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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

RONALD SCOTT EDDINGTON,	)	
	)	**No. 45803**
Petitioner-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CV-PC-2015-16861**
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE LYNN G. NORTON
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Ronald Scott Eddington appeals from the district court's order denying him post-conviction relief following remand by the Idaho Court of Appeals for an evidentiary hearing,

Statement Of Facts And Course Of The Proceedings

The Idaho Court of Appeals set forth the facts and procedure leading to Eddington's initial post-conviction appeal as follows:

> On August 9, 2013, Eddington broke into his ex-wife's home, held her at gunpoint, and threatened to kill both himself and his ex-wife. Once Eddington left the house, the ex-wife called her father, who then called the police. The State charged Eddington with second degree kidnapping pursuant to Idaho Code § 18-4503, burglary pursuant to I.C. § 18-1401, aggravated assault pursuant to I.C. § 18-905(a), and using a deadly weapon in the commission of a felony pursuant to I.C. § 19-2520. Eddington retained private counsel. Soon after Eddington was charged, his mother was charged with witness intimidation, I.C. § 18-2604. The charge stemmed from a letter Eddington's mother wrote to her ex-daughter-in-law about Eddington's charges. Eddington's trial counsel then agreed to represent Eddington's mother.
>
> Eddington pled guilty to second degree kidnapping and aggravated assault, and the remaining charges were dismissed as the result of a plea agreement. Eddington was sentenced on March 17, 2014. During the sentencing hearing, the State put several witnesses on the stand. The witnesses most relevant to the post-conviction proceedings were Eddington's ex-wife, the ex-wife's father, the detective who responded to the scene of the crime, and a forensic psychologist. The district court then imposed a unified sentence of twenty-two years, with ten years determinate, for second degree kidnapping and a concurrent unified sentence of five years, with five years determinate, for aggravated assault. On March 18, 2014, Eddington's mother's charge was dismissed.
>
> Eddington filed a petition for post-conviction relief, alleging several instances of ineffective assistance of trial counsel and one instance of trial court error. . . . The district court granted the State's motion for summary dismissal.

Eddington v. State, 162 Idaho 812, 816-817, 405 P.3d 597, 601-602 (Ct. App. 2017).

On appeal, the Idaho Court of Appeals affirmed the summary dismissal of all but four of Eddington's post-conviction claims – "ineffective assistance of counsel claims pertaining to

conflict of interest, pressure to plead guilty, failure to cross-examine or object to the testimony of the ex-wife, and failure to investigate[.]" Eddington, 162 Idaho at 824, 405 P.3d at 609. The Court of Appeals reversed the order summarily dismissing those four claims and remanded the case with instructions that the district court hold an evidentiary hearing on them. Id.

After a two-day evidentiary hearing during which Eddington, his current wife (Tracy Eddington), his mother (Diana Eddington), and his trial counsel (Michael Bartlett) testified, the district court entered a 33-page Order Dismissing After Evidentiary Hearing (R., pp.247-279) and a Final Judgment (R., pp.280-281), denying Eddington relief on his four remaining claims. Eddington filed a timely notice of appeal. (R., pp.282-285.)

ISSUES

Eddington presents the following issues on appeal:

A. The District Court erred in failing to grant Mr. Eddington the relief he requested at the evidentiary hearing held on this matter.

B. The District Court's findings of fact are clearly erroneous.

C. The District Court's conclusions of law were not supported by substantial and competent evidence.

(Appellant's Brief, p.8.)

The state phrases the issue on appeal as:

Has Eddington failed to establish, following an evidentiary hearing, that the district court erred by denying him post-conviction relief?

ARGUMENT

Eddington Has Failed To Establish, Following An Evidentiary Hearing, That The District Court Erred By Denying Him Post-Conviction Relief

A. Introduction

On appeal following remand and an evidentiary hearing, Eddington challenges the district court's order denying him post-conviction relief on the four claims that survived the state's motion for summary dismissal. (See generally Appellant's Brief.) Eddington has failed to establish the district court erred in denying him post-conviction relief.

B. Standard Of Review

A petitioner for post-conviction relief has the burden of proving, by a preponderance of the evidence, the allegations on which his claim is based. I.C.R. 57(c); Estes v. State, 111 Idaho 430, 436, 725 P.2d 135, 141 (1986). A trial court's decision that the petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990). Where the district court conducts a hearing and enters findings of fact and conclusions of law, an appellate court will disturb the findings of fact only if they are clearly erroneous, but will freely review the conclusions of law drawn by the district court from those facts. Mitchell v. State, 132 Idaho 274, 276-77, 971 P.2d 727, 729-730 (1998). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. Peterson v. State, 139 Idaho 95, 97, 73 P.3d 108, 110 (Ct. App. 2003).

C. Eddington Has Failed To Establish Any Error In The District Court's Denial Of Post-Conviction Relief

In its Order Dismissing After Evidentiary Hearing (hereinafter "Order") (R., pp.247-279), the district court articulates the applicable legal standards (id. at 248-250), sets forth in great detail

its findings of fact (id. at 251-268), and finally, the reasons Eddington failed to establish, by a preponderance of the evidence, the validity of his four remaining claims (id. at 268-279). The state fully adopts the legal standards, findings of fact, and analysis of each claim presented in the district court's Order, as its basis for affirming the denial of Eddington's four remaining post-conviction claims. The state incorporates that Order (attached as Appendix A) into this brief as if fully set forth herein.

In addition to relying on the district court's Order, the state makes the following supplemental arguments in response to Eddington's Appellant's Brief.

1. First Claim: Actual Conflict Based On Concurrent Representation

Eddington's first claim is that his trial counsel had an actual conflict of interest because he concurrently represented both Eddington and Eddington's mother, Diana, the latter of whom was charged with felony witness intimidation based on an e-mail she sent to the victim in Eddington's case – his ex-wife Carrie. (See generally R., pp.8-14; see Appellant's Brief, pp.10-21.) Eddington alleges his trial counsel succeeded in getting him to accept the state's plea offer by representing or implying that Diana's case would be dismissed if he did. (See id.) Additionally, Eddington alleges that trial counsel's conflict of interest caused counsel to not submit a letter prepared by Diana in support of Eddington at sentencing, and to not call her to testify at the sentencing hearing. (Id.)

The district court rejected Eddington's "actual conflict" claim, explaining that the evidence presented showed: (1) Eddington was the only one who said that the dismissal of Diana's case was dependent upon his acceptance of the state's plea offer and subsequent guilty pleas, (2) neither one of the two deputy prosecutors suggested that dismissal of Diana's case was dependent upon Eddington's guilty plea, (3) Diana never told Eddington that his guilty plea would result in her case being dismissed, (4) Eddington's trial counsel consistently advised Diana that her charge was

unfounded and would be dismissed, (5) Eddington's testimony that his trial counsel went into fits of anger, made threats, and yelled at Eddington on January 14, 2014, is not credible in light of recordings of conversations between Eddington and his counsel, and counsel's explanations to Eddington that it was important that he decide for himself if he wanted to accept the state's plea offer, and (6) Eddington's credible statements during the plea-entry hearing and on his Guilty Plea Form that his plea was not connected to any threats or promises (apart from the plea agreement itself). (R., pp.268-271.)

The district court also concluded that, even if Eddington's trial counsel's performance met the first prong of Strickland v. Washington, 466 U.S. 668 (1984), he failed to meet the second prong – prejudice. (R., p.271.) The court held, based on trial counsel's testimony, that trial counsel made a reasonable strategic decision to not call Diana as a witness at Eddington's sentencing hearing because he routinely disallowed parents of his clients to provide such testimony due to the risk they may become emotional and/or uncontrollable. (R., p.272.) The court similarly found that trial counsel's decision to not include Diana's support letter in the submission of letters to the sentencing court was reasonably and strategically based upon his conclusion that it contained parts that may have been perceived as "victim blaming," which would not have benefitted Eddington. (R., pp.271-272.)

The overarching theme of Ellington's "actual conflict" argument is that his and Diana's cases were "linked," as ostensibly proven by several comments made by the attorneys about Diana's case, and the scheduling/re-scheduling of the hearing to dismiss her case. (See generally Appellant's Brief, pp.15-19.) However, the relevant question is not whether the cases were linked. Even the district court acknowledged that "mother and son were charged with crimes in separate cases that were *somewhat related*." (R., p.269 (emphasis added).) Rather, the question is *how* the

cases were linked, and more specifically, whether trial counsel communicated to Eddington that he had to accept the state's plea offer in his case in order to have Diana's case dismissed. Eddington failed to prove, by a preponderance of the evidence, that any such understanding existed. As the court explained, Eddington "is the only one who says that he thought his guilty plea would have an impact on whether his mother's case was dismissed[.]" (R., pp.269-270.)

To the extent Eddington argues that events occurring after he entered his guilty plea show a covert agreement that Diana's case would be dismissed only after he pled guilty – such as the re-scheduling of the hearing to dismiss Diana's case after Eddington's sentencing hearing – such argument is not relevant to his claim that his prior guilty plea was coerced.[1] Eddington seems to acknowledge that fact, as he states:

> The evidence shows it was [Deputy Prosecutor] Faulkner who rescheduled Diana's dismissal for the day after her son's sentencing, and then the day after Ron's Judgment and Commitment hearing. This allowed Ms. Faulkner to link Diana's case with her son and, significantly, would have reasonably allowed the State to coerce [trial counsel] Mr. Bartlett *by refusing to dismiss Diana's case based on the sentence her son received.*

(Appellant's Brief, p.17 (emphasis added).) Instead of contending that dismissal of Diana's case was contingent on his acceptance of the state's plea offer, Eddington argues that such dismissal hinged upon the state's satisfaction with his sentence. Eddington apparently understands that the rescheduling of his sentencing date could not have coerced his prior guilty pleas. In short, the rescheduling of Eddington's sentencing dates is irrelevant to his claim.

[1] Despite Eddington's insistence that there is no evidence in the record as to who re-scheduled Diana's sentencing hearing (see Appellant's Brief, pp.16-17), at Eddington's sentencing hearing, his trial counsel stated, "We've set it over, and the state has agreed to dismiss" (Pet. Ex. I, p.EE 73 (3/13/14 Tr., p.72, Ls.20-21)). It appears from that comment that the set-over was done by agreement of both parties.

Eddington contends that because trial counsel knew that Diana was paying for Eddington's legal fees, it created a "bias in favor of protecting Diana's interests above her son's interests." (Appellant's Brief, p.13.) However, given that trial counsel (and in turn, Diana) was told early on by the prosecutor that Diana's case would be dismissed, the fact that Diana was paying for counsel to represent he son in a much more serious case would not have created a bias in counsel against Eddington – it would have more reasonably shown counsel that Eddington's case was very important to Diana.

Eddington argues that his trial counsel's statement at the plea entry hearing that he was concerned the state would "claim that he's aiding and abetting" Diana with "the crime of intimidating a witness" (Pet. Ex. H, p.EE 46 (1/16/14 Tr., p.5, Ls.15-18)) was inconsistent with counsel's evidentiary hearing testimony that he wanted to continue Diana's dismissal "to protect Diana from doing something in the intervening period of time that might have affected her." (11/17/17 Tr., p.43, L.15 – p.44, L.4.). (Appellant's Brief, p.16.) There is nothing inconsistent about trial counsel's concerns that further contact by Diana with Carrie could lead to criminal charges against either or both Diana and Eddington. The fact that Eddington's trial counsel expressed each concern in separate proceedings does not show they are inconsistent.

Next, Eddington asserts that the prosecutor, "at the evidentiary hearing, argued at closing that the State held out Diana's dismissal to protect their 'star witness', Carrie Eddington[,]" but presented no evidence to support that argument. (Appellant's Brief, p.17.) Contrary to Eddington's statement, Eddington's trial counsel testified at the evidentiary hearing, "I do know that [the prosecutors] were concerned that Diana would continue to talk with Carrie and possibly get herself in trouble. And I had the same concern that Diana would continue to talk with Carrie, and I didn't want that to happen." (11/15/17 Tr., p.254, Ls.11-16.) In short, the evidentiary record

shows that both Eddington's trial counsel and the state were concerned about the possibility that Diana would continue to contact Carrie. It was in the best interests of both Diana and Eddington that Diana not do so. An extension of the date for the hearing to dismiss Diana's case – with its attendant no contact order – clearly provided Diana incentive not to contact Carrie during that time.

Finally, Eddington argues that "the holding out of Diana's dismissal allowed the prosecutor to use Diana's case to prejudice Mr. Eddington[,]" and that the PSI contained detailed statements about Diana's pending crime against her son's alleged victim." (Appellant's Brief, p.19.) However, it would not have mattered if Diana's case was dismissed at the time the PSI was prepared, or even if Eddington and Diana had different counsel, because Diana's e-mail to Carrie would have been relevant to the issue of "familial support" and background regardless. (See Pet. Ex. I, p.EE 73 (3/13/14 Tr., p.72, Ls.5-13).)

For the above reasons, and those set forth in the district court's Order, Eddington has failed to demonstrate that the district court erred in denying this claim.

2. Third Claim: Trial Counsel Pressured Eddington To Plead Guilty Because There Was A Conflict Of Interest

As explained by the district court, Eddington's third claim asserts that he "entered a guilty plea only because [trial counsel] yelled at him, got angry, told him he had to, and inferred his mother's case would not be dismissed[.]" (R., p.272; see R., pp.26-32.) The district judge found that Eddington's claim was "just incredulous, given the extensive conversations recorded in this case." (R., p.273; see Resp. Ex. 23 (transcript of jail telephone calls).)

Eddington's argument in regard to his third claim is, in large part, an unsubstantiated and subjective running account of what he ascribes were his, his trial counsel's, and the state's

intentions and motivations leading up to the entry of his guilty pleas. (See generally Appellant's Brief, pp.21-31.) Inasmuch as Eddington's first and third claims are interrelated, the state relies upon the district court's Order in regard to those claims (see R., pp.268-275), and the state's preceding argument relative to the first claim, for its response to the third claim. In addition, the state makes the following two supplemental comments in response to Eddington's third claim.

Eddington implies that his trial counsel did not review the police audios. (Appellant's Brief, p.23 ("It is reasonable to state that without knowing the information in the police audios, Bartlett was not able to conduct competent plea negotiations.").) That statement is wholly contradicted by Mr. Bartlett's evidentiary hearing testimony that he listened to "all the investigative audios in the case multiple times." (11/15/17 Tr., p.245, Ls.10-11.)

Next, Eddington states, "In explaining Bartlett's statement of his limited defense choices because of Mr. Eddington's confession to entering Carrie's home with a gun, he did not confess, and in fact, denied threatening Carrie with the gun.[,]" citing page 200 of the November 15, 2017 transcript of the evidentiary hearing. (Appellant's Brief, p.23.) Although Bartlett testified that Eddington said "he didn't intend to harm her," and that he was trying to "intimidate her into making different agreements with regard to custody," Bartlett did not testify that Eddington denied threatening Carrie with a gun.[2] (Pet. Ex. H, p.EE 49 (11/15/17 Tr., p.200, Ls.10-15).)

Eddington has failed to demonstrate error in the district court's determination that his trial counsel pressured him to plead guilty pursuant to the state's plea offer.

[2] Although not directly relevant to the precise issue presented here, it is worth noting that, at his plea entry hearing, Eddington admitted he "threatened to shoot [Carrie] with a gun" which "created a well-founded fear in her that violence was imminent." (Pet. Ex. H, p.EE 49 (1/16/14 Tr., p.19, Ls.9-14).)

3. Fifth And Sixth Claims: Trial Counsel Failed To Listen To Audio Recordings Of Victim's Police Interviews And/Or Failed To Cross-Examine Or Object To Victim's Testimony At Sentencing

Eddington claims the district court erred by determining that he failed meet his burden of proving, by a preponderance of the evidence, that his counsel was ineffective "because he failed to listen to audio recordings of [Carrie's] police interviews," and "failed to cross-examine or object to [Carrie's] testimony at the sentencing hearing." (Appellant's Brief, p.31; see R., p.275.) The district court's Order on that claim (see R., pp.275-278) is fully relied upon as the state's response to that claim. The record clearly provides substantial evidence showing that Eddington's trial counsel listen to the audio recordings of Carrie's police interviews; therefore, no further comment on that point is warranted. (See 11/15/17 Tr., p.245, Ls.5-11.)

As a point of clarification, Eddington states that he testified at the evidentiary hearing that his trial counsel "informed him that he (Bartlett) had *only* listened to Mr. Eddington's police interrogation," citing page 121 of the hearing transcript. (Appellant's Brief, p.33 (emphasis added).) Eddington misstates his own testimony. Eddington actually testified, "When I initially talked to him about it sometime, a long time prior to that, he had told me that he had listened to my interrogation, and beyond that he didn't say anything else specifically." (11/15/17 Tr., p.121, Ls.17-21.) Eddington's testimony that his trial counsel did not say "anything else specifically" about what he had listened to is not the same as trial counsel saying "he had only listened to Mr. Eddington's police interrogation."

Eddington also challenges the district court's determination that his trial counsel failed to cross-examine Carrie at the sentencing hearing about a prior statement she made in a recorded police interview: the parties stipulated "that Carrie agreed on the audio recording of her law enforcement interview that [Eddington] had not been abusive before." (R., p.265.) At the

evidentiary hearing, Eddington's trial counsel testified that he had intended to make that an issue at the sentencing hearing, and had written it down in his sentencing notes in bold (Resp. Ex. 17). (11/15/17 Tr., p.241, Ls.1-16.) However, counsel testified that he "failed to make that point in any kind of clear way, and that was an absolute failure." (11/15/17 Tr., p.241, Ls.22-24.)

On appeal, Eddington alleges that his trial counsel's sentencing notes "make no comment that he listened to or was going to present statements he heard on the audio recordings." (Appellant's Brief, p.34.) However, in trial counsel's cross-examination at the evidentiary hearing, he explained how his sentencing notes referenced Carrie's prior inconsistent statement to police:

> Q. . . . [P]lease point to me specifically where it talks about her admitting that.
>
> . . .
>
> A. "Evident from statements of Carrie and others, violent abuse behavior didn't start" – the night of August 9, excuse me – "control, manipulate, kicks, punch holes through things – and then in bold the point – "not in divorce proceedings, custody proceedings, or police reports," meaning none of these things were there in those things.
>
> Q. And so you specifically said not in the police reports.
>
> A. "Not in divorce proceedings, custody proceedings, police reports."
>
> Q. But there's no mention of her actually in a police report saying that she –
>
> A. Well, keep in mind, this is my notes. So this police report we refer to discovery, all of discovery. Right? I'm not writing this for anyone other than myself, and I'm referencing the materials provided by the state, that there wasn't any evidence of prior abuse.
>
> So I have bolded it here, because I thought it was a very important point, which is also why I have shared with you I think it was a big deal that I forgot to say it, and I simply forgot.

(11/15/17 Tr., p.247, L.7 – p.248, L.14; see Resp. Ex. 17.) Regardless of Eddington's insistence that the sentencing notes should have included a comment that trial counsel "was going to present statements he heard on the audio recordings" (Appellant's Brief, p.34), as trial counsel testified,

the notes were his own way of reminding himself to discuss the fact that the discovery materials from the state showed "that there wasn't any evidence of prior abuse." (Id.)

Next, Eddington pieces together an argument that, because his trial counsel was made aware by the district court that Dr. Johnston (the psychological evaluator) would rely upon inaccurate collateral information from police reports and from the victim, counsel should have contacted Dr. Johnston "to correct this inaccurate collateral information that played such a significant part in determining Mr. Eddington's risk to re-offend," including obtaining "Mr. Eddington's phone and email records which would have shown there was no obsessive behavior." (Appellant's Brief, pp.34-35.) Apart from asserting that "inaccurate collateral information" from Carrie portrayed him as a man escalating in obsessive and stalking conduct, Eddington does not specifically explain what other information he is referencing. (See Appellant's Brief, pp.34-36.) Eddington contends his trial counsel was ineffective for failing to obtain phone records, emails, and text messages between him and Carrie that would have shown that he was not engaged in such escalating behavior towards her; however, he failed to present any such records as evidence at the evidentiary hearing. (See generally Appellant's Brief, pp.34-43; "Exhibit List," pp.1-4 (sequential).) Therefore, Eddington's assertion that presentation of those records at the sentencing hearing would have led to a lesser sentence is entirely unsubstantiated. See Strickland, 466 U.S. 668.

The remainder of Eddington's Appellant's Brief does not warrant further discussion or comment. Based upon the district court's entire Order, and the arguments and comments presented above, Eddington has failed to show any error in the denial of his post-conviction claims.

CONCLUSION

The state respectfully requests this Court affirm the district court's order denying Eddington post-conviction relief.

DATED this 17th day of December, 2018.

/s/ John C McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of December, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

RONALD SCOTT EDDINGTON
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/s/ John C McKinney
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Deputy Attorney General

JCM/dd

APPENDIX A

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RONALD EDDINGTON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2015-16861

ORDER DISMISSING AFTER EVIDENTIARY HEARING (ON REMAND)

The Petitioner filed a Petition for Post-Conviction Relief pursuant to I.C. §19-4901, *et seq.* (Uniform Post-Conviction Procedure Act (UPCPA)). The Petitioner's verified petition was filed by counsel on September 30, 2015. The State filed an Answer on December 7, 2016. The Idaho Supreme Court remanded portions of allegations for evidentiary hearing in a decision dated May 8, 2017. An evidentiary hearing was held on November 15th and 17th, 2017.

Appearances:

Ellen Smith for Petitioner, the Petitioner was personally present.
Shelley Akamatsu for Respondent.

PROCEDURAL BACKGROUND

As noted by Petitioner:

> Mr. Eddington pled guilty and was sentenced by the Honorable Lynn Norton of the Fourth Judicial District . . . to ten (10) years fixed, followed by twelve (12) years indeterminate, for Kidnapping in the Second-Degree and five (5) years fixed for Aggravated Assault to run concurrently. Mr. Eddington was sentenced on March 13, 2014.[1]

[1] Verified Petition for Post-Conviction Relief, filed Sep. 30, 2015, p. 1, (hereinafter "Petition"). The underlying case is Ada County Case No. CR-FE-2013-10953.

Petitioner appealed the sentence but then withdrew that appeal. A Verified Petition for Post-Conviction Relief was filed on September 15, 2015 which originally stated eight bases for relief. The Court granted the Respondent's Motion for Summary Dismissal on June 22, 2016 and dismissed all claims, with a Judgment entered the same day. The Petitioner appealed.

In *Eddington v. State,* 162 Idaho 812, 405 P.3d 597 (Ct. App. 2017), the Court of Appeals affirmed in part, and reversed and remanded in part. The issues remanded for evidentiary hearing included portions of the First Ground for Relief[2] on 1) whether counsel was ineffective and whether there was an actual conflict of interest between Michael Bartlett[3] ("Bartlett) representing both Ronald Eddington, Jr. and Diana Eddington simultaneously on related criminal charges, and 2) if so, whether prejudice was shown by Petitioner; the Third Ground for Relief[4] of whether Bartlett was ineffective because he pressured Ronald Eddington, Jr. to plead guilty because there was a conflict of interest as alleged in the First Cause of Action; and the Fifth[5] and Sixth[6] Grounds for Relief of whether counsel was ineffective because he failed to listen to audio recordings of the ex-wife's police interviews and/or failed to cross-examine or object at sentencing to Eddington's ex-wife's testimony on whether her testimony was contradicted by her police interview.

An evidentiary hearing on these claims was held on Wednesday November 15, 2017 and Friday November 17, 2017.

LEGAL STANDARDS

The Uniform Post-Conviction Procedure Act, I.C. §§ 19-4901 through 19-4911, allows individuals convicted and/or sentenced for a crime to petition the Court for relief in the following situations: (1) the sentence is in violation of the constitution; (2) the Court lacks jurisdiction; (3) the sentence exceeds the maximum provided by law; (3) there is evidence of material fact, not previously presented and heard, requiring

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2 Petition, pp. 8-14.
3 Petitioner's counsel during the guilty plea hearing in the underlying criminal case.
4 Petition, pp. 17-22.
5 Petition, pp. 27-38.
6 Petition, pp. 38-44.

vacation of the sentence in the interest of justice; (5) the sentence has expired; (6) the petitioner is innocent, subject to the provisions for DNA testing in the statute; (7) or the sentence is subject to collateral attack upon any ground of alleged error. I.C. § 19-4901(a).

A petition for post-conviction relief is an entirely new proceeding and is civil in nature. It is distinct from the criminal action which led to conviction. *Stuart v. State,* 136 Idaho 490, 494, 36 P.3d 1278, 1282 (2001); *Peltier v. State*, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991). Like a plaintiff in a civil action, a petitioner seeking post-conviction relief must bear the burden of proving the allegations upon which the petition for post-conviction relief is based by a preponderance of the evidence. I.C.R. 57(c); *Grube v. State,* 134 Idaho 24, 27, 995 P.2d 794, 797 (2000).

It is the Petitioner's responsibility to present admissible evidence at an evidentiary hearing. Unless introduced into evidence at the hearing, verified petitions and affidavits do not constitute evidence. *Loveland v. State*, 141 Idaho 933,936, 120 P.3d 751, 754 (Ct. App. 2005). A Petitioner is required to prove his allegations at the hearing by a preponderance of the evidence and the standard for avoiding summary dismissal, in which the district court is required to accept the petitioner's allegations as true, is not applicable at an evidentiary hearing. *Id*; s*ee also Willie v. State*, 149 Idaho 647, 649, 239 P.3d 445, 447 (Ct. App. 2010).

The elements of a claim of ineffective assistance of counsel are (1) that petitioner's trial counsel was deficient; and (2) that such deficiency prejudiced petitioner's case. *Goodwin v. State*, 138 Idaho 269, 272, 61 P.3d 626, 629 (Ct. App. 2003); *Pratt v. State*, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000). Related to ineffective assistance of counsel, the applicant must show, first, that the attorney's representation fell below an objective standard of reasonableness. *Strickland v. Washington,* 466 U.S. 668 (1984); *Aragon v. State,* 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Second, the applicant must demonstrate that he was prejudiced by his or her attorney's deficient performance. *Strickland v. Washington* at 691-692; *Aragon v. State* at 760-761. "Strategic and tactical decisions will not be second-guessed or serve as basis for post-conviction relief under a claim of ineffective assistance of counsel unless that decision is shown to have resulted from inadequate

preparation, ignorance of the relevant law or other shortcomings capable of objective review." *State v. Osborne,* 130 Idaho 365, 372-373, 941 P.2d 337, 344-345 (citing *Giles v. State,* 125 Idaho 921, 924, 877 P.2d 365, 368 (1994)). When faced with a tactical decision, the court utilizes the "strong presumption" that the decision fell within the acceptable range of choices available to trial counsel. *Hairston v. State,* 133 Idaho 496, 511, 988 P.2d 1170, 1185 (1999). To prove that such deficiency prejudiced Petitioner's case requires a showing of a "reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different." *Aragon,* 114 Idaho at 761, 760 P.2d at 1177.

The district court is vested with the discretion of making factual findings, and must rely on substantial evidence in the record, although the evidence may be conflicting. *Martinez,* 125 Idaho at 846, 875 P.2d at 943; *Holmes v. State,* 104 Idaho 312, 314, 658 P.2d 983, 985 (Ct. App. 1983). "[A]n applicant's conclusory allegations, unsubstantiated by any admissible evidence, need not be accepted as true." *Roman v. State,* 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

EVIDENCE PRESENTED AT THE HEARING

The Petitioner did not offer the verified petition as evidence during the hearing and only offered one signed, sworn affidavit (Ex. 9 "Affidavit of Diana Eddington"). Unless introduced into evidence at the hearing, verified petitions and affidavits do not constitute evidence. *Loveland v. State*, 141 Idaho 933,936, 120 P.3d 751, 754 (Ct. App. 2005). The Idaho Court of Appeals specifically declined to overrule or extend *Loveland* in *Willie v. State*, 149 Idaho 647, 239 P.3d 445 (Ct. App. 2010). Since verified petitions and affidavits do not automatically become evidence at the evidentiary hearing, the Court is not to consider the allegations or any other affidavit just because it is a filed pleading.

The court heard the testimony of Ronald Eddington Jr., Diana Eddington, Tracy Eddington, and Michael Bartlett presented at the evidentiary hearing. The parties entered into a stipulation of certain facts filed in the record on November 15, 2017 and also stipulated to the admission of certain exhibits. The other exhibits were also admitted during the hearing. The Court has considered only the admitted exhibits.

There were many Eddingtons discussed at the evidentiary hearing so the Court will clarify for purposes of this decision. The Court will use "Ronald Eddington" to refer to the Defendant/Petitioner although his legal name appears to be Ronald Eddington, Jr. Ronald Eddington's father is also named Ronald Eddington so the Court will use "Ron Sr." to refer to the Petitioner/Defendant's father. Diana Eddington is the Petitioner/Defendant's mother. Carrie Eddington is the Petitioner/Defendant's ex-wife and she was also the ex-wife at the time of the crime, plea and sentencing. Carrie Eddington was the victim of the Petitioner's crime. Tracy Eddington is the Petitioner/Defendant's current wife and she was also married to the Petitioner/Defendant at the time of the crime, plea and sentencing.

FINDINGS OF FACT

On August 9, 2013, the Petitioner broke into his ex-wife's (Carrie Eddington's) house in Ada County, Idaho, held her at gunpoint for an hour, and threatened to kill both himself and her. During this time, Petitioner told Carrrie he had thought about killing her throughout the prior three years. As a result, Petitioner was charged by Indictment with four crimes (Respondent's Exhibit 1) including Count I, Kidnapping in the Second Degree; Count II Burglary; Count III, Aggravated Assault; and Count IV, a sentencing enhancement for Use of a Deadly Weapon in the Commission of a Crime.

On August 10, 2013, the Petitioner's current wife, Tracy Eddington, called Petitioner's mother, Diana Eddington, to tell her the Petitioner had been arrested. Diana Eddington lived in Idaho Falls and was in Idaho Falls sleeping at time the crime was committed in Ada County. Diana Eddington said she became aware in August through telephone calls with Petitioner that Petitioner admitted to police his involvement in the crime. Those jail calls were recorded. The Petitioner was originally represented by another counsel but the Petitioner's family was unhappy with that representation so they got references and selected Michael Bartlett as new counsel.

The Petitioner testified he hired Michael Bartlett to represent him in CRFE-2013-10953 on October 16, 2013. Bartlett testified he is a criminal defense attorney that graduated ninth in his class at University of Idaho Law School, graduating in 1996, and passing the Idaho bar examination the first time. Bartlett clerked for Judge Lansing on the Idaho Court of Appeals for two years, and then has practiced "99.9 percent" in criminal

defense work for almost twenty years with Nevin, Benjamin, McCain, and Bartlett, including teaching criminal defense at some continuing legal education seminars. Diana Eddington testified that she and her husband signed a written agreement for representation of the Petitioner by Bartlett (Petitioner's Exhibit B). Diana and the Petitioner both testified that the Petitioner was Bartlett's client, although Ron Sr. and Diana received the bills and paid the attorney fees. The Petitioner also signed this representation agreement on October 18, 2013.

On October 21, 2013, Diana Eddington was charged with Witness Tampering/Intimidating a Witness arising from an email written to Carrie on or about September 18, 2013. This was Ada County Case No. CRFE-2013-14859. The Court considered all of Petitioner's Exhibit X (which is also Respondent's Exhibit 2) which is the e-mail written by Diana to Carrie. But specifically, the Court notes which includes,

> ....
> Jail is a terrifying place.... The lack of enough food to eat, the confinement with men who are unstable and frightening at best, the total loss of privacy or any sort of control over anything in your life, never seeing daylight, constant fear for your safety and your life puts you into a whole other unknown world. Sharing a cell with three other men where you confined for 30 hours at a time every two days without access to any kind of distraction or hope is unbearable. And Ronnie knows he could be there for months prior to his sentencing. And then what? Off to prison for years?
>
> We know the decision about [the Petitioner's] future is in your hands, Carrie. We know you will do what is best for you and the children. This frightening event will be put to rest in your mind in time but the children have to live the humiliation of having their father in prison for the rest of their lives. How do they explain that to people? How does [your [redacted] tell his buddies where the father he adores is living? Our greatest wish would be that the charges would be dropped and he could get the psychological help he needs....

Diana testified that she told Bartlett that she did not intend to cause any harm by sending the e-mail and that she had no idea anyone would see the letter as harmful or negative toward Carrie. She felt she was just sharing her feelings and had no idea it could be considered witness intimidation.

Diana learned of the charge by receiving a bondsman's card in the mail. She called Michael Bartlett and he offered to represent her so she hired him. Mr. Bartlett

testified he believed it was Respondent's Exhibit 2 that was the basis of Diana's charge and, most likely, the sentence of "Our greatest wish would be that the charges would be dropped and he could get the psychological help he needs." that led to Diana's charge. Bartlett testified that he immediately told Diana that he was never in a position to promise any disposition but that that the State's case against Diana looked very weak and unfounded and should be dismissed quickly. According to Diana Eddington's affidavit, Mr. Bartlett stated he would do whatever he could to get the charges against Diana dismissed. Bartlett testified his reaction to seeing the charge was that it was incredibly week and unfounded, and that he was shocked she was charged at all.

Diana Eddington lived in Idaho Falls at the time of the crime and all the way through the Petitioner's sentencing. Mr. Bartlett's advice was for Diana to turn herself in to the Ada County Jail. So, on October 31, 2013, Diana and Ron Sr. drove to Ada County and she turned herself in at the Ada County Jail on the charge. She testified that she, Bartlett, Ron Sr., Tracy, and a bondsman met at the Jail and Bartlett went through Diana's e-mail to Carrie line-by-line and concluded it wasn't intimidation. Diana's testimony was that Bartlett said from the first time he talked with her about the charge that he could easily get Diana's charge dismissed because there was no evidence that she was trying to hurt Carrie. Diana testified that Bartlett never told her there was any other way to get her case dismissed; it was only because there was not enough evidence for the State to prove the charge. Tracy Eddington's testimony about the October 31, 2013 meeting was also that Bartlett said Diana's charge was unfounded, did not meet the criteria for that offense, and that he would do everything he could to get the charge dismissed. Petitioner's Exhibit V shows Diana posted bond on November 1, 2013 and Diana testified she then returned to Idaho Falls.

Diana's testimony was that Mr. Bartlett did not say anything to her about a potential conflict and that she did not sign any written waiver of any conflict. Bartlett did not find an engagement letter for Diana in his file so said he did not believe one was signed because he probably thought the representation would be brief. Diana testified that she asked Ron Sr. not to tell Ron about her charge because she did not want to add to Ron's stress. Diana testified that Bartlett said he had to tell Ron about the charge. The Petitioner's testimony was that he found out about his mother's charge on October 31, 2013

when Barlett visited him at the jail and told Petitioner about it. Petitioner stated Bartlett brought a copy of the e-mail and they reviewed it together. Petitioner testified that Bartlett said he offered to represent Diana, that the charge was unfounded, not to worry about it, and that the charge would probably be dismissed. Petitioner did not state at the evidentiary hearing that he stated any objection to Bartlett or anyone else to Bartlett's representation of both he and Diana.

Bartlett later asked Diana to write an e-mail addressing the payment of her fees and Petitioner's Exhibit FF is a December 29, 2013 email from Diana to Bartlett stating Bartlett had Diana's permission to use the retainer paid for Petitioner to also pay for Diana's legal charges. In Petitioner's Exhibit DD, a bill from Bartlett, Bartlett billed $46 on October 14, 2013 for reviewing a letter from Diana to Carrie and a voicemail from Tracy. Diana stated she thought the date was in error since it was before her arrest but she never brought it to Bartlett's attention. Bartlett billed 1.4 hours on October 30, 2013 for reviewing information which included information about Diana's case and billed 2.7 hours on October 31, 2013 for conversations with Diana and her self-surrender at the jail which also included a conference with Ron. Bartlett prepared his notice of appearance for Diana's case on November 12, 2013.

Bartlett acknowledged Rule of Professional Conduct 1.7(a) (Respondent's Exhibit 21) addresses concurrent conflicts but he testified that he did not view his representation of Diana and Ron as a conflict. Rule 1.7 provides "a lawyer shall not represent a client fi the representation involes a concurrent conflict of interest" and subsection (a) defines a concurrent conflict of interest to exist if: "(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by the personal interests of the lawyer, including family and domestic relationships."

Bartlett represented Diana at her arraignment hearing on November 26, 2013. Petitioner's Exhibit II is a No Contact Order for Diana Eddington with Carrie Eddington entered the same day. Although Diana testified she never saw it, the face of the document has a signature of Diana Eddington dated 11/26/13 and states she was served that day. Diana recalled a second telephonic hearing around

December 20, 2013 when Bartlett told Diana that Deputy Prosecutor Dan Dinger was going to drop the charge against her. Diana's testimony was that the preliminary hearing was continued but Dinger said he would not drop Diana's charge until Ron had pled guilty. Diana did not recall returning to Boise until her son's sentencing. Diana testified it was her understanding that her charge was supposed to be dismissed the day after Ron's guilty plea, although it was not dismissed that day. Instead, the preliminary hearing was again moved until after Ron's sentencing hearing and dismissed on March 18, 2014, the day after Ron was sentenced. Bartlett testified he was not concerned about Diana's pending charge because he was confident it would be dismissed. He testified he had never had a prosecutor say they would dismiss a case and then not dismiss it. Bartlett testified that in Petitioner's Exhibit N, it was Bartlett who wanted the Diana's preliminary hearing continued to the day after Ron's guilty plea because he was concerned that there wouldn't be a no contact order between Diana and Carrie if Diana's case was dismissed. He was concerned that, without the no contact order, Diana would talk with Carrie and Diana would get into additional trouble because it was Bartlett's perception that Carrie had used the no contact order to distance herself from Diana and the situation, and that Carrie had a willingness to accuse others and contact the police. Bartlett felt the no contact order was a "very good thing" that protected Ron and Diana, as well as the victim, since any contact with Carrie could reflect negatively or Diana or Ron. Bartlett viewed the later dismissal date would protect Diana from doing something detrimental during that intervening time. Bartlett actually mentioned his concern to the Court at the guilty plea hearing, Petitioner's Exhibit H, contains the prosecutor's statement that she had been reviewing the Petitioner's jail calls, and then Bartlett states, "...the State has charged his mother with the crime of intimidating a witness, and I'm concerned that they will claim that he is aiding and abetting that crime." After that, the Court stated it was unclear whether this intimidating a witness charge was part of the plea agreement with Ron Eddington so the Court gave counsel approximately twenty minutes to discuss the issue with counsel. The Court asked counsel if there was a plea agreement as to any potential charge and Faulkner stated the parties had agreed that if there was any intimidation from the date of the plea hearing forward, it would violate the plea agreement but any previous conduct of Mr. Eddington would not be considered the violate the plea agreement and would just be "fodder for argument in sentencing." Eddington then acknowledged on the record that was the

plea agreement, he was not required to accept a plea agreement, and that he was not required to change his previously-entered not guilty plea.

On cross-examination, Diana Eddington acknowledged that Ron never told her that he felt he had to enter a guilty plea to get Diana's case dismissed; never asked Diana to enter a guilty plea so that he could have a more favorable disposition of his case; and never said that Ron had to enter a guilty plea otherwise he felt his mother's case would not be dismissed. In Respondent's Exhibit 9, Diana's Affidavit signed September 28, 2015, Diana testified Bartlett repeatedly informed her that her charges against her were unfounded and that he would get them dismissed.

Bartlett testified that Whitney Faulkner, the deputy prosecutor in Ron's case, e-mailed a plea offer (Respondent's Exhibit 3) with a Settlement Offer sheet attached on December 9, 2013. Bartlett testified that there was never any discussion between him and Dinger or Faulkner about a resolution in Ronald Eddington's case being tied to Diana's case. He testified that there is such a thing as a joint offer for co-defendants in the same case where one co-defendant is more culpable than the other. Those offers are rare but are typically termed as, "If the other co-defendant pleads to X, then the State offers this to you…." Bartlett testified those offers must be made in writing. Bartlett testified that the State did not make any written offer in Ronald Eddington's case that contained any contingency related to Diana. Bartlett testified that no offer was ever made that these cases were linked, joint or concurrent offers between Ron and Diana's cases.

It was the Petitioner's testimony that Bartlett inferred on January 14, 2014 in a conversation at the jail the night before Petitioner's plea hearing that Petitioner had to plead guilty or Diana's case would not be dismissed. Petitioner stated that Bartlett wanted to complete the guilty plea form, Respondent's Exhibit 32. Petitioner's initial testimony was that the Petitioner only initialed the form and the rest was filled out by Bartlett. Petitioner testified he told Bartlett that entering a guilty plea "felt wrong" and that he didn't want to enter a guilty plea. Petitioner's testimony was that Bartlett then became very upset and yelled at the Petitioner, something to the effect of, "Take responsibility and sign damn thing." When Petitioner refused, Petitioner testified Bartlett was angry and yelled some more, saying something like, "call your parents and tell them you need $20,000 for a trial." Petitioner then testified Bartlett said, "Your

mom's case is going to be dismissed the day after this thing." Petitioner testified that he wasn't aware of that prior to Bartlett's statement and that he felt that Bartlett alluded that her case was somehow intermixed with the Petitioner's case. Petitioner then said he wanted more clarification of the facts but that Bartlett said he had not listened to all of the audios because Petitioner's family could not afford it. Petitioner testified he next told Bartlett that he was going to enter a plea but then tell the judge that he did not actually do the crime to which Bartlett, "exploded again," got mad, then stood pointing his finger saying, "you will say exactly what I tell you." Petitioner stated he felt Bartlett was alluding to his mom's case again. Petitioner described himself as flustered by exchange.

Bartlett's recollection of this visit differs greatly from Ron's recollection. Bartlett stated he did not recall whether he talked about his mother's case although it was likely they did. Bartlett said Ron conveyed some doubts, concerns or fears about a guilty plea, which was understandable. Bartlett said he told Ron that additional payment would be necessary for a trial, although Bartlett did not recall giving the cost of $20,000. He recalled he just said trial was more expensive although he had already taken the time to review all of the discovery thoroughly at significant cost. Petitioner's Exhibit DD, billing records, show Bartlett had billed 56 hours in preparation for Ron's case as of this date (which excludes 10.4 hours which was clearly attributable to Diana's representation). Bartlett testified that he did not always bill all of his time. Bartlett testified that he went through the discovery thoroughly and discussed it with Mr. Eddington. Billing records show that meeting with Ron and Bartlett lasted 2.8 hours. But Bartlett testified the Defendant never said he had changed his mind and never said he did not want to plead guilty. Bartlett testified that how the Defendant pleaded was the Defendant's choice. Bartlett testified he did not force the Petitioner to plead guilty.

Petitioner's course of recorded phone calls shed light on Eddington's decision to enter a guilty plea and lend credibility to Bartlett's version above. Petitioner's Exhibit V shows Bartlett met with Ron at the jail for 11.4 hours plus the time on 10/31/13 between October 2, 2013 and January 15, 2014. Petitioner acknowledged that Bartlett never lost his temper or yelled on the phone. Petitioner testified he was aware that the plea offer was that Petitioner was to plead guilty to Counts 1 and 3, then the State would

dismiss the other two charges, with open sentencing up to the maximum punishment for the two charges he pled to. Then, the State would request a psychological evaluation of the Defendant by Dr. Robert Engle. In the December 11, 2013 phone call, Bartlett told the Petitioner that Bartlett thought the defense strategy should be to "force their hand" by going to the status conference the next day and telling the State that the Defendant was "not taking their deal." Bartlett discussed his perception that Dr. Engle was not as defense-friendly as other evaluators.

In another call, the Petitioner and Bartlett discussed the plea offer to which Petitioner says, "wow, kidnapping, that's bad." Bartlett follows up with, "So, I have permission to go forward?" and Petitioner responds, "yeah, I guess." Upon hearing that tentative response, Bartlett actually told Petitioner to think more about whether to plead because Bartlett didn't want the Petitioner to guess. Bartlett tells the Petitioner that he thinks pleading out is the right thing to do but that Bartlett wants the Petitioner to have more time to think about it. There was no discussion about Diana's case on any calls recorded to this point. Petitioner did not enter a plea at the status conference on December 12, 2013.

After the status conference, Respondent's Exhibit 24 is a call on December 12, 2013 where Petitioner acknowledged to his mother that he had gone to court but was going to wait to enter a plea. Petitioner stated he felt the plea offer was "really awful." Diana asked if they gave a plea offer and Petitioner responded, "Well, if you call it that." He stated in this call that he did not think he was going to plead to it because it didn't "make much difference timewise." He acknowledged he had received the offer a couple of days earlier, again reiterated the offer was "awful," stated he had discussed it with Bartlett, and Bartlett had said Carrie did not want to drop any charges. "I know what they are offering—it's just awful, what they are offering is essentially nothing." Petitioner stated he was unsure if he should just go to trial but that he couldn't comprehend them putting him away for year and years and years. Petitioner stated he did not see how he could plead guilty to kidnapping but that Bartlett explained the legal reason (with the explanation cut off in the recorded call).

In another recorded call, Petitioner asked Bartlett what he felt was the best option for Petitioner and Bartlett advised the Petitioner it was to plead to the two charges with open recommendations, and then discussed the difference in evaluations between Dr. Engle and Dr. Johnston.

Respondent's Exhibit 25 was a call recorded on Friday, December 13, 2013, between Petitioner and Tracy. Petitioner told Tracy that he had talked with Bartlett and was going to ponder the offer over weekend and then decide on Monday. On the same day, in Respondent's Exhibit 26, Petitioner told Diana he was going to talk with Bartlett over the weekend to let him know Petitioner's thoughts and to "discuss how long the rope I want to hang from is." There was still no discussion with Diana about her case.

Bartlett testified about the timing and content of the telephone calls. Bartlett testified the offer in Respondent's Exhibit 3 was going to be revoked on Friday, December 13, 2013. Still, Bartlett testified that he did not respond to the Prosecutor by Friday because Ron needed time to consider whether to enter a plea; whether to counteroffer; and Ron needed to know how he felt about the evaluation required if he entered a plea agreement. Bartlett testified his client needed to be confident in his decision and that his client wasn't so he advised Eddington to take more time to think about his decision.

Petitioner testified that in a conversation on December 16, 2013, Petitioner told Bartlett that he would agree to plead to Second Degree Kidnapping and Aggravated Assault because his plea was due if he was going to take advantage of the State's offer. Petitioner acknowledged he discussed the plea offer for four or five days in recorded phone calls with Bartlett. Petitioner said he reluctantly agreed to plead because Bartlett had not come to see him and it wasn't binding. Petitioner acknowledged he had time to think about whether to enter a plea.

Petitioner spoke with Bartlett on two recorded calls on December 16, 2013. In the first call, Bartlett asked Petitioner what he wanted to do and Petitioner responded he would "go with" Bartlett's expertise meaning he would plead to two charges instead of four. Bartlett responded that he would set a meeting with Dr. Johnston and discussed the presentence evaluation process and requesting additional time before sentencing. Bartlett states in the call to Petitioner, "I think this is the best we are going to get, there is not a lot of incentive to play ball, this is a slam dunk case." Then, in the second call, Petitioner expresses his feeling that he wouldn't be in jail if he'd actually shot Carrie, explaining he was really depressed when he made that statement. Petitioner testified he had previously discussed an "Ambien defense" with Bartlett and stated in this call, "I've never hurt anyone so I wasn't going to hurt her—I was whacked out on Ambien." Bartlett expressed concern with Petitioner using the

statement "whacked out on Ambien," stating the Petitioner didn't want to blame the events on medication and that the Petitioner had to take responsibility during the presentence process. Bartlett cautioned the Petitioner to not to use that language loosely so that an evaluator could consider it as not taking responsibility. Bartlett expressed his view that this was not a drug-induced crime because the evidence looked like the Petitioner operated very efficiently. Bartlett again said it was important to accept responsibility.

Bartlett discussed his defense strategy in this case during his testimony at the evidentiary hearing. He stated the Defendant had confessed which drastically limits counsel's ability to defend at trial unless there were 1) constitutional issues to limit admissible evidence, or 2) issues that cause the confession to lack credibility. Bartlett's summary of the confession was that Petitioner confessed he went to Carrie Eddington's home, taking his firearm with him, with the intent to intimidate her into making different custody decisions, although without an intent to harm her. Afterward, Petitioner returned home, took more Ambien, and then went back to bed. Bartlett discussed his assessment of the use of Ambien as a defense in this case and that Ambien can cause people to act in somnolent state or sleepwalking. He testified that, in his experience, people who used Ambien usually acted confused, disjointed, and couldn't accomplish detailed tasks. Bartlett testified that he considered using this strategy but did not feel it was a very effective defense strategy in this case because the Petitioner had to get out of bed without waking his wife, get into closet, take his firearm and load it, then drive his car to Carrie's, get into Carrie's house using a garage code, where Petitioner then had a one-hour-long conversation where Carrie did not notice any issues with Petitioner's behavior. Then, Petitioner drove back to his house, unloaded the gun and put it back into the closet, and finally got back into bed. Bartlett testified all this was unlikely on a drug that causes someone to sleep. Therefore, Bartlett felt that even though Tracy and the Petitioner had suggested using the "Ambien defense" at trial or sentencing, that strategy would be ineffective in gaining an acquittal at trial or a lesser sentence.

Bartlett testified he reviewed all of the discovery he was provided except for some of the jail calls, relaying the jail calls of his client provided in discovery were extensive. The billing records support this. He testified he reviewed the downloads from the cell phone and the computer (which included a substantial number of gruesome crime photos of head wounds,

particularly of women, for a substantial period of time—and his client's statement that Ron had intentionally looked at these photos), all of the audios of police interviews which was about nine hours, photos, and over 1,000 pages of documents. Bartlett testified he listened to Carrie's statement to the police several times. Carrie had told police that Ron had told her that night that he'd been thinking about this crime for three years. Although Ron said he could not remember that night, Ron told police that what Carrie said was true and accurate.

Bartlett testified he listened multiple times to all of the police interview audios, including the one with Carrie Eddington, and he took notes as he listened. He testified that his assessment was that the evidence to support the aggravated assault and burglary charges was "incredibly strong" while the evidence to support the kidnapping charge was weaker because Ron did not make Carrie move at all—she was always in the bedroom—but there was still a risk of conviction on that charge. Bartlett testified he viewed this as a sentencing case with a strategy of getting the best deal possible by removing two of the charges to limit the possible sentence recommendation of the State.

Respondent's Exhibit 27 is a phone call from the Petitioner to his mother on January 14, 2014—the same day Petitioner testified that he was threatened by Bartlett during their conversation at the jail. Petitioner calmy asked his mother about the cost of his defense and how much more it would cost, assuring her he would pay his parents back. Diana replied, "We're not starving to death and it will be a while before we do." Petitioner told his mom that Tracy's dad is well off so his parents would get their money back. Diana assured the Petitioner, "Don't worry, we just want this settled for you in the best way. In our old age you'll take care of us." There was no mention of Diana's case during this call and no mention of going to trial, changing his mind about entering a guilty plea, being coerced or pressured into a plea by Bartlett, or any angry exchange with Bartlett.

Bartlett testified that it was Monday when the Defendant decided to enter a guilty plea, that Bartlett and the Defendant had talked through the issues, and that the Defendant made up his mind to enter a guilty plea before Bartlett talked with Whitney Faulkner about accepting a plea deal. After Petitioner relayed his desire to Bartlett, it was then that Bartlett contacted Whitney Faulkner and then Dr. Johnston. Bartlett contacted Whitney Faulkner by e-mail in Petitioner's Exhibit S, requesting that his client not be required to use Dr. Engle

for the psychological evaluation. Faulkner did not want evaluation by Dr. Beaver. So, both counsel agreed the Defendant could be evaluated by Dr. Johnston or Dr. Engle. Bartlett e-mailed Whitney Faulkner on Monday saying Ron Eddington was willing to accept the State's offer. This e-mail is Petitioner's Exhibit HH, which shows Whitney Faulkner forwarded Bartlett's response at 12:01 am on December 17, 2017 to Kate Curtis and Dan Dinger. Bartlett testified that his strategy with this plea was to create time to get a favorable evaluation by Dr. Johnston, but then he would still have the opportunity to get another evaluation if that one turned out poorly. Bartlett also wanted time to prepare favorable presentence materials, hoping a favorable evaluation and materials would persuade the prosecutor to have different view of his client.

While initially the Petitioner had said Bartlett brought the guilty plea form all filled out except initials, he later testified that on Respondent's Exhibit 32, the guilty plea form, Bartlett told him what to write so Petitioner actually wrote it verbatim including, "all other charges will be dismissed. I will plea [sic] guilty to these charges (above) and undergo psycologic [sic] evaluation by Dr. Michael Johnston with a domestic violence component." In response to question number 53, Petitioner acknowledged he swore under penalty of perjury that the information was true and correct and signed the form. Although the Petitioner swore to and signed the form that said it was a knowing, intelligent and voluntary plea, Petitioner testified he was threatened and felt like he had no choice but to enter a guilty plea. He testified at the evidentiary hearing that he essentially lied at the guilty plea hearing and did not want to plead to the charges. He testified that no one threatened him with bodily harm but that he felt coerced into entering a guilty plea and like he had no alternative for his mom. He acknowledged he signed the guilty plea form on January 15, 2014, that he answered it was a free and voluntary plea in answer to number 43, that there were no other promises that influenced his decision to plead guilty in answer to number 14, that he agreed to the psychological evaluation as part of plea agreement in number 31, and that he understood no one could force him to plead guilty and it was his voluntary choice in answer to question number 42, and he was pleading guilty because he committed the crimes in number 44. Petitioner testified he saw the guilty plea form and plea agreement given to court, he testified he had read every word of guilty plea form,

heard the terms of written plea agreement on the record, and stated those were terms. He said nothing during this hearing about his mother's case and acknowledged he entered a guilty plea under oath. He also testified that he never told the judge that he did not want to plead guilty. The guilty plea hearing transcript was admitted as Petitioner's Exhibit H.

After the plea hearing, on January 17, 2014 Petitioner had a call with his mother (Respondent's Exhibit 28). Petitioner asks if she heard from Bartlett about a court date that day. His mother responded that Bartlett said they shouldn't talk about it so she couldn't tell him. Petitioner then asks, "Did they dismiss it?" and his mother responds, "Not yet." The Petitioner's response is just, "Okay." Diana reiterates that Bartlett has been adamant about not talking about things. Petitioner asks if his mother has another court date and she responds, "Yes." Petitioner asks, "You have to go?" and his mother responds "No" and then that Petitioner can give Bartlett a call, followed by "They are listening to these phone calls." Petitioner states, "They've made promises." Petitioner testified he asked his mother about her case because he wanted to know if her case was dismissed because Bartlett had informed Petitioner Diana's case would be dismissed the day after the Petitioner's guilty plea. The next day, Diana's preliminary hearing was again set over until after Petitioner's sentencing hearing. The earlier preliminary hearing notice had noted that Diana was not required to be present on January 16, 2014. Diana testified that she could not remember whether she travelled to Boise for the guilty plea hearing.

Finally, the Petitioner's testimony about Bartlett's anger, threats and yelling on January 14, 2014 is simply not credible given the extensive conversations recorded between Petitioner and Bartlett and Bartlett's extensive explanation about the importance of Petitioner making his own decision whether to enter a plea. The guilty plea hearing and guilty plea form also show by a preponderance of the evidence that there was no covert plea agreement linking dismissal of Diana's case with Ron's guilty plea. While the Petitioner testified at the evidentiary hearing that he was lying at the plea hearing and that his testimony at the evidentiary hearing was more credible, the Court finds by a review of all of the evidence that the Petitioner's testimony at the guilty plea hearing was the truth as supported by the record and that Petitioner's testimony at the evidentiary hearing was not credible.

Diana e-mailed Respondent's Exhibit 12 to Bartlett on December 9, 2013 which was a list of names and addresses for letters of support that Bartlett requested. Bartlett sent letters to these explaining his request for support letters. Diana testified that she wrote Petitioner's Exhibit U dated February 16, 2014 and would have testified if asked since she attended the sentencing hearing. It was Diana's testimony that she later saw that letter with a portion at the bottom crossed out. The portion crossed out states,

> The effect of Ron's actions last August on these children has been heart breaking ~~and made worse after Carrie charged me with a felony after I wrote her an email asking for compassion for Ron and the children. She has a restraining order against me, and, from fear of further retaliation; I have not contacted my grandchildren, causing them additional confusion and grief. Carrie has not allowed her children to see or communicate with the newborn baby sister born on January 24.~~ If they were to have their father whom they love and adore taken away from them for a lengthy period of time also, I can't imagine the further damage to their lives....

(strike through in admitted exhibit). Diana testified that Bartlett said it was crossed out because it could influence the outcome of Diana's case so was not submitted to the court with the other support letters. Diana said Bartlett just said it would be "detrimental to me" but did not explain further and did not mention Ron's case.

Bartlett addressed Petitioner's Exhibit U, saying that it was absolutely intentional that he did not submit Diana's letter to the Court. Bartlett testified that his representation of Diana did not limit his ability to represent Ron. He testified that Diana's letter was inappropriate for submission as originally written because it talked about the effect of the case on the children without recognizing the Court could attribute the poor effects on the children to Ron's behavior. It also contained a phrase about Carrie charging Diana with a felony and having a no contact order as blaming the victim or showing that the whole situation was made worse by Carrie. Bartlett testified he always asked anyone writing a letter of support to leave out any statement that seemed to blame the victim. Bartlett said that, in his experience, when someone close to a defendant blames the victim, the judge thinks that attitude mirrors my client's thoughts and is ultimately unhelpful. So, he prefers letters of support that focus on good qualities. He testified having Diana testify at Petitioner's sentencing hearing was never a consideration in Bartlett's mind because he felt that it was a "particularly poor strategic decision" to let a parent, especially a mother, take the stand because a parent could very easily get walked into providing information that would be harmful to Ron. Bartlett testified that mothers don't accept

responsibility for their children's crimes and that judges expect parents to love their children and want positive outcomes. Bartlett testified that, in his experience, parents testifying at sentencing provided a big danger with limited benefit. Therefore, he never considered having Diana Eddington testify at sentencing.

Related to the presentation of evidence at the sentencing hearing, the Petitioner testified that he wasn't sure if Bartlett listened to all of the audios because he just remembered only seeing or hearing about police reports from Bartlett, except he recalled listening to his own interrogation. Petitioner testified he asked Bartlett to get copies of Ron's phone records and e-mails so that they could refute Carrie's statements that Ron had called or texted excessively which Ron felt made him appear as an obsessed stalker at the sentencing hearing. These records were not presented to the Court at the sentencing although they were included with the Petitioner's Rule 35 request for reconsideration of the sentence which was then denied.

Respondent's Exhibit 36 was Officer Dixon's police report which stated that Ron would send a few emails or texts a day to Carrie and not the extraordinary amount the officer had previously been told. This report is Bates stamped 000020 and 000021 in the presentence materials the Court received, Petitioner's Exhibit JJ. Bartlett said he did not view daily calls or texts as a problem since Ron and Carrie were co-parenting children. Counsel directed the court's attention to the computer download and the materials in the presentence report stating that Bartlett did not find the allegation of excessive emailing or texting supported by the presentence materials. Bartlett testified that the crux of the sentencing was not about stalking, but rather about what happened in bedroom that night. Stipulation number 2 by the parties was that Carrie agreed on the audio recording of her law enforcement interview that Ron had not been abusive before. The written police report did not contain that statement but it also did not contain any information stating Ron had been abusive in the past.

Bartlett testified he reviewed all of the discovery he was provided except for some of the jail calls because the number of jail calls for his client was extensive. Bartlett testified he reviewed multiple times all of the audios of police interviews including listening to Carrie's statement to the police several times and making notes. He testified he reviewed over 1,000 pages of document including all of the police reports and downloads. Bartlett testified he had received an advance copy of Dr. Johnston's evaluation and had the opportunity to provide a

review before the final version was submitted to the Court. He reviewed the presentence report well in advance of the sentencing as well. Billing records in Petitioner's Exhibit DD show Bartlett expended 37.2 hours after the guilty plea to prepare for the sentencing hearing (which excludes time representing Diana and discussing post-conviction options).

Bartlett testified that he developed a sentencing hearing strategy including do not attack the victim because he felt any attack on Carrie would be attributed to his client which almost always "backfires." He testified his approach at sentencing was to ignore the actual crime and make the hearing about the client, not the victim. Bartlett also testified it was a strategic decision not to focus on the frequency of e-mails and texts between Ron and Carrie because Bartlett felt a legitimate point was that this was a traumatic event in the victim's life causing the victim to see her and Ron's history together differently after this event—in a viewpoint that was inaccurate, and inconsistent with the custody cases where things went well for Ron. Bartlett said his strategy was to acknowledge that anger influenced Carrie and her family's view, but that the Court's focus should be on the crime as an isolated event and that, with treatment, the Petitioner would not be a risk to the community.

Bartlett testified that he reviewed all of the presentence materials which included Carrie's victim impact statement well in advance of the sentencing and prepared notes, Respondent's Exhibit 17. Bartlett stated that he knew Carrie had made the audio statement about no prior abuse by Ron and that Bartlett knew that she also had never made any allegations of physical abuse in the divorce or custody cases, either, even though she would have had the opportunity and motivation to make such allegations. He knew that her victim impact statement, Petitioner's Exhibit F, said that Ron had thrown things, even grabbed and pushed Carrie, although described as minor compared to the emotional abuse. Bartlett testified that he had intended to address this inconsistency during the sentencing hearing and had included it in bold in his sentencing argument outline. However, Bartlett testified that he got caught up in the sentencing argument and he failed to make that point in a clear way in the sentencing hearing. He testified that it was not because of lack of preparation but rather it was a clear mistake. Bartlett was cross-examined on the issue and testified that he would be happy to be found ineffective because, if this mistake played any role in this case, Eddington should get a lower sentence. He testified he was not worried about his reputation. Bartlett actually did state during the sentencing argument in Petitioner's Exhibit H, page 87, "I would

note that he had 40/60 custody of these children after multiple court proceedings. If a magistrate judge believed that he was so out of control, so manipulative, so controlling and so bad, why did he still have that much custody?" The Petitioner in his allocution addressed the Court stating, "I have never in my life physically harmed anyone."

Tracy Eddington testified that Michael Bartlett spoke with her after Ron's sentencing and was shocked that the sentence was so harsh. She said she talked with Bartlett about opportunities to get the sentence reduced and Bartlett suggested an appeal or a post-conviction claim alleging that Bartlett was ineffective and that Bartlett stated he would be willing to "fall on his sword" in this case. Tracy testified that she did not like Barlett's representation of her husband. Bartlett had relayed to Tracy that the prosecutor's perception of her was as a "silly little woman was being controlled," in part because she was pregnant with his child at the time, and because Ron had an affair with a different woman but Tracy did not leave. Tracy testified that if she had testified at the sentencing, she would have explained Ron's alcoholism, the mental health aspects of what went on with Ron including his signs of depression, and that they had started counseling together. Bartlett testified he had reviewed a letter from Tracy explaining all of this and offering other information prior to the sentencing and the billing records show Bartlett reviewed a great deal of information from Tracy. Tracy Eddington testified it was her belief that Bartlett had not reviewed all of the evidence in the case so she obtained all of the letters, texts, audios, and documents and reviewed all of them after the sentencing.

Bartlett testified he knew Carrie was going to make a victim statement and that she did not testify as a witness. His plan was to listen and respect the victim since the rules and the Constitution allow a victim to make a statement and there is not a great deal of legal latitude to object. Bartlett testified he could always comment on a victim impact statement which was a strategically better approach.

Bartlett testified that he never presents parents to testify at sentencings because 1) they are always proponents of their child so the weight of their testimony is insignificant, 2) they love their children so they are more emotional and less rational so is frequently difficult to figure out how to respond on stand , and 3) a letter can be controlled, evaluated in advance, and is not subject to cross examination. These letters can be evaluated in advance to be sure

they do not say anything inadvertently harmful. Diana was not called as a witness for these reasons and, although Tracy really wanted to testify, Bartlett felt it was a "horrible" idea for the same reasons and because the State would have used their testimony to its advantage to make Ron look manipulative.

Before pronouncing sentence, the Court specifically noted she had read the entire presentence report carefully and considered everything in that report in arriving at a sentence. The prosecutor asked for fifteen years fixed and ten indeterminate for the Kidnapping Second and an additional five years indeterminate, consecutive, for the Aggravated Assault. This would have been a sentence of fifteen years fixed, fifteen years indeterminate for a thirty-year unified sentence. The Court ultimately did not follow that recommendation, rather sentencing the Defendant to concurrent sentences resulting in a total unified sentence of ten years fixed, twelve years indeterminate for a total unified sentence of twenty-two years. This was eight years total less than requested by the State and five years fixed less than requested.

FIRST GROUND FOR RELIEF

A. First Ground for Relief:[7] 1) whether counsel was ineffective and whether there was an actual conflict of interest between Bartlett representing both Ronald Eddington, Jr. and Diana Eddington simultaneously on related criminal charges, and 2) if so, whether Petitioner was prejudiced;

Petitioner contends trial counsel was ineffective because he "concurrently" represented Petitioner and Diana Eddington in related criminal matters, without obtaining informed written consent from either party.[8] Petitioner claims this conflict of interest prejudiced Petitioner in plea bargaining negotiations and the sentencing phase of the underlying criminal case.[9]

The Idaho Court of Appeals has stated

> "Although *Strickland*[10] generally governs ineffective assistance of counsel claims, 'conflicts of interest arising from joint representation have been excepted from the general requirement that actual prejudice be shown.' This rule flows from the constitutional right to conflict-free counsel. But the presumption of prejudice is a narrow exception to *Strickland* and the mere

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7 Petition, pp. 8-14.
8 Verified Petition for Post-Conviction Relief, filed Sep. 30, 2015, p. 8.
9 Id.
10 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

> potential of a conflict is insufficient. For this reason, joint representation alone is an insufficient showing because it is not per se ineffective assistance of counsel nor is it a per se actual conflict. Rather, '(t)he conflict itself must be shown' and the defendant must demonstrate 'that counsel 'actively represented conflicting interests' and 'that an actual conflict of interest adversely affected his lawyer's performance.'"

Barnes v. State, 2013 WL 5290424, *3 (Id. Ct. App. 2013), although it is an unpublished decision, this decision is a correct summary of Idaho's law on conflicts and cites *State v. Guzman*, 126 Idaho 368, 371, 883 P.2d 726, 729 (Ct. App. 1994); *Cuyler v. Sullivan*, 446 U.S. 335, 348, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980); *Holloway v. Arkansas*, 435 U.S. 475, 482, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978)). The Defendant never raised any objection to the court claiming a conflict of interest by Bartlett. When a defendant did not object to the conflict, the defendant's conviction will only be reversed if he can prove an actual conflict of interest adversely affected his lawyer's performance. *State v. Severson,* 147 Idaho 694, 215 P.3d 414 (2009), citing *Cuyler v. Sullivan*, 446 U.S. at 348.

This is a situation where a mother and son were charged with crimes in separate cases that were somewhat related. This is not a situation where trial counsel was engaged in joint representation of co-defendants. The evidence at the hearing was that Bartlett's representation of Diana had no material effect on Bartlett's representation of Ron since Bartlett believed from the start that Diana's charge was unfounded and would ultimately be dismissed, the deputy prosecutor Dan Dinger had offered to dismiss the charge, and it was Bartlett who requested it be dismissed after sentencing so that the no contact order between the victim and Diana remained in place to avoid Diana further upsetting the victim before the Petitioner's sentencing. The Petitioner has failed to show facts by a preponderance of the evidence to support a conclusion that this was joint representation of co-defendants or concurrent representation that materially affected Bartlett's representation of Ronald Eddington.

The Petitioner has failed to show by a preponderance of the evidence that an actual conflict of interest existed under *Giles v. State*, 125 Idaho 921, 923, 877 P.2d 365, 367 (1994). First, Petitioner is the only one who says that he thought his guilty plea would have an impact on whether his mother's case was dismissed and the

Petitioner's statement to that effect is just not supported by the other evidence in the case, including Petitioner's contemporaneously recorded jail calls with counsel and his mother. The evidence is that neither deputy prosecutor Faulkner or Dinger ever suggested that a guilty plea by Ron was a condition to getting Diana's case dismissed in either Ron's or Diana's case. Diana never told Ron that his guilty plea was required to get her case dismissed. Bartlett had always firmly advised Diana that her charge was unfounded and that he would get her case dismissed for insufficient proof. Finally, the Petitioner's testimony about Bartlett's anger, threats and yelling on January 14, 2014 is simply not credible given the extensive conversations recorded between Petitioner and Bartlett and Bartlett's extensive explanation about the importance of Petitioner making his own decision whether to enter a plea. The guilty plea hearing and guilty plea form also show by a preponderance of the evidence that there was no covert plea agreement linking dismissal of Diana's case with Ron's guilty plea. While the Petitioner testified at the evidentiary hearing that he was lying at the plea hearing and that his testimony at the evidentiary hearing was more credible, the Court finds by a review of all of the evidence that the Petitioner's testimony at the guilty plea hearing was the truth as supported by the record and that Petitioner's testimony at the evidentiary hearing was not credible.

Additionally, the Petitioner's and Diana's assertions that Bartlett failed to offer Diana's letter or call Diana at sentencing was because of the actual conflict in representation is also not supported by the evidence. The preponderance of the evidence shows that Bartlett had clear and strategic reasons for not providing Diana's letter of support to the Court and not calling a mother as a witness in the sentencing phase of a non-capital case. Bartlett's strategy was sound and will not be second-guessed by this Court based upon all the evidence presented at the hearing.

The Petitioner has not shown by a preponderance of the evidence that an actual conflict existed. Petitioner has not met his burden of proof to show that Bartlett's representation of both of Diana and Ron precluded effective representation of Mr. Eddington during his guilty plea or subsequent sentencing. He has failed to show that Bartlett rendered ineffective assistance due to an actual conflict of interest. He has also failed to show that Bartlett's representation violated the Idaho Rules of Professional

Conduct.[11]

The Petitioner completed a guilty plea advisory form which he swore in open court was correctly answered by him and the truth. In this form, he specified that there were no other promises, rewards, favorable treatment or leniency other than the plea agreement. The Petitioner's claim of coercion is also contradicted by the guilty plea proceeding itself. Although there was a discussion that Petitioner would not be charged with aiding and abetting Diana Eddington's charge of intimidating a witness, nothing was ever said in the prior phone calls, in any of the e-mails between the prosecution and counsel, or during this hearing about any requirement that Petitioner plead guilty in order for Diana Eddington's charge to be dismissed.

Based on these facts, Petitioner has failed to show by a preponderance of the evidence that any actual conflict was caused by Mr. Bartlett represented Petitioner and Petitioner's mother. Petitioner has failed to show by a preponderance of the evidence that dismissal of charges against Petitioner's mother was in any way conditioned upon Petitioner pleading guilty to the charges against him. And Petitioner has failed to show that Bartlett's representation of Petitioner fell below an objective standard of reasonableness. Since the first prong of *Strickland v. Washington* has not been met, the First Ground for Relief must be dismissed.

But even if the first prong was met, the Petitioner has also failed to show by a preponderance of the evidence that he was prejudiced by his attorney's deficient performance since strategic and tactical decisions will not be second-guessed or serve as basis for post-conviction relief under a claim of ineffective assistance of counsel unless that decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review. The court utilizes the "strong presumption" that counsel's decision fell within the acceptable range of choices available to trial counsel. Petitioner has failed to show that removing Diana

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[11] But even if there was a violation of those rules, it still would not demonstrate that counsel provided ineffective assistance. *See, e.g., United States v. Ailemen*, 43 Fed. Appx. 77, 83 (9th Cir. 2002) ("[E]ven if the attorneys violated rules of professional conduct, their conduct did not preclude effective representation of their client."). Under such circumstances, the remedy is a referral to the Idaho State Bar, as opposed to post-conviction relief.

Eddington's support letter from those proffered to the Court was not strategic—especially given the specific language of the letter stricken through. In fact, the evidence before the Court was that Petitioner's counsel had a very clear and reasonable strategy and was well prepared to present a coherent sentencing case to the Court. Additionally, the evidence before the Court is that Diana Eddington's letter would have negatively impacted the Court's perception of Diana and her son as not truly understanding the gravity of Ron's offense and it impact on the victim and her children. Removing this letter avoided prejudice to the Petitioner because the positive aspects of the letter of a mother would have been outweighed by these comments that show obvious continued tension between the victim and Diana. Petitioner also failed to show that Petitioner was prejudiced by not calling Diana as a sentencing witness. Petitioner has failed to show that there was a reasonable probability that that the outcome of Petitioner's sentencing would have been different if Diana Eddington's letter had been included or if she had taken the stand to testify to the same information. Bartlett's assessment that such testimony carried much greater risk than benefit was reasonable and correct.

Having failed to meet the burden of proof at the evidentiary hearing, the Petitioner has shown no right to relief and the First Ground for Relief is DISMISSED.

B. Third Ground for Relief:[12] Whether Bartlett was ineffective because he pressured Ronald Eddington Jr. to plead guilty because there was a conflict of interest as alleged in the First Cause of Action;

> [T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the *Strickland* . . . test is nothing more than a restatement of the standard of attorney competence . . . The second, or 'prejudice,' requirement . . . focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.

Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985).

The Court incorporates its analysis in Section A above and its conclusion that the

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[12] Petition, pp. 17-22.

Petitioner failed to show an actual conflict existed. The Petitioner's assertion that Petitioner entered a guilty plea only because Bartlett yelled at him, got angry, told him he had to, and inferred his mother's case would not be dismissed is just incredulous given the extensive conversations recorded in this case.

Petitioner was indicted for Count I. Kidnapping in the Second Degree; Count II Burglary; Count III. Aggravated Assault; and Count IV. Use of a Deadly Weapon in the Commission of a Crime. The Petitioner testified he knew of the plea agreement and that he entered a plea to Counts 1 and 3, to get dismissal of the other two charges along with their possible consecutive sentences of an additional ten years for burglary and/or an additional fifteen year enhancement for using a deadly weapon in the commission of a crime. The plea bargain ultimately resulted in Petitioner receiving a fixed sentence of ten years, followed by an indeterminate twelve-year sentence. Petitioner's assertion that there is a reasonable probability that he would have rejected the plea deal and insisted on going to trial is also not credible. Bartlett's assessment of the case of a high likelihood of conviction on all of the charges, given the Petitioner's confession and all of the evidence presented at the evidentiary hearing, was certainly not unreasonable and reflects Bartlett's knowledge of the law, investigation and preparation in this case, and experience with judges and juries.

Petitioner's assertions that he was not fully apprised of the consequences of the plea bargain and his current dissatisfaction with the services of his attorney are also directly contradicted by his sworn declarations in open court. "Solemn declarations in open court carry a strong presumption of verity." *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). The Petitioner's assertion that he was lying at the guilty plea hearing but truthful at the evidentiary hearing carries little weight with the Court. In his Guilty Plea Advisory Form, Petitioner acknowledged that he understood the kidnapping charge alone had a maximum potential fixed sentence of twenty-five years. Petitioner also, among other things, affirmed that his guilty plea was the result of a plea agreement, that he understood the terms of that agreement, and that he understood he would be pleading guilty to the kidnapping and aggravated assault charges while the other two counts against him would be dismissed. He also affirmed that he understood that the Court was not bound by either the plea agreement or any

sentencing recommendation. He also acknowledged that he was not given any other promises which influenced his decision to plead guilty, that he had sufficient time to discuss his case with his attorney, that he had told his attorney everything he knew about the crime, and that there was not anything he had requested his attorney to do that had not been done. He also said that he understood that no one, including his attorney, could force him to plead guilty and that he was pleading guilty freely and voluntarily and because he had committed the acts alleged in the indictment. Petitioner also acknowledged that other than the plea agreement, no one had promised him any special sentence, reward, favorable treatment or leniency and that only the judge could "promise what sentence you will actually receive." He also acknowledged that he was satisfied with the services of his attorney.

Petitioner also reaffirmed in court under oath that he was fully aware of the consequences of entering his guilty plea and that he had sufficient time to speak with his attorney. He stated that he had understood the terms of the plea agreement and that it was acceptable to him. Petitioner also stated, under oath, that he had read every word in the guilty plea advisory form and that he had answered all of the questions truthfully. He also stated, under oath, that he understood that the Court was not bound by terms of the plea agreement. Petitioner stated, under oath, that he went into the victim's house "in the middle of the night and confined her into her bedroom . . . against her will . . . and threatened to shoot her with a gun."

Based on these facts, Petitioner has failed to show by a preponderance of the evidence that he was threatened or coerced by Bartlett into entering a guilty plea so that his mother's case would be dismissed.

The Court is free to arrive at the most probable inferences to be drawn by the evidentiary facts. In reviewing all of the evidence, this Court concludes counsel predicted how the facts, as he understood them, would be viewed by a court and whether the State could convince a jury of the Defendant's guilt although this can never be answered with certitude. Counsel reviewed the evidence, provided competent advice to the Petitioner about the risks of conviction and the pros and cons of entering a plea rather than going to trial, and bought extra time for the Petitioner to weigh his options and get additional advice from counsel. The preponderance of the evidence

shows counsel's advice was competent and reasonable, and that the Petitioner considered such advice and ultimately made up his own mind to enter a guilty plea under the terms of the plea agreement. Petitioner recognized that the plea agreement was not as favorable as he would have liked, the crimes he was charged with were serious, and that the plea agreement was for up to the maximum sentence for each crime to which he entered a plea. The Petitioner's revision of the conversations with counsel appears to be based more in his disappointment with the sentence than the reality of an uninformed and involuntary plea.

Therefore, the Third Ground for Relief is also DISMISSED.

C. Fifth[13] and Sixth[14] Grounds for Relief: Whether counsel was ineffective because he failed to listen to audio recordings of the ex-wife's police interviews and/or failed to cross-examine or object to Eddington's ex-wife's testimony at the sentencing hearing

Determining whether an attorney's preparation falls below a level of reasonable performance constitutes a question of law, but is essentially premised upon the circumstances surrounding the attorney's investigation. *Thomas v. State,* 145 Idaho 765, 769, 185 P.3d 921, 925 (Ct. App. 2008). To prevail on a claim that counsel's performance was deficient for failing to interview witnesses, a petitioner must establish that the inadequacies complained of would have made a difference in the outcome of trial, and not just that counsel would have discovered weaknesses in the State's case. *Id.*

Based upon the admissible evidence at the evidentiary hearing, the Petitioner has not met his burden of showing by a preponderance of the evidence that counsel's investigation or sentencing strategy were inadequate. First, Petitioner's testimony that Bartlett may not have reviewed all of the audio interviews with police is not supported by a preponderance of the evidence. While counsel admits he did not listen to every jail call, the Petitioner did not present any evidence of how the failure to listen to every jail call was deficient. Bartlett's testimony and sentencing notes show that Bartlett listened to all of the investigative audios, including Carrie Eddington's. Bartlett was obviously

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13 Petition, pp. 27-38.
14 Petition, pp. 38-44.

familiar with each statement Carrie had made and how they differed with previous statements, and was obviously prepared to bring up these issues at sentencing. His testimony demonstrated he had a reasonable sentencing strategy that avoided highlighting the actual crime that the Petitioner committed and try to lessen the anger and animosity of the victim and her family to refocus the court attention on lack of criminal history, past pro-social behavior, lack of previous abuse and his role as a good father, that this was an isolated incident, and that the Petitioner was amenable to treatment which would lessen his risk to the community. Petitioner has not met his burden of showing that counsel was ineffective because he failed to listen to the audio recordings of Carrie Eddington's police interviews. The preponderance of the evidence is that Bartlett did listen to that audio and was prepared to address it at sentencing.

Additionally, Petitioner has also not shown by a preponderance of the evidence that Bartlett failed to cross-examine Carrie Eddington at the sentencing hearing since she only presented a victim impact statement and, as such, was not subject to cross examination. The Petitioner has also not stated a basis for any objection to Carrie Eddington's statement to the court or to any information contained in the police reports. Bartlett testified the decision not to call Carrie as a witness to question her about the inconsistency between her statement and the audio was strategic because he could address it with the court without drawing negative attention to all of the bad things his client that Carrie would repeat for the Court. What was shown at the hearing was that counsel made one mistake during the argument—he forgot to point out that Carrie's victim impact statement was inconsistent with the audio recording where she stated there was no prior abuse, and the custody and divorce proceedings. This was not due to lack of preparation or knowledge. Petitioner's counsel had prepared to present the point, it was just inadvertently overlooked in his notes at the sentencing. However, *Strickland v. Washington* does not require perfection by counsel. It requires an objective standard of reasonableness. While counsel failed to mention the inconsistency during his argument, counsel's overall performance in preparation for the sentencing, in developing a strategy and materials to present to the Court, and in arguing the sentencing has been shown by a preponderance of the evidence to meet the objective standard of reasonableness for counsel to be effective. Counsel made the

point that Ron had gained a significant amount of custody in the custody proceedings in spite of Carrie's statement about all the negative issues with the Defendant. "The constitutional requirement for effective assistance of counsel is not the key to the prison for a defendant who can dredge up a long series of examples of how the case might have been tried better." *Ivey v. State,* 123 Idaho 77, 80, 844 P.2d 706, 709 (1992). Counsel's argument was effective in have the Court not agree with the State's sentencing recommendation, not give consecutive sentences, and not give the maximum sentence available for the Kidnapping Second. So, the Court would dismiss the Fifth and Sixth Grounds of Relief for these reasons.

In the alternative, even if this mistake in failing to mention the one inconsistency or to object to the victim impact statement fell below an objective standard of reasonableness under *Strickland v. Washington,* the Petitioner has failed to show the second prong by a preponderance of the evidence that he was prejudiced by this mistake and the Court would have given a different sentence if Petitioner's counsel had mentioned Carries allegations of throwing things, pushing and grabbing her were refuted by her audio statement to the police. The Court stated she read all of the presentence materials and the previous abuse was not documented in the police reports with the presentence materials. The failure to mention the lack of previous physical abuse does not overshadow the gravity of the offense the Petitioner committed by holding his ex-wife at gunpoint for over an hour and contemplating whether to kill her and himself. It does not overshadow the gruesome photos of head wounds viewed over a course of time by the Defendant and his corresponding statement to the victim that he had contemplated this crime over a course of time. It does not overshadow the computer internet searches which included "Murdered Wives," "Gunshots," "Gunshots to the Head" (from Dixon's testimony at the sentencing hearing) and "murdered women, murder victims, and dead from gunshots (all last viewed on 12/06/2012)" as noted in Dr. Johnston's report. When questioned about these pictures, the Petitioner stated to Dr. Johnston that he had frequently engaged in these internet searches in the month leading up to the crime, "including viewing scens of murder and suicide through the Internet search. He stated viewing these pictures through Internet searches was a way for him to process his feelings, and was also a method for him to relieve stress and

emotional pain." (Johnston's report in PIS at EE214) Dr. Johnston's report also stated, "The examinee denied a history of exposure to prior violence, in addition to denying a history of fighting, or engaging family members, acquaintances, or strangers in aggressive behavior." (Johnston's report in PSI at EE213). While the court considered Dr. Johnston's evaluation that the Petitioner had moderate or moderate-to-low risk to reoffend and was moderately amenable to treatment, Dr. Johnston's evaluation was absolutely correct in stating that the most severe level of harm if the Defendant reoffended would be death. (Johnston's report in PSI at EE219).

All of the information in the presentence report, its supporting documentation and the Petitioner's psychological evaluation lead the Court to find by a preponderance of the evidence that even if Petitioner's counsel would have mentioned that Carrie had previously told police that there was no prior physical abuse, the Petitioner would have received the same sentence given the gravity of this offense and the fact that any lesser sentence would have lessened the seriousness of the crime when weighed with the Toohill factors. The Court's primary goal in sentencing was to protect society, incluidng Carrie Eddington and everyone else that the Petitioner had domestic relations with. Therefore, Bartlett's performance did not prejudice the Defendant at sentencing giving the overwhelming evidence, including Defendant's admission, that he entered his ex-wife's house in the middle at of the night, and held her at gunpoint for about an hour, threatening to kill both himself and her, and routinely flicking and clicking a loaded handgun with her in the room. The Petitioner failed to show by a preponderance of the evidence that counsel's performance at sentencing was so deficient that it would warrant a resentencing. In fact, given all of the evidence and having heard Petitioner's arguments about those deficiencies, the Court having considered the audio interview of Carrie Eddington, along with all of the other sentencing evidence presented at the hearing, this Court finds Barlett's sentencing strategy and argument was very competent under the circumstances. The Court finds its sentence would have been no different with this additional information.

Having failed to meet his burden of proof at the evidentiary hearing, the Petitioner has shown no right to relief and the Fifth and Sixth Grounds for Relief are DISMISSED.

IV. CONCLUSION

Based on the foregoing analysis, the Petition for Post-Conviction Relief is DISMISSED.

ORDERED Signed: 1/22/2018 02:03 PM

Lynn G. Norton
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2018, I e-mailed (served) a true and correct copy of the above document to the following:

Shelley Akamatsu
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Ellen Smith
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CHRISTOPHER D. RICH
Clerk of the Court

Deputy Clerk Signed: 1/22/2018 02:36 PM

CLERK OF THE DISTRICT COURT FOURTH JUDICIAL DISTRICT ADA COUNTY, IDAHO