

2-20-2013

Chippewa v. State Clerk's Record v. 1 Dckt. 40527

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IN THE SUPREME COURT OF STATE OF IDAHO

DANIEL CHIPPEWA,)
)
 Petitioner/Appellant)
-vs-)
)
 STATE OF IDAHO,)
)
 Respondent)
_____)

SUPREME COURT # 40527-2012

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Seventh Judicial District
of the State of Idaho, in and for the County of Bingham.
Honorable Darren B. Simpson, District Judge, presiding.

Counsel for Appellant: State Appellant Public Defender, 3647 Lake Harbor Lane,
Boise, ID 83703

Counsel for Respondent: Attorney General, Criminal Appeals Division,
Statehouse Mailbox, Boise, Idaho 83720-0010

Daniel Chippewa, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
5/18/2012	NCPC	MPRATT	New Case Filed - Post Conviction Relief	Darren B. Simpson
	APPR	MPRATT	Other party: State of Idaho, Appearance Through Attorney J Scott Andrew	Darren B. Simpson
	PETN	MPRATT	Petition and Affidavit for Post Conviction Relief	Darren B. Simpson
	MOTN	MPRATT	Motion & Affidavit in Support of appointment of counsel	Darren B. Simpson
	MOTN	MPRATT	Motion & Affidavit for permission to proceed on partial payment of court fees	Darren B. Simpson
5/22/2012		MPRATT	Filing: L4a - Appeal - Post Conviction Relief Paid by: Chippewa, Daniel (subject) Receipt number: 0009530 Dated: 5/22/2012 Amount: \$.00 (Cash) For: Chippewa, Daniel (subject)	Darren B. Simpson
6/6/2012	HRSC	MPRATT	Hearing Scheduled (Status Conference 06/19/2012 09:00 AM)	Darren B. Simpson
		MPRATT	Notice Of Hearing	Darren B. Simpson
	ORPD	MPRATT	Subject: Chippewa, Daniel Order Appointing Public Defender Public defender R. James Archibald	Darren B. Simpson
	CERT	MPRATT	Certificate Of Service - Copy of File to Counsel	Darren B. Simpson
6/19/2012	MNUT	MPRATT	Minute Entry Hearing type: Status Conference Hearing date: 6/19/2012 Time: 9:37 am Courtroom: Court reporter: Minutes Clerk: MARIELLE PRATT Tape Number:	Darren B. Simpson
	DCHH	MPRATT	Hearing result for Telephonic Status Conference scheduled on 06/19/2012 09:00 AM: District Court Hearing Held Court Reporter: DAN WILLIAMS Number of transcript pages for this hearing estimated:	Darren B. Simpson
	HRSC	MPRATT	Hearing Scheduled (Summary Disposition 10/01/2012 09:00 AM)	Darren B. Simpson
		MPRATT	Notice Of Hearing	Darren B. Simpson
9/28/2012	MOTN	MPRATT	Motion for Summary Disposition	Darren B. Simpson
10/1/2012	MNUT	MPRATT	Minute Entry Hearing type: Summary Disposition Hearing date: 10/1/2012 Time: 9:00 am Courtroom: Court reporter: Minutes Clerk: MARIELLE PRATT Tape Number:	Darren B. Simpson

Daniel Chippewa, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
10/1/2012	DCHH	MPRATT	Hearing result for Summary Disposition scheduled on 10/01/2012 09:00 AM: District Court Hearing Held Court Reporter: Number of transcript pages for this hearing estimated: Darren B. Simpson
10/25/2012	ORDR	MPRATT	Order Granting in Part Petition for Post-Conviction Relief Darren B. Simpson
	CDIS	MPRATT	Civil Disposition entered for: State of Idaho,, Other Party; Chippewa, Daniel, Subject. Filing date: 10/25/2012 Darren B. Simpson
	STAT	MPRATT	Case Status Changed: Closed Darren B. Simpson
11/27/2012	APSC	MPRATT	Appealed To The Supreme Court Darren B. Simpson
	MOTN	MPRATT	Motion for Appointment of the State Appellate Public Defender Darren B. Simpson
11/28/2012	ORDR	MPRATT	Order Appointing the State Appellate Public Defender Darren B. Simpson
12/7/2012	ORDR	MPRATT	Order Remanding to District Court Darren B. Simpson
12/11/2012	JDMT	MPRATT	Judgment Darren B. Simpson

 ORIGINAL

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO

Inmate Name Daniel Chippewa
IDOC No. 47690
Address Idaho Corr. Center Unit K-112-B
P.O. Box 70010
Boise, Idaho 83707
Petitioner

2012 MAY 18 PM 4:07

CLERK
SARA STAUD
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

DANIEL CHIPPEWA)
)
) Petitioner,)
)
) vs.)
)
) STATE OF IDAHO)
)
) Respondent.)
)

Case No.

CW-2012-975

**PETITION AND AFFIDAVIT
FOR POST CONVICTION
RELIEF**

The Petitioner alleges:

1. Place of detention if in custody: IDAHO CORRECTIONAL CENTER
2. Name and location of the Court which imposed judgement/sentence: Seventh
Judicial District Court, Blackfoot, Idaho
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: C-R-9-6831
 - (b) Offense Convicted: DUI
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: April 4, 2011
 - b. Terms of Sentence: Six years fixed, Three years indeterminet
Total of Nine Years.

PETITION FOR POST CONVICTION RELIEF - 1
Revised: 10/13/05

3.

5. Check whether a finding of guilty was made after a plea:

Of guilty Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes No

If so, what was the Docket Number of the Appeal? _____

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) Substance Abuse Treatment Plan not allowed to be considered at sentencing. No alternative's considered by the court. Sent. excessive.

(b) Prejudicial conflict of interest, prejudice caused by counsel, Campbell was previous prosecutor on felony eluding, refused to raise issues. (see ineffect. claim)

(c) Probation violation process in violation of petitioner's due processes previously adjudicated allegations used against petitioner to bolster the new misdemeanor allegations, had a right to rely on adjudication.

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? no

b. Any other petitions, motions, or applications in any other court? no

c. If you answered yes to a or b above, state the name and court in which each petition, motion or application was filed:

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) Presumptive prejudice: counsel was previous prosecutor in my case, she was asked to withdraw, did so, but than assigned again at the sentencing stage, creating gross conflict of interest, against objection.

(b) Counsel refused to raise alternative treatment plan, for placement in treatment alcohol center program, or any other alternative other than extensive incarceration. Including objections to excessive sentence.

(c) Trial counsel failed to object to and raise issues concerning clear violations of due processes in probation violation proceedings, in that previously adjudicated facts were used arbitrarily.

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

Yes No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

Yes No

12. State specifically the relief you seek:

Withdrawal of guilty plea, new trial, vacation of the sentence,
vacation of the probation violation findings, new proceedings that
comport to fair due processes.

13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 15 day of May, 2012.

Daniel Chippewa

Petitioner
Daniel Chippewa

STATE OF IDAHO)
) ss
County of ADA)

Daniel Chippewa, being sworn, deposes and says that the party is the Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

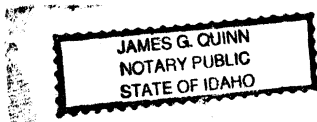
Daniel Chippewa

Petitioner
Daniel Chippewa

SUBSCRIBED AND SWORN and AFFIRMED to before me this 15TH day of

May, 2012.

(SEAL)



James G. Quinn

Notary Public for Idaho
Commission expires: 9/10/2013

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15 day of May, 2012, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

Bingham County Prosecuting Attorney

501 N. Maple #402

Blackfoot, Idaho 83221-1700



Petitioner
Daniel Chippewa

ORIGINAL

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

STATE OF IDAHO)
) ss
COUNTY OF ADA)

I, Daniel Chippewa, being first duly sworn on oath, deposes and says:

That I was previously punished by probation and parole for an incident of drinking while on probation in 2010, a full year before the new violation.

That I provided counsel with an alternative treatment plan, asked to be allowed to enter treatment, and was denied. That I objected to Mrs Campbell being my counsel due to a gross conflict of interests, her refusal to work with me, or raise any of my issues at sentencing. She was previously a prosecutor in my case, and prosecuted me for felony eluding, which was used against me in the new charges for misdemeanor eluding allegattions in the probation violation on this new charge and sentence, which is very prejudicial to my best interests and due processes. That I asked her to file an appeal which she refused to do, and so I was denied my right to raise the issue of excessive sentence, (9 years was imposed for a misdemeanor probation violation allegation. That my right to fair due processes, equal protection of law, and effective assistance of counsel has been violated, and that due to these violations, I did not make a knowing and willing, and informed plea of guilty.

I assert that I objected at trial to the appointment of the conflicted counsel.

I assert that I told counsel to petition the court for treatment care program placment rather than incarceration for nine years.

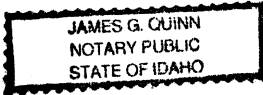
I assert that I aksed counsel to file a direct appeal, Mrs. Campbell, and she refused to do so, and also has refused to provide me with any of the discovery in the case, probation violation allegations and reports, or any other documents pertainent to this case, except the rule 35 denial. Further your affiant sayeth not.

Daniel Chippewa

Signature of Affiant
Daniel Chippewa

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 15TH day of

May, 20 12



James G. Quinn

Notary Public for Idaho

My Commission Expires: 9/10/2013

ORIGINAL

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO

2012 MAY 18 PM 4:08

Inmate name Daniel Chippewa
IDOC No. 47690
Address Idaho Corr. Center Unit K-112-B
P.O. Box 70010
Boise, Idaho 83707

CLERK
SARA STAUD CLERK
BY [Signature] DEPUTY

~~Defendant~~ Petitioner

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

STATE OF IDAHO,)
)
 Responent, Plaintiff,)
)
 vs.)
)
 DANIEL CHIPPEWA,)
)
 Petitioner, Defendant.)
 _____)

Case No. CV-2012-975

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, Daniel Chippewa, Defendant, in the above
entitled matter and moves this Honorable Court to grant Defendant's Motion for Appointment of
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for
Appointment of Counsel.

1. Defendant is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden Wengler,
of the Idaho Correctional Center.
2. The issues to be presented in this case may become to complex for the Defendant
to properly pursue. Defendant lacks the knowledge and skill needed to represent
him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1
Revised: 10/06/05

3. Defendant required assistance completing these pleadings, as he/she was unable to do it him/herself.

4. Other: That I am unable to obtain counsel on my own.

DATED this 15 day of May, 2012.


Defendant ^{Petitioner}
Daniel Chippewa

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

I, Daniel Chippewa, after first being duly sworn upon his/her oath, deposes and says as follows:

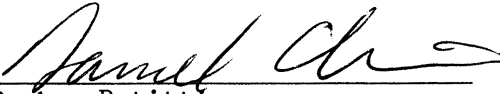
1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho Correctional Center,
under the care, custody and control of Warden Wengler;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 2
Revised: 10/06/05

Further your affiant sayeth naught.

WHEREFORE, Defendant respectfully prays that this Honorable Court issue its Order granting Defendant's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Defendant is entitled to.

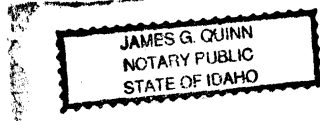
DATED This 15 day of May, 2012.

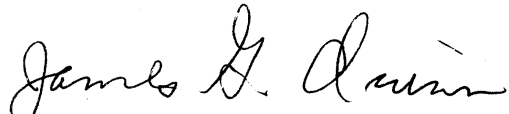


Defendant Petitioner
Daniel Chippewa

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 15th day
of May, 2012.

(SEAL)





Notary Public for Idaho
Commission expires: 9/10/2013

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15 day of May, 2012, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Bingham County Prosecuting Attorney

501 N. Maple #402

Blackfoot, Idaho 83221-1700



Defendant Petitioner
Daniel Chippewa

Inmate name Daniel Chippewa
IDOC No. 47690
Address Idaho Corr. Center Unit K-112-B
P.O. Box 70010
Boise, Idaho 83707

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO
2012 JUN -6 AM 10:50
CASE#
SARA STAUB CLERK
BY [Signature] DEPUTY

Petitioner
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

STATE OF IDAHO,)
)
Respondent Plaintiff,)
)
vs.)
)
DANIEL CHIPPEWA,)
)
Petitioner Defendant.)
_____)

Case No. CW-2012-975
**ORDER GRANTING
MOTION FOR
APPOINTMENT
OF COUNSEL**

IT IS HEARBY ORDERED that the Defendant's Motion for Appointment of Counsel is granted and R. James Archibald (attorney's name), a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant in all proceedings involving the Idaho Criminal Rule 35 motion.

DATED this 6TH day of JUNE, 2012.

[Signature]
District Judge

2. I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: _____ Other name(s) I have used: _____

Address: _____

How long at that address? _____ Phone: _____

Date and place of birth: 5-10-76 Pocatello, Idaho

DEPENDENTS:

I am single married. If married, you must provide the following information:

Name of spouse: _____

My other dependents (including minor children) are: _____

INCOME:

Amount of my income: \$ 0 per [] week [] month

Other than my inmate account I have outside money from: None,

Tribal Royalties - Exempt

My spouse's income: \$ _____ per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>None</u>					

List all other property owned by you and state its value.

Description (provide description for each item)	Value
<u>Cash</u>	<u>0</u>
<u>Notes and Receivables</u>	<u>0</u>
<u>Vehicles:</u>	<u>0</u>
<u>Bank/Credit Union/Savings/Checking Accounts</u>	<u>0</u>
<u>Stocks/Bonds/Investments/Certificates of Deposit</u>	<u>0</u>
<u>Trust Funds</u>	<u>0</u>
<u>Retirement Accounts/IRAs/401(k)s</u>	<u>0</u>
<u>Cash Value Insurance</u>	<u>0</u>
<u>Motorcycles/Boats/RVs/Snowmobiles:</u>	<u>0</u>
<u>Furniture/Appliances</u>	<u>0</u>
<u>Jewelry/Antiques/Collectibles</u>	<u>0</u>

Description (provide description for each item)

Value

TVs/Stereos/Computers/Electronics	used TV
Tools/Equipment	0
Sporting Goods/Guns	0
Horses/Livestock/Tack	0
Other (describe)	0

EXPENSES: List all of your monthly expenses.

Expense	Average Monthly Payment
Rent/House Payment	0
Vehicle Payment(s)	0
Credit Cards: (list each account number)	
None	

Loans: (name of lender and reason for loan)

None

Electricity/Natural Gas	0
Water/Sewer/Trash	0
Phone	0
Groceries	0
Clothing	0
Auto Fuel	0
Auto Maintenance	0
Cosmetics/Haircuts/Salons	0
Entertainment/Books/Magazines	0
Home Insurance	0

Expense	Average Monthly Payment
Auto Insurance	0
Life Insurance	0
Medical Insurance	0
Medical Expense	0
Other	0

MISCELLANEOUS:

How much can you borrow? \$ 0 From whom? _____

When did you file your last income tax return? 2003? Amount of refund: \$ 200⁰⁰?

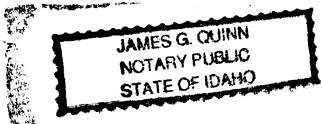
PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name	Address	Phone	Years Known
<u>Warden Wengler</u>	<u>ICC</u>		
<u>Paralegal - Quinn</u>	<u>ICC</u>		

Daniel Chippewa
Signature

Daniel Chippewa
Typed or Printed Name

SUBSCRIBED AND SWORN TO before me this 15TH day of May, 2012.



James G. Quinn
Notary Public for Idaho
Residing at Ada County
My Commission expires 9/10/2013

ORIGINAL

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 05/15/2012 =

Doc No: 47690 Name: CHIPPEWA, DANIEL
Account: CHK Status: ACTIVE

ICC/UNIT H PRES FACIL
TIER-1 CELL-12

Transaction Dates: 05/15/2011-05/15/2012

Beginning Balance	Total Charges	Total Payments	Current Balance
100.68	2433.47	2417.07	84.28

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
05/19/2011	SI0544634-098	099-COMM SPL		11.24DB	89.44
05/26/2011	SI0545333-085	099-COMM SPL		27.00DB	62.44
06/01/2011	HQ0545683-023	011-RCPT MO/CC	MAIL	150.00	212.44
06/02/2011	SI0546010-091	099-COMM SPL		4.40DB	208.04
06/09/2011	SI0547160-140	099-COMM SPL		31.13DB	176.91
06/23/2011	SI0548624-085	099-COMM SPL		12.63DB	164.28
07/06/2011	HQ0549858-013	011-RCPT MO/CC	MAIL	150.00	314.28
07/07/2011	SI0550117-092	099-COMM SPL		302.33DB	11.95
07/07/2011	SI0550117-093	099-COMM SPL		4.93DB	7.02
07/14/2011	SI0551100-136	099-COMM SPL		6.89DB	0.13
08/02/2011	HQ0552833-005	011-RCPT MO/CC	RTCP MO	150.00	150.13
08/04/2011	II0553165-009	072-METER MAIL	54200	1.71DB	148.42
08/04/2011	SI0553249-096	099-COMM SPL		41.07DB	107.35
08/04/2011	SI0553249-097	099-COMM SPL		74.86DB	32.49
08/11/2011	SI0554302-144	099-COMM SPL		31.17DB	1.32
09/01/2011	SI0556480-089	099-COMM SPL		1.06DB	0.26
09/06/2011	HQ0556782-005	011-RCPT MO/CC	RTCP MO	150.00	150.26
09/12/2011	II0557674-301	099-COMM SPL		9.17DB	141.09
09/26/2011	II0559123-253	099-COMM SPL		18.32DB	122.77
10/03/2011	HQ0559894-002	061-CK INMATE	189159	50.00DB	72.77
10/04/2011	HQ0559926-008	011-RCPT MO/CC	RTCP MO	150.00	222.77
10/10/2011	II0560817-363	099-COMM SPL		78.70DB	144.07
10/10/2011	II0560817-364	099-COMM SPL		71.91DB	72.16
10/17/2011	II0561465-288	099-COMM SPL		60.62DB	11.54
10/17/2011	II0561465-289	099-COMM SPL		0.37DB	11.17
10/24/2011	II0562229-289	099-COMM SPL		8.40DB	2.77
11/01/2011	HQ0563197-004	011-RCPT MO/CC	RTCP MO	150.00	152.77
11/07/2011	II0564115-360	099-COMM SPL		79.75DB	73.02
11/14/2011	II0564784-301	099-COMM SPL		70.99DB	2.03
12/06/2011	IC0567108-171	099-COMM SPL		1.95DB	0.08
12/06/2011	HQ0567116-020	011-RCPT MO/CC	MAIL	450.00	450.08
12/13/2011	IC0567959-222	099-COMM SPL		235.91DB	214.17
12/16/2011	IC0568405-147	099-COMM SPL		82.62DB	131.55
12/22/2011	HQ0569148-008	061-CK INMATE	178764	100.00DB	31.55
12/27/2011	IC0569352-203	099-COMM SPL		23.80DB	7.75
12/27/2011	IC0569355-081	100-CR INM CMM		2.33	10.08
01/03/2012	IC0570037-173	099-COMM SPL		9.24DB	0.84
01/04/2012	HQ0570071-001	011-RCPT MO/CC	MAIL	150.00	150.84
01/17/2012	IC0571715-206	099-COMM SPL		67.81DB	83.03

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 05/15/2012 =

Doc No: 47690 Name: CHIPPEWA, DANIEL
Account: CHK Status: ACTIVE

ICC/UNIT H PRES FACIL
TIER-1 CELL-12

Transaction Dates: 05/15/2011-05/15/2012

Beginning Balance	Total Charges	Total Payments	Current Balance
100.68	2433.47	2417.07	84.28

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
01/23/2012	IC0572284-008	045-PIZZA	184024	18.80DB	64.23
01/24/2012	IC0572406-180	099-COMM SPL		52.92DB	11.31
01/31/2012	IC0573052-192	099-COMM SPL		10.57DB	0.74
02/06/2012	HQ0573895-010	011-RCPT MO/CC	RCPT MO	164.74	165.48
02/07/2012	IC0574154-175	099-COMM SPL		89.46DB	76.02
02/08/2012	HQ0574324-004	022-PHONE TIME	187147	13.60DB	62.42
02/14/2012	IC0574881-211	099-COMM SPL		44.25DB	18.17
03/01/2012	HQ0576674-018	061-CK INMATE	181866	16.00DB	2.17
03/05/2012	HQ0576901-011	011-RCPT MO/CC	MAIL	250.00	252.17
03/06/2012	IC0577145-177	099-COMM SPL		62.51DB	189.66
03/13/2012	IC0578019-247	099-COMM SPL		68.96DB	120.70
03/14/2012	HQ0578120-029	022-PHONE TIME	181857	20.40DB	100.30
03/16/2012	IC0578447-004	045-CHICKEN	181999 K	23.20DB	77.10
03/20/2012	IC0578670-218	099-COMM SPL		50.78DB	26.32
04/03/2012	HQ0580046-020	011-RCPT MO/CC	MAIL	250.00	276.32
04/03/2012	IC0580105-169	099-COMM SPL		23.32DB	253.00
04/05/2012	HQ0580564-002	061-CK INMATE	183056	120.00DB	133.00
04/10/2012	IC0581127-218	099-COMM SPL		73.15DB	59.85
04/17/2012	IC0581755-188	099-COMM SPL		58.86DB	0.99
04/24/2012	IC0582466-188	099-COMM SPL		0.75DB	0.24
05/01/2012	HQ0583067-004	011-RCPT MO/CC	MAIL	250.00	250.24
05/08/2012	IC0584066-190	099-COMM SPL		66.44DB	183.80
05/10/2012	HQ0584408-016	061-CK INMATE	183057	22.94DB	160.86
05/10/2012	HQ0584411-001	061-CK INMATE	195822	5.00DB	155.86
05/15/2012	IC0584746-241	099-COMM SPL		71.58DB	84.28

STATE OF IDAHO

Idaho Department of Correction

I hereby certify that the foregoing is a full, true, and correct copy of an instrument as the same now remains on file and of record in my office.

WITNESS my hand hereto affixed this 15TH


day of MAY A.D., 2012

By [Signature]

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO

2012 JUN -6 AM 10:56

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

CASE#
SARA STAUB CLERK
BY  DEPUTY

CV-2012-975 DANIEL CHIPPEWA V. STATE OF IDAHO

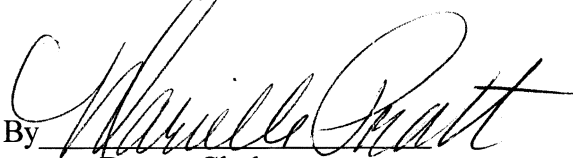
CERTIFICATE OF SERVICE OF DOCUMENTS IN POST CONVICTION CASE

I HEREBY CERTIFY that a full, true and correct copy of the Post-Conviction file was placed in the DESIGNATED COURTHOUSE BOX this 6th day of June, 2012 to the following:

SCOTT ANDREW, ESQ. - DESIGNATED COURTHOUSE BOX

R. JAMES ARCHIBALD, ESQ., - DESIGNATED COURTHOUSE BOX

SARA STAUB, Clerk of the Court

By 
Deputy Clerk

ACKNOWLEDGMENT:

DATE

SEVENTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF BINGHAM

501 N Maple
BLACKFOOT, IDAHO 83221-1700

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO

2012 JUN -6 AM 10: 54

CASE#
SARA STAUB CLERK

Case No: CV-2012-0000975 DEPUTY

Daniel Chippewa, Plaintiff)

vs.)

State Of Idaho, Defendant)

) NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Telephonic Status Conference Tuesday, June 19, 2012 09:00 AM
Judge: Darren B. Simpson
Courtroom: District

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Wednesday, June 06, 2012.

R. JAMES ARCHIBALD
525 9TH STREET
IDAHO FALLS ID 83404

U.S. Mail Courthouse Box Facsimile

J SCOTT ANDREW
501 N. MAPLE #302
BLACKFOOT ID 83221

U.S. Mail Courthouse Box Facsimile

Dated: June 6th, 2012
Sara Staub
Clerk Of The District Court

By:
Deputy Clerk

2012 JUN 19 PM 4:01

CLERK
SARA STACCO CLERK
DEPUTY

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

DANIEL CHIPPEWA,)
)
Petitioner,)
-vs-)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV-2012-975

MINUTE ENTRY

This matter came before the Court this 19th day of June 2012 for the purpose of a status conference, the Honorable Darren B. Simpson, District Judge, presiding.

Court Reporter Dan Williams and Deputy Court Clerk Marielle Pratt were present.

Attorney Jim Archibald appeared telephonically on behalf of the petitioner. Bingham County Prosecutor Scott Andrew appeared on behalf of the respondent.

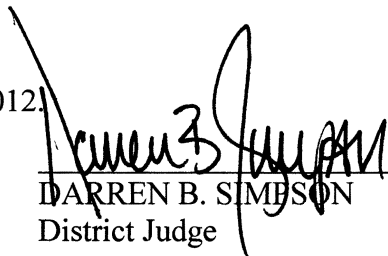
The Court reviewed the status of the case with counsel. Mr. Archibald stated that it would take approximately 60 days to prepare an amended petition. Mr. Andrew informed the Court that he would be filing a motion for summary disposition.

The amended petition shall be filed by August 20, 2012. The summary disposition hearing was set for October 1, 2012 at 9:00 a.m.

A scheduling order shall be issued.

Court was thus adjourned.

DATED this 19th day of June 2012.



DARREN B. SIMPSON
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing document was delivered by first-class mail, facsimile or designated box this 19 day of June 2012, to the following:

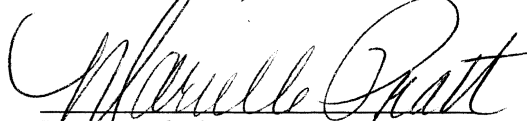
J. SCOTT ANDREW, ESQ.
501 NORTH MAPLE
BLACKFOOT, ID 83221

U.S. Mail Courthouse Box Facsimile

R. JAMES ARCHIBALD, ESQ.
525 NINTH STREET
IDAHO FALLS, ID 83404

U.S. Mail Courthouse Box Facsimile

SARA STAUB, Clerk of the Court


Deputy Clerk

SEVENTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF BINGHAM

501 N Maple
BLACKFOOT, IDAHO 83221-1700

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO
2012 JUN 19 PM 4:01

CLERK
SARA STAUB CLERK
[Signature]
DEPUTY

Daniel Chippewa, Plaintiff)

vs.)

State Of Idaho, Defendant)

) Case No: CV-2012-0000975)
) **NOTICE OF HEARING**)
))
))

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Summary Disposition
Judge:
Courtroom:

Monday, October 01, 2012
Darren B. Simpson
District

09:00 AM

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on Tuesday, June 19, 2012.

R. JAMES ARCHIBALD
525 9TH STREET
IDAHO FALLS ID 83404

U.S. Mail Courthouse Box Facsimile

J SCOTT ANDREW
501 N. MAPLE #302
BLACKFOOT ID 83221

U.S. Mail Courthouse Box Facsimile

Dated: June 19th, 2012
Sara Staub
Clerk Of The District Court

By: *[Signature]*
Deputy Clerk

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO
2012 JUN 19 PM 4:02

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

BY MP DEPUTY CLERK

DANIEL CHIPPEWA,)
)
 Petitioner,)
-vs-)
)
STATE OF IDAHO,)
)
 Respondent.)
_____)

Case No. CV-2012-975

POST-CONVICTION
SCHEDULING ORDER

NOTICE: PLEASE READ CAREFULLY AND NOTE ALL DATES, DEADLINES
AND PROCEDURES TO BE FOLLOWED.

Pursuant to the Idaho Uniform Post-Conviction Procedure Act, Idaho code § 19-4901, et.seq., the following Scheduling Order shall govern all proceedings in this case. Therefore, it is hereby ordered as follows:

- A. Briefing Schedule and Record.
 - 1. Petitioner shall file any supplemental or amended petition by 5:00 p.m. on August 20, 2012.
 - 2. Respondent shall respond to the petition and/or any supplemental or amended petition by answer or by motion on or before 5:00 p.m. 28 days.
 - 3. Pursuant to Idaho Code § 19-4906(b), **if application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.**
- B. Hearing Schedule.
 - 1. Summary judgment is requested, a hearing on the summary judgment motion will be held on **October 1, 2012 at 9:00 a.m.**
- C. Summary Judgment Proceedings.

The following procedures shall be observed:

1. The Idaho Rules of Civil Procedure shall apply except as modified by this Scheduling Order.
2. Such motion, affidavits and supporting brief shall be served at least twenty-eight (28) days before the time fixed for the hearing **(September 4, 2012)**.
3. If the adverse party desires to serve opposing affidavits, the party must do so at least fourteen (14) days prior to the date of hearing **(September 17, 2012)**.
4. The adverse party shall serve an answering brief at least fourteen (14) days prior to the date of the hearing **(September 17, 2012)**.
5. The moving party may reply to an answering brief, but must do so at least seven (7) days before the date of the hearing **(September 24, 2012)**.
6. Pursuant to Rule 56(c) of the Idaho Rules of Civil Procedure, this Court may impose costs, attorney fees and sanctions against a party or the party's attorney or both for failure to comply with Rule 56(c) of the Idaho Rules of Civil Procedure or this Scheduling Order.

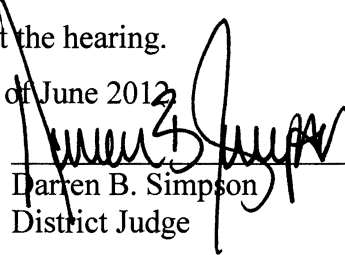
D. Discovery Procedures:

Pursuant to Idaho Code § 19-4907, all rules and statutes applicable in civil proceedings, including pre-trial, discovery and appellate procedures are available to the parties.

E. Applicant's Attendance at Hearings:

This Court shall only order the attendance of the Applicant upon written motion of either party, unless the petition attacks the sentence and substantial issues of fact exist as to evidence. In such a case, the Applicant will be produced at the hearing.

Dated this 19TH day of June 2012



Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing document was delivered by first-class mail, facsimile or designated box this 19 day of June 2012, to the following:

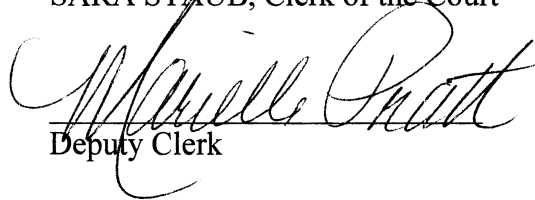
R. JAMES ARCHIBALD, ESQ.
525 NINTH STREET
IDAHO FALLS, ID 83404

U.S. Mail Courthouse Box Facsimile

J. SCOTT ANDREW, ESQ.
501 NORTH MAPLE
BLACKFOOT, ID 83221

U.S. Mail Courthouse Box Facsimile

SARA STAUB, Clerk of the Court


Deputy Clerk

J. SCOTT ANDREW
 Bingham County Prosecuting Attorney
 501 North Maple, #302
 Blackfoot, Idaho 83221-1700
 Telephone: (208) 782 3101

DISTRICT COURT
 SEVENTH JUDICIAL DISTRICT
 BINGHAM COUNTY, IDAHO

2012 SEP 28 PM 2:46

CASE#
 SARA STAUB CLERK
 BY UMP DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

DANIEL CHIPPEWA,)	
	)	Case No. CV-2012-975
Petitioner,)	
)	
vs.	)	MOTION FOR SUMMARY
	)	DISPOSITION
STATE OF IDAHO,)	
)	
Respondent.)	
)	

COMES NOW the Respondent State of Idaho, by and through J. Scott Andrew, Bingham County Prosecuting Attorney, and hereby moves the Court for an order entering judgment in its favor as a matter of law.

1. Petition Not Timely Filed

Certain of the claims raised by Petitioner (hereinafter "Chippewa") are subject to dismissal pursuant to Idaho Code §19-4902. That statute requires a post-conviction petition to be filed within one (1) year from the expiration of the time for appeal or from the determination of an appeal or from the determinate of a proceeding following an appeal, whichever is later.

In paragraph 12 of the petition, Chippewa requests "withdrawal of guilty plea, new trial, vacation of sentence." Chippewa also complains that no substance abuse treatment plan was allowed to be considered at sentencing, no alternative was considered by the court, and the sentence was excessive. Chippewa's judgment in the underlying matter was entered on December 7, 2009. Chippewa did not file an appeal his conviction or sentence. Pursuant to I.C. §19-4902, Chippewa had one year and forty two days from the entry of the judgment in this matter to file a post-conviction petition alleging any challenges to his conviction and sentence.

The petition in this matter was filed by the clerk on May 18, 2012. That is more than two (2) years beyond the statute of limitations for having filed a post-conviction petition regarding his conviction and sentence.

In 2010 a probation violation was filed against Chippewa. As a result, Chippewa's probation was revoked, his sentence was imposed and the court retained its jurisdiction. The order revoking probation and imposing the retained jurisdiction program was entered on July 19, 2010. No appeal was filed from this revocation of probation and imposition of the sentence. Pursuant to I.C. §19-4902, Chippewa had one year and forty two days to file a post-conviction petition alleging any challenges to the revocation of his probation, imposition of his sentence, and placement in a retained jurisdiction program. The petition in this matter was filed by the clerk on May 18, 2012. That is approximately nine (9) months beyond the statutory time limit for having filed a post-conviction petition regarding Chippewa's 2010 probation violation proceedings.

Chippewa failed to timely raise post-conviction claims regarding his conviction and sentence or his probation violation proceedings which occurred in 2010. The record fails to raise a genuine issue of material fact excusing Chippewa's failure to file his petition within the required one-year period. Accordingly, the State of Idaho is entitled to judgment in its favor as a matter of law regarding any claims directed at Chippewa's underlying conviction and sentence.

2. Petition Raises Issues Required To Be Raised On Direct Appeal

Dismissal is requested pursuant to Idaho Code §19-4901(b) on the grounds that the petition raises issues that could have and should have been raised on appeal. All issues that could have been raised on direct appeal were required to be raised on appeal and cannot be raised in a post conviction petition. Any claims regarding the court failing to consider facts or the law at sentencing were required to be raised on appeal and cannot be raised by way of a post-conviction petition.

3. Record Fails To Raise A Genuine Issue Of Material Fact

The motion is brought pursuant to Idaho Code §19-4906(c). The motion is made upon the grounds that the record fails to raise a genuine issue of material fact entitling the Petitioner to post-conviction relief. Accordingly, the State of Idaho is entitled to judgment in its favor as a matter of law. Specifically, the Petitioner fails to raise a genuine issue of material fact regarding

the following:

a. Representation by Cindy Campbell

Chippewa raises several issues with regard to being represented by Cindy Campbell. The following facts are either established in the record or will be established subsequent to this filing through judicial notice and/or affidavit:

Ms. Campbell was initially appointed to represent Chippewa in the underlying criminal proceeding. In April 2009, Ms. Campbell filed a motion requesting to withdraw from representation of Chippewa because she had previously prosecuted him for a felony and that felony conviction could be used against Chippewa at sentencing. The motion was granted and Manuel Murdoch was appointed to represent Chippewa.

Chippewa entered a guilty plea to the felony D.U.I. charge while represented by Mr. Murdoch. Mr. Murdoch represented Chippewa at his sentencing hearing, on December 7, 2009. Sentence was pronounced, but suspended. Chippewa was placed on probation and was ordered to complete the Felony Drug Court program.

In May of 2010, Chippewa was terminated from the Felony Drug Court program and a probation violation was filed. Mr. Murdoch represented Chippewa in the probation violation proceeding. The court kept the underlying sentence unchanged, but revoked probation and required Chippewa to complete a retained jurisdiction program. In January 2011, following Chippewa's completion of the retained jurisdiction program, his sentence was suspended and he was again granted probation.

Within a month of being placed back on probation, Mr. Chippewa again violated the conditions of his probation. A new probation violation was filed on February 15, 2011. Ms. Campbell was appointed to represent Chippewa in the probation violation proceeding. Mr. Chippewa was found to have violated the conditions of probation and his probation was revoked for a second time. The court imposed the sentence which had pronounced, but suspended, when Chippewa had been represented by Mr. Murdoch. Ms. Campbell filed a motion under I.C.R. 35. That motion was denied. No appeal was filed.

i. Chippewa claims that Cindy Campbell had a conflict of interest which prohibited her from representing him because, she had previously been the prosecutor in a felony case involving Eluding A Police Officer for which Chippewa had pled guilty and been convicted. This claim is without merit. The mere fact that an attorney has previously been a prosecutor in a

matter involving a client does not, *per se*, amount to a conflict of interest. In this case, there may have been a potential conflict in the initial representation by Ms. Campbell, when the prior Eluding An Officer conviction could have been used against Mr. Chippewa at sentencing. However, Ms. Campbell was allowed to withdraw from representing Chippewa because of that potential issue. At the time Ms. Campbell was reappointed, the prior conviction had no bearing on the proceedings in Chippewa's DUI case. Sentence had already been imposed, but suspended. The only two issues that would have been relevant at the time Ms. Campbell was reappointed was whether Chippewa violated the conditions of his probation and, if so, whether his original sentenced should be imposed or some other option was available. Neither of these would have been affected by the fact of his previous conviction. As such, Chippewa has not established a conflict of interest that would entitled him to post-conviction relief.

ii. Chippewa claims he is entitled to relief because Ms. Campbell refused to work with him or raise any of his issues at "sentencing" (which the Respondent takes to mean the disposition hearing on his probation violation). Chippewa also claims that Ms. Campbell failed to provide him with any of the discovery in the case, the probation violation allegations or any reports or other documents pertaining to the case

The claims that Ms. Campbell refused to work with Chippewa or raise of any of his issues are conclusory and unsupported by any facts which would entitle Chippewa to relief. Chippewa provides no information detailing how Ms. Campbell "refused to work" with him. He does not identify which issues that he wanted raise, nor when or how he communicated those issues to Ms. Campbell. Furthermore, he does not provide any legal and/or factual basis for the issues he wanted raised. As such, Chippewa has offered no facts or information that establishes Ms. Campbell provided a defective performance or that the outcome of his case would have been different, but for the defective performance.

Chippewa fails to provide sufficient information to determine if the failure to provide him with information would entitle him to relief. The court reviewed the allegations of the probation violation with the defendant in open court. Therefore, Chippewa was not prejudiced by any failure of counsel to provide him with a report of alleged probation violations. In addition, Chippewa assumes that there were reports, discovery, or other information possessed by Ms. Campbell that he, subsequently, was not provided. He fails to identify or provide copies of the documents or provide any facts that actually existed that were not provided to him. As such,

there is no way for the court to determine that Ms. Campbell's performance was defective for failure to provide it to Chippewa or that Chippewa was prejudiced by that failure.

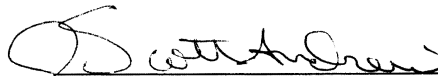
iv. Chippewa claims that he is entitled to relief because he told Ms. Campbell to file an appeal and she did not. Chippewa has not provided any facts that he made such a request prior to the expiration of the time for filing an appeal. There is nothing in the record from which the court could infer that such a request was timely made. The court is left to assume that fact, which is cannot. Without establishing that the request to Ms. Campbell was timely, Chippewa has failed to establish that he was prejudiced by a failure to file an appeal.

c. In paragraph 7(c) of the petition, Chippewa makes allegations regarding due process, his probation violation proceedings, previously adjudicated allegations and a new misdemeanor allegation. The claim is unintelligible. Furthermore, there are not sufficient facts alleged that the court could find Chippewa would be entitled to relief. For these reasons the claims should be dismissed.

4. Motion File In Lieu Of Answer

This motion is filed in lieu of an answer, pursuant to I.C. §19-4906(a). Respondent will file an answer in the event that the motion is denied, in whole or in part.

DATED this 28th day of May 2012.



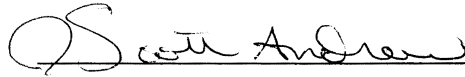
J. SCOTT ANDREW
Bingham County Prosecuting Attorney

CERTIFICATE OF SERVICE

I certify that on the 28th day of May, 2012, I served a true and correct copy of the foregoing upon the following person(s) in the manner(s) indicated:

- first class mail
- hand delivery
- designated courthouse box
- fax

R. James Archibald
Attorney at Law
525 9th Street
Idaho Falls, ID 83404



J. SCOTT ANDREW

2012 OCT -1 PM 3: 25

CLERK
SARA STAUZ CLERK
BY [Signature] DEPUTY

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

DANIEL CHIPPEWA,)
)
Petitioner,)
-vs-)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV-2012-975

MINUTE ENTRY

This matter came before the Court this 1st day of October 2012 for the purpose of a summary disposition, the Honorable Darren B. Simpson, District Judge, presiding.

Court Reporter Dan Williams and Deputy Court Clerk Marielle Pratt were present.

Attorney Jim Archibald appeared on behalf of the petitioner. No one appeared on behalf of the respondent.

Court and counsel discussed the motion for summary disposition which was filed on September 28, 2012. Mr. Archibald stated that he was ready to proceed.

Without objection, the Court took judicial notice of the underlying criminal case CR-2009-6831.

Mr. Archibald presented argument. The Court found the summary disposition was not timely filed and would not be considered. The Court took the matter under advisement regarding whether the petitioner was denied his right to appeal following the last revocation of his probation in CR-2009-6831.

Court was thus adjourned.

DATED this 1 day of October 2012.

[Signature]
DARREN B. SIMPSON
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing document was delivered by first-class mail, facsimile or designated box this 2 day of October 2012, to the following:

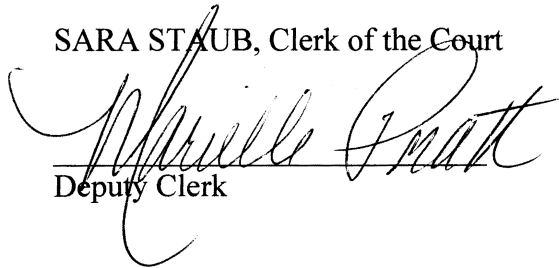
J. SCOTT ANDREW, ESQ.
501 NORTH MAPLE
BLACKFOOT, ID 83221

U.S. Mail Courthouse Box Facsimile

R. JAMES ARCHIBALD, ESQ.
525 NINTH STREET
IDAHO FALLS, ID 83404

U.S. Mail Courthouse Box Facsimile

SARA STAUB, Clerk of the Court



Deputy Clerk

it alleges that post-sentencing counsel failed to file an appeal of the April 7, 2011 *Order of Commitment Order Revoking Probation* and the May 10, 2011 *Minute Entry Order Denying Rule 35*.

II. ISSUES PRESENTED

The State argues that Chippewa filed his Petition beyond the statute of limitations applicable to post-conviction cases, raised issues only appropriate on direct appeal, and failed to raise a genuine issue of material fact.⁴ Chippewa responded that the State's Motion was untimely.⁵ The Court found the State's Motion untimely and denied consideration of the State's arguments.⁶

Chippewa conceded, however, that his Petition was untimely as to his initial sentence⁷ and the judgment following his first probation violation.⁸ Chippewa maintained that he timely filed his Petition with regard to the April 7, 2011 *Order of Commitment Order Revoking Probation*⁹ and the May 10, 2011 *Minute Entry Order Denying Rule 35*.¹⁰ Given the state of the record, the following issues must be determined:

1. Has Chippewa raised a material issue of fact in support of his ineffective assistance of counsel claims?

⁴ State's Motion, at pp. 1-5.

⁵ October 1 Minute Entry, at p. 1.

⁶ Id.

⁷ See: Judgment/Order of Probation, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed December 9, 2009) (hereinafter the "**First Criminal Judgment**").

⁸ See: Order of Retained Jurisdiction, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed July 21, 2010) (hereinafter the "**Second Criminal Judgment**").

⁹ Order of Commitment Order Revoking Probation, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed April 7, 2011) (hereinafter the "**Third Criminal Judgment**").

2. Should Chippewa be granted an appeal from the Third Criminal Judgment?
3. Should Chippewa be granted an appeal from the *Rule 35 Order*?

III. FINDINGS OF FACT

1. In his underlying criminal case, Chippewa was charged with Driving While Under the Influence of Alcohol (having had two prior misdemeanors within the previous ten (10) years).¹¹ Attorney Cindy Campbell was appointed to represent him.¹²

2. Ms. Campbell moved to withdraw as attorney of record, based upon her prior prosecution of Chippewa and the State's potential use of that prior conviction as a sentencing enhancement.¹³ Ms. Campbell's request to withdraw was granted and attorney Manuel Murdoch was appointed to represent Chippewa in Ms. Campbell's place.¹⁴

3. Chippewa pleaded guilty to Driving While Under the Influence of Alcohol (having had two prior misdemeanors within the previous ten (10) years), and was sentenced on December 7, 2009 to the Idaho State Board of Correction for a fixed and determinate term six (6) years, together with an indeterminate period of three (3) years (not less than six (6) nor more than

¹⁰ See: Minute Entry Order Denying Rule 35, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed May 10, 2011) (hereinafter the "**Rule 35 Order**").

¹¹ Criminal Complaint, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed August 3, 2009).

¹² Order Appointing Public Defender, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed August 3, 2009).

¹³ Motion to Withdraw as Attorney and Motion to Appoint Another Public Defender, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed August 10, 2009).

¹⁴ Order Allowing Withdrawal and Order Appointing Public Defender, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed August 13, 2009).

nine (9) years) and a fine in the amount of \$1,000.00.¹⁵ His sentence was suspended and he was placed on probation for a period of five (5) years.¹⁶

4. On July 19, 2010, based upon his admission to violating the terms and conditions of his probation,¹⁷ Chippewa's probation was revoked, his sentence was re-imposed, and he was placed upon retained jurisdiction for a period not to exceed 365 days.¹⁸

5. Following completion of his period of retained jurisdiction, Chippewa was again placed on probation.¹⁹ He was represented by Ms. Campbell at the review of retained jurisdiction hearing.²⁰

6. On April 4, 2011, Chippewa's probation was revoked a second time because of his admitted probation violations, and his sentence was re-imposed.²¹ He was represented by Ms. Campbell at that revocation hearing.²²

7. On April 11, 2011, Ms. Campbell moved for relief from the sentence on Chippewa's behalf.²³

8. On May 10, 2011, this Court amended its *Third Criminal Judgment* with essentially identical language to the *Third Criminal Judgment*.²⁴

¹⁵ *First Criminal Judgment*, at pp. 1-2.

¹⁶ *First Criminal Judgment*, at p. 2.

¹⁷ *Second Criminal Judgment*, at p. 1.

¹⁸ *Id.*

¹⁹ Order of Probation After Retained Jurisdiction, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed February 3, 2011).

²⁰ *Id.*, at p. 6.

²¹ *Third Criminal Judgment*, at p. 1.

²² *Id.*

²³ Motion for Relief Under ICR 35, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed April 11, 2011) (hereinafter "**Chippewa's Rule 35 Motion**").

9. On the same date, this Court entered its *Rule 35 Order* denying Chippewa's Rule 35 Motion.²⁵

10. On May 18, 2012, Chippewa filed his Petition for post-conviction relief.²⁶

IV. PRINCIPLES OF LAW

1. An application under Uniform Post-Conviction Procedures Act ("UPCPA"), Idaho Code §§ 19-4901 *et seq.*, is a special proceeding, civil in nature. It is an entirely new cause of action and distinct from the criminal action which led to the conviction.²⁷ The UPCPA limits Chippewa's potential relief as follows:

This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of an appeal from the sentence or conviction. Any issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings, unless it appears to the court, on the basis of a substantial factual showing by affidavit, deposition or otherwise, that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt and could not, in the exercise of due diligence, have been presented earlier. Except as otherwise provided in this act, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.²⁸

2. Within thirty (30) days after the filing of a post-conviction petition, the State is required to respond by answer or by motion, unless the court makes appropriate orders for extending the time for the filing of any pleading.²⁹

²⁴ Amended Order of Commitment Order Revoking Probation, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed May 10, 2011).

²⁵ Rule 35 Order, at p. 1.

²⁶ Chippewa's Petition, at p. 1.

²⁷ Idaho Criminal Rule 57(b); *Peltier v. State*, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991); *Nguyen v. State*, 126 Idaho 494, 499, 887 P.2d 39, 42 (Ct.App. 1994).

²⁸ Idaho Code § 19-4901(b).

²⁹ Idaho Code § 19-4906(a).

3. To justify an evidentiary hearing in a post-conviction relief proceeding, the applicant must tender a factual showing based upon evidence that would be admissible at the hearing.³⁰ An application must be supported by written statements from witnesses who are able to give testimony themselves as to facts within their knowledge, or must be based upon otherwise verifiable information.³¹

4. Ineffective assistance of counsel is properly raised in a post-conviction proceeding.³² To prevail on his ineffective assistance of counsel claim, Chippewa must show, by a preponderance of the evidence, that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's errors, the result of the proceedings would have been different.³³

5. There is a strong presumption that trial counsel's performance falls within the wide range of "professional assistance."³⁴ Tactical or strategic decisions of trial counsel will not be second-guessed unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation.³⁵

6. A petitioner's allegation that his attorney failed to file an appeal when requested states a cognizable claim of ineffective assistance of counsel.³⁶ Where an attorney's deficient performance deprived a defendant of the appellate proceeding altogether, prejudice is presumed

³⁰ *Hall v. State*, 126 Idaho 449, 451, 885 P.2d 1165, 1167 (Ct. App. 1994); *Roman v. State*, 125 Idaho 664, 647, 873 P.2d 898, 901 (Ct.App. 1994); *Drapeau v. State*, 103 Idaho 612, 615, 651 P.2d 546, 549 (Ct.App. 1982).

³¹ *Id.*

³² *Murray v. State*, 121 Idaho 918, 924, 828 P.2d 1323, 1329 (Ct. App. 1992).

³³ *Goodwin v. State*, 138 Idaho 269, 272, 61 P.3d 626, 629 (Ct. App. 2002); *State v. Wood*, 132 Idaho 88, 95, 967 P.2d 702, 709 (1998); *Carsner v. State*, 132 Idaho 235, 239, 970 P.2d 28, 33 (1999).

³⁴ *Yon v. State*, 124 Idaho 821, 823, 864 P.2d 659, 661 (Ct. App. 1993).

³⁵ *Id.*

and the defendant must only show that “but for counsel’s deficient performance, he would have appealed.”³⁷

7. Where counsel disregards a direct request to file an appeal, the defendant should not be required to identify the meritorious issues that would have been raised, but should be restored to the status enjoyed immediately following the judgment of conviction when the defendant was entitled to a direct appeal.³⁸ Thus, where counsel failed to file a direct appeal in a criminal case despite a defendant’s request, re-entry of the order or judgment from which the defendant wishes to appeal is appropriate in order that the appellate deadlines may be re-activated.³⁹

V. ANALYSIS

Since the State’s Motion was not timely filed, the Court heard Mr. Chippewa on his Petition. Chippewa identifies four (4) complaints against his trial counsel, each of which shall be addressed.⁴⁰

A. Conflict of Interest.

Initially, Chippewa complains that Ms. Campbell’s prior prosecution of Chippewa created a gross conflict of interest.⁴¹ Chippewa alleged:

³⁶ *Judd v. State*, 148 Idaho 22, ___, 218 P.3d 1, 4 (Ct. App. 2009).

³⁷ *Kuehl v. State*, 145 Idaho 607, 611, 181 P.3d 533, 537 (Ct. App. 2008) [citing: *Roe v. Flores-Ortega*, 528 U.S. 470, 483-6, 120 S.Ct. 1029, 1038-9, 145 L.Ed.2d. 985, 998-1000 (2000)].

³⁸ *Loveland v. State*, 141 Idaho 933, 936 at fn. 3, 120 P.3d 751, 754 at fn. 3 (Ct. App. 2005) [citing: *Beasley v. State*, 126 Idaho 356, 361, 883 P.2d 714, 719 (Ct. App. 1994)].

³⁹ *See: State v. Halbesleben*, 147 Idaho 161, 164, 206 P.3d 867, 870 (Ct. App. 2009); *Cook v. State*, 145 Idaho 482, 486, 180 P.3d 521, 525 (Ct. App. 2008).

⁴⁰ *See: Dixey Affidavit 1*, at pp. 2-5.

⁴¹ Chippewa’s Petition, at p. 3.

Presumptive prejudice: counsel was previous prosecutor in my case, she asked to withdraw, did so, but than [sic] assigned again at the sentencing stage, creating gross conflict of interest, against objection.⁴²

That I objected to Mrs. Campbell being my counsel due to a gross conflict of interests, her refusal to work with me, or raise any of my issues at sentencing. She was previously a prosecutor in my case, and prosecuted me for felony eluding, which was used against me in the new charges for misdemeanor eluding [sic] allegations [sic] in the probation violation on this new charge and sentence, which is very prejudicial to my best interests and due processes.⁴³

I assert that I objected at trial to the appointment of the conflicted counsel.⁴⁴

Ms. Campbell was initially appointed to represent Chippewa. She made her conflict known, however, and was excused from the case. At sentencing, Chippewa was represented by Mr. Murdoch, not Ms. Campbell.

Ms. Campbell did not assume representation of Chippewa until after the revocation of his first probation, and after his completion of a period of retained jurisdiction. At the hearing on Chippewa's alleged violations of his second period of probation, the only issues before the Court were Chippewa's admitted violations of Special Conditions No. 4(c) and 4(l) of the Order of Probation; and/or Rule No. 14 of the Agreement of Supervision, as alleged in the Report of Violation filed on February 15, 2011.⁴⁵ The allegations which Chippewa admitted concerned an incident which occurred on February 14, 2011.⁴⁶ Nothing in Ms. Campbell's former prosecution of Chippewa was relevant to the determinations made in the Third Criminal Judgment.

⁴² *Id.*

⁴³ Chippewa's Petition, at Affidavit of Facts in Support of Post-Conviction Petition, p. 1.

⁴⁴ *Id.*

⁴⁵ *Third Criminal Judgment*, at p. 3.

⁴⁶ Report of Probation Violation, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed February 15, 2011) (hereinafter the "**February 15, 2011 Report of Probation Violation**").

In addition, Chippewa's prior conviction played a minor role, if any, in the denial of Chippewa's Rule 35 Motion. Having been granted probation on two prior occasions for his present conviction, and having violated the conditions of his probation both times, the re-imposition of Chippewa's sentence was a result of his present, rather than his past conduct. Ms. Campbell's representation of Chippewa in his efforts to gain reconsideration of his sentence did not present a conflict of interest. Therefore, Chippewa's Petition, as it pertains to his allegation of a conflict of interest, shall be denied.

B. Refusal to Raise Alternative Treatment Plan.

Next, Chippewa contends:

Counsel refused to raise alternative treatment plan, for placement in the treatment alcohol center program, or any other alternative other than extensive incarceration. Including objections to excessive sentence.⁴⁷

I assert that I told counsel to petition the court for treatment care program placment [sic] rather than incarceration for nine years.⁴⁸

Chippewa bears the burden of proof as to each essential element of his claims.⁴⁹ The Court is not required to accept mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law.⁵⁰

Although the record does not include a transcript of the disposition hearing on the February 15, 2011 Report of Probation Violation, the *Third Criminal Judgment* suggests that the

⁴⁷ Chippewa's Petition, at p. 3.

⁴⁸ Chippewa's Petition, at Affidavit of Facts in Support of Post-Conviction Petition, p. 1.

⁴⁹ *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) [quoting: *Berg v. State*, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998)].

⁵⁰ *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008); *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

Court did take Chippewa's need for treatment of his alcohol dependency into consideration. The Court ordered that Chippewa undergo evaluation and treatment in the Therapeutic Community counseling Program.⁵¹ Thus, even if Ms. Campbell did not request alternative treatment, the issue of treatment was considered.

Furthermore, at the time of the disposition hearing on the February 15, 2011 Report of Probation Violation, Chippewa had already been accepted into and then discharged from Felony Drug Court because of a probation violation,⁵² and had completed "A New Direction," a substance abuse program, while serving a period of retained jurisdiction. In other words, Chippewa had been offered alternative treatment on two prior occasions, but was unable to sustain a sober lifestyle. If Ms. Campbell failed to raise the issue of alternative treatment at the disposition hearing, it is not clear such alleged failure would have altered the imposition of sentence.

For these reasons, Chippewa's Petition, with regard to Ms. Campbell's alleged refusal to raise an alternative treatment plan, shall be denied.

C. Failure to Raise Due Process Issues.

Next, Chippewa contends:

Trial counsel failed to object to and raise issues concerning clear violations of due processes in probation violation proceedings, in that previously adjudicated facts were used arbitrarily.⁵³

⁵¹ *Third Criminal Judgment*, at p. 1.

⁵² Order Accepting Admission to Felony Drug Court, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed December 1, 2009); Order of Suspension from Felony Drug Court, *State v. Chippewa*, Bingham County case no. CR-2009-6831 (filed May 25, 2010).

⁵³ Chippewa's Petition, at p. 3.

That my right to fair due processes, equal protection of law, and effective assistance of counsel has been violated, and due to these violations, I did not make a knowing and willing, and informed plea of guilty.⁵⁴

The Court is unsure whether the due process issues go to Ms. Campbell's performance on Chippewa's second probation violation, or to Mr. Murdoch's performance at sentencing. Furthermore, Chippewa does not detail what the omitted issues were. For these reasons, Chippewa has not carried his burden to show that counsel was ineffective as to any "due process issues." Chippewa's Petition shall be denied with regard to his due process issues.

D. Failure to File an Appeal.

Finally, Chippewa argues that Ms. Campbell failed to file an appeal on his behalf.⁵⁵ He states:

That I asked her to file an appeal which she refused to do, and so I was denied my right to raise the issue of excessive sentence, (9 years was imposed for a misdemeanor probation violation allegation.⁵⁶

I assert that I asked counsel to file a direct appeal, Mrs. Campbell, and she refused to do so, and also has refused to provide me with any of the discovery in the case, probation violation allegations and reports, or any other document pertinent [sic] to this case, except the rule 35 denial.⁵⁷

Ms. Campbell represented Chippewa on his second probation violation and on his Rule 35 Motion. Chippewa states that he requested an appeal but that Ms. Campbell failed to file the appeal. Thus, Chippewa has stated a claim for ineffective assistance of counsel with regard to his appellate rights, both as to the disposition of his second probation violation and as to the

⁵⁴ Chippewa's Petition, at Affidavit of Facts in Support of Post-Conviction Petition, p. 1.

⁵⁵ Chippewa's Petition, at Affidavit of Facts in Support of Post-Conviction Petition, p. 1.

⁵⁶ *Id.*, at p. 1.

⁵⁷ *Id.*, at p. 2.

denial of his Rule 35 request. Chippewa's Petition shall be granted with regard to his requested appeals of the *Third Criminal Judgment* and the *Rule 35 Order*.

VI. CONCLUSIONS OF LAW

The following conclusions result from the foregoing findings and analyses:

1. Chippewa has raised a material issue of fact in support of his ineffective assistance of counsel claim of counsel's failure to file an appeal from the *Third Criminal Judgment* and the *Rule 35 Order*.

2. Chippewa should be granted an appeal from the *Third Criminal Judgment*?

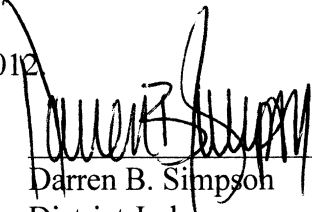
3. Chippewa should be granted an appeal from the *Rule 35 Order*?

VII. ORDER

Accordingly, **grants in part** Chippewa's Petition for post-conviction relief. Chippewa was denied effective assistance of counsel in his effort to appeal the *Third Criminal Judgment* and the *Rule 35 Order*. Therefore, the *Third Criminal Judgment* and the *Rule 35 Order*, to the extent they do not conflict with Chippewa's present terms of incarceration, shall be re-issued. Since Ms. Campbell is no longer employed as a public defender for Bingham County, attorney Manuel Murdoch shall file an appropriate notice of appeal. Upon the filing of the notice of appeal, this Court shall appoint the State Appellate Public Defender to represent Chippewa on appeal.

IT IS SO ORDERED.

DATED this 25TH day of October 2012



Darren B. Simpson
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Oct. 25, 2012 served a true copy of the foregoing Order Granting In Part Petition for Post-Conviction Relief on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Manuel Murdoch, Esq.
Attorney at Law
490 N. Maple
Blackfoot, ID 83221

U.S. Mail Courthouse Box Facsimile

J. Scott Andrew, Esq.
Bingham County Prosecuting Attorney
501 North Maple, # 302
Blackfoot, ID 83221


U.S. Mail Courthouse Box Facsimile

SARA J. STAUB, District Clerk

By: *Marilee Pratt*
Deputy Clerk

R. James Archibald, Esq.
Idaho State Bar #4445
525 Ninth Street
Idaho Falls, Idaho 83404
Telephone: (208) 524-4002
Facsimile: (208) 524-4131
Attorneys for Plaintiff/Appellant

2012 NOV 27 PM 2:39

CLERK
BY  DEPUTY

DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
IN AND FOR BINGHAM COUNTY, IDAHO

<p>DANIEL CHIPPEWA, Plaintiff/Appellant, vs. STATE OF IDAHO, Defendant/Respondent.</p>	<p>Case No.: CV-2012-975 NOTICE OF APPEAL</p>
--	--

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO AND THE PARTY'S ATTORNEY, J. SCOTT ANDREW, ESQ., AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Daniel Chippewa appeals against the above named respondents to the Idaho Supreme Court from the Order Granting in Part Petition for Post-Conviction Relief filed on October 25, 2012, Hon. Darren B. Simpson, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11c I.A.R.

[] This is an EXPEDITED APPEAL pursuant to I.A.R. 12.2.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal is as follows:

(a) Did the Court properly grant summary disposition?

4. Has an order been entered sealing all or any portion of the record? If so, what portion?

5. (a) Is a reporter's transcript requested? Yes.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in hard copy electronic format both for the hearing held on July 3, 2012.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R: All pre-sentence reports and evaluations.

7. The appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court. None.

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Daniel E. Williams, Court Reporter
501 N. Maple #310
Blackfoot, Idaho 83221

(b) (1) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) [X] That the appellant is exempt from paying the estimated transcript fee because appellant is indigent and qualified for the services of a public defender.

(c) (1) [] That the estimated fee for preparation of the clerk's or agency's record has been paid.

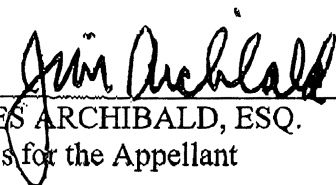
(2) [] That the appellant is exempt from paying the estimated fee for the preparation of the record because appellant is indigent and qualified for the services of a public defender

(d) (1) [] That the appellate filing fee has been paid.

(2) [X] That appellant is exempt from paying the appellate filing fee because appellant is indigent and qualified for the services of a public defender

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED this 27th day of November, 2012.



R. JAMES ARCHIBALD, ESQ.
Attorneys for the Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I served a true and correct copy of the foregoing document on the following:

J. Scott Andrew, Esq. Fax
Bingham County Prosecuting Attorney
501 N. Maple, Box 302
Blackfoot, Idaho 83221


Daniel E. Williams, Court Reporter Fax
501 N. Maple #310
Blackfoot, Idaho 83221

Idaho Supreme Court Fax
P.O. Box 83720
Boise, Idaho 83720

Idaho Attorney General Fax
P.O. Box 83720
Boise, Idaho 83720

Idaho Appellate Public Defender Fax
3647 Lake Harbor Lane
Boise, Idaho 83703

DATED this 27th day of November, 2012.



R. JAMES ARCHIBALD, ESQ.
Attorneys for the Appellant

R. James Archibald, Esq.
Idaho State Bar #4445
525 Ninth Street
Idaho Falls, Idaho 83404
Telephone: (208) 524-4002
Facsimile: (208) 524-4131
Attorneys for Plaintiff/Appellant

2012 NOV 27 PM 2:57
SARA [Signature] DEPUTY

DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
IN AND FOR BINGHAM COUNTY, IDAHO

<p>DANIEL CHIPPEWA, Plaintiff/Appellant, vs. STATE OF IDAHO, Defendant/Respondent.</p>	<p>Case No.: CV-2012-975 MOTION TO APPOINT APPELLATE PUBLIC DEFENDER</p>
--	---

Comes now the Defendant's attorney, and moves the Court to appoint the Idaho State Appellate Public Defender's Office to pursue Plaintiff/Appellant's appeal. The Plaintiff/Appellant is indigent, has filed an appeal, and Bingham County has contracted for the services of the Idaho State Appellate Public Defender's Office to pursue such appeals.

DATED this 27th day of November, 2012.

[Signature]
R. JAMES ARCHIBALD, ESQ.
Attorneys for the Appellant

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this day I served a true and correct copy of the foregoing

document on the following:

J. Scott Andrew, Esq. Fax
Bingham County Prosecuting Attorney
501 N. Maple, Box 302
Blackfoot, Idaho 83221

Idaho Appellate Public Defender Fax
3647 Lake Harbor Lane
Boise, Idaho 83703

DATED this 27th day of November, 2012.



R. JAMES ARCHIBALD, ESQ.
Attorneys for the Appellant

2012 NOV 28 PM 2:13

CLERK
SARA STANLEY
BY *[Signature]* DEPUTY

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

DANIEL CHIPPEWA,)
)
Petitioner/Appellant,)
-vs-)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV-2012-975

**ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER**

The above named Appellant has requested the aid of counsel in pursuing a direct appeal from the Order Granting in Part Petition for Post-Conviction Relief entered by this Court;

The Court being satisfied that said defendant is a needy person entitled to the services of the State Appellate Public Defender for purposes of appeal pursuant to Idaho Code §19-852 and 19-854 and the services of the State Appellate Public Defender are available;

IT IS HEREBY ORDERED, in accordance with Idaho Code §19-870, that the State Appellate Public Defender is appointed to represent the Appellant on this appeal of the order granting in part petition for post-conviction relief.

IT IS FURTHER ORDERED that R. James Archibald, Esq., shall be allowed to withdraw as counsel of record in all matters regarding the appeal.

Dated this 28th day of November 2012.

[Signature]

DARREN B. SIMPSON
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29 day of November 2012, served a true and correct copy of the attached ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER by placing a copy in the United States Mail, with the correct postage thereon, or by causing the same to be hand delivered to the following parties:

STATE APPELLATE PUBLIC DEFENDER
3647 LAKE HARBOR LN
BOISE IDAHO 83703

STATE OF IDAHO ATTORNEY GENERAL
PO BOX 83720
BOISE, ID 83720-1000

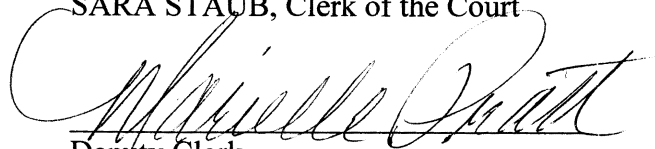
COURT OF APPEALS
STEPHEN KENYON
PO BOX 83720
BOISE, ID 83720-0101

DANIEL WILLIAMS, Designated Courthouse Box

PROSECUTOR'S OFFICE, Designated Courthouse Box

R. JAMES ARCHIBALD, ESQ., Designated Courthouse Box

SARA STAUB, Clerk of the Court



Michelle Pratt
Deputy Clerk

In the Supreme Court of the State of Idaho

DANIEL CHIPPEWA,
 Petitioner-Appellant,
 v.
 STATE OF IDAHO,
 Respondent.

)
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ORDER REMANDING TO DISTRICT COURT
 Supreme Court Docket No. 40527-2012
 Bingham County Docket No. 2012-975

DISTRICT COURT
 TENTH JUDICIAL DISTRICT
 BINGHAM COUNTY, IDAHO
 2012 DEC - 7 5 PM 1:12
 CASE#
 SARA STARR DILLON
 DEPT
 BY

This appeal is from the District Court's ORDER GRANTING IN PART PETITION FOR POST-CONVICTION RELIEF filed October 25, 2012. It appears that a final judgment set forth on a separate document, as required by Idaho Rules of Civil Procedure 54(a) and 58(a), has yet to be entered. Therefore, good cause appearing,

IT HEREBY IS ORDERED that pursuant to Idaho Appellate Rules 11(a), 13.3, and 17(e)(2), the above-entitled matter be, and hereby is, REMANDED to the District Court and proceedings in this appeal shall be SUSPENDED to allow for the entry of a final judgment. Upon entry of the final judgment by the District Court, the District Court Clerk is directed to transmit a certified copy of the judgment to this Court at which time this appeal shall proceed.

DATED this 10th day of December, 2012.

For the Supreme Court



 Stephen W. Kenyon, Clerk

cc: Counsel of Record
 District Court Clerk
 District Court Reporter

2012 DEC 11 AM 8:28

CLERK
SARA STAUB CLERK
BY MP DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF BINGHAM

DANIEL CHIPPEWA,	)	Case No. CV-2012-975
)	
Petitioner,	)	JUDGMENT
)	
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

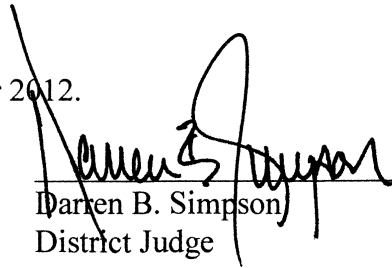
THIS COURT, having granted in part the petition for post-conviction relief filed by Petitioner Daniel Chippewa (hereinafter “Chippewa”), finds that entry of Judgment in the above-numbered and styled cause is appropriate.

Accordingly, Chippewa’s petition for post-conviction relief is hereby **granted in part**. The *Third Criminal Judgment* and the *Rule 35 Order*, entered in Bingham County Criminal case no. CR-2009-6831, to the extent they do not conflict with Chippewa’s present terms of incarceration, shall be re-issued. Furthermore, attorney Manuel Murdoch shall file an appropriate notice of appeal on Chippewa’s behalf in Bingham County case no. CR-2009-6831.

Upon the filing of the notice of appeal, this Court shall appoint the State Appellate Public Defender to represent Chippewa on appeal.

IT IS SO ORDERED.

DATED this 11th day of December 2012.



Darren B. Simpson
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on 12/11/12, I served a true copy of the foregoing Order Granting In Part Petition for Post-Conviction Relief on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Manuel Murdoch, Esq.
Attorney at Law
490 N. Maple
Blackfoot, ID 83221

U.S. Mail Courthouse Box Facsimile

J. Scott Andrew, Esq.
Bingham County Prosecuting Attorney
501 North Maple, # 302
Blackfoot, ID 83221

U.S. Mail Courthouse Box Facsimile

SARA J. STAUB, District Clerk
By: *Michelle Court*
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

DANIEL CHIPPEWA,)	
	)	SUPREME COURT # 40527-2012
Petitioner/Appellant)	
-vs-)	
	)	CERTIFICATION OF EXHIBITS
STATE OF IDAHO,)	
)	
Respondent.)	

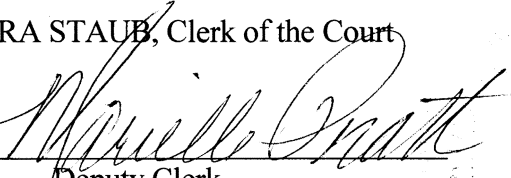
I, SARA STAUB, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham, do hereby certify, list and describe the following exhibits which were offered or admitted during the proceedings in the above-entitled case:

EXHIBITS/APPENDICES

TITLE
NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Blackfoot, Idaho, this 16th day of January 2013.

SARA STAUB, Clerk of the Court

By 
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

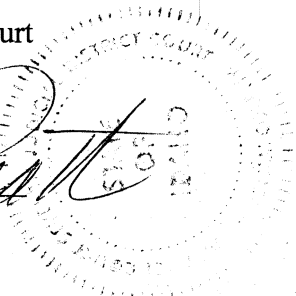
DANIEL CHIPPEWA,)	
	)	SUPREME COURT # 40527-2012
Petitioner /Appellant,)	
-vs-)	
	)	CERTIFICATION OF
STATE OF IDAHO,	)	CLERK’S RECORD
)	
Respondent.)	

I, SARAH STAUB, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham, do hereby certify that the above and foregoing record in the above-entitled case was compiled and bound under my direction, and is a true, full and correct record of the pleadings, documents and papers designated to be included in the clerk’s record by the Idaho Appellate Rule 28, the notice of appeal, any notice of cross-appeal, and any designation of additional documents to be included in the clerk’s record.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Blackfoot, Idaho, this 16th day of January 2013.

SARAH STAUB, Clerk of the Court

Sarah Staub
 Deputy Clerk



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

DANIEL CHIPPEWA,)
)
 Petitioner/Appellant,)
-vs-)
)
 STATE OF IDAHO,)
)
 Respondent.)
_____)

SUPREME COURT # 40527-2012

CERTIFICATE OF SERVICE

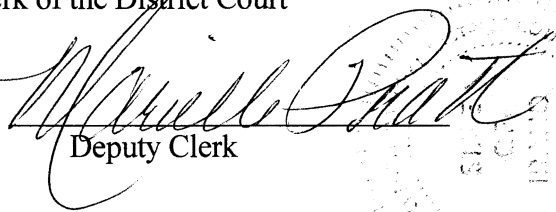
I, SARA STAUB, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham, do hereby certify I personally served or mailed, by United States mail, one copy of the clerk's record and the reporter's transcript in the above-entitled case to each of the attorneys of record, to wit:

Appellant's counsel: State Appellate Public Defender, 3647 Lake Harbor Ln. Boise, ID 83703

Respondent's counsel: Attorney General, Statehouse Mail, Boise, Idaho 83720-0005

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Blackfoot, Idaho, this 16th day of January 2013.

SARA STAUB, CLERK
Clerk of the District Court

By 
Deputy Clerk

