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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.)	
_____)	

REPLY 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 A. Hoagland
District Judge**

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ARGUMENT

I. The Respondent incorrectly argues that Mr. Rinke failed to present evidence of how his attorney's dereliction of duties to consult and investigate affected the outcome of the case and why Rinke would have insisted on going to trial.

The Respondent argued that Mr. Rinke failed to present evidence of his attorney's failure to consult with him and his attorney's failure to investigate the case, and how those deficiencies affected the outcome of the case. (Respondent's Brief, pp. 7-8). Further, the Respondent argued that Mr. Rinke failed to present evidence how counsel's deficient performance in this regard would have translated to Rinke insisting on going to trial instead of pleading guilty. (Respondent's Brief, pp. 7-9). These arguments are affirmatively disproved by the record.

The record contains two affidavits from Mr. Rinke. (R., pp. 299-313, 314-321). In his affidavits, Mr. Rinke discussed in specific terms his attorney's lack of time and effort invested in the case. (R., pp. 300-01, 303-05, 319, 320). Mr. Rinke discussed exactly how those deficiencies affected the outcome of the case. (R., pp. 301, 303-04, 305, 320). Mr. Rinke specifically testified that his attorney's deficiencies affected his defense and his ability to challenge the charges against him (R., pp. 301, 302, 303, 304, 305, 308, 320). Finally, Mr. Rinke provided sworn testimony that his counsel's deficient performance translated directly to Mr. Rinke's decision to plead guilty rather than proceed to jury trial. (R., pp. 305, 320). He provided sworn testimony, without contradiction from the State, that he "wished to go to trial and challenge [the alleged victim's] allegations against [him]." (R., p. 320).

The record clearly disproves the State's argument in this regard. This Court should not adopt the State's mistaken arguments.

To survive summary judgment, Mr. Rinke needed only to set forth a *prima facie* case of ineffective assistance of counsel, rather than the “preponderance of the evidence” standard required for PCR claims to prevail at evidentiary hearing. *Ash v. State*, ___ Idaho ___ (Ct. App. 2017)(2017 Opinion No. 27, p. 3; June 7, 2017); *Schultz v. State*, 153 Idaho 791, 796 (Ct. App. 2012). Mr. Rinke met this low evidentiary standard by submitting sworn, uncontradicted testimony in support of his claim. The district court erred by ignoring that evidence, and granting summary judgment for the State.

Importantly, Mr. Rinke’s allegations on this claim track very closely with established case law outlining defense counsel’s duty to conduct reasonable investigations in defense of his client. Counsel must assist the defendant as part and parcel of counsel’s duty of loyalty to the defendant. *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). 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; *Stevens v. State*, 156 Idaho 396, 412 (Ct. App. 2013)(citing *Mitchell v. State*, 132 Idaho 274, 280 (1998)). 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.

Simply put, counsel had a duty to investigate Mr. Rinke’s case, witnesses and evidence, and prepare his defense. The record contains evidence that he failed to do so. (R., pp. 301-02, 303-04, 305, 307-08, 315-16, 320, 321). The State failed to provide any evidence, such as an affidavit from counsel or other competent evidence, to contradict or disprove the evidence that Mr. Rinke provided. He submitted a *prima facie* case on this

issue. The district court erred by failing to recognize this, and denying Mr. Rinke an evidentiary hearing on his claim.

II. The Respondent's use of the plea colloquy to refute Mr. Rinke's claims ignores the factual realities of in-court proceedings set forth in Mr. Rinke's sworn affidavit.

The State, mimicking the district court's ruling, attempted to use Mr. Rinke's plea colloquy to refute Rinke's PCR claims. (Respondent's Brief, pp. 7-8, 13-14, 18). At first glance, this argument seems to contain merit. However, Mr. Rinke specifically addressed this argument in his sworn testimony. (R., pp. 320-21). Mr. Rinke stated that

“[a]t the hearing when I pled guilty, during my plea colloquy with the Court, I failed to notify the Court of any of these problems. I was experiencing severe mental health problems at the time, and was not thinking clearly or acting in my own best interests. Representatives of the Boise Police Department and the Ada County Jail noted that I was “delusional”, experiencing “extreme mood swings”, making suicidal statements, and talking of hearing voices in my head. I have attached reports from the Boise Police Department and the Ada County Jail [...]. Records from the Ada County Jail during the pendency of the case, and mental health counseling records from Boise State University just prior to my incarceration, which are included with Dr. Ward's report, also show that I was suffering from severe mental health issues at the time I entered my plea of guilty.

I was intimidated by the Court process and by my attorney's words. To the best of my recollection, my attorney directed me to answer the Court's questions as expected and without any protest or questioning of my understanding of the proceedings. I should have notified the Court at that time, but failed to do so, based on the totality of my difficult circumstances at the time.” (R., pp. 320-21).

Mr. Rinke provided evidence in support of this claim in the form of his sworn affidavit. While the parties may disagree as to the relative strength or weight of this evidence, it constitutes evidence nonetheless. At the summary judgment stage, it is well established that Mr. Rinke only need make a *prima facie* case of ineffective assistance of counsel. *See Payne v. State*, 159 Idaho 879, 883 (Ct. App. 2016); *Charboneau v. State*,

140 Idaho 789, 792 (2004). Mr. Rinke's evidence, in the form of sworn testimony, met that low standard. While the State's argument on this issue is not meritless, it fails to recognize that Mr. Rinke provided evidence in the form of sworn testimony to contradict their argument. The district court's summary dismissal was in error. Mr. Rinke should have been allowed to proceed to trial on his post-conviction claims.

III. The Respondent's statement that failure to contact defense witnesses constitutes deficient performance supports rather than refutes Mr. Rinke's arguments on appeal.

The State conceded in briefing a central point of Mr. Rinke's post-conviction case; that is, "failure to contact potential defense witnesses prior to trial would likely constitute deficient performance" (Respondent's Brief, p. 9). As Mr. Rinke previously argued, case law at both the state and national level require defense counsel to conduct reasonable investigations (*Strickland*, 466 U.S. at 691; *Stevens*, 156 Idaho at 412; *Mitchell*, 132 Idaho at 280) and, if warranted by known evidence, conduct further investigations. (*Stevens*, 156 Idaho at 412-13). Counsel did fail to contact potential defense witnesses. Mr. Rinke and the State are in agreement on this point.

The Respondent surprisingly argues that it was not deficient performance for defense counsel to recommend that his client accept a plea agreement with open recommendations for prison time without conducting a full investigation of the case. (*See* Respondent's Brief, pp. 9-10). Incredulous at best, this argument suggests that defense counsel need not fulfill their obligation to conduct reasonable investigations into the case, in clear violation of United States Supreme Court and Idaho appellate court direction. *Strickland*, 466 U.S. at 691; *Stevens*, *supra*; *Mitchell*, *supra*. Simply put, how could an attorney effectively represent his client, and recommend acceptance of a plea

agreement, if he had not taken the time and effort to fully investigate whether his client had a reasonable chance of prevailing before a jury?

Mr. Rinke respectfully asserts that this argument is in clear contradiction of the precedent established in the landmark *Strickland* case and its progeny. He urges the Court to reject lowered standards which would negatively affect the constitutional plight of the criminally accused in and out of Idaho.

IV. The Respondent inaccurately argued that Mr. Rinke failed to present any explanation why reasonably competent counsel would conduct further investigation.

The Respondent argued that reasonably competent counsel had no need to conduct further investigation of potential defense witnesses. (*See* Respondent’s Brief, p. 10). This argument lacks merit.

First, standards of reasonableness require counsel to do so, as established by U.S. Supreme Court and Idaho appellate court precedent. *Wiggins v. Smith*, 539 U.S. 510, 527, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003); *Murphy v. State*, 143 Idaho 139, 146-47 (Ct. App. 2006)(holding that “[i]n 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*”)(citing *Strickland, supra*, 466 U.S. at 691)(emphasis added).

Second, this evidence, if pursued in defense counsel’s investigation of the case, would have provided inconsistent stories or versions of events capable of impeachment under vigorous cross-examination at trial. Mr. Rinke argued that a comparison of their testimony versus the victim’s version of events to the police would have helped impeach the state’s witness and bolster Mr. Rinke’s defense. (R., pp. 303-04, 426). In short, it

could have provided a viable defense upon which Mr. Rinke could proceed to trial, as he desired from the outset. The district court record is void of any evidence his counsel engaged in any such comparison. For that matter, the district court record is void of *any* evidence whatsoever from the State regarding what Mr. Rinke’s counsel did or did not do in Rinke’s defense.

At the very least, the potential existence of Mr. Rinke’s proffered evidence and testimony merited further investigation by counsel. Instead, counsel did the opposite: nothing. Completely failing to investigate evidence and witness testimony with the potential to effectively impeach the state’s only witness constitutes incompetent performance at its worst.

Reasonably competent counsel would have investigated further. Mr. Rinke’s counsel did nothing. Mr. Rinke made a *prima facie* case of ineffective assistance of counsel, and the district court erred by finding otherwise.

V. The Respondent incorrectly argued that Mr. Rinke failed to provide a “basis” or evidence for his assessment of his attorney’s lack of competent representation and his decisions based thereon.

The Respondent attacked Mr. Rinke’s argument that he was prejudiced by his counsel’s lack of diligence and failure to fulfill his duties as defense counsel based on Rinke’s language contained in his sworn affidavits. (*See* Respondent’s Brief, p. 10). The Respondent suggested that Mr. Rinke “present[ed] no other basis (much less evidence) for his ‘feelings’ and ‘realization’.” (*Id.*)

This argument is expressly disproved by the record. Mr. Rinke provided evidence in the form of a sworn affidavit. (R., pp. 299-313, 314-321)(specifically, R. pp. 301, 305, 309, 320). The “specific evidence” was not controverted by the State in the district court.

Although courts do not have to accept a petitioner's ultimate conclusions, courts are *required* to accept the petitioner's un rebutted allegations as true. *Saykhamchone v. State*, 127 Idaho 319 (1995)(citing *Kraft v. State*, 100 Idaho 671, 674 (1979))(emphasis added); *Bure v. State*, 126 Idaho 253, 254 (Ct. App. 1994). Mr. Rinke's allegations, set forth above, were not rebutted by the State, and therefore 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 v. State*, ___ Idaho ___ (2017)(2017 Opinion No. 72, p. 3, June 21, 2017)(citing *Charboneau v. State*, 140 Idaho 789, 792 (2004)).

This argument is disproved by the record and should not be adopted by this Court.

VI. The Respondent's argument that Mr. Rinke's relatively quick resolution in Court precludes the existence of legitimate post-conviction relief claims is meritless and without reason.

The State's claim that Mr. Rinke pled guilty quickly so therefore he really could not have had a legitimate PCR issue borders on the ludicrous.

Whether a case moves through the system in several months, or several years, should not be the determining factor. Any individual attorney can be just as ineffective, and perform in an equally deficient manner, in one month as he can in one year. What matters is the specific performance of counsel during the entirety of the representation, which was lacking here based on the substantial amount of evidence provided by Mr. Rinke. This argument lacks any merit whatsoever, and should be disregarded.

VII. The Respondent incorrectly attempts to segregate defense counsel's duties between pre-trial and trial processes.

The Respondent argued that counsel's deficiencies in failing to pursue potential testimony and evidence to utilize in his client's defense, and therefore build a case for trial, was "irrelevant to whether counsel acted competently in relation to a guilty plea". (Respondent's Brief, p. 11). Notably, the Respondent conceded that Mr. Rinke presented "potentially meritorious argument[s]" that he offered a *prima facie* claim of ineffective assistance of counsel in this regard. (*Id.*).

Whether defense counsel follows through with his constitutional duty to provide effective assistance of counsel is completely relevant to Mr. Rinke's decision to plead guilty or proceed to trial. Mr. Rinke argues just the opposite from the Respondent; that is, counsel's failure to provide effective assistance of counsel and failure to pursue evidence and testimony to offer in defense at trial is perhaps the *most relevant* factor for a defendant to consider. Any defendant, and Mr. Rinke specifically in this instance, must strongly consider whether their attorney is working to build a defense and obtain evidence and testimony to utilize during cross-examination at trial, in determining whether or not to proceed to trial. As Mr. Rinke testified under oath,

"I began to realize that [my counsel] was not willing or able to pursue the evidence and witnesses necessary for me to stage a strong defense against the charges. I believed that he was not motivated to vigorously represent me at a jury trial, nor that he would put in the time and effort to build our defense. I felt like I was left with no other choice than to plead guilty, at his specific recommendation. I felt that my plea was essentially coerced as a result of my attorney's ineffective assistance of counsel." (R., p. 305).

He further testified under oath that

"[w]hen I realized that my trial attorney was not going to interview the potential witnesses I provided to him and was not going to obtain the

physical evidence and records I requested, I realized that I would not have a viable defense at trial. I believed that I would not receive a vigorous defense from my attorney. I decided to plead guilty although I wished to go to trial and challenge [the victim's] allegations against me.” (R., p. 320).

Respondent seems to suggest that counsel's performance and duties during the pre-trial process do not affect a defendant's decision whether to plead guilty or proceed to trial. (*See* Respondent's Brief, p. 11). Nothing could be further from the truth. Any defendant deciding whether or not to proceed to trial or plead guilty before trial must take into account a number of factors before making that crucial and potentially life-changing decision. Certainly, one of those factors is whether they believe their attorney will do the work necessary, and thereby fulfill their duties as defense counsel, to conduct the necessary investigation, contact potential defense witnesses, gather evidence, and properly prepare their defense.

Once again, the Respondent's argument misses the mark.

VIII. The Respondent incorrectly argues that a comprehensive mental health examination was performed on Mr. Rinke.

The State argued on summary dismissal that Mr. Rinke did in fact undergo a mental health examination during the presentence process. (R., p. 467)(but compare R., p. 496, where the district court states that the “Idaho Department of Health and Welfare sent a letter to the Court advising that based on a review of the [GAIN assessment and records], the Department *did not recommend any additional mental health assessment or treatment.*”). The district court adopted this argument, and summarily dismissed Mr. Rinke's PCR petition based in part thereon. (R., pp. 496-97). This is error, as discussed below. The Respondent exacerbated this error by adopting this argument as well. (Respondent's Brief, pp. 12-13, 17-18).

Mr. Rinke concedes that he did undergo a mental health *screening* as part of the presentence investigation process. (PSR, pp. 50-51). However, this screening falls significantly short of a comprehensive mental health examination (such as the one actually performed by Dr. Clay Ward, Ph.D.)(R., pp. 392-99). Mr. Rinke's mental health screening was performed by Kendra Pettit, a licensed professional counselor. It consisted of a "review of the GRRS report, completed by Perla Ramirez-Groothuis (who had an MS degree only and no mental health professional title)(PSR, p. 63), to determine if mental health symptoms were present" and a "search for relevant IDHW electronic medical records to include previous mental health evaluations and treatment provision, none of which were found." (PSR, p. 50)(Letter from Idaho Department of Health and Welfare to Honorable Michael Wetherell, Nov. 14, 2013). Mr. Rinke did not undergo a mental health examination by a psychiatrist or the equivalent.

Again, the record demonstrates that Mr. Rinke did not undergo a comprehensive mental health examination during the pendency of his criminal case. His attorney apparently failed to understand his duty to assist his client and request that the Court order an examination, despite having admitted knowledge of Mr. Rinke's mental health issues. (R., p. 382)(Tr., p. 75, ls. 5-13)("[h]e has some mental health difficulties in reviewing the file. From the very beginning of our office's representation of him, the preliminary hearing attorney mentioned concerns about his mental health."); (R., p. 384)(Tr., p. 83, ls. 2-12). Mr. Rinke asserts that this is clear proof of deficient performance by his counsel, which ultimately prejudiced Rinke by depriving him of crucial mitigating evidence for the district court to consider. Additionally, given that the district court sentenced Mr. Rinke to two consecutive, maximum sentences, Rinke clearly

was prejudiced without the assistance of this information at sentencing which tended to mitigate the severity of his actions and position him to receive a reduced sentence.

Mr. Rinke put forth a *prima facie* case on this claim, and the district court erred by ignoring the evidence, misunderstanding the nature of what the court itself ordered and received, and denying Mr. Rinke due process on his post-conviction petition.

IX. The Respondent's admission that extensive evidence of Mr. Rinke's mental health condition existed at sentencing supports Rinke's arguments.

Mr. Rinke agrees with the Respondent that “extensive” evidence of Mr. Rinke’s mental health condition was available to the Court at sentencing. (*See* Respondent’s Brief, p. 17). Mr. Rinke alleged that his mental health condition was a prominent and significant factor, worthy of significant consideration at sentencing. (*See, e.g., R.*, pp. 14 (referencing “mental health issues”), p. 18 (referencing “mania in jail”), p. 19 (self-reporting a diagnosis of “Schizoaffective Disorder”, “taking medication for his mental health issues in the Ada County Jail”, and spending “a month at Intermountain Hospital”, a psychiatric hospital in Boise), p. 20 (starting “medication during his current period of incarceration for his mental health issues”), p. 22 (referencing his “mental health conditions”), and p. 24 (self-reporting “a previous diagnosis and treatment history of Anxiety/Phobia Disorder, Depression, Bipolar, and Post/Acute Traumatic Stress Disorder.”)). The PreSentence Investigation Report contains numerous references to mental health issues. (*See, e.g.,* PSR, pp. 4 (victim reports Mr. Rinke making suicidal statements), p. 18 (referencing “Schizoaffective Disorder”), p. 19 (the defendant experiencing anxiety and depression), p. 22 (referencing “mental health evaluations”), p. 23 (referencing possibility of “Mood Disorder” and “Personality Disorder”), p. 24

(indicating that Mr. Rinke should “follow the recommendations of Health and Welfare’s Mental Health review’, referring to a “Dual diagnosis” of mental health and drug issues, and referencing “symptoms in the GAIN consistent with a diagnosis of Mood Disorder NOS”), p. 25 (stating that Mr. Rinke “appeared to have symptoms of a Borderline Personality Disorder”), p. 26 (referring to “his chronic mental illness” and recommending that he “[o]btain a mental health assessment from a *psychiatrist and/or other licensed professional such as a psychologist ...*”)(emphasis added), and p. 28 (restating prior diagnoses and treatment history for mental health disorders)).

The district court apparently failed to review the record, or completely ignored the record, in granting summary judgment, stating “there no (sic) material mental health issues noted or obvious in the presentence investigation report.” (R., p. 497). This statement is stunningly inaccurate.

Based on the existence of significant evidence that Mr. Rinke’s mental health condition was a significant factor at sentencing, Idaho law then required that the Court order a comprehensive mental health evaluation. (*Idaho Code* §19-2522(1)). However, Mr. Rinke’s attorney inexplicably failed to request such an examination, and made no mention of this legal requirement on the record at sentencing. (*See, generally*, R., pp. 381-385)(Tr., p. 71, l. 13 – p. 86, l. 24). This failure to recognize clear legal standards was incompetent. The failure to protect his client was indefensible. The result is deficient performance which prejudiced Mr. Rinke to the tune of *two maximum concurrent sentences*.

Mr. Rinke’s mental health status was a significant factor at sentencing. The district court specifically mentioned Mr. Rinke’s mental health issues during sentencing, albeit not before pronouncing sentence. (R., p. 387)(Tr., p. 95, ls. 9-17). Mr. Rinke’s

PSR specifically and repeatedly referenced his mental health issues, and the PSR attachments included specific mental health diagnoses. (*See* PSR, ps. 11, 74, 76, 77, 79, 80-81). Nonetheless, the District Court proceeded forward at sentencing without a separate, specific comprehensive mental health evaluation.

The decision whether to order a mental health evaluation pursuant to I.C. §19-2522 is discretionary. *State v. Jockumsen*, 148 Idaho 817, 822 (Ct. App. 2010). However, as with any exercise of discretion, the district court's determination must be consistent with applicable legal standards. *Id.* "The legal standards governing the court's decision whether to order a psychological evaluation and report are contained in I.C. §19-2522." *State v. Collins*, 144 Idaho 408, 409 (Ct. App. 2007). 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. (*Idaho Code* §19-2522; *State v. Coonts*, 137 Idaho 150, 152 (Ct. App. 2002); *State v. McFarland*, 125 Idaho 876, 879 (Ct. App. 1994)). The record is loaded with references to Mr. Rinke's mental health issues, disorders and history, as discussed above. His mental condition was clearly a "significant factor" at sentencing.

Mr. Rinke's counsel did not object to the lack of a psychological or mental health evaluation in accordance with I.C. §19-2522 prior to the district court's judgment of conviction. However, a district court is under an independent duty to order a mental health evaluation under I.C. §19-2522 under certain circumstances, even in absence of a request on the part of the defendant or his counsel. "A claim that the district court abused its discretion by failing to *sua sponte* order a psychological evaluation of a defendant before sentencing can be made on appeal without an objection to the lack of an evaluation or a request for an evaluation before the district court." *State v. Durham*, 146

Idaho 364, 366 (Ct. App. 2008). In that situation, the defendant must demonstrate that the district court manifestly disregarded the relevant provisions of Idaho Criminal Rule 32 by failing to order the psychological examination. *Id.* If a court's comments indicate that it found the defendant's mental condition and rehabilitative potential to be significant factors, and the district court nonetheless proceeds to sentencing "without the benefit of a professional diagnosis of that condition and prognosis for improvement," the court has erred. These are factors that support a finding under I.C. §19-2522 that a mental health evaluation is required. *See McFarland*, 125 Idaho at 881.

The analysis under I.C. § 19-2522 focuses on factors relevant to appropriate punishment, such as the degree of the defendant's illness and level of impairment, which may impact upon the defendant's overall culpability for the offense; the available treatments for his condition, along with the risks and benefits of treatment or non-treatment; and a consideration of the risk of danger that the defendant might pose if released back into the community. (*Idaho Code* §19-2522(3)).

The evidence before the district court at Mr. Rinke's sentencing failed to address nearly all of the critical factors that are required to be included within a mental health evaluation for sentencing purposes. Unfortunately, the court relied upon limited mental health information for Mr. Rinke, as it was based only on a GAIN assessment and a limited mental health screening report. (*See generally*, PSR, ps. 50-51, 52-63).

Further, the PSR author was aware of Mr. Rinke's mental health issues, having referenced the topic specifically in the body of Rinke's PSR on numerous occasions, as discussed in detail above. Despite clear indications in the PSR that Mr. Rinke had significant mental health issues, the district court made no mention of these issues during Mr. Rinke's sentencing hearing until after he had pronounced sentence, and even then,

only to recommend to the Idaho Department of Corrections that he should obtain a “*further mental health evaluation*”. (R., p. 387)(Tr., p. 95, ls. 9-17). This was error.

Unfortunately, the district court compounded this error by not following up on this information and requiring a comprehensive mental health evaluation. This omission clearly violates the dictates of Idaho Code §19-2522, which requires a court to consider such an evaluation under Mr. Rinke’s circumstances.

Since there was no comprehensive mental health evaluation, it follows that there was no evaluation of what treatments were potentially available to Mr. Rinke in order to address his mental conditions, or any evaluation of the potential risk to the public if Mr. Rinke were to receive mental health treatment in lieu of additional fixed incarceration. (*See* Idaho Code §19-2522(3)). The information properly available to the district court did not adequately meet the requirements of I.C. §19-2522(3). In light of this, the district court acted with manifest disregard for the provisions of Idaho Code §19-2522 and 2523, and Idaho Criminal Rule 32, when it failed to order a psychological report or comprehensive mental health evaluation for sentencing purposes.

Returning to post-conviction analysis, Mr. Rinke’s counsel did nothing about this. He made no mention of these legal requirements or made any effort to protect his client’s interests at sentencing. The district court committed clear legal error, and, for post-conviction purposes, Mr. Rinke’s counsel engaged in deficient performance of his duties by either not knowing the law on this issue, or ignoring the law to the overwhelming detriment to his client.

X. The Respondent's argument that counsel did not commit error at Mr. Rinke's sentencing hearing is based on inaccurate information.

Mr. Rinke's post-conviction petition included claims that his counsel failed to correct the record when the district court judge based his decision on inaccurate information. (R., pp. 288-90). Specifically, the district court judge sentenced Mr. Rinke more harshly based on inaccurate information regarding the extent of the victim's injuries. The district court judge stated that "her CT scan showed something that you don't very seldom (sic) see in attempted strangulation cases, actual swelling on the interior structures of the neck confirmed by the CT scan." (R., pp. 386-87)(Tr., p. 92, l. 25 – p. 93, l. 3). The judge clearly sentenced Mr. Rinke more harshly based on this information, stating "[p]hysical evidence confirming the statements made by the victim as to the violence of the attack upon her certainly lend credence or lend credence to her description of the domestic violence and attempted strangulation that occurred here." (R., p. 387)(Tr., p. 93, ls. 11-16). He further stated that "he has not been successful in controlling his impulses in violence and those violent impulses have been turned more than once against his close domestic partners." (R., p. 387)(Tr., p. 93, ls. 22-25). Finally, the Court stated that "[a]ll of these are factors that I have taken into consideration." (R., p. 387)(Tr., p. 94, ls. 4-5).

The Respondent argued that the district court did not utilize inaccurate information. (Respondent's Brief, pp. 19-20). The Respondent refers to page numbers 146 and 149-50 in the PreSentence Investigation Report.

However, it appears that this is in error. In Mr. Rinke's counsel's version of the PSR, pages 146 and 149-50 refer to notes from Mr. Rinke's counseling sessions through Boise State University, and not to the victim's medical records.

The district court's comments, and subsequent sentencing ruling based on those comments, were factually inaccurate. The PSR documents that the victim had no significant injuries to her "neck structures". On page 95, the PSR notes that the victim's "neck soft tissues [were] normal". (PSR, p. 000095). The CT scan concludes that the victim had a "normal CT angiography of the neck." (*Id.*). Additionally, the PSR noted that "[p]atient's CT of her neck as well as angiography [do not] reveal any findings to suggest significant injury." (PSR, p. 000096). Finally, the PSR noted that "[p]atient's exam remains unremarkable" (*Id.*). This clearly contradicts the sentencing judge's findings at Mr. Rinke's sentencing hearing.

Mr. Rinke's attorney failed to take any steps to correct the district court or remedy the error, and thereby to protect his client from a harsher sentence. Mr. Rinke provided a *prima facie* case of ineffective assistance of counsel on this issue, sufficient to prevent summary judgment. (*See Ash, supra; Schultz, supra; Payne, supra*). The district court erred by granting the State's motion for summary judgment. This Court should remedy that error.

At a minimum, a genuine issue of fact existed "based on the pleadings, depositions and admissions together with any affidavits on file." *Wheeler, supra* (citing *Workman, supra*). 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). The district court erred by finding that no genuine issue of material fact existed. Summary judgment was inappropriate.

Conclusion

Mr. Rinke has effectively addressed and countered the State's main arguments in its brief to the Court. Mr. Rinke should not have been denied an evidentiary hearing by the district court on his post-conviction claims, as set forth in this and Rinke's Opening Brief. Summary judgment was not appropriate, under an analysis of Idaho law and the facts of Mr. Rinke's post-conviction case. Mr. Rinke urges this Court to grant him relief on his appeal.

DATED this 16th day of November, 2017.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2017, I filed the foregoing document electronically with the Court, pursuant to Idaho Appellate Rule 34.1(b), and served a true and correct copy of the foregoing document on the following person utilizing email transmission:

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise ID 83720-0010
Via Email: ecf@ag.idaho.gov

I further certify that I served a copy of the foregoing document on the following person, utilizing first-class mail:

Isaac Rinke #109709
Idaho State Corr. Inst. Unit 13
P.O. Box 14
Boise ID 83707

Paul E. Riggins
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