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

JERMAINE JAMES ARRATS,	)	
	)	**No. 46123-2018**
Petitioner-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CV01-2018-6776**
	)	
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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jermaine James Arrats appeals from the district court's judgment dismissing Arrats's petition for post-conviction relief with prejudice. Arrats argues that the district court erred by dismissing the petition without judicially noticing transcripts from Arrats's underlying criminal case and abused its discretion by dismissing the petition without appointing counsel.

Statement Of The Facts And Course Of The Proceedings

This post-conviction proceeding arises from Jermaine James Arrats's conviction for robbery. (R., p.4.) According to the state, Arrats stole a car "by using force or violence to remove [the victim] from the vehicle." (No. 45030 R., pp.45-46.[1]) Arrats did not dispute that he stole the victim's car by "force[]" but blamed his behavior on "a full blown meth psychosis" that caused him to believe that "people had kidnapped [him] and that [he] had to escape" or he "was going to be captured and then murdered." (No. 45030 PSI, p.5 (spelling fixed).) Arrats drove the stolen car "well in excess of 120 mph" before crashing in a residential neighborhood. (No. 45030 PSI, p.4.)

Arrats and the state entered a Rule 11 binding plea agreement that called for an aggregate sentence of thirty years, with ten years fixed and twenty years indeterminate. (No. 45030 R., pp.81-83.) As part of the agreement, the parties stipulated that, rather than

[1] The district court took judicial of the following documents from Arrats's underlying criminal proceeding, which was designated Case No. 45030 on appeal: "the information charging Arrats with robbery; the Rule 11(f)(1)(C) plea agreement; the presentence report; the judgment of conviction; the order appointing the SAPD; Arrats's Rule 35 motion and related motion for appointment of counsel; the order denying those motions; the four notices of appeal; and the opinion of the Idaho Court of Appeals on appeal." (R., p.17 n.1.)

enter a guilty plea by admitting he committed the robbery, Arrats could enter a plea pursuant to North Carolina v. Alford, 394 U.S. 956 (1969), by agreeing that the state could prove the elements of robbery at trial. (No. 45030 R., p.82.) The district court accepted the binding plea agreement and sentenced Arrats accordingly. (No. 45030 R., pp.97-100.)

Arrats filed a Rule 35 motion alleging that the district court imposed an illegal sentence because he acted in self-defense under Idaho law. (No. 45030 R., pp.120-26.) The district court denied Arrats's motion as an improper collateral attack on his underlying conviction. (No. 45030 R., p.132.) The Idaho Court of Appeals affirmed the district court's denial of Arrats's Rule 35 motion on the basis articulated by the district court. State v. Arrats, No. 45030, 2017 WL 5562527 (Idaho Ct. App. Nov. 20, 2017).

Arrats filed a petition for post-conviction relief. (R., pp.4-8.) Arrats alleged that the district court violated his right to due process by refusing to follow Idaho's law on self-defense and that his "counsel during [t]rial" provided ineffective assistance by refusing to present Arrats's evidence of self-defense. (R., pp.5-6.) He also alleged "[t]hat the District Court erred when it refused to appoint counsel to assist [him] during the Rule 35 process" and that his appellate counsel provided ineffective assistance by failing to raise the issues on appeal that Arrats told him to raise. (R., pp.5-6.)

One week later, the district court filed notice that it intended to dismiss Arrats's petition for post-conviction relief. (R., pp.16-25.) The district court observed that a defendant waives all non-jurisdictional defects and defenses to a criminal charge when the defendant enters a knowing, intelligent, and voluntary guilty plea, and found that "Arrats waived the defense of self-defense" because "Arrats present[ed] no reason to think his *Alford* plea wasn't entered voluntarily and understandingly." (R., p.19.)

The district court also informed Arrats that it was going to dismiss his claim that his counsel performed ineffectively by failing to present Arrats's evidence of self-defense because Arrats did not plead facts "sufficient to satisfy either element of the *Strickland* test." (R., p.20.) Specifically, the district court found Arrats had failed to plead deficient performance because his defense attorney never had the opportunity to present evidence of self-defense given that Arrats pled guilty and because the facts of the underlying crime, even as articulated by Arrats, "aren't enough to make out the defense of self-defense." (R., pp.20-21.) The lack of any alleged facts supporting self-defense also meant that Arrats had failed to plead prejudice. (R., p.21.)

The district court also informed Arrats that it was going to dismiss his claims related to his Rule 35 motion. The district court explained that Arrats's claims that the district court erred when it denied his Rule 35 motion and erred when it refused to appoint counsel for Arrats were procedurally barred because Arrats litigated those issues, or at least could have litigated those issues, on direct appeal. (R., pp.21-22.) Arrats's claim that his appellate counsel provided ineffective assistance would be dismissed, the district court explained, because appellate counsel is not required to raise meritless issues on appeal and all of the issues Arrats claimed his counsel should have raised were meritless. (R., p.23.)

The district court also preliminarily denied Arrats's motion for the appointment of post-conviction counsel because Arrats had failed to "allege[] facts that raise the possibility of a valid claim." (R., p.24.) The notice informed Arrats that he had thirty days to respond to the notice and supplement his claims or the district court would dismiss Arrats's petition without appointing counsel. (R., p.24.)

More than thirty days later, Arrats filed his reply to the district court's notice of intent to dismiss. (R., pp.26-32.) The district court accepted Arrats's petition as timely despite his late filing (R., p.33.) But the district court found that "Arrats fail[ed] to demonstrate any flaw in the Court's analysis" and dismissed Arrats's claims "for the reasons articulated in the notice of intent to dismiss." (R., pp.33, 36.)

Arrats timely appealed. (R., pp.43-46.)

ISSUES

Arrats states the issues on appeal as:

1. Did the district court error [sic] in sua sponte summarily dismissing Mr. Arrats [sic] petition for post-conviction relief without judicially noticing the record?

[2]. Did the district court abuse its discretion by dismissing the petition for post-conviction relief without appointing counsel?

(Appellant's brief, p.4.)

The state rephrases the issues as:

I. Has Arrats failed to show that the district court abused its discretion when it dismissed Arrats's petition without judicially noticing the transcripts of Arrats's underlying criminal proceeding?

II. Has Arrats failed to show that the district court abused its discretion by dismissing his petition without appointing counsel?

ARGUMENT

I.
The District Court Did Not Abuse Its Discretion By Dismissing Arrats's Petition Without Judicially Noticing Transcripts From The Underlying Criminal Proceeding

A. Introduction

The district court did not abuse its discretion when it dismissed Arrats's petition without taking judicial notice of the transcripts from his underlying criminal proceeding. The district court judicially noticed all of the records from the underlying criminal proceeding that were necessary to decide that Arrats's petition did not raise the possibility of a viable post-conviction claim. Under the rule governing judicial notice, the district court could not have had an obligation to take judicial notice of the transcripts because no party requested the district court take judicial notice.

Arrats argues that the state had a statutory obligation to respond to his petition and attach the transcripts to its response. But the state did not need to respond here because the district court could make an intelligent decision on Arrats's petition without a response. Furthermore, the state could not have had an obligation to provide the transcripts from the underlying criminal proceeding because the transcripts were not material to the issues Arrats raised in his petition. And even if the state had an obligation to provide the transcripts, Arrats cannot benefit from the state's failure to provide the transcripts because he made no effort to compel the production of the transcripts in the district court.

B. Standard Of Review

Arrats characterizes the issue on appeal as whether the district court erred when it dismissed his petition "without judicially noticing the record." (Appellant's brief, p.4.) This Court reviews issues of judicial notice for an abuse of discretion. Rome v. State, 164

Idaho 407, ___, 431 P.3d 242, 248 (2018). Despite that articulation of the issue presented, Arrats actually faults the state for not presenting the district court with the transcripts from Arrats's criminal case as was, in Arrats's view, a statutory requirement. (Appellant's brief, pp.6-8.) "This Court exercises free review over the interpretation of a statute." State v. Tollman, 162 Idaho 798, 801, 405 P.3d 583, 586 (2017).

C. The District Court Did Not Have An Obligation To Take Judicial Notice Of The Transcripts From Arrats's Criminal Case Before Dismissing His Petition

The district court had no obligation to take judicial notice of the transcripts from Arrats's criminal case. Judicial notice is governed by the Idaho Rules of Evidence. See I.R.E. 201. The rule states that the district court "*may* take judicial notice on its own" but does not impose any requirement that the district court must take judicial notice on its own. I.R.E. 201(c)(1) (emphasis added). The only time a district court "*must* take judicial notice" is when "a party requests it and the court is supplied with the necessary information." I.R.E. 201(c)(2) (emphasis added). Here, no party requested that the district court take judicial notice of any record in Arrats's criminal case. Without such a request, the district court could not have had an obligation to take judicial notice of any record, including transcripts, in Arrats's criminal case. See I.R.E. 201(c).

Arrats argues that the state had a statutory obligation to present the transcripts from Arrats's criminal case to the district court. (Appellant's brief, pp.6-8.) He cites the statute governing pleadings in post-conviction actions, which requires the state, after a petition for post-conviction relief has been filed, to "respond by answer or by motion" and to "file with its answer the record [of the proceedings challenged] or portions thereof that are material to the questions raised in the application." I.C. § 19-4906(a). Arrats's reliance on the statute is misplaced.

Although the statute imposes on the state an obligation to file a response to a petition for post-conviction relief, a district court can dismiss a petition without a response from the state where the record allows the district court to "make an intelligent ruling on the application despite the State's failure to respond." Fetterly v. State, 121 Idaho 417, 418, 825 P.2d 1073, 1074 (1991) (quotations omitted). Here, the district court, on its own initiative, "reviewed the petition for post-conviction relief, the rest of the record in this case, and the case file in the underlying criminal case" and then took judicial notice of the material documents from the underlying criminal case. (R., p.24; see R., p.17 n.1.) The record was thus sufficient to allow the district court to "make an intelligent ruling on the application." Fetterly, 121 Idaho at 418, 825 P.2d at 1074.[2]

Furthermore, the state had no obligation to provide the transcripts because the transcripts were not "material to the questions raised in the application." I.C. § 19-4906(a). Arrats's claims for post-conviction relief are all based on his view that he had a valid claim of self-defense.[3] (R., pp.4-7.) But none of the transcripts mention anything about self-defense. At best, the transcripts provide the factual basis of the crime, but that information is already available in the records the district court judicially noticed. (See, e.g., No. 45030 PSI.)

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[2] Although the record is not clear as to why the state did not respond to Arrats's petition, the state could have viewed the district court's filing of the notice of intent to dismiss, just one week after Arrats filed his petition, as an indication that the district court did not need a response "to properly frame any factual and legal issues before the district court so that it [could] make an intelligent ruling." Fetterly, 121 Idaho at 418, 825 P.2d at 1074.

[3] Arrats's claims either expressly mention self-defense or relate to his Rule 35 motion. (R., pp.5-6.) His Rule 35 motion, in turn, argued only that the district court imposed an illegal or overly harsh sentence because he had a valid claim of self-defense. (No. 45030 R., pp.120-26.)

Arrats argues that "the transcripts of the change of plea hearing and sentencing hearings were necessary to resolution [sic] of Mr. Arrats' claims" because he "challenged the voluntariness of his *Alford* plea and his the [sic] effectiveness of his attorney's assistance during plea proceedings." (Appellant's brief, p.7.) But that is not an accurate characterization of Arrats's claims. See infra Part II. As the district court observed, "Arrats present[ed] no reason to think his *Alford* plea wasn't entered voluntarily and understandingly." (R., p.19.) And his only claim with respect to the ineffective assistance of counsel during plea negotiations was that his attorney "refused to present [Arrats's] evidence of self defense [sic]" (R., p.6), which finds no support in the transcripts and, even if true, has no bearing on whether Arrats entered his plea voluntarily.

Even if the transcripts were material to Arrats's claims, Arrats cannot now benefit from the state's failure to provide the transcripts because Arrats made no attempt to secure the transcripts in the district court. Despite "the state['s] responsibility to pay for the transcription," a petitioner must live with "the consequence of failing to place in evidence a transcript" *unless* he makes an "effort to compel action by the state or to otherwise arrange for the filing of the transcript." Roman v. State, 125 Idaho 644, 648 n.3, 873 P.2d 898, 902 n.3 (Ct. App. 1994). Arrats made no effort to put the transcripts in front of the district court and thus cannot benefit from the state's failure to present them to the district court.

II.
Arrats Has Failed To Show That The District Court Abused Its Discretion By Dismissing Arrats's Petition Without Appointing Counsel

A. Introduction

The district court did not abuse its discretion by dismissing Arrats's petition without appointing counsel for Arrats. A district court need only appoint counsel for a post-

conviction petitioner if he alleges facts in his petition that show the possibility of a valid claim. Here, the district court explained to Arrats in a thorough notice of intent to dismiss exactly why he had failed to raise even the possibility of a valid post-conviction claim. Arrats's reply did not fix the issues noted by the district court, so the district court properly denied Arrats's motion to appoint counsel and then dismissed Arrats's petition.

On appeal, Arrats does not take issue with the district court's conclusion that the asserted claims in the petition do not raise the possibility of relief. Instead, Arrats argues that the district court applied the wrong standard, did not provide sufficient notice, and should not have dismissed the petition because transcripts outside of the record contained facts that raised the possibility of two un-asserted claims for post-conviction relief. Arrats is wrong: The district court expressly stated and applied the correct standard for deciding whether to appoint counsel for Arrats. The district court explained the reasons why Arrats's post-conviction claims did not merit the appointment of counsel, as required by the relevant statute. And the district court had no obligation to slog through transcripts that were not in the record to determine whether Arrats *could* have alleged facts in his petition that would show the possibility of a valid claim.

B. <u>Standard Of Review</u>

This Court reviews for an abuse of discretion a district court's decision to appoint or deny counsel in a post-conviction proceeding. <u>See</u> <u>Workman v. State</u>, 144 Idaho 518, 529, 164 P.3d 798, 809 (2007).

C. <u>The District Court Properly Dismissed The Petition Without Appointing Counsel</u>

The district court did not abuse its discretion by dismissing Arrats's petition without appointing counsel. "[T]he proper standard for determining whether to appoint counsel for

an indigent petitioner in a post-conviction proceeding is whether the petition alleges facts showing the possibility of a valid claim that would require further investigation on the defendant's behalf." Workman, 144 Idaho at 529, 164 P.3d at 809. "[T]he trial court should consider whether the facts alleged are such that a reasonable person with adequate means would be willing to retain counsel to conduct a further investigation into the claims." Swader v. State, 143 Idaho 651, 654, 152 P.3d 12, 15 (2007).

Here, the district court thoroughly reviewed Arrats's petition and found he did not allege facts showing the possibility of a valid claim: With respect to Arrats's claim that he acted in self-defense, the district court properly recognized that Arrats waived that defense when he entered his Alford plea. (R., p.19 (quoting State v. Al-Kotrani, 141 Idaho 66, 69, 106 P.3d 392, 395 (2005)).) With respect to Arrats's claim that his counsel rendered ineffective assistance by refusing to present evidence of self-defense, the district court properly observed that Arrats failed to plead deficient performance or prejudice because his counsel never had the opportunity to present evidence of self-defense given Arrats's Alford plea and because the facts Arrats alleged showed self-defense "wasn't available to Arrats in the first place." (R., pp.20-21 (citing Strickland v. Washington, 466 U.S. 668, 687 (1984); ICJI 1517).) With respect to Arrats's claims that the district court erred in failing to appoint Arrats's counsel for his Rule 35 motion and in denying his Rule 35 motion, the district court properly found those claims were barred because Arrats raised, or at least could have raised, those issues on direct appeal. (R., pp.21-22 (citing Knutsen v. State, 144 Idaho 433, 439, 163 P.3d 222, 228 (Ct. App. 2007); Grove v. State, 161 Idaho 840, 850, 392 P.3d 18, 28 (Ct. App. 2017)).) With respect to Arrats's claim that he received ineffective assistance of counsel in his appeal from the denial of his Rule 35 motion, the

district court properly observed that "appellate counsel 'is not required to raise issues which are reasonably considered to be meritless'" (R., p.23 (quoting Dunlap v. State, 159 Idaho 280, 296, 360 P.3d 289, 305 (2015))), and properly found all of the issues that Arrats wanted his appellate counsel to raise were meritless (R., p.23). Because Arrats did not allege facts showing the possibility of a valid claim, the district court did not abuse its discretion when it dismissed Arrats's petition without appointing counsel.

On appeal, Arrats does not directly challenge the district court's conclusions as to the viability of his asserted post-conviction claims. (See Appellant's brief.) For example, Arrats does not argue that he did allege facts that supported a claim of self-defense or cite any authority for the proposition that self-defense could justify robbery in the context of this case. (See Appellant's brief.) Instead, Arrats lodges several indirect attacks against the district court's decision to dismiss his petition without appointing counsel. (Appellant's brief, pp.8-11.) None of the attacks withstand scrutiny.

First, Arrats claims that the district court erroneously applied the standard applicable to deciding the merits of a post-conviction petition rather than the standard applicable to deciding whether to appoint counsel. (Appellant's brief, pp.9-10.) That is incorrect. The district court's notice of intent to dismiss expressly stated the correct standard: "Post-conviction counsel generally should be appointed if the petitioner alleges facts that raise the possibility of a valid claim." (R., p.24 (citing Charboneau v. State, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004)).) And the district court specifically found that "Arrats has not done so." (R., p.24.) The district court then gave Arrats thirty days to allege facts that raise the possibility of a valid claim. (R., p.24.) After Arrats filed his

reply, the district court found he had failed to raise the possibility of a valid claim "for the reasons articulated in the notice of intent to dismiss." (R., p.33.)

Second, Arrats asserts that "[t]he district court's notice includes a technical analysis of the legal insufficiency of Mr. Arrats' post-conviction claims and failed to meaningfully notify Mr. Arrats—a pro se prisoner untrained in the law—of deficiencies that he was capable of remedying." (Appellant's brief, p.9.) But "a technical analysis of the legal insufficiency of Mr. Arrats' post-conviction claims" is exactly what the post-conviction statute calls for. See I.C. § 19-4906(a) (requiring the district court to "indicate to the parties its intention to dismiss the application and its reasons for doing so"). The district court's ten-page notice of intent to dismiss walked through each of Arrats's claims and explained the reasons why the district court was going to dismiss each claim, and nothing about the notice was especially "technical." (R., pp.16-25.) Indeed, Arrats's pro se reply to the district court's notice makes no mention of any difficulties understanding the notice. (R., pp.26-32); cf. DeRushe v. State, 146 Idaho 599, 602, 200 P.3d 1148, 1151 (2009) (explaining that, if the petitioner believed the state did not articulate the grounds of its motion to dismiss the petition with sufficient particularity, "then [the petitioner] should have raised that issue below").

Furthermore, Arrats's appellate counsel, who *is* trained in the law, makes no attempt to explain how, in her view, the district court should have articulated the problems with Arrats's petition differently or what exactly Arrats could not understand in the notice. (See Appellant's brief, p.9.) Elsewhere in his brief, Arrats suggests that the district court should have notified Arrats that "his petition was deficient because records of the underlying proceeding were not included." (Appellant's brief, p.7.) But that is not a

simpler or less "technical" explanation of the defects in Arrats's petition; it is an incorrect explanation of the defects in Arrats's petition. The district court neither notified Arrats that he was missing critical portions of the underlying proceeding nor dismissed Arrats's petition on that basis. (R., pp.16-24, 33.)

Third, Arrats claims that the district court had to appoint counsel because transcripts not in the record contained facts that "give rise to the possibility of a valid claim that Mr. Arrats' *Alford* plea was not knowing and voluntary." (Appellant's brief, p.10.) The pertinent question, however, is "whether *the petition* alleges facts showing the possibility of a valid claim that would require further investigation on the defendant's behalf." Workman, 144 Idaho at 529, 164 P.3d at 809 (emphasis added). In other words, to obtain appointed counsel, Arrats had to allege facts *in his petition* showing the possibility of a valid claim. He "is not entitled to have counsel appointed in order to search the record for possible nonfrivolous claims," Brown v. State, 135 Idaho 676, 679, 23 P.3d 138, 141 (2001), and he is certainly not entitled to have *the district court* search *outside* of the record for possible nonfrivolous claims, cf. Rome v. State, 164 Idaho 407, ___, 431 P.3d 242, 251 (2018) (refusing to "saddle the [district] court with an inefficient and onerous obligation to scour the records of underlying or separate cases in an aimless search for information that might be potentially relevant"); United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs.").

Arrats has not pointed to any facts alleged in his petition to support a claim that he did not enter a knowing and voluntary plea. (See Appellant's brief.) As the district court observed, "Arrats present[ed] no reason to think his *Alford* plea wasn't entered voluntarily and understandingly." (R., p.19.) In fact, even after the district court made that observation

in its notice of intent to dismiss, Arrats did not state anything in his reply suggesting that he did not enter a knowing, intelligent, and voluntary plea. (R., pp.26-32.)

Fourth, Arrats claims that the district court had to appoint counsel because transcripts not in the record contained facts that "give rise to the possibility that Mr. Arrats received ineffective assistance of counsel during the course of plea negotiations." (Appellant's brief, p.10.) Here, again, Arrats's attempt to rely on transcripts outside of the record misunderstands the standard for appointing counsel in a post-conviction proceeding. See Workman, 144 Idaho at 529, 164 P.3d at 809 (stating the relevant question as "whether *the petition* alleges facts showing the possibility of a valid claim that would require further investigation on the defendant's behalf" (emphasis added)). And here, again, Arrats has failed to point to any facts alleged in his petition to support a claim that his counsel provided ineffective assistance during plea negotiations. (See Appellant's brief, pp.8-11.)

Even if the district court had some obligation to troll for possible post-conviction claims in the transcripts of Arrats's criminal proceeding—and it did not—the transcripts do not show what Arrats claims: "namely that he pleaded guilty despite repeated protestations of innocence because his attorney did not provide effective assistance." (Appellant's brief, p.9.[4]) The transcript of the change-of-plea hearing shows that Arrats maintained that he did not have the intent to commit a robbery (2/10/2017 Tr., p.20, Ls.4-

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[4] In his opening brief, Arrats requested that this Court judicially notice the transcripts from his underlying criminal proceeding. (Appellant's brief, p.1 n.1.) The transcripts were not part of the record in the district court (see R., p.17 n.1.), and Arrats made no attempt to make the transcripts part of the record in the district court (see R., pp.4-11). Accordingly, this Court can, and should, decide this appeal without resorting to the transcripts. See Roman, 125 Idaho at 648 n.3, 873 P.2d at 902 n.3. Nevertheless, the state acknowledges that this Court may need the transcripts to understand the parties' arguments related to the transcripts and therefore does not object to this Court taking judicial notice of the transcripts.

10) but that he believed the state could prove intent at trial (2/10/2017 Tr., p.25, Ls.14-18 ("They have all of the evidence and then some.")) and wanted to take advantage of the plea deal (2/10/2017 Tr., p.23, L.21 – p.24, L.2 ("This is the best deal that I'm going to get, and [my attorney] did his best. And thank God the prosecution agreed . . . .")). In fact, Arrats walked through his entire thought process on entering an Alford plea on the record and under oath. (2/10/2017 Tr., p.12, L.15 – p.18, L.22.) And the district court commented that Arrats "seem[ed] very articulate and very well spoken" and "seem[ed] to have thought this through and decided . . . what course of action [he] would like to take." (2/10/2017 Tr., p.14, Ls.8-11.)

The district court also confirmed that Arrats had no "trouble understanding what's going on here in court" (2/10/2017 Tr., p.22, Ls.8-16); that Arrats understood the district court would "treat [him] as guilty if [he] enter[ed] a plea under Alford" (2/10/2017 Tr., p.20, Ls.4-10); and that Arrats understood he was giving up his right to a jury trial (2/10/2017 Tr., p.24, Ls.7-11), his right to cross-examine witnesses (2/10/2017 Tr., p.24, Ls.12-15), his right to present evidence, including his right to assert defenses (2/10/2017 Tr., p.12, Ls.4-8, p.24, Ls.16-19), and his right to testify (2/10/2017 Tr., p.24, L.20 – p.25, L.1). Arrats also confirmed that his "lawyer told [him] to [his] satisfaction about [his] rights and potential defenses" (2/10/2017 Tr., p.23, Ls.16-20), and Arrats had nothing but praise for his attorney throughout the proceeding (2/10/2017 Tr., p.16, Ls.14-16 ("I have a very good attorney. My attorney is very good."); 2/10/2017 Tr., p.22, Ls.17-20 ("My lawyer is very good."); 2/10/2017 Tr., p.23, L.21 – p.24, L.2 ("I have no complaints about my attorney.")).

It was only after Arrats had entered an Alford plea that he raised concerns about his attorney, and those concerns were resolved to Arrats's satisfaction before the district court imposed Arrats's sentence. (3/31/2017 Tr., p.29, L.4 – p.41, L.11; 4/7/2017 Tr., p.4, L.4 – p.12, L.18.) Arrats raised the concerns at the first sentencing hearing, and the district court gave Arrats a week to speak with his attorney and think about his options. (3/31/2017 Tr., p.39, L.20 – p.40, L.12.) A week later, Arrats candidly explained that the concerns he raised came from "talk[ing] with a lot of freaking jailhouse, freaking lawyers, [who were] like you're going to get out of it" (4/7/2017 Tr., p.8, Ls.5-21), but that after the first sentencing hearing his "attorney quickly let [him] know that all these cool things that [he] ha[d] written down that [he] thought was going to help [him] is not going to work" (4/7/2017 Tr., p.10, Ls.12-17). Arrats repeatedly assured the district court that he wanted to move forward to sentencing. (4/7/2017 Tr., p.5, L.6 – p.6, L.8, p.9, Ls.5-14, p.10, Ls.12-19.) The actual sentencing took place one week later, and Arrats did not raise any concerns about his counsel or his Alford plea. (See 4/13/2017 Tr., p.42, L.4 – p.69, L.16.)

These transcripts, which the district court had no obligation to review in the first place, do not show that "a reasonable person with adequate means would be willing to retain counsel to conduct a further investigation into" the possibility that Arrats entered an involuntary plea because his counsel provided ineffective assistance. Swader, 143 Idaho at 654, 152 P.3d at 15. The district court properly denied Arrats's motion to appoint counsel and dismissed his petition.

CONCLUSION

The state respectfully requests this Court affirm the dismissal of Arrats's petition for post-conviction relief.

DATED this 30th day of April, 2019.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of April, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Jeff Nye
JEFF NYE
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JN/ah