

9-10-2014

Brown v. State Clerk's Record Dckt. 42511

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RAYLAND BROWN,
Petitioner-Appellant,
vs.
STATE OF IDAHO,
Respondent.

Supreme Court Case No. 42511

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MIKE WETHERELL

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Rayland Brown, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
6/27/2014	NCPC	CCBARRSA	New Case Filed - Post Conviction Relief	District Court Clerk
	CHGA	CCBARRSA	Judge Change: Administrative	Mike Wetherell
	PEAF	CCBARRSA	Petition and Affidavit for Post-Conviction Relief	Mike Wetherell
	MOAF	CCBARRSA	Motion & Affidavit for Permission to Proceed on Partial Payment of Court Fees (Prisoner)	Mike Wetherell
	MOAF	CCBARRSA	Motion & Affidavit in Support for Appointment of Counsel	Mike Wetherell
	CERT	CCBARRSA	Certificate Of Mailing	Mike Wetherell
6/30/2014	PROS	PRWILSVL	Prosecutor assigned Jonathan M Medema	Mike Wetherell
7/23/2014	ORDR	TCWEGEKE	Order Denying Motion for Appointment of Counsel and Notice of Intent to Dismiss Pursuant to IC 19-4906(b)	Mike Wetherell
7/25/2014	MOTN	CCWEEKKG	Motion for Summary Disposition	Mike Wetherell
	BREF	TCMEREKV	Brief In Support Of Motion For Summary Disposition	Mike Wetherell
8/4/2014	BREF	TCLAFFSD	Petitioner's Brief In Response To The Court Order Pursuant To IC 19-4906(b)	Mike Wetherell
8/26/2014	ORDR	DCOATMAD	Order Dismissing Petition	Mike Wetherell
	JDMT	DCOATMAD	Judgment	Mike Wetherell
	CDIS	DCOATMAD	Civil Disposition entered for: State Of Idaho, Other Party; Brown, Rayland, Subject. Filing date: 8/26/2014	Mike Wetherell
	STAT	DCOATMAD	STATUS CHANGED: Closed	Mike Wetherell
9/10/2014	APSC	CCTHIEBJ	Appealed To The Supreme Court	Mike Wetherell
	MOAF	CCTHIEBJ	Motion & Affidavit for Permission to Proceed on Partial Payment of Court Fees	Mike Wetherell
	MOAF	CCTHIEBJ	Motion & Affidavit in Support for Appointment of Counsel	Mike Wetherell
	NOTA	TCWEGEKE	NOTICE OF APPEAL	Mike Wetherell
9/12/2014	ORDR	DCOATMAD	Order Appt'g State Appellate Public Defender	Mike Wetherell

JUN 27 2014

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Inmate Name RAYLAND, BROWN,
IDOC No. 105964
Address P.O. Box 70016
Boise ID 83707

MIKE WETHERELL

Petitioner

IN THE DISTRICT COURT OF THE Fourth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RAYLAND BROWN,)
)
Petitioner,)
)
vs.)
STATE OF IDAHO)
)
Respondent.)

Case No. CV PC 1412624
PETITION AND AFFIDAVIT
FOR POST CONVICTION
RELIEF

The Petitioner alleges:

1. Place of detention if in custody: Idaho Correctional Center
2. Name and location of the Court which imposed judgement/sentence: COUNTY OF ADA IN THE Fourth JUDICIAL DISTRICT
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: CR 2012 - 5898
 - (b) Offense Convicted: domestic battery in the presence of a child. a felon.
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: 12/28/12
 - b. Terms of Sentence: a unified sentence of twenty years with fifteen years fixed.

3.

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

Of guilty

Of not guilty

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

Yes No

If so, what was the Docket Number of the Appeal? 41488

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

(a) Petitioner alleges his trial counsel
was ineffective for the reason that he
 (b) did not object to the sentence which
was imposed. Because there was a Rule 11 plea
agreement. But district court did not follow
 (c) the plea agreement. Counsel's failure to
object to the sentence imposed
prejudiced petitioner.

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

a. Petitions in State or Federal Court for habeas corpus? N/A

b. Any other petitions, motions, or applications in any other court? N/A

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

Petitioner filed an Idaho
Criminal Rule 35.

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

- (a) Counsel's failure to object to the sentence to allow the Petitioner to
- (b) have a genuine opportunity of a fair trial was ineffective. His
- (c) failure to do so also prejudiced Petitioner.

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

Yes [] No

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

Yes [] No

12. State specifically the relief you seek:

Petitioner respectfully requests that this
court reconsider plea agreement,
which was recommended by the state
in the Rule 11, agreement.

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

DATED this 24 day of June, 2014.

RAYLAND BROWN.
Petitioner

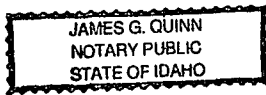
STATE OF IDAHO)
County of ADA) ss,
)

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

[Signature]
RAYLAND BROWN.
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 24TH day of June, 2014.

(SEAL)



[Signature]
Notary Public for Idaho
Commission expires: 9/10/2019

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of _____, 20____, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

ADA County Prosecuting Attorney
P.O. Box / 200 w. Front St.
Boise IDAHO 83702

RAYLAND BROWN.
Petitioner

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

STATE OF IDAHO)

COUNTY OF ADA)

) ss

CV PC 1412624

RAYLAND BROWN, being first duly sworn on oath, deposes and says:

~~He is the~~ Petitioner in the above entitled Petition. Petitioner was charged with and convicted of one count of domestic battery, a violation of Idaho Code §18-6608, a felony in the Ada County. Petitioner ~~alleges~~ alleges on the part of his trial counsel, Nicholas Wollen, in his Petition for Post Conviction Relief and in his argument.

ARGUMENT

A claim of ineffective assistance of counsel may properly be brought under the Post-conviction Procedure Act Murray v. State 121 Idaho 918 924-25 828 P.2d 1323 1329-30 (ct. App. 1992). To Prevail on ineffective assistance of counsel claim.

The defendant must show that the attorney's performance deficient and that the defendant was prejudiced by the deficiency. Strickland v. Washington. 466 US 668 687 88 (1984). Hassett v. State 127 Idaho 313 316 900 P.2d 221, 224 (ct App 1995) To establish a deficiency applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. Aragon v. State 114 Idaho 758, 760 760 P.2d 1174 1176 (1988).

To establish prejudice the applicant must show a reasonable probability that but for the attorney's deficient performance the outcome of the trial would have been different. Aragon. 114 Idaho at 760 P.2d at 1177 A reasonable probability is 114 Idaho 433 443, 163 P.3d 222, 232 (ct App 2007) the Court has long adhered to the proposition that tactical decisions of trial counsel will not be second guessed on appeal unless those decisions are based on inadequate preparation ignorance of relevant

low or other shortcomings Capable of objective
evaluation.. Howard v. State 231, 231-233-880.
P.2d 261 263 (CtApp 1994)

Pate v. Robinson 383 U.S. 375 378 86 Sct
836 838 15 L Ed 2d 815 818 (1966) State v.

Lovelace 140 Idaho 536 2 90 P. 3d 278 287
(2003). Aff'd on reh'g 140 Idaho 739 0 P. 3d

298 (2004) The test to determine if defendant
has the mental capacity to stand trial
is whether the defendant has sufficient
present ability to consult with his lawyer

with a reasonable degree of rational
understanding and whether the defendant
has a rational as well as factual understanding
of the proceeding against Dusky v. United
States 362 U.S. 402 80 Sct 788 4 L. Ed
2d 824 (1960) Lovelace 140 at 62 90 P.3d.
at 287.

Petitioner alleges that there was a due

Process violation. Petitioner further alleges that

his fifth and his fourteenth Amendments
to the United States Constitution and
Art. § 13 of the Idaho Constitution

were both violated after the court
denied the plea agreement under the
Rule 11 of the Idaho Criminal Rule:

On 12/28/2012 The Court entered its
Judgment of Conviction and ordered
retaining Jurisdiction

According to the Judgment of Conviction

The Court sentenced Petitioner under

IC § 18-908, 918 (2) 918 (4) and yet

according to the Court record Petitioner
violated the Idaho code § 18-6608

a felony in the Ada County.

Counsel's failure to object to the Court's Sentence prejudiced Petitioner Because there was a plea agreement under the ~~Rule~~ Rule 11 the Idaho Criminal Rule.

this was a clear violation of Petitioner's due process right to a fair trial a miscarriage of justice occurred here there was

a clear violation of the fifth and the fourteenth Amendments to the U.S. Constitution and Art 8 13 of the Idaho constitution.

which protects the defendants ability communicate with his attorney to understand the proceedings assist in his defense and meaningful confront witnesses [1] see

State v. Hernandez 120 Idaho 785 788 820 P 2d 380 383 (Ct APP 1991). The due process right to a fair trial also prohibits trying

or convicting a defendant while he lacks the mental capacity to understand the proceedings to consult with counsel, and to assist in the preparation of his

defense see Prope v. Missouri, 240 U.S. 162 171 95 Sct 896 903 43 L. Ed 2d 103 112 (1975)). Pate v. Robinson 383 U.S. 375 378 86 Sct. 836 838 15 L. Ed 2d 815 818 (1966) State v. Lovelace

140 Idaho 5362 90 P. 3d 278 287 (2003) aff on reh'g 140 Idaho 73 90 P. 3d 298 (2004). The mental capacity to stand trial is whether the defendant has the mental capacity to stand trial is with his lawyer with a reasonable degree of

rational understanding and whether the defendant has a rational as well as factual understanding of the proceedings

against him Dusky v. United States 362 U.S. 402 80 S. Ct 788 44 L. Ed 2d 824 (1960) Lovelace 140. at 65 90 P. 3d at 287.

See Coleman v. Thompson, 501 U.S. 722
731 (1991) a showing of actual innocence,
which means that a miscarriage of justice
will occur if the claim is not heard. also see
Murray v. Carrier, 477 U.S. 478 488 (1986)
Schlup v. Delo, 513 U.S. 298 329 (1995).

Petitioner alleges that his Counsel's
Nicholas's failure to object to the
sentence and take the case to trial
prejudiced Petitioner.

Clearly Petitioner was denied a genuine
opportunity to have a fair trial.
This all came to a clear violation
of Petitioner's Fourteenth Amendment
and his Fifth Amendment to the
United States Constitution.

It is clear here that trial counsel
(Nicholas) was ineffective to present
the real defense.

Post-Conviction Procedure.

The uniform Post-Conviction Procedure Act, §§ 19-4901 - 19-4911. Provides a mechanism by which a person convicted of a crime may show that his conviction was in violation of the Constitution, that the conviction ~~is~~ should be vacated in the interest of justice, or that the conviction is otherwise subject to collateral attack. As such, the act provides an appropriate mechanism for considering claims of ineffective assistance of counsel and claims that a plea of guilty was accepted in violation of the requirements set forth in this Rule. *Nellsch v State*, 122 Idaho 426, 835 P.2d 661 (Ct. App 1992).

A breach of a plea bargain agreement by the State affects the voluntariness of the guilty plea and is fundamental error. *State v. Rutherford*, 107 Idaho 910, 693 P.2d 1112 (Ct. App. 1985) where the State has breached a plea bargain agreement a defendant may be

entitled to specific performance of the Plea bargain agreement, which entail resentencing by a different district judge or a defendant may also be permitted to withdraw his guilty plea and go to trial on all the original charges. State v. Rutherford, 107 Idaho 910, 693 P.2d 1112 (Ct App 1985).

It is incumbent upon the attorneys to state the plea bargain agreement in its entirety on the record, and in a clear and coherent manner. State v. Rutherford, 107 Idaho 910, 693 P.2d 1112 (Ct App 1985) where the terms of the plea bargain agreement are merely orally stated on the record by one of the attorneys the court should - by specific inquiries to the defendant - establish that the defendant both understands and agrees to the terms and the sentencing court should inform the defendant that the court is not bound by any recommendation from the prosecutor as to the sentence to impose. State v. Rutherford 107 Idaho 910, 693 P.2d 1112, (Ct App 1985).

Conclusion

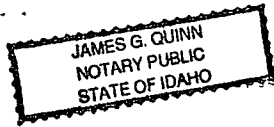
Petitioner requests a hearing so that he may be allowed to put on evidence in support of his allegations.

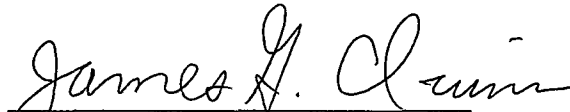
Further your affiant sayeth not.


Signature of Affiant

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 24th day of

June, 2014.




Notary Public for Idaho
My Commission Expires: 9/10/2019

JUN 27 2014

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

RAYLAND BROWN.
Full Name of Party Filing This Document
IDOC No. 15964
Mailing Address (Street or Post Office Box)
P.O. Box 170010
City, State and Zip Code
Boise ID 83707
Telephone Number

IN THE DISTRICT COURT OF THE Fourth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RAYLAND BROWN
Plaintiff,
vs.
STATE OF IDAHO
Defendant.

Case No.: CV PC 1412624
MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
County of ADA) ss.

[] Plaintiff [] Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) PETITION AND AFFIDAVIT FOR POST CONVICTION RELIEF
believe I'm entitled to get what I am asking for.

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

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

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

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

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

IDENTIFICATION AND RESIDENCE:

Name: N/A Other name(s) I have used: N/A

Address: N/A

How long at that address? N/A Phone: N/A

Date and place of birth: _____

DEPENDENTS:

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

Name of spouse: N/A

N/A

My other dependents (including minor children) are: N/A

N/A

INCOME:

Amount of my income: \$ N/A per [] week [] month

Other than my inmate account I have outside money from: _____

My spouse's income: \$ N/A per [] week [] month.

ASSETS:

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

Your Address	City	State	Legal Description	Value	Equity
<u>N/A</u>					

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

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

Description (provide description for each item)

Value

TVs/Stereos/Computers/Electronics

N/A

Tools/Equipment

N/A

Sporting Goods/Guns

N/A

Horses/Livestock/Tack

N/A

Other (describe)

N/A

N/A

EXPENSES: List all of your monthly expenses.

Expense

**Average
Monthly Payment**

Rent/House Payment

Vehicle Payment(s)

N/A

Credit Cards: (list each account number)

N/A

Loans: (name of lender and reason for loan)

N/A

Electricity/Natural Gas

N/A

Water/Sewer/Trash

N/A

Phone

N/A

Groceries

N/A

Clothing

N/A

Auto Fuel

N/A

Auto Maintenance

N/A

Cosmetics/Haircuts/Salons

N/A

Entertainment/Books/Magazines

N/A

Home Insurance

N/A

Expense	Average Monthly Payment
Auto Insurance	N/A
Life Insurance	N/A
Medical Insurance	N/A
Medical Expense	N/A
Other	N/A
	N/A

MISCELLANEOUS:

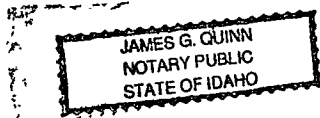
How much can you borrow? \$ N/A From whom? N/A
 When did you file your last income tax return? N/A Amount of refund: \$ N/A

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

Name	Address	Phone	Years Known
N/A	N/A	N/A	N/A

Rayland Brown
 Signature
Rayland Brown
 Typed or Printed Name

2014 SUBSCRIBED AND SWORN TO before me this 24th day of June



James G. Quinn
 Notary Public for Idaho
 Residing at N/A
 My Commission expires 9/10/2019

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 06/24/2014 =

Doc No: 105964 Name: BROWN, RAYLAND
Account: CHK Status: ACTIVE

ICC/UNIT E PRES FACIL
TIER-1 CELL-14

Transaction Dates: 06/24/2013-06/24/2014

Beginning Balance	Total Charges	Total Payments	Current Balance
0.00	446.50	446.70	0.20

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
12/23/2013	HQ0652914-001	950-RE INCARECERAT	IBSUSPCHK	0.00	0.00
12/23/2013	HQ0652926-001	011-RCPT MO/CC	30817	300.00	300.00
12/31/2013	IC0653718-295	099-COMM SPL		74.79DB	225.21
01/09/2014	HQ0654869-016	026-JAIL INCOM	DEC PAY	10.50	235.71
01/14/2014	IC0655318-266	099-COMM SPL		74.59DB	161.12
01/21/2014	IC0655909-222	099-COMM SPL		10.20DB	150.92
01/21/2014	IC0655909-223	099-COMM SPL		61.14DB	89.78
01/28/2014	IC0656639-204	099-COMM SPL		24.84DB	64.94
02/04/2014	IC0657349-186	099-COMM SPL		10.65DB	54.29
02/04/2014	IC0657349-187	099-COMM SPL		23.45DB	30.84
02/05/2014	HQ0657664-021	026-JAIL INCOM	JAN PAY	18.00	48.84
02/11/2014	IC0658193-233	099-COMM SPL		38.13DB	10.71
02/18/2014	IC0658731-131	099-COMM SPL		9.52DB	1.19
03/11/2014	HQ0661313-005	026-JAIL INCOM	FEB PAY	34.00	35.19
03/11/2014	IC0661369-123	099-COMM SPL		1.19DB	34.00
03/11/2014	HQ0661376-022	011-RCPT MO/CC	36496	40.00	74.00
03/12/2014	IC0661525-097	099-COMM SPL		10.20DB	63.80
03/19/2014	IC0662169-246	099-COMM SPL		37.42DB	26.38
03/26/2014	IC0662901-215	099-COMM SPL		10.87DB	15.51
04/02/2014	HQ0663685-031	026-JAIL INCOM	MAR PAY	29.20	44.71
04/09/2014	IC0664470-240	099-COMM SPL		41.14DB	3.57
04/29/2014	IC0666199-169	099-COMM SPL		3.37DB	0.20
06/19/2014	HQ0672467-005	011-RCPT MO/CC	43613	15.00	15.20
06/24/2014	IC0672947-185	099-COMM SPL		15.00DB	0.20

STATE OF IDAHO

Idaho Department of Correction

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

WITNESS my hand hereto affixed this 24

day of June A.D., 2014

By [Signature]

JUN 27 2014

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Inmate name RAYLAND BROWN
IDOC No. 105964
Address P.O. BOX 70010
Boise ID 83707

Defendant

IN THE DISTRICT COURT OF THE Fourth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
) Plaintiff,)
)
) vs.)
)
RAYLAND BROWN.)
)
) Defendant.)
)

Case No. CV PC 1412624
**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

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

1. Defendant is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden Randy Blades,
of the Department of Correction.

2. The issues to be presented in this case may become to complex for the Defendant
to properly pursue. Defendant lacks the knowledge and skill needed to represent
him/herself.

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

4. Other: I am not a trained Professional lawyer, and am also untrained in Paralegal work
DATED this ___ day of _____, 20__.

RAYLAND BROWN
Defendant

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

RAYLAND BROWN, after first being duly sworn upon his/her oath, deposes and says as follows:

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

Further your affiant sayeth naught.

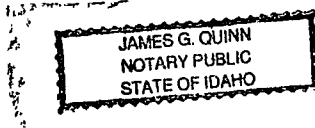
WHEREFORE, Defendant respectfully prays that this Honorable Court issue it's Order granting Defendant's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Defendant is entitled to.

DATED This 24 day of June, 2014.

Respectfully
RAYLAND BROWN
Defendant

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 24th day
of June, 2014.

(SEAL)

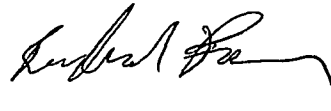


James G. Quinn
Notary Public for Idaho
Commission expires: 9/10/2019

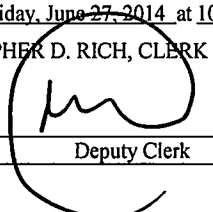
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24 day of June, 2014, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

ADA County Prosecuting Attorney
200 W. Front St
Boise Idaho 83702



RAYLAND BROWN
Defendant

FILED
Friday, June 27, 2014 at 10:55 AM
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: 
Deputy Clerk

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

BROWN RAYLAND,
Plaintiff,

vs.

STATE OF IDAHO,
Defendant.

CASE NO. CV-PC-2014-12624

CERTIFICATE OF MAILING

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the: **PETITION AND AFFIDAVIT FOR POST-CONVICTION RELIEF** as notice pursuant to Rule 77 (d) I.R.C.P. to each of the parties or attorneys of record in this cause in envelopes addressed as follows:

ADA COUNTY PROSECUTING ATTORNEY
(INTERDEPARTMENTAL MAIL)

ADA COUNTY PUBLIC DEFENDER
(COPY IN FILE)

RAYLAND BROWN # 105964
ISCC - C-POD 114B
PO BOX 70010
BOISE ID 83707

Dated: Friday, June 27, 2014

CHRISTOPHER D. RICH
Clerk of the Court
By: 
Deputy Clerk Santiago Barrios


SAB

JUL 23 2014

CHRISTOPHER D. RICH, Clerk
By DIANE OATMAN
Deputy

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

RAYLAND BROWN,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

Case No. CV-PC-2014-07839

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
NOTICE OF INTENT TO DISMISS
PURSUANT TO I.C. § 19-4906(b)

Currently before this Court is Petitioner's motion for the appointment of counsel to represent him in his petition for post-conviction relief, filed on June 27, 2014.

LEGAL STANDARDS

I. APPOINTMENT OF COUNSEL. Idaho Code § 19-4904 provides "a court-appointed attorney may be made available to the applicant" in a post conviction action. *Id.* The decision whether to grant or deny a request for court-appointed counsel is in the discretion of the court. *Plant v. State*, 143 Idaho 758, 152 P.3d 629 (Ct. App. 2006), citing *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). In analyzing whether a court should appoint counsel, a court must consider whether the claims filed by a *pro se* applicant are conclusory and incomplete. *See id.* at 792-93, 102 P.3d at 1111-12. In this determination, a court must be lenient. If an applicant alleges facts that raise the possibility of a valid claim, the district court should appoint counsel in order to give the applicant an opportunity to work with counsel and properly allege the necessary supporting facts. *Id.* at 793, 102 P.3d at 1112. On the other hand,

if claims are so patently frivolous that they could not be developed into viable claims even with the assistance of counsel, the court may decline to appoint counsel. *Newman v. State*, 140 Idaho 491, 493, 95 P.3d 642, 644 (Ct. App. 2004). A motion to appoint counsel should receive careful consideration prior to any decision on the merits of the petition. *Plant* at 761, 152 P.3d at 632.

II. INEFFECTIVE ASSISTANCE OF COUNSEL. The issue of ineffective assistance of counsel is properly raised in a post-conviction setting. See *Mathews*, 839 P.2d 1215, 1219 (citing *Kraft v. State*, 100 Idaho 671, 674, 603 P.2d 1005, 1008 (1979)). To prevail on a claim of ineffective assistance, a petitioner must overcome the strong presumption that counsel's performance was adequate by demonstrating "that counsel's representation did not meet objective standards of competence." *Roman*, 125 Idaho at 648-49, 873 P.2d at 902-03.

Claims alleging ineffective assistance of counsel are evaluated under the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under this test, the petitioner must not only demonstrate that counsel's performance was deficient, but must also show that the deficient performance was prejudicial. *Id.*, 466 U.S. at 687-88, 104 S.Ct. at 2064-65. To establish deficient performance, the applicant must prove that counsel's representation fell below an objective standard of reasonableness. *Id.* To prove prejudice, the applicant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*, at 694; *Parrott*, 117 Idaho at 274-75, 787 P.2d at 260-62. This latter "prejudice" requirement focuses on whether counsel's ineffective performance impacted the outcome of the case. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370-71 (1985); *Griffith v. State*, 121 Idaho 371, 825 P.2d 94 (Ct.App.1992). In order to avoid summary dismissal, Petitioner must allege sufficient facts under both parts of the test. *Martinez v. State*, 125 Idaho 844, 875 P.2d 941 (Ct. App. 1994). Finally, the Court notes that "[t]here is a

strong presumption that trial counsel was competent and that trial tactics were based on sound legal strategy.” *Dunlap v. State*, 141 Idaho 50, 58-59, 106 P.3d 376, 384-85 (2004).

BACKGROUND

This petition for post-conviction relief states a claim for ineffective assistance of counsel against Mr. Nicholas Wollen of the Ada County Public Defender’s office, in connection with Mr. Wollen’s representation of the petitioner in Ada County case number CR-FE-2012-0005898. In that case, on May 22, 2012, an Indictment was filed accusing Mr. Brown of the felony crime of Forcible Sexual Penetration by Use of a Foreign Object (I.C. § 18-6608). The case proceeded to trial on the indictment, but on the second day of trial (October 23, 2012), the defendant changed his plea pursuant to a proposed Rule 11 written plea agreement, and the Court accepted his conditional plea of guilty to a single count of Domestic Battery in the Presence of a Child (felony, I.C. § 18-903, 918(2), 918(4)). Consistent with the agreement, on October 23, 2012, the state filed an Information charging the petitioner with the same.

Pursuant to the petitioner’s conditional plea of guilty, sentencing was held on December 27, 2012, at which time the parties and the Court signed the written Rule 11 plea agreement. In relevant part, the agreement called for the state to amend the original charge to the charge of domestic battery as set forth above, and to recommend a period of retained jurisdiction, in exchange for the defendant’s guilty plea to the amended charge.¹ The agreement also called for the Court to bind itself to ordering a period of retained jurisdiction. The agreement did not purport to bind the parties or the Court with respect to sentencing recommendations or the sentence itself. Moreover, the agreement specifically stated that neither the parties nor the Court would be bound to any particular course of action after the end of the period of retained

¹ The agreement also calls for the state to dismiss a second count of simple battery, but the Court can find no indication (in either the original indictment or in the information filed on October 23, 2012) that either of these charging documents ever contained a second count.

jurisdiction.

The Court signed the agreement on December 27, 2012, and sentenced the defendant pursuant to his guilty plea to a maximum term of twenty years in prison, with the first fifteen years fixed. In accordance with the written plea agreement, the Court retained jurisdiction. Thereafter, at a rider review hearing held on August 29, 2013, the Court relinquished jurisdiction and imposed the underlying sentence. The petitioner then filed a motion for reconsideration of sentence pursuant to Idaho Criminal Rule 35, and a direct appeal of the sentence. On November 6, 2013, the Court granted the motion for reconsideration and reduced the sentence to an aggregate term of twenty years, with the first eleven years fixed. On July 15, 2014, the Court received the remittitur of the Idaho Supreme Court following its unpublished decision affirming the Court's decision to relinquish jurisdiction and its decision with regard to the petitioner's Rule 35 motion.

For his petition, Mr. Brown claims that Mr. Wollen provided ineffective assistance of counsel because he failed to object to the sentence on the ground that the Court violated the written plea agreement. Although the petitioner did not specify the nature of the alleged breach of the agreement in his petition, in his affidavit he alleges some incongruity in the fact that he was sentenced for violation of a different section of the Idaho Code than that for which he was indicted.

ANALYSIS AND CONCLUSION

As presently constituted, this petition does not state any claim that could be developed into viability even with the assistance of counsel, and the Court will therefore not appoint counsel at this time. This conclusion follows from the fact that the written plea agreement is contained in the record, and the record conclusively rebuts the petitioner's contention that it was

breached by the Court (or by the state) such that Mr. Wollen had an obligation to raise that issue at sentencing or at any time prior to sentencing. To the contrary, the record in the underlying criminal case² shows that the state fulfilled its commitments by amending the charge as set forth in the agreement³ and, following the petitioner's plea of guilty, by joining the petitioner in requesting a period of retained jurisdiction. The record further reveals that the Court fulfilled its obligations under the plea agreement by retaining jurisdiction. As noted above, the plea agreement explicitly provided that the Court would not be obligated to place the petitioner on probation following the retained jurisdiction period, and could instead relinquish jurisdiction, and the state was free to argue for either outcome. Moreover, the plea agreement places no restrictions on the sentencing recommendations that could be given or the sentence that could be imposed.

Because there was no breach of the plea agreement by the Court as alleged, or (for that matter) by Mr. Wollen or by the prosecutor, Mr. Wollen had no basis to object on that ground, and did not provide ineffective assistance to the petitioner as alleged. In short, based upon the record already available to the Court, the petitioner's claim is plainly frivolous, and he is not entitled to representation at the public's expense.

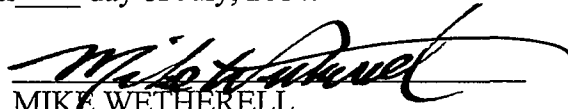
The Court further finds that as presently constituted, this petition raises no genuine issues of material fact and this Court is satisfied that the petitioner "is not entitled to post-conviction relief and no purpose would be served by any further proceedings." I.C. § 19-4906(b). Accordingly, the petitioner has twenty (20) days to supply a brief or further supporting affidavit explaining specifically how the Court breached the plea agreement, in light of the Court's review

² The Court takes judicial notice of the following documents filed in Ada County Case Number CR-FE-2012-0005898: 1) the Indictment filed on May 22, 2012; 2) the Information filed on October 23, 2012; 3) the written Rule 11 plea agreement filed on December 27, 2012; 4) the Judgment of Conviction and Order Retaining Jurisdiction filed on December 28, 2012; and 4) the Order Relinquishing Jurisdiction and Commitment filed on September 3, 2013.

³ Of course, this is the reason the defendant was sentenced for violating a different section, or sections, of the Idaho Code than that set forth in the original indictment.

of the record in the underlying criminal case. Any materials submitted should be addressed to the underlined topic; the Court will not consider any new claims, as no motion to amend the petition has been filed. Upon timely receipt of this responsive material, the Court will reconsider the issue of appointing counsel and whether the petition should be dismissed. If no responsive material is timely received, the Court will dismiss the petition without further notice.

SO ORDERED AND DATED this 23rd day of July, 2014.


MIKE WETHERELL
District Judge

CERTIFICATE OF MAILING

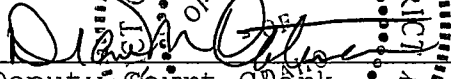
I hereby certify that on this 23rd day of July, 2014,

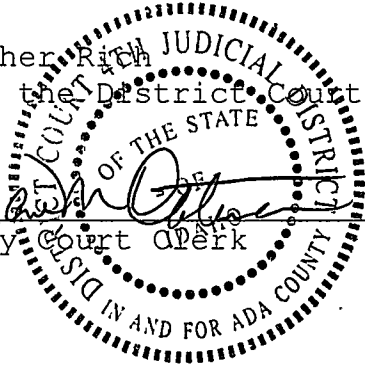
I mailed(served) a true and correct copy of the within
instrument to:

RAYLAND BROWN
IDOC NO. 105964
PO BOX 70010
BOISE, ID 83707

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

Christopher Rich
Clerk of the District Court

By 
Deputy Court Clerk



Wetherell / Disney
7-28-14 JH

NO. _____ FILED _____
A.M. _____ P.M. _____

JUL 25 2014

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Jonathan M. Medema
Deputy Prosecuting Attorney
ISB Number: 5623
200 W. Front Street, Rm. 3191
Boise, Idaho 83702-5954
Phone: (208) 287-7700

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

RAYLAND BROWN,
Petitioner,

vs.

STATE OF IDAHO,
Respondent.

CASE NO. CV-PC-2014-12624

MOTION FOR SUMMARY
DISPOSITION


COMES NOW, the State of Idaho, by and through Jonathan Medema, and does hereby move for summary disposition of Rayland Brown's petition for post-conviction relief pursuant to Idaho Code § 19-4906(c) on the general basis that, in light of the pleadings and the record of the underlying criminal case, the petition fails to produce admissible evidence of facts which, if true, would entitle petitioner to relief.

Brown's ineffective assistance of counsel claims fails to aver facts which, if true, would entitle him to relief.

The specific grounds for dismissal of each of Brown's allegations are as set forth in the Brief in Support of the State's Motion for Summary Disposition. The Brief in Support is incorporated herein.

DATED this 25th day of July 2014.

GREG H. BOWER
Ada County Prosecuting Attorney


Jonathan M. Medema
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July 2014, I caused to be served, a true and correct copy of the foregoing Motion for Summary Disposition upon the individual(s) named below in the manner noted:

Name and address: Rayland Brown IDOC NO.105964, P.O.Box 70010, Boise, ID 83707

- ✓ By depositing copies of the same in the United States mail, postage prepaid, first class.
- * By Hand Delivering said document to defense counsel.
- * By depositing copies of the same in the Interdepartmental Mail.
- * By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- * By faxing copies of the same to said attorney(s) at the facsimile number: _____


Legal Assistant

Wetherell
7-28-14

NO. _____
A.M. _____ FILED P.M. *6/25*

JUL 25 2014

CHRISTOPHER D. RICH, Clerk
BY JAMIE MARTIN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Jonathan M. Medema
Deputy Prosecuting Attorney
ISB Number: 5623
200 W. Front Street, Rm. 3191
Boise, Idaho 83702-5954
Phone: (208) 287-7700

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

RAYLAND BROWN,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

CASE NO. CV-PC-2014-12624

**BRIEF IN SUPPORT OF
MOTION FOR SUMMARY
DISPOSITION**

COMES NOW, the State of Idaho, by and through Jonathan Medema, and does hereby provide this brief in support of the State's Motion for Summary Disposition of Rayland Brown for post-conviction relief pursuant to Idaho Code §19-4906(c).

I. Procedural History

Mr. Brown pleaded guilty to Domestic Battery in the presence of a Child in violation of Idaho Code §18-903, 18-918(2) and 18-918(4) in Ada County Case No. CR-FE-2012-0005898. Mr. Brown pled guilty pursuant to a plea agreement that was partially binding on the Court under Rule 11(f)(C), I.C.R. Under the terms of the plea agreement, the Court could choose to impose

W

any sentence up to the maximum allowed by law, but the Court was required to retain jurisdiction for the first 365 days of any sentence imposed. The plea agreement did not require the Court to take any action to suspend the sentence within the period of retained jurisdiction, it simply required the Court to retain the jurisdiction to suspend that sentence during the first year of any sentence imposed.

Consistent with the terms of the plea agreement, the Court imposed a term of 20 years with 15 determinate, but retained jurisdiction. The Idaho Department of Corrections placed Mr. Brown in a retained jurisdiction program and, at the completion of the program, provided the Court with a report on Mr. Brown's participation and performance in that program. The Court conducted a hearing on the issue of whether or not to relinquish jurisdiction. After the hearing, the Court relinquished jurisdiction. Mr. Brown filed a motion to reduce his sentence pursuant to Idaho Criminal Rule 35. The Court granted the motion reducing the determinate portion of Mr. Brown's sentence to 11 years.

Mr. Brown appealed from the Court's decision to relinquish jurisdiction. The Idaho Court of Appeals affirmed that decision in an unpublished opinion. State v. Brown, 2014 Unpublished Opinion no. 548 (Ct. App. June 4, 2014).

II. Argument

Mr. Brown now files an application for post-conviction relief. Mr. Brown's sole claim in his petition is that his trial counsel was constitutionally ineffective for "failing to object to the sentence which was imposed. Because there was a Rule 11 plea agreement. But the District Court did not follow the plea agreement." (Pet. Post. Conv. Relief. P.2).

An application for post-conviction relief under the Uniform Post Conviction Procedure Act (UPCPA) is civil in nature. *Stuart v. State*, 136 Idaho 490, 495, 36 P.3d 1278, 1282 (2001). Like

a plaintiff in a civil action, the applicant for post-conviction relief must prove by a preponderance of evidence the allegations upon which the application for post-conviction relief is based. *Grube v. State*, 134 Idaho 24, 995 P.2d 794 (2000). Unlike the complaint in an ordinary civil action, however, an application for post-conviction relief must contain more than “a short and plain statement of the claim” that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant. I.C. § 19–4903.

To prevail on an ineffective assistance of counsel claim, the defendant must demonstrate both that (a) his counsel’s performance fell below an objective standard of reasonableness and (b) there is a reasonable probability that, but for counsel’s errors, the result of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); LaBelle v. State, 130 Idaho 115, 118, 937 P.2d 427, 430 (Ct. App. 1997). “Because of the distorting effects of hindsight in reconstructing the circumstances of counsel’s challenged conduct, there is a strong presumption that counsel’s performance was within the wide range of reasonable professional assistance -- that is, ‘sound trial strategy.’” Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989) (quoting Strickland, 466 U.S. at 689-90); Aragon v. State, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). A petitioner must overcome a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment” to establish that counsel’s performance was “outside the wide range of professionally competent assistance.” Claibourne v. Lewis, 64 F.3d 1373, 1377 (9th Cir.1995) (quoting, Strickland, 466 U.S. at 690).

Thus, the first element – deficient performance – “requires a showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Strickland, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693.

The second element – prejudice – requires a showing that counsel’s deficient performance actually had an adverse effect on his defense; i.e., but for counsel’s deficient performance, there was a reasonable probability the outcome of the proceeding would have been different. Strickland, 466 U.S. at 693; Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999).

Mr. Brown has alleged only that his counsel failed to object to the sentence imposed because there was a Rule 11 plea agreement and, according to Brown’s petition, the Court did not follow that agreement¹. This Court must dismiss Brown’s petition because he has failed to show his counsel’s performance was constitutionally deficient and he has failed to show that, absent counsel’s alleged error, the outcome of the proceeding would have been any different. Brown’s claim that the Court violated the plea agreement is also disproved by the record in the underlying criminal case.

Brown plead guilty pursuant to a plea agreement which was binding upon the Court in only one respect – the Court was required, if it imposed a prison sentence, to retain jurisdiction over Brown for the first year of that sentence. Under the plea agreement the parties were free to request any sentence up to the maximum allowed by law. Similarly the Court was free to impose any sentence up to the maximum allowed by law. The Court was only required to retain jurisdiction. The Court did so.

Brown’s apparent complaint is that the Court chose to impose a sentence that contained a significantly greater determinate portion than that recommended by the State at sentencing. However, under the plea agreement, the Court was clearly free to do so. Brown does not identify

¹ Brown’s petition contains a number of conclusory statements of law such as “petitioner alleges that there was a due process violation,” (Affidavit p. 2); “due process...prohibits trying or conviction a defendant while he lacks the mental capacity to understand the proceedings,” (Affidavit p.3), and “a breach of the plea agreement by the State affects the voluntariness of the guilty plea.” (Affidavit p 5). However, Brown never claims that he in fact lacked mental capacity at any time, he does not claim that the State breached the plea agreement in any way and he identifies no violation of his due process rights, other than to say his attorney failed to object to the sentence imposed. Thus, Brown’s citations to various statements of law do not appear to constitute additional claims for relief, even interpreting his *pro se* petition broadly.

the basis on which his counsel should have objected to the Court's determination of an appropriate sentence. Similarly, Brown fails to identify how any objection would have affected the Court's decision as to what sentence to impose. Brown has failed to allege facts that would entitle him to relief. To the extent that Brown believed the sentence was unreasonable, his trial counsel did assist Brown in filing a motion to reduce his sentence which was granted. Also, trial counsel assisted Brown in filing a timely appeal during which Brown challenged both the sentence imposed and the Court's decision to relinquish jurisdiction. Brown fails to identify what more his trial counsel could have done. This Court should dismiss his petition for relief.

The State believes Brown's claim for ineffective assistance of counsel is based on his counsel's failure to object to the sentence imposed. That is what the petition says. However, to the extent one may read Brown's petition to complain about his counsel's actions at the jurisdictional review hearing, his claim must also fail.

Under the plea agreement, at the end of the period of retained jurisdiction, each party was free to argue whether the court should relinquish jurisdiction. Similarly, the Court was free to relinquish jurisdiction or suspend the sentence in its discretion. Counsel for Mr. Brown argued that the Court should exercise its jurisdiction and place Mr. Brown on probation. Mr. Brown has failed to identify in his petition any failure of his counsel in this regard. This Court must dismiss Brown's petition for post-conviction relief.

III. CONCLUSION

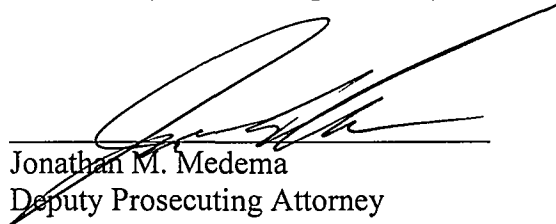
Brown's ineffective assistance of counsel claims fail to raise a genuine issue of material fact regarding both deficient performance and resulting prejudice. The state is therefore entitled to

summary disposition pursuant to Idaho Code § 19-4906(c).

The state requests that this court grant the state's Motion for Summary Disposition.

DATED this 25th day of July 2014.

GREG H. BOWER
Ada County Prosecuting Attorney

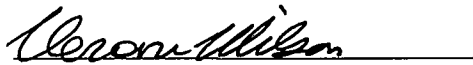

Jonathan M. Medema
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July 2014, I caused to be served, a true and correct copy of the foregoing Brief in Support of Motion for Summary Disposition upon the individual(s) named below in the manner noted:

Name and address: Rayland Brown IDOC NO.105964, P.O.Box 70010, Boise, ID 83707

- * By depositing copies of the same in the United States mail, postage prepaid, first class.
- * By Hand Delivering said document to defense counsel.
- * By depositing copies of the same in the Interdepartmental Mail.
- * By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- * By faxing copies of the same to said attorney(s) at the facsimile number: _____


Legal Assistant

Wetherell, Diane 8/5
RAYLAND BROWN

RECEIVED

NO. 10-45 FILED AS
A.M. 10:45 P.M.

IDOC NO. 10596A

AUG 04 2014

AUG 04 2014

ISCC - P.O. Box 70010

Ada County Clerk

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

BOISE ID 83707

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

RAYLAND BROWN
Petitioner.

CASE NO. CV-PC-2014-¹²⁶²⁴~~07839~~

vs.

PETITIONER'S BRIEF IN
RESPONSE TO THE COURT
ORDER PURSUANT TO
I.C. §19-4906 (b)

STATE OF IDAHO
Respondent.

Comes now RAYLAND, BROWN Petitioner Pro Se
and infirm Pueris being untrianed in law and
without the befit of Counsel, Hereby responds
to the Court Order of the 23rd day of July 2014. Pursuant
to I.C §19-4906 (b)

BACKGROUND

The petition for Post-Conviction relief states a claim
for ineffective assistance of counsel against
Mr Nicholas Wollen of the Ada County Public Defender's
office, in connection with Mr Wollen's representation.

of the Petitioner in Ada County Case Number 2012
CRFE-2012-0005898. In that case on May 22, 2012,
an Indictment was filed accusing Mr Brown
of the felony Crime of forcible Sexual Penetration by
use of a foreign Object (I.C. § 18-6608). The defendant
changed his Plea Pursuant to a Proposed Rule 11 written
Plea agreement, and the Court accepted his Conditional
Plea of guilty to a single Count of Domestic Battery
in the Presence of a Child (felony I.C. § 18-903-918(2)
918(4)). Consistent with the agreement on October 23, 2012,
the Statefiled an information charging the
Petitioner with the same.

Pursuant to the Petitioner's Conditional Plea of guilty,
Sentencing was held on December 27, 2012 at
which time the parties and the Court signed the
written Rule 11 Plea agreement. In relevant part,
the agreement called for the State to amend
the Original Charge to the Charge of domestic
battery as set forth above, and to recommend
a period of retained Jurisdiction. in exchange for
the defendant's guilty Plea to the amended Charge.
The agreement also called for the Court to bind
itself to Ordering a period of retained Jurisdiction

The agreement did not purport to bind the parties or the court with respect to sentencing recommendation of the sentence itself. Moreover, the agreement specifically stated that neither the parties nor the court would be bound to any particular course of action after the end of the period of retained jurisdiction.

The court signed the agreement on December 27, 2012 and sentenced the defendant pursuant to his guilty plea to a maximum term of twenty years in prison, with the first fifteen years fixed.

But according to the petitioner, he alleges his trial counsel Mr. Nicholas Wollen informed him that he was going to be placed on probation after when he does his ride. The petitioner completed his ride successfully. The court signed the agreement on December 27, 2012, and still sentenced the petitioner to a maximum term of twenty years in prison.

ARGUMENT

A claim of ineffective assistance of counsel may properly be brought under the Post-Conviction Procedure Act. *Murray v. State*, 121 Idaho 918, 924-25 0000138 P. 2d.

Claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *Strickland vs. Washington*, 466 U.S. 668 687 88 (1984) *Hassett v. State*, 127 Idaho 313, 316 900 P.2d 221, 224 (ct App 1995). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174 1176 (1988).

To establish prejudice, the applicant must show 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Knutson v. State*, 144 Idaho 433, 443 163 P.3d 222 232 (ct. App 2007) This court has long adhered to the proposition that tactical or strategic decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Howard v. State* 126 Idaho 231 233 880 P.2d 261, 263 (ct App. 1994).

Odle v. State of Idaho Docket No 33573
(ct App. 2008).

In this case at hand Petitioner (Brown) was informed by his trial Counsel Mr Nicholas Wollen that the plea agreement, included Probation Mr Wollen's failure to objected to the sentenced Prejudiced Petitioner. This was clearly ineffective assistance of Counsel on the part of Counsel Mr. Nicholas Wollen. The due process right to a fair trial, which protects the defendants ability to Communicate with his attorney, and understand the proceedings, assist in his defense, and meaningfully confront witness. (I see State v. Hernandez 120 Idaho 785 788 820 P2d 380, 383 (Ct App 1991)). The due process right to a fair trial also prohibits trying or Convicting a defendant while he lacks the mental capacity to understand the proceedings, to Consult with Counsel, and to assist in the preparation of his defense. See Drope vs. Missouri, 383 U.S. 162 171 95 S Ct. 896 903, 43 L Ed 2d 103 112 (1975); Pate v. Robinson, 383 U.S. 375 378 86 S Ct. 836 838 15 L Ed 2d 181 5 (1966) State v. Lovelace 140 Idaho 53 62 90 P. 3d 278 278 (2003) aff'd on reh' 9140 Idaho T3 90 P. 3d 298 (2004) The test to determine if a defendant has the mental capacity to stand trial is whether

the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether the defendant has a rational as well as factual understanding of the proceeding against him. *Dusky vs. United States* 362 U.S. 402. 80 S. Ct. 788 4 L. Ed 824 (1960) *Lovelace* 1140 Idaho at 82, 90 P. 3d at 287. See *Murillo vs. State* 1144 Idaho 449 (ct App. 2007).

Post-Conviction Procedure

The uniform Post-Conviction Procedure Act, 19-4901 - 19-4911 provides a mechanism by

which a person convicted of a crime may show that his conviction was in violation of the Constitution that the conviction should be vacated in the interest of justice or that the conviction is otherwise subject to collateral attack. As such, the act provides an appropriate mechanism for considering claim that a plea of guilty was accepted in violation of the requirements set forth in this Rule. *Nellsch vs. State* 122 Idaho 426 835 P. 2d 661 (ct App 1992).

A breach of a Plea Bargain agreements by the State affects the voluntariness of the guilty Plea and is fundamental error State v. Rutherford.

107 Idaho 910 693 P.2d 1112 (Ct App. 1985).

where the State has breached a plea bargain agreement a defendant may be entitled to specific performance of the Plea Bargain agreement, which would entail resentencing by a different district Judge or a defendant may also be permitted to withdraw his guilty Plea and go to trial on all the original Charges. State v. Rutherford 107 Idaho 910 693 P.2d 1112 (Ct App-1985).

where the nature of the plea bargain is disputed and the record on appeal does not clearly disclose the terms of the Plea Bargain, it would be appropriate for an appellate Court to remand to the district Court for an evidentiary hearing and specific findings State v. Rutherford 107 Idaho 910 693 P.2d 1112 (Ct App 1985).

In the case at hand the State Court's failure to ^{live} up to its agreement in a plea bargain was fundamental error and where such error was not harmless beyond a reasonable doubt The Petitioner (Mr. Brown) is entitled to relief.

see State v. Rutherford 107 Idaho 910 693 P.2d 1112 (Ct App 1985).

where as a result of a plea bargain defendant plea guilty and the State agreed to drop certain charges and agreed not to affirmatively recommend a life sentence, but at the sentencing hearing a different prosecutor specifically recommended a determinate life sentence and the district court sentenced defendant to an indeterminate life sentence the defendant was entitled to specific performance of his plea bargain. State v. Rutherford 107 Idaho 910, 693 P.2d 1112 (Ct App 1985).

in the case at hand (Mr Brown) alleges that his counsel Mr Nicholas Wollen was ineffective in failing to inform him of the possibility of entering into a plea agreement under this Rule(11). were it was not shown that a guilty plea was tainted by (Mr Brown) confession even if the confession was improperly obtained and guilty plea was entered about four months after the confession, when he was represented by counsel, the plea was not a conditional plea under this rule for the purpose

of preserving the right to have the adverse rulings of the District Court.

If the Court rejects the plea agreement the Court shall on the record inform the parties of this fact and advise the defendant personally in open court or on a showing of good cause in camera that the Court is not bound by the plea agreement and afford the defendant the opportunity to then withdraw the defendant's plea, and advise the defendant that if the defendant persists in the guilty plea the disposition of the case be less favorable to the defendant than that disposition by the plea agreement. In the case at hand this never happened. The Court accepted the plea agreement. But sentenced the Petitioner (Mr Brown) to a sentence which was not in the plea agreement. Counsel's failure to object to ^{the} sentence prejudiced petitioner. Mr Nicholas Wollen was ineffective for his failure to do so. To establish prejudice (Mr Brown)

MUST show a reasonable probability that but for the attorney's deficient performance, the outcome of the trial would have been different. In which has shown in this case. See Aragon, 114 Idaho at 761, 760 P.2d at 1177. A reasonable probability is a probability sufficient to undermine confidence in the outcome. also see Kuntzen vs. State. 114 Idaho 433 443, 163 P. 3d 222, 232 (ct app 2007).

MEMORANDUM OF LAW

The holding of Martinez v. Ryan, 132 S Ct. 1309 (2012) established a limited exception to the Coleman rule - that inadequate assistance of post-conviction review (PCR) Counsel or lack of Counsel" at initial review collateral review proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." Id at 1315.

The United States Supreme Court described the Martinez test as consisting of four requirements or prongs:

"We consequently read Coleman as containing an excusing a defendant's procedural default, where (1) the claim of ineffective assistance of trial counsel" was a "substantial" claim; (2) the cause consisted of there being no counsel" or only ineffective counsel during the state collateral review proceeding; (3) the state collateral review proceeding was the initial" review proceeding in respect to the ineffective assistance of trial counsel claim", and (4) state law requires that an ineffective assistance of trial counsel (claim)... be raised in an initial review collateral proceeding."

133 Sct. at 1918 (citing Martinez 132 Sct at 1318

-19, 1320-21). Thus as a necessary first prong for the Martinez exception to apply a petitioner must bring forward some facts demonstrating that his ineffective assistance of trial counsel claim is substantial. The United States Supreme Court has defined "substantial" as a claim that has some

merit."

Determining whether a Claim is Substantial requires a federal district Court to examine both prongs of an IATC Claim under Strickland vs. Washington 466 U.S. 668 (1984) deficient performance and prejudice. As to deficient performance, Strickland emphasizes that there is a strong presumption that a trial attorney performed within the wide range of professional competence; the attorney's performance will be deemed deficient only if it fell below an objective standard of reasonableness measured under prevailing professional norms Strickland 466 U.S. at 689-90.

Prejudice under Strickland means that "there is a reasonable probability that but for Counsel's unprofessional errors, the result of the proceeding would have been different". Id at 694. A reasonable probability is one "sufficient to undermine confidence in the outcome". Id. These standards from Strickland for determining deficient performance and prejudice are, of course the standards for an eventual

review of the merits ~~merits~~ merits of the IATC Claim. The first Martinez prong is not the same as a merits review but as the Martinez Court explained, it is more akin to a preliminary review of a Strickland Claim for purposes of determining whether a certificate of appealability should issue. See Martinez 132 S.Ct. at 1318-19 (Comparing Miller Elv. Cockrell, 537 U.S. 322 (2003)). Therefore a court may conclude that a claim substantial when a petitioner has shown that "resolution" of the merits of the Strickland Claim would be "debatable among jurists of reason," or that the issues presented are "adequate to deserve encouragement to proceed further." Miller-El, 537 U.S. at 336 (internal citation and punctuation omitted). Thus the first prong of Martinez requires the district court to review but not determine whether trial counsel's acts or omissions resulted in deficient performance and in a reasonable probability of prejudice, and to determine only whether resolution of the merits of the claim would be debatable among jurists of reason and whether the issues are deserving enough to encourage⁰⁰⁰⁰⁵³ further pursuit of them.

A second necessary prong of Martinez is a showing that petitioner had no counsel on initial P.C.R. review, or that P.C.R. counsel was "ineffective under the standards of Strickland." 132 S.Ct. at 1318; see Trevino, 133 S.Ct. at 1918. "Ineffectiveness" is a term defined by Strickland as deficient performance and a reasonable probability of prejudice caused by the deficient performance. 446 U.S. at 694, 700.

As to deficient performance, not just any error or omission of P.C.R. counsel will be deemed "deficient performance" that will satisfy Martinez, if the PCR attorney in the initial review collateral proceeding did not perform below constitutional standards; the PCR attorney's performance does not constitute "cause." 132 S.Ct. at 1319. The Strickland standards for analyzing deficient performance set forth above apply with equal force to P.C.R. counsel.

As to prejudice in *Detrich vs. Ryan* - F3d - 2013 WL 4712729 (9th Cir. 2013).

(en banc) (plurality opinion). a plurality of Judges concluded: "A prisoner need not show actual prejudice resulting from his PCR Counsel's deficient performance, over and above his required showing that trial Counsel IAC claim be "substantial" under the first Martinez requirement." *Id.* at *6. That set of Judges reasoned:

If a prisoner who had P.C.R. Counsel were required to show prejudice, in the ordinary Strickland sense, resulting from his P.C.R. Counsel's deficient performance in order to satisfy the second Martinez requirement, the prisoner would have to show, as a condition for excusing his procedural default of a claim.

But if a prisoner were required to show that the defaulted trial-Counsel IAC claims fully satisfied Strickland in order to satisfy the second Martinez requirement, this would render superfluous the first Martinez requirement of showing that the underlying Strickland claims were "substantial" - that is that they merely had "same merit." see Martinez 132 S.Ct. at 1318-19.

CONCLUSION

Petitioner (Rayland, Brown) requests a hearing so that he may be allowed to put on evidence in support of his allegations.

DATED this 31 day of August 2014

RAYLAND BROWN *Rayland Brown*
PETITIONER PRO SE

CERTIFICATE OF MAILING

I CERTIFY that on this 31 day of ~~August~~^{July} 2014
I caused a true and correct copy of the
foregoing PETITIONER'S BRIEF IN RESPONSE
TO THE COURT ORDER PURSUANT TO I.C. § 19-4906 (b)
To be mailed, postage and certified mail
to the following:

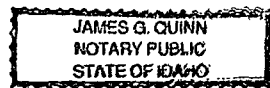
1) Christopher Rich,
Clerk of the District Court,
FOURTH DISTRICT COURT
STATE OF IDAHO
ADA COUNTY COURTHOUSE
200W FRONT STREET
BOISE IDAHO 83702

2) ADA County PROSECUTOR
INTERDEPARTMENTAL
MAIL FOURTH DISTRICT COURT
200W FRONT STREET
BOISE IDAHO 83702

AFF AVT AND PROOF OF SERVICE

Comes now Rayland, Brown, the Petitioner in the fore going matter as Captioned and Certifies under Penalty for Perjury and for False Swearing in a official Proceeding that all matters herein are true and Corret to the best of my Personal Knowledge. experience belief and recall Petitioner further affirms he has served by first Class Mail the party/parties listed in his certificate of mailing by placing these matters in the hand of prison Outhorities for that Purpase in accord with Houston vs. Lack 487 U.S. 266 108 Sct 2379 (1988). Served when so delivered. Subscribed and Sworn to before me the 31st day of ~~August~~ JULY 2014

James G. Guinn
Notary Public for IDAHO



Commission Expires 9/10/2019

RAYLAND BROWN x Rayland Brown
PETITIONER PRO SE

NO
AM ~~12:30~~ PM

AUG 26 2014

CHRISTOPHER D. RICH, Clerk
By DIANE CATMAN
Deputy

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

RAYLAND BROWN,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

Case No. CV-PC-2014-¹²⁶²⁴~~07839~~
ORDER DISMISSING PETITION
PURSUANT TO I.C. § 19-4906(b)

Currently before this Court is Petitioner's response to the Court's July 23, 2014 Notice of Intent to Dismiss the petition pursuant to § 19-4906(b), Idaho Code. Petitioner filed his response on August 4, 2014, within the twenty-day time limit provided in the notice and required by law. Accordingly, the viability of the petition is ripe for decision.

LEGAL STANDARDS

I. INEFFECTIVE ASSISTANCE OF COUNSEL. The issue of ineffective assistance of counsel is properly raised in a post-conviction setting. See *Mathews*, 839 P.2d 1215, 1219 (citing *Kraft v. State*, 100 Idaho 671, 674, 603 P.2d 1005, 1008 (1979)). To prevail on a claim of ineffective assistance, a petitioner must overcome the strong presumption that counsel's performance was adequate by demonstrating "that counsel's representation did not meet objective standards of competence." *Roman*, 125 Idaho at 648-49, 873 P.2d at 902-03.

Claims alleging ineffective assistance of counsel are evaluated under the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under this test, the

petitioner must not only demonstrate that counsel's performance was deficient, but must also show that the deficient performance was prejudicial. *Id.*, 466 U.S. at 687-88, 104 S.Ct. at 2064-65. To establish deficient performance, the applicant must prove that counsel's representation fell below an objective standard of reasonableness. *Id.* To prove prejudice, the applicant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*, at 694; *Parrott*, 117 Idaho at 274-75, 787 P.2d at 260-62. This latter "prejudice" requirement focuses on whether counsel's ineffective performance impacted the outcome of the case. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370-71 (1985); *Griffith v. State*, 121 Idaho 371, 825 P.2d 94 (Ct.App.1992). In order to avoid summary dismissal, Petitioner must allege sufficient facts under both parts of the test. *Martinez v. State*, 125 Idaho 844, 875 P.2d 941 (Ct. App. 1994). Finally, the Court notes that "[t]here is a strong presumption that trial counsel was competent and that trial tactics were based on sound legal strategy." *Dunlap v. State*, 141 Idaho 50, 58-59, 106 P.3d 376, 384-85 (2004).

BACKGROUND

This petition for post-conviction relief states a claim for ineffective assistance of counsel against Mr. Nicholas Wollen of the Ada County Public Defender's office, in connection with Mr. Wollen's representation of the petitioner in Ada County case number CR-FE-2012-0005898. In that case, on May 22, 2012, an Indictment was filed accusing Mr. Brown of the felony crime of Forcible Sexual Penetration by Use of a Foreign Object (I.C. § 18-6608). The case proceeded to trial on the indictment, but on the second day of trial (October 23, 2012), the defendant changed his plea pursuant to a proposed Rule 11 written plea agreement, and the Court (Judge Darla Williamson then presiding) accepted his conditional plea of guilty to a single count of Domestic Battery in the Presence of a Child (felony, I.C. § 18-903, 918(2), 918(4)). Consistent with the

agreement, on October 23, 2012, the state filed an Information charging the petitioner with the same.

Pursuant to the petitioner's conditional plea of guilty, sentencing was held on December 27, 2012, at which time the parties and the Court signed the written Rule 11 plea agreement. In relevant part, the agreement called for the state to amend the original charge to the charge of domestic battery as set forth above, and to recommend a period of retained jurisdiction, in exchange for the defendant's guilty plea to the amended charge. The agreement also called for the Court to bind itself to ordering a period of retained jurisdiction. The agreement did not purport to bind the parties or the Court with respect to sentencing recommendations or the sentence itself. Moreover, the agreement specifically stated that neither the parties nor the Court would be bound to any particular course of action after the end of the period of retained jurisdiction.

The Court signed the agreement on December 27, 2012, and sentenced the defendant pursuant to his guilty plea to a maximum term of twenty years in prison, with the first fifteen years fixed. In accordance with the written plea agreement, the Court retained jurisdiction. Thereafter, at a rider review hearing held on August 29, 2013, the Court relinquished jurisdiction and imposed the underlying sentence. The petitioner then filed a motion for reconsideration of sentence pursuant to Idaho Criminal Rule 35, and a direct appeal of the sentence. On November 6, 2013, the Court granted the motion for reconsideration and reduced the sentence to an aggregate term of twenty years, with the first eleven years fixed. On July 15, 2014, the Court received the remittitur of the Idaho Supreme Court following its unpublished decision affirming the Court's decision to relinquish jurisdiction and its decision with regard to the petitioner's Rule 35 motion.

For his petition, Mr. Brown claims that Mr. Wollen provided ineffective assistance of counsel because he failed to object to the sentence on the ground that the Court violated the written plea agreement. Although the petitioner did not specify the nature of the alleged breach of the agreement in his petition, in his affidavit he alleges some incongruity in the fact that he was sentenced for violation of a different section of the Idaho Code than that for which he was indicted. In his response to the Court's notice of intent to dismiss, Mr. Brown for the first time makes the specific claim that Mr. Wollen told him that as a result of the plea agreement in the criminal case, he would be placed on probation.

Thus, reading the pleadings in the light most favorable to the petitioner, the claim of ineffective assistance of counsel takes two forms: 1) Mr. Wollen provided ineffective assistance by failing to properly advise (or by affirmatively misadvising) Mr. Brown as to the terms of the plea agreement, specifically as to what would occur after the period of retained jurisdiction came to an end; and 2) Mr. Wollen provided ineffective assistance of counsel by failing to object (on the day of the rider review hearing, August 29, 2013) to a purported breach of the plea agreement by the Court, consisting of the Court's decision to relinquish jurisdiction rather than place the defendant on probation.

ANALYSIS AND CONCLUSION

In its notice of intent to dismiss, the Court reviewed the record in the underlying criminal case and concluded that the ineffective assistance of counsel claim, as originally submitted, did not justify further proceedings in light of the fact that the Court unquestionably adhered to the terms of the written plea agreement, and hence there was no basis for any objection by Mr. Wollen when the Court relinquished jurisdiction. Mr. Brown's response to the Court's notice does not address this finding, as he provided no argument or evidence showing that the Court in

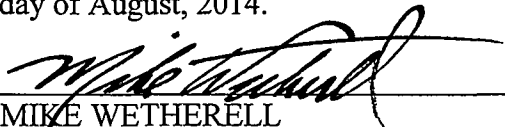
fact breached the plea agreement. Thus, the claim as originally submitted must be dismissed.

As noted above, in his responsive brief, Mr. Brown argued for the first time that Mr. Wollen informed him that “the plea agreement included Probation[.]” While the Court is sometimes required to take testimony or receive other evidence when a claim of ineffective assistance of counsel is based upon alleged statements or conduct of counsel that cannot be proved or disproved from the record, this is not such a case. Even assuming Mr. Wollen advised the petitioner at some point that he should expect to be placed on probation following his rider, any such misconception could not have survived the petitioner signing the written plea agreement filed of record on December 27, 2012, in the underlying case. Specifically, paragraph six of the agreement states “[a]t the end of the period of retained jurisdiction, each party is free to argue whether the court should exercise or relinquish jurisdiction,” and paragraph seven states “[a]t the end of the period of retained jurisdiction, the court would be free to exercise or relinquish jurisdiction in its discretion.” The Court has also reviewed the recorded audio of the change-of-plea hearing held on October 23, 2012, and would be remiss if it did not point out that the presiding Judge at that hearing, Judge Darla Williamson, specifically advised the defendant in open court concerning the purpose and particulars of the retained jurisdiction program, and (most importantly) advised him that the plea agreement did not guarantee him probation. Mr. Brown acknowledged his understanding of these particular facts in open court on that date, and the plea agreement he later signed is fully consistent with Judge Williamson’s characterization of the agreement, as well as the characterization of the agreement put forth by both counsel.

In short, even assuming that at some point Mr. Wollen was professionally negligent by advising Mr. Brown that the plea agreement would or did contain a guarantee of probation, Mr. Brown could not (even with the assistance of counsel) show the required prejudice under

Strickland where he was advised to the contrary in open court on October 23, 2012, and when he signed a written Rule 11 plea agreement containing terms explicitly leaving the issue of probation to the discretion of this Court. For this reason, the Court is satisfied that the petitioner is not entitled to post-conviction relief and no purpose would be served by any further proceedings. I.C. § 19-4906(b). Accordingly, the petition is **DISMISSED**. The Court will enter a separate, final judgment reflecting this result.

SO ORDERED AND DATED this 26th day of August, 2014.


MIKE WETHERELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this ___ day of August, 2014,

I mailed(served) a true and correct copy of the within
instrument to:

RAYLAND BROWN
IDOC NO. 105964
PO BOX 70010
BOISE, ID 83707

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

Christopher Rich
Clerk of the District Court

By _____
Deputy Court Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 27 day of August, 2014,

I mailed(served) a true and correct copy of the within
instrument to:

RAYLAND BROWN
IDOC NO. 105964
PO BOX 70010
BOISE, ID 83707

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

Christopher Rich
Clerk of the District Court

By 
Deputy Court Clerk

AUG 26 2014

CHRISTOPHER D. RICH, Clerk
By DIANE OATMAN
Deputy

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

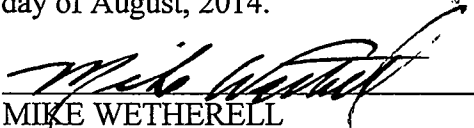
RAYLAND BROWN,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

12624
Case No. CV-PC-2014-07839
JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1) The petition is dismissed in its entirety with prejudice.

SO ORDERED AND DATED this 26th day of August, 2014.



MIKE WETHERELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 27 day of August, 2014,

I mailed(served) a true and correct copy of the within
instrument to:

RAYLAND BROWN
IDOC NO. 105964
PO BOX 70010
BOISE, ID 83707

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

Christopher Rich
Clerk of the District Court

By 
Deputy Court Clerk

NO. 11 FILED _____
A.M. _____ P.M. _____

SEP 10 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Inmate Name RAYLAND BROWN
IDOC No 105964 - ISCC
Address C-P.O. 1148 P.O. BOX
70010 Boise ID 83701

Appellant

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

RAYLAND BROWN,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)

CASE NO. CN-PC-2014-12624-07839
S.C. DOCKET NO. _____
NOTICE OF APPEAL
Post Conviction

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, STATE OF IDAHO, PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

- The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the entered in the above-entitled action on the August 26, 2014 (DATE), the Honorable MIKE WETHERILL (NAME OF JUDGE) presiding.
- That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(1-10), I.A.R.
- A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in dismissing the appellant's Petition for Post Conviction Relief?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portions of the reporter's transcript:

(a) The Status Hearing held on N/A (DATE OF HEARING); and

(b) The Evidentiary Hearing held on N/A (DATE OF HEARING).

6. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

(a) Any briefs or memorandums, filed or lodged, by the state, the appellate, or the court in support of, or in opposition to, the dismissal of the Post Conviction Petition;

(b) Any motions or responses, including all attachments, affidavits or copies of transcripts, filed or lodged by the state, appellant or the court in support of, or in opposition to, the dismissal of the Post Conviction Petition; and

(c) (ANY ITEMS FROM THE UNDERLYING CRIMINAL CASE OF WHICH THE COURT TAKES JUDICIAL NOTICE NOTE: UNLESS SPECIFICALLY ASKED FOR, THE PORTIONS OF THE UNDERLYING RECORD WHICH THE DISTRICT COURT TOOK JUDICIAL NOTICE OF WON'T BE INCLUDED IN THE RECORD.)

(1) Whether the district court erred in dismissing Mr Brown's claim of ineffective assistance of counsel (2) whether Mr Brown's fourteenth Amendment to the united states Constitution was violated by denying him his due process

7. I certify:

- (a) That a copy of this Notice of Appeal has been served on the reporter;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Ada (NAME OF COUNTY) County who will be responsible for paying for the reporter's transcript, as the client is indigent, Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e);
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 5 day of SEPT, 2014.

RAYLAND BROWN
Appellant

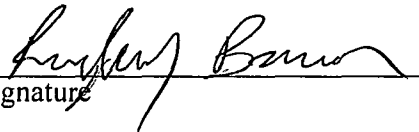
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5 day of Sept, 2014, I mailed a true and correct copy of the attached NOTICE OF APPEAL via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

**Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010**

Ada County Prosecuting Attorney

ADA COUNTY COURT HOUSE 200 W
FRONT STREET BOISE IDAHO 83702


Signature

NO. 11 FILED
A.M. _____ P.M. _____

SEP 10 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

RAYLAND BROWN.
Full Name of Party Filing Document
105964 ISCC - C.Pod 114B -
Mailing Address (Street or Post Office Box)
P.O. Box 70010 Boise
City, State and Zip Code
IDAHO 83707
Telephone

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

BAYLAND BROWN
Plaintiff,
vs.
STATE OF IDAHO
Defendant.

Case No. CV-PC-2014-12624-87839

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

Plaintiff Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) NOTICE OF APPEAL - Post conviction. I believe I am entitled to get what I am asking for.

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

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

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

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

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

IDENTIFICATION AND RESIDENCE:

Name: RAYLAND BROWN Other name(s) I have used: N/A

Address: ISCC - C-Pod - 114B P.O. Box 70010 Boise ID 83707

How long at that address? TA LEAST TWO YEARS Phone: N/A

Year and place of birth: _____

DEPENDENTS:

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

Name of spouse: N/A

My other dependents including minor children (use only initials and age to identify children) are: N/A

INCOME:

Amount of my income: \$ N/A per week month

Other than my inmate account I have outside money from: _____

My spouse's income: \$ N/A per week month.

ASSETS:

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

Your Address	City	State	Legal Description	Value	Equity
<u>N/A</u>				<u>N/A</u>	

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

Description (provide description for each item)	Value
Cash _____	<u>N/A</u>
Notes and Receivables _____	<u>N/A</u>
Vehicles _____	<u>N/A</u>
Bank/Credit Union/Savings/Checking Accounts _____	<u>N/A</u>
Stocks/Bonds/Investments/Certificates of Deposit _____	<u>N/A</u>
Trust Funds _____	<u>N/A</u>
Retirement Accounts/IRAs/401(k)s _____	<u>N/A</u>
Cash Value Insurance _____	<u>N/A</u>
Motorcycles/Boats/RVs/Snowmobiles _____	<u>N/A</u>
Furniture/Appliances _____	<u>N/A</u>
Jewelry/Antiques/Collectibles _____	<u>N/A</u>
Description (provide description for each item)	
TVs/Stereos/Computers/Electronics _____	<u>N/A</u>
Tools/Equipment _____	<u>N/A</u>
Sporting Goods/Guns _____	<u>N/A</u>
Horses/Livestock/Tack _____	<u>N/A</u>

Other (describe) _____

N/A
N/A
N/A

EXPENSES: (List all of your monthly expenses.)

Expense

**Average
Monthly Payment**

Rent/House Payment _____

N/A

Vehicle Payment(s) _____

N/A

Credit Cards (List last four digits of each account number.)

N/A

N/A

N/A

Loans (name of lender and reason for loan)

N/A

N/A

Electricity/Natural Gas _____

N/A

Water/Sewer/Trash _____

N/A

Phone _____

N/A

Groceries _____

N/A

Clothing _____

N/A

Auto Fuel _____

N/A

Auto Maintenance _____

N/A

Cosmetics/Haircuts/Salons _____

N/A

Entertainment/Books/Magazines _____

N/A

Home Insurance _____

N/A

Expense	Average Monthly Payment
Auto Insurance _____	<u>N/A</u>
Life Insurance _____	<u>N/A</u>
Medical Insurance _____	<u>N/A</u>
Medical Expense _____	<u>N/A</u>
Other _____	<u>N/A</u>
_____	<u>N/A</u>

MISCELLANEOUS:

How much can you borrow? \$ N/A From whom? N/A
 When did you file your last income tax return? N/A Amount of refund: \$ N/A

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

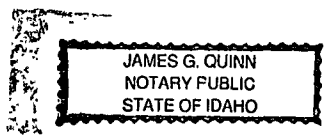
Name	Address	Phone	Years Known
_____	_____	_____	_____

RAYLAND BROWN
 Typed/printed

Rayland Brown
 Signature

STATE OF IDAHO)
) ss.
 County of ADA)

SUBSCRIBED AND SWORN before me on this 05 day of September, 2014



James G. Quinn
 Notary Public for Idaho
 Residing at N/A
 Commission expires 9/10/2019

RECEIVED

SEP 10 2014

Ada County Clerk

Inmate name RAYLAND BROWN
IDOC No. 105964 ISCC - C-Pod 114B
Address P.O. Box 70010
Boise ID 83707

Defendant-Appellant

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

RAYLAND BROWN,)
)
Petitioner-Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent)

NO. 11
FILED
A.M. PM

SEP 10 2014

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

12624

Case No. CV-PC-2014-01839

MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL

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

1. Petitioner-Appellant is currently incarcerated within the Idaho Department of
Corrections under the direct care, custody and control of Warden RANDY BLADES,
of the ISCC / IDOC.

2. The issues to be presented in this case may become to complex for the Petitioner-
Appellant to properly pursue. Petitioner-Appellant lacks the knowledge and skill needed to
represent him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/17/05

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

4. Other: I am untrained in law and Paralegal work.

DATED this 5 day of Sept, 2014.

RAYLAND BROWN
Petitioner-Appellant

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

RAYLAND BROWN, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the ISCC,
under the care, custody and control of Warden RANDY BLADES;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;

7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

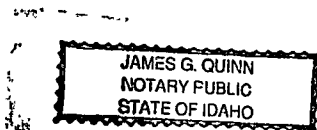
WHEREFORE, Petitioner-Appellant respectfully prays that this Honorable Court issue it's Order granting Petitioner-Appellant's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Petitioner-Appellant is entitled to.

DATED This 5 day of SEPT, 2014.

RAYLAND BROWN
Petitioner-Appellant

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 5TH day
of September, 2014.

(SEAL)



James G. Quinn
Notary Public for Idaho
Commission expires: 9/10/2019

CERTIFICATE OF MAILING RB

I HEREBY CERTIFY that on the 5 day of 2 Sept, 2014, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010

Ada County Prosecuting Attorney

ADA COUNTY COURT HOUSE 200W FRONT

STREET BOISE IDAHO 83702

RAYLAND BROWN
Petitioner-Appellant

NO. 9700 FILED
A.M. 9:00 P.M.

SEP 12 2014

CHRISTOPHER D. RICH, Clerk
BY: DEBBIE OATMAN
Deputy

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

RAYLAND BROWN,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

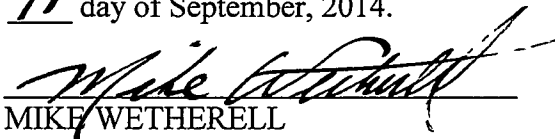
Case No. CV-PC-2014-12624
ORDER APPOINTING STATE
APPELLATE PUBLIC DEFENDER

Presently before the Court is Mr. Brown's Motion for Appointment of Counsel, filed on September 10, 2014. The purpose of the application is to assist the petitioner with his appeal of the Court's prior Order for Dismissal and corresponding Final Judgment dismissing his petition.

An indigent defendant has a right to counsel at every stage of the criminal proceeding, including any appeal, and also including any post-conviction proceeding satisfying the requirements of section 19-852(2), Idaho Code. Moreover, the court may appoint counsel at public expense where a defendant is unable to afford one. I.C. §19-852(2), I.C. §19-851(4). The petitioner is incarcerated, and the Court finds him to be indigent. The Court further finds that Mr. Brown's undertaking is not obviously frivolous and that he otherwise qualifies for representation at public expense. Accordingly, his motion for appointment of appellate counsel is hereby **GRANTED**. The State Appellate Public Defender is appointed to represent the

petitioner in his appeal.

SO ORDERED AND DATED this 15th day of September, 2014.


MIKE WETHERELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of September, 2014,
I mailed(served) a true and correct copy of the within
instrument to:

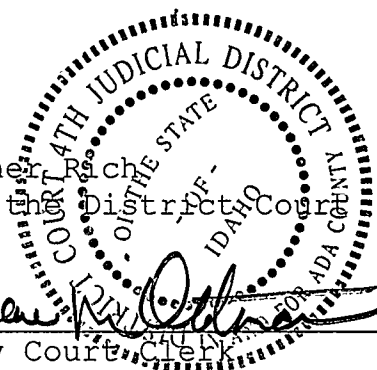
RAYLAND BROWN
IDOC # 105964
ISCC C-POD 114B
PO BOX 70010
BOISE, ID 83707

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

STATE APPELLATE PUBLIC DEFENDER
FAX: 334-2985

Christopher Rich
Clerk of the District Court

By 
Deputy Court Clerk



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

RAYLAND BROWN,

Petitioner-Appellant,
vs.
STATE OF IDAHO,

Respondent.

Supreme Court Case No. 42511

CERTIFICATE OF EXHIBITS

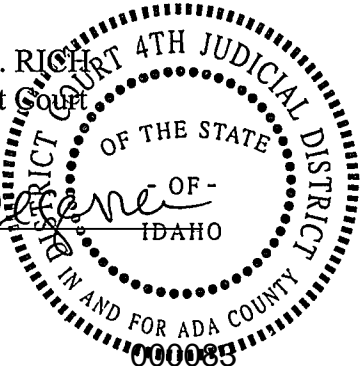
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10th day of October, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By *KW Jaganer*
Deputy Clerk



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

RAYLAND BROWN,

Petitioner-Appellant,
vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 42511

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

LAWRENCE G. WASEN

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

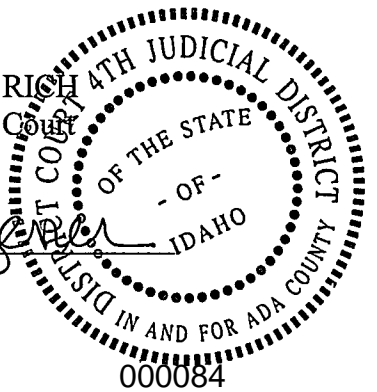
BOISE, IDAHO

BOISE, IDAHO

Date of Service: JUL 10 2014

CHRISTOPHER D. RICH
Clerk of the District Court

By *LW Wase*
Deputy Clerk



CERTIFICATE OF SERVICE

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

RAYLAND BROWN,

Petitioner-Appellant,
vs.
STATE OF IDAHO,

Respondent.

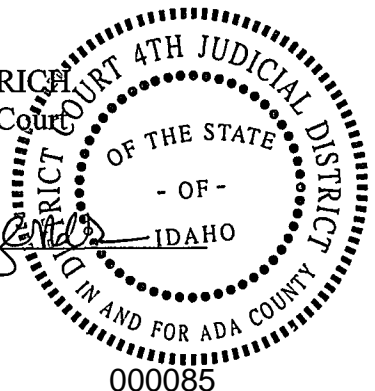
Supreme Court Case No. 42511
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 10th day of September, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By *KW*
Deputy Clerk



CERTIFICATE TO RECORD