his attorney failed to inform him of the elements of the crime—specifically the elements of “traumatic injury” and intent to choke or strangle—but Rinke acknowledged in his plea colloquy that he understood the state had to prove these things beyond a reasonable doubt before a jury could convict him. The record amply supports the district court’s dismissal of this claim, and Rinke provides no specific argument otherwise. (Appellant’s brief, pp. 14-19.)

Rinke also alleged counsel “failed to investigate” prior to the entry of his guilty pleas. (R., p. 280.) The evidence of counsel’s alleged failure to investigate the case consisted primarily of claims that counsel failed to interview 11 potential defense witnesses as requested by Rinke. (R., pp. 66-67.) Rinke presented affidavits from four of those alleged potential witnesses, who stated they had not been contacted regarding the case. (R.,

pp. 350-65.) Rebecca Goodwin's affidavit stated that, if contacted, she would have testified that the victim told her Rinke "aggressively pushed her up against a wall, that he put his hands around her neck, that she felt some 'crunching' as a result, and that she had hit her head as a result of being pushed up against the wall." (R., p. 351.) Yurek Hansen would have testified that the victim told him Rinke had "thrown her or slammed her against a wall" and "threw a water bottle which bounced off of a wall and hit her in the head, during the same series of events." (R., p. 355.) Jim Moison, the victim's ex-husband, stated the victim had "a history of dishonesty and deceit" who would "engage in dishonesty for her own purposes," and gave a couple of alleged examples of dishonest behavior. (R., pp. 358-59.) Jonathon Scaggs, a co-worker of Rinke's, would have testified that near the time of the crimes Rinke appeared depressed and made statements about hurting himself, so he encouraged Rinke to get help, which he did. (R., pp. 362-63.) Rinke asserted in his affidavits that he "felt like [he] was left with no other choice than to plead guilty" because his attorney "was not willing or able to pursue the evidence and witnesses necessary ... to stage a strong defense against the charges." (R., pp. 305, 320-21.)

Rinke's allegations fail to show a *prima facie* claim of either deficient performance or prejudice. Although failure to contact potential defense witnesses prior to trial would likely constitute deficient performance, Rinke has failed to show why it would be deficient performance to recommend that Rinke accept the state's offer to dismiss two felony charges and the enhancement in exchange for guilty pleas to two of the charges prior to speaking with all of the potential defense witnesses. Rinke did not, for example, allege that counsel was unaware of what evidence Rinke believed the witnesses could provide when he made his recommendation that Rinke plead guilty. "In assessing the

reasonableness of counsel's investigation, we consider not only the quantum of evidence known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Stevens v. State, 156 Idaho 396, 412–13, 327 P.3d 372, 388–89 (Ct. App. 2013). Rinke presented no reason why a reasonably competent counsel would have investigated further than what his client told him about potential defense witnesses prior to recommending acceptance of the state's plea offer.

Rinke's claim of prejudice fails for similar reasons. Rinke does not claim he was ignorant of what the potential defense witnesses would have testified to. "In order to demonstrate prejudice, a petitioner is required to show that as a result of counsel's deficient performance '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.'" Ridgley v. State, 148 Idaho 671, 676, 227 P.3d 925, 930 (2010) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)). His affidavit asserts that he pled guilty because he "felt" his attorney was not going to present a vigorous defense and "realized" his attorney "was not going to interview the potential witnesses," but he does not assert his attorney ever told him this and presents no other basis (much less evidence) for his "feelings" and "realization." (R., pp. 305, 320–21.) The record shows Rinke accepted the state's plea offer and entered his guilty pleas within a month of the filing of the complaint and within two weeks of the filing of the information. (#41696 R., pp. 5, 34, 41.) No trial was ever scheduled because, at the arraignment, the parties requested that the matter be set for entry of plea. (#41696 R., p. 40.) Rinke's subjective belief that counsel's failure to interview his 11 witnesses within a month after the complaint was filed meant that such interviews would never occur and



therefore he could not get a fair as-yet-not-scheduled trial did not establish a claim of prejudice meriting an evidentiary hearing.

On appeal Rinke argues the district court erred because he did establish a *prima facie* claim of ineffective assistance of counsel and there was a genuine issue of material fact. (Appellant’s brief, p. 13.) Specifically, Rinke argues that the evidence from the potential witnesses would have created “ripe grounds for cross-examination and impeachment” of the victim and counsel failed to “obtain this crucial evidence.” (Appellant’s brief, pp. 15-17.) Although this might be a potentially meritorious argument had this case proceeded to trial, it is irrelevant to whether counsel acted competently in relation to the guilty plea. There was no cross-examination or impeachment of the victim at the guilty plea proceedings and, according to his own factual claims, Rinke and his counsel were aware of the witnesses and their potential testimony (even if counsel had not “obtain[ed]” the testimony) when they decided to enter the plea agreement with the state. Rinke has failed to show that counsel was constitutionally required to talk to the potential witnesses prior to entering the plea agreement, or that there was a reasonable probability that Rinke would have elected to proceed to trial instead of enter the plea agreement had counsel talked to the witnesses.

2. Rinke’s Claim Counsel Was Ineffective For Not Obtaining A Competency Evaluation Or A Mental Health Evaluation For Sentencing Was Meritless And Properly Dismissed

Rinke alleged counsel was ineffective for failing to obtain a competency evaluation prior to entry of the guilty plea. (R., pp. 282-85.) He supported this claim with (a) his own affidavit claiming he “experienced a complete mental breakdown” after his arrest, was placed on a “strong anti-psychotic medication” by jail staff, and stabilized only after being

incarcerated in the prison (R. pp. 68-70); (b) a report from Dr. Ward concluding there was “strong evidence” Rinke was “experiencing an acute mental health exacerbation and crisis when incarcerated” and “no evidence” that Rinke’s mental state was “stabilized prior to his medical proceedings” (R., p. 399); (c) the affidavit of Jonathon Scaggs stating that Rinke appeared depressed and made statements about hurting himself near the time of the crimes (R., pp. 362-63); and (d) jail medical records showing Rinke was treated for mental health issues, was placed on suicide watch, and reported symptoms of anxiety (R., pp. 259-76). The district court rejected the competency evaluation claim because there was “no evidence showing that [Rinke] was incompetent during the proceedings in the underlying case, or that his counsel was ineffective for failing to obtain a mental health evaluation.” (R., p. 495.) The district court further stated that a mental health evaluation was done for sentencing, which did not indicate Rinke was incompetent. (R., pp. 495-96.) The court noted that Rinke’s claim that counsel should have involved him more in preparing his own defense was inconsistent with any claim of incompetence. (R., p. 496.) Finally, the district court concluded that Dr. Ward’s statement that Rinke was not stabilized during the legal proceedings was “conclusory and contrary to the record in the underlying case.” (R., pp. 496-97.)

Application of relevant legal standards shows no error by the district court. “The two-pronged test for competency to stand trial is whether a defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him.” State v. Hanson, 152 Idaho 314, 325, 271 P.3d 712, 723 (2012) (internal quotes and brackets omitted). Although there was certainly evidence that Rinke suffered mental health

problems, none of that evidence shows those mental health issues were of the type or nature to prevent Rinke from having a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and a “rational, as well as factual, understanding of the proceedings against him.” Rinke cites to the evidence of his mental health issues, but makes no attempt to show how that evidence relates to the proper legal standard for competency. (Appellant’s brief, pp. 17-18.) Because Rinke does not articulate how the evidence he presented establishes incompetency under the relevant legal standard, he has failed to show error in the summary dismissal of this claim of ineffective assistance of counsel for not seeking a competency evaluation.

3. Rinke’s Claim That Counsel Misrepresented The Terms Of The Plea Agreement Was Properly Dismissed

Rinke alleged counsel was ineffective for making inaccurate statements to him about the plea agreement or failing to put terms of the plea agreement on the record. (R., p. 286.) The inaccurate statement was that the state would recommend “a sentence of five years, with two years determinate and three years indeterminate, with the Court retaining jurisdiction.” (R., p. 71.) The district court concluded this claim was contradicted by the record because the plea agreement was stated on the record prior to the entry of the plea and Rinke failed to show any prejudice from the alleged inaccurate statement. (R., p. 504.)

The record supports this conclusion. At the guilty plea hearing counsel for both parties specifically stated that sentencing recommendations were not part of the plea agreement. (#41696 Tr., p. 5, Ls. 13-21.) Rinke, when asked by the court whether he agreed with his counsel’s “representations to the Court regarding your conversations concerning these guilty pleas,” answered that he did. (#41696 Tr., p. 7, Ls. 20-25.) He also stated that he understood that his guilty pleas would expose him to sentences of “up

to 25 years in prison” and that “the only person who can promise [him] what sentence [he] will actually receive is the judge.” (#41696 Tr., p. 8, L. 16 – p. 9, L. 2; p. 12, Ls. 20-23.)

This case is indistinguishable from that of Nevarez v. State, 145 Idaho 878, 187 P.3d 1253 (Ct. App. 2008). Nevarez asserted that “counsel misrepresented the terms of the plea agreement” by guaranteeing he would “receive only a sentence of fifteen years with three years determinate,” which was less than the mandatory minimum. Id. at 884, 187 P.3d at 1259. Nevarez supported his claim with affidavits from himself and his son. Id. However, Nevarez’s factual assertions were “contradicted by the record” which showed the plea agreement placed on the record, a lack of objection to the terms expressed in open court, Nevarez’s expression of understanding the terms of the plea agreement, and the court’s articulation of the mandatory minimum sentence. Id. “Furthermore, even if counsel did misinform Nevarez about the mandatory minimum sentence, this erroneous advice was cured by the trial court’s clear statements that the mandatory minimum sentence for trafficking would apply.” Id. at 885, 187 P.3d at 1260. As in Nevarez, the record of the underlying criminal case contradicts Rinke’s claim, demonstrating that he entered his guilty plea with a full understanding of the terms of the agreement.

On appeal Rinke argues that “it appears that the District Court did not follow the appropriate standard, and required Mr. Rinke to show more than a *prima facie* case.” (Appellant’s brief, p. 20.) Rinke does not cite to the record or any part of the district court’s analysis in support of this assertion. More importantly, the district court was not applying the *prima facie* claim standard: it specifically said it was dismissing the claim because it was “contradicted by the record.” (R., p. 504.) Even if a petitioner’s allegations and factual claims present a viable claim on their face, if those factual claims are refuted by the record

of the underlying criminal case then summary dismissal is appropriate. Nevarez, 145 Idaho at 884-85, 187 P.3d at 1259-60; see also Eddington v. State, \_\_\_ Idaho \_\_\_, \_\_\_ P.3d \_\_\_, 2017 WL 1842828, at \*6 (Idaho Ct. App. May 8, 2017) (“Because the record contradicts Eddington’s argument, the district court properly summarily dismissed this claim.”). Rinke’s argument does not address the legal standard actually applied by the district court.

The district court concluded that Rinke’s claims of ineffective assistance of counsel leading to his guilty plea were not viable claims meriting an evidentiary hearing. Review of the record and application of the relevant legal standards show that Rinke’s claims are either facially without merit, are unsupported by a demonstration of admissible evidence, or are contradicted by the record of the underlying criminal proceedings. Rinke has failed to show error in the summary dismissal of these claims.

## II.

### Rinke Has Failed To Present A Viable Claim Of Ineffective Assistance Of Counsel In His Sentencing

#### A. Introduction

Rinke alleged ineffective assistance of counsel for allegedly failing to obtain a mental health evaluation for sentencing, failing to inform him of his right to remain silent in the pre-sentence investigation and domestic violence evaluation, failing to object to “improper statements and items” provided at sentencing, and failing to object to “improper statements made by the District Judge” at sentencing. (R., pp. 286-90.) The district court dismissed these claims as lacking legal merit or because they were contradicted by the record of the underlying criminal proceedings. (R., pp. 495-97, 502-05.) Rinke asserts he did present viable claims that merited an evidentiary hearing. (Appellant’s brief, pp. 23-

27.) Review of Rinke’s arguments in the context of the record and applicable legal standards show he has failed to demonstrate error by the district court.

B. Standard Of Review

“‘[W]hen reviewing a district court’s order of summary dismissal in a post-conviction relief proceeding, we apply the same standard as that applied by the district court.’” Takhsilov v. State, 161 Idaho 669, 672, 389 P.3d 955, 958 (2016) (quoting Ridgley v. State, 148 Idaho 671, 675, 227 P.3d 925, 929 (2010)). Under this standard the Court “‘must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file.’” Id.

“‘When considering summary dismissal, the district court must construe disputed facts in the petitioner’s favor, but the court is not required to accept either the petitioner’s mere conclusory allegations, unsupported by admissible evidence, or the petitioner’s conclusions of law.’” Mallory v. State, 159 Idaho 715, 718, 366 P.3d 637, 640 (Ct. App. 2015). “‘Claims may be summarily dismissed if the petitioner’s allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims, or if the petitioner’s allegations do not justify relief as a matter of law.’” Id.

C. Rinke Failed To Establish A Viable Claim Of Ineffective Assistance Of Counsel At Sentencing

“‘To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney’s performance was deficient and that the defendant was prejudiced by the deficiency.’” Booth v. State, 151 Idaho 612, 617, 262 P.3d 255, 260 (2011). “‘The manner of cross-examination and the lack of objections to testimony are considered tactical or

strategic decisions.” Eddington v. State, No. 44353, 2017 WL 1842828, at \*5 (Idaho Ct. App. May 8, 2017). “Bare assertions or speculation, unsupported by specific facts, do not suffice to prove ineffective assistance of counsel.” Aragon v. State, 114 Idaho 758, 764, 760 P.2d 1174, 1180 (1988). To show prejudice from deficient performance at sentencing the petitioner must demonstrate “a reasonable probability the result of the sentencing proceeding would have been different.” State v. Abdullah, 158 Idaho 386, 495, 348 P.3d 1, 110 (2015).

Rinke alleged that his trial counsel was ineffective for “failing to inform the Court that a mental health evaluation was necessary for sentencing purposes.” (R., p. 286.) The district court summarily dismissed this claim, at least in part, because “a mental health evaluation was ordered, performed and provided to the Court prior to sentencing.” (R., pp. 496-97.) That evaluation was ordered by the court after it took Rinke’s guilty plea (#41696 Tr., p. 22, L. 7 – p. 23, L. 2) and is in the record in the underlying criminal case (#41696 PSI, pp. 50-63; see also pp. 18-19, 164-251, 303-08). Trial counsel did not render deficient performance by not requesting what the trial court itself ordered, and Rinke was not prejudiced because the mental health evidence in the record at sentencing was extensive.

Rinke argues that his trial counsel “committed legal error by failing to inform the Court that a mental health evaluation was necessary for sentencing purposes” and that his “failure led to a much harsher sentence.” (Appellant’s brief, pp. 24-25.) He also states trial counsel “took no steps to ensure that a comprehensive mental health evaluation was performed.” (Appellant’s brief, p. 25.) This argument is nothing more than a restatement of Rinke’s pleadings. (R., p. 286 (counsel “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”).) Rinke fails to address the district court’s holding that the mental health evaluation and materials included in sentencing as demonstrated in the record of the underlying criminal case disprove this claim. Because he does not address the district court’s actual analysis and holding, Rinke has failed to show error by the district court.

Rinke also claimed that “[c]ounsel and the Court failed to advise [him] of his ongoing right to remain silent” rather than participate in the PSI and the domestic violence evaluation. (R., p. 288.) The district court dismissed this claim because, as part of the plea colloquy, Rinke waived his right to silence regarding those evaluations, and therefore there was no prejudice regardless of “any failure” by counsel in this regard. (R., pp. 503-504.) The record supports this determination. During the colloquy the trial court asked Rinke whether he understood that he was waiving his right against self-incrimination, including “any right you may have to refuse to participate in a presentence investigation, an alcohol or substance abuse evaluation, a domestic violence or anger evaluation, or a psychological or psychiatric evaluation to assist the Court in sentencing,” to which Rinke answered, “Yes, Your Honor.” (#41696 Tr., p. 17, L. 9 – p. 18, L. 5.) Because the district court explained the right in open court, and took Rinke’s waiver, prior to the plea, any failure by counsel to explain this to Rinke was not prejudicial.

On appeal Rinke merely re-states his allegations. (Compare Appellant’s brief, pp. 25-26 with R., p. 288.) Because Rinke has not addressed the district court’s holding or reasoning on appeal, he has failed to show error.

Rinke claimed his counsel was ineffective for failing to “object to several improper statements and items of information” at sentencing. (R., p. 288.) Specifically, he alleged



counsel should have objected to “misinformation regarding dismissed charges,” prosecution statements about his potential dangerousness, and the victim’s sentencing recommendations. (R., pp. 288-89; see also R., pp. 73-74.) The district court rejected the claim of ineffective assistance of counsel for not objecting to the prosecutor’s comments on dismissed charges because such an objection would have been without merit. (R., p. 503.) It rejected the claim of ineffective assistance of counsel for not objecting to the victim statement because counsel did, in fact, object. (R., p. 503.)

The record supports the district court’s rulings. The prosecutor recited the facts as contained in the PSI regarding Rinke’s prior arrest on domestic violence charges. (#41696 Tr., p. 62, L. 17 – p. 63, L. 20; see also #41696 PSI, pp. 11-12.) This was proper argument. State v. Ott, 102 Idaho 169, 170, 627 P.2d 798, 799 (1981) (“In arriving at its sentencing decision the court was within its authority in considering prior charges against Ott which had been dismissed and the pending charges against him for battery, resisting arrest and possession of stolen property.”); State v. Barnes, 121 Idaho 409, 411, 825 P.2d 506, 508 (Ct. App. 1992) (“The district court may, with due caution, consider the existence of the defendant’s alleged criminal activity for which no charges have been filed, or where charges have been dismissed.”). Rinke’s counsel entered a specific objection to consideration of the victim’s sentencing recommendation, which the court overruled because such a recommendation was only inadmissible in capital cases. (#41696 Tr., p. 59, L. 25 – p. 60, L. 15.) The district court did not err in dismissing these claims.

Rinke also alleged that counsel was ineffective for failing to correct certain factual findings by the district court regarding the extent of the victim’s injuries. (R., pp. 289-90.) The evidence presented was the sentencing transcript, pages 92-93, and Rinke’s affidavit

stating the findings were “erroneous and improper.” (R., p. 74.) The district court’s statements were that the CT scan showed “swelling on the interior structures of the neck,” and photographs showed “bruising” and “scratches.” (#41696 Tr., p. 92, L. 20 – p. 93, L. 16.) The medical records attached to the PSI in the underlying criminal case shows that a CT scan of the victim’s neck revealed swelling. (#41696 PSI, pp. 146, 149-50.) The photographs attached to the PSI show that the victim had bruising and scratches on her neck. (#41696 PSI, pp. 95-97, 99.)

The district court dismissed this claim on the basis that claims of factual error or judicial misconduct could have been raised on appeal. (R., pp. 502-03.) Rinke correctly points out that his claim is of ineffective assistance of counsel, which is not an issue that could have been raised in the appeal in the underlying criminal case. (Appellant’s brief, pp. 26-27.) However, a claim of clear error in the factual findings could have been raised on appeal, State v. Kesling, 155 Idaho 673, 677, 315 P.3d 861, 865 (Ct. App. 2013) (review of factual findings at sentencing is based on clear error standard), so the claim that the court erred could have been raised by appellate counsel, yet Rinke did not allege appellate counsel was ineffective.

Even if Rinke had established that the district court employed an erroneous theory, his argument that his claim was erroneously dismissed would still fail. The state asked for dismissal below on the basis that evidence of the victim’s injuries was presented at the sentencing. (R., pp. 474-75.) It is well established that when the trial court “reaches the correct result by an erroneous theory,” the Idaho Supreme Court “will affirm the result on the correct theory.” Deiter v. Coons, 162 Idaho 44, 394 P.3d 87, 91 (2017). See also State v. Abdullah, 158 Idaho 386, 417, 348 P.3d 1, 32 (2015) (“If a district court reaches the

correct result by an erroneous theory, this Court will affirm the order upon the correct theory.”); Nampa & Meridian Irr. Dist. v. Mussell, 139 Idaho 28, 33, 72 P.3d 868, 873 (2003) (same). Moreover, as stated above, this Court directly applies the summary dismissal standard. Takhsilov, 161 Idaho at 672, 389 P.3d at 958. Applying those standards shows the district court reached the right result, regardless of the reason, because the district court’s factual findings at sentencing were supported by the evidence before it. It was neither deficient performance nor prejudicial for trial counsel not to challenge the sentencing court’s finding that the victim suffered from external bruising and internal swelling of her neck as a result of being choked by Rinke.

Rinke raised several claims that trial counsel was ineffective at sentencing, but his factual claims bear no resemblance to the contemporaneous record of what actually happened in the trial court. The district court properly summarily dismissed these claims, and Rinke has failed to show error.

#### CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 25th day of October, 2017.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 25th day of October, 2017, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

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KKJ/dd