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IN THE SUPREME COURT OF THE STATE OF IDAHO

JUAN JIMENEZ,

Petitioner- Appellant.

vs.

STATE OF IDAHO,

Respondent,

Supreme Court No. 46211-2018

Twin Falls County No. CV42-16-0287

OPENING BRIEF OF APPELLANT JUAN JIMENEZ

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS

HONORABLE BENJAMIN J. CLUFF
District Judge

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II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the district court's judgment denying Appellant Juan Robert Jimenez's petition for post-conviction relief following an evidentiary hearing.

B. General Course of Proceedings

1. Underlying criminal proceedings in district court

Juan Robert ("Robert"), Jorge and Jose were brothers. Robert and Jose had a tumultuous relationship in which they disagreed about money and Robert's romantic relationship with Jose (the third brother's) ex-girlfriend. *See* Trial Transcript,¹ p. 185, ln.12-25; p. 186, ln. 3-21. On February 9, 2013, Jorge became increasingly aggressive and threatened Robert's girlfriend, her children and Robert in a voicemail left on the girlfriend's phone. *See id.* at p. 334, ln.3-11. After several heated telephone conversations, Jorge told Robert he was coming over to Robert's house and, fearing for his safety, Robert secured a gun from a friend. *State v. Jimenez*, 159 Idaho 466, 468, 362 P.3d 541, 543 (Ct. App. 2015).

Jorge parked his car in front of Robert's house, exited and walked around the vehicle's rear, advancing toward Robert while aiming a gun at his head and verbally threatening him.

Jimenez, 159 Idaho at 468, 362 P.3d at 544; Trial Transcript, p. 450, ln.2 - p. 453, ln. 12.

Robert told Jorge to lower his gun and fired two warning shots at the ground after Jorge failed to comply. *Jimenez*, 159 Idaho at 468, 362 P.3d at 544. Jorge continued to advance as Robert

¹ The transcript prepared in Robert's direct appeal (herein "Trial Transcript"), Docket Number 42155, was admitted as Exhibit 1 in the evidentiary hearing held on Robert's post-conviction relief application.

pleaded with him to put the gun down and, as Jorge raised the raised his gun towards Robert's head, Robert fired at Jorge's legs. Trial Transcript, p. 450, ln.15-24. As Robert called 911, Jorge went to the driver's side of his vehicle and entered and started the vehicle. Trial Transcript, p. 460, ln.7-9. Shortly thereafter, Jorge turned off the ignition, walked to the back and sat on the tailgate of the vehicle. Trial Transcript, p. 460, ln.12-15.

However, Jorge claimed that he had no weapons on his person but that he kept a hand gun in the center console of his vehicle, along with his concealed weapons permit. *See* Plaintiff's Exhibit 33, D71; Trial Transcript, p. 170, ln. 3-13. Jorge told the responding officer that he walked to the front of his vehicle to retrieve his cellphone after he was shot. Trial Transcript, p. 174, ln. 20-23.

As one officer detained Robert at gunpoint and the other demanded to know what occurred, Robert advised his brother had been shot by an unknown assailant in a black hoodie and black pants who had run from the are. Ex 33, D73,75 D. 73. Robert denied Jorge's claim that he had shot him and the officer advised Robert of his rights under *Miranda* and placed him in the back of the patrol vehicle. Robert was charged with aggravated battery enhanced with the use of a firearm in its commission, Idaho Code §§ 18-903, 18-908, 19-2520, and with unlawful possession of a firearm with a persistent violator sentence enhancement, I.C. §§ 18-3316, 19-2514. *Jimenez*, 159 Idaho at 468-69, 362 P.3d at 543-44.

During trial, Jorge claimed that he was neither angry nor arguing with Robert at the time of the shooting, denied threatening Robert on the phone and claimed Robert started firing at him with no exchange of words. Trial Transcript, p. 164, ln.11-12; p. 169, ln.13-14; p. 171, ln.16-19;

p. 198, ln. 20-21; p. 199, ln.10-20; p. 201, ln.1-2; p. 202, ln.1-13; p. 204, ln. 22-23. Although Jorge admitted arguing with Robert to the EMT and the emergency room physician, trial counsel failed to refute Jorge's testimony that he was not angry or that he and Petitioner were not arguing prior to the shooting. Exhibits 2, 6 and 7. Counsel also failed to impeach Jorge's claim he was unarmed at the time of the shooting and always carried the handgun in vehicle pursuant to his concealed weapons permit with evidence the officers found not evidence of any such permit. However, Mr. Alvarado testified that he was not armed at the time of the shooting. Trial Transcript, p. 169, ln.23 - p.170, ln.2; Exhibit 33, D70.

Robert was arrested on an unrelated incident the evening and appeared for the second day of trial in custody and with neither sleep nor his medication. Trial Transcript, p. 238, ln. 5-20; p. 239, ln.3-6; *see also* R. 524. The jail refused to administer the narcotic pain and anti-anxiety medication Robert had been prescribed for over a year and, by his testimony on the third day of trial, Robert was experiencing withdrawal including blurred vision, head and back ache, and difficulty focusing. Trial Transcript, p. 543, ln.25 – p.544, ln. 24. Finally, after he had testified and been subject to cross-examination, Robert was given medication. Exhibit 15. The jury found Robert guilty.

The district court sentenced Robert to a unified sentence of twenty-eight years with eight years determinate on the aggravated battery conviction and a concurrent sentence of five years determinate for the unlawful possession of a firearm conviction. *Jimenez*, 159 Idaho at 469, 362 P.3d at 544. On direct appeal, Robert argued that the district court committed fundamental error by providing an erroneous self-defense jury instruction; that the prosecutor's misconduct during

closing arguments constituted fundamental error; that the district court abused its discretion in denying his motion for a new trial; and that the district court abused its sentencing discretion.

Jimenez, 159 Idaho at 469, 362 P.3d at 544. The Court of Appeals affirmed. *Id.* at 475, 362 P.3d at 550.

2. Post-conviction relief proceedings

On January 7, 2016, Robert initiated the instant post-conviction relief proceedings; claiming ineffective assistance of counsel due to counsel's failure to object or otherwise prevent the medication situation from violating his fundamental right to testify on his own behalf. R. 10; 117. Robert also alleged trial counsel was ineffective for failing to move to suppress his statements to officers while held at gunpoint, counsel's failure to provide the discovery materials to Robert or to use the information contained therein during trial, representing Robert while operating under a conflict of interest. R 109-125. Robert also alleged that he was entitled to post-conviction relief based on newly discovered evidence — psychological examinations — which should have presented mitigation evidence at his sentencing. R. 125.

The matter proceeded to an evidentiary hearing and Robert supported his petition with the underlying trial transcript, discovery and multiple exhibits. The district court denied Robert's petition following an evidentiary hearing. R. 517-551. Robert moved to reconsider, which the district court also denied. R. 557-64, 575-77. This appeal follows.

III. ISSUES PRESENTED ON APPEAL

1. Did the district court err in denying Mr. Jimenez's petition for post-conviction relief because he established that he received ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments?
2. Did the district court err in denying Mr. Jimenez's petition for post-conviction relief because he established that newly discovered evidence entitled him to post-conviction relief?

IV. ARGUMENT

A. Standard of Review

A petition for post-conviction relief initiates a civil proceeding in which the petitioner must prove the allegations in his petition by a preponderance of evidence. I.C. § 19-4907; *Rhoades v. State*, 148 Idaho 247, 249, 220 P.3d 1066, 1068 (2009); *Keserovic v. State*, 158 Idaho 234, 238, 345 P.3d 1024, 1028 (Ct. App. 2015). When reviewing a district court's decision deny a petition for post-conviction relief following an evidentiary hearing, this Court will disturb the district court's factual findings when they are clearly erroneous. I.R.C.P. 52(a); *Wurdemann v. State*, 161 Idaho 713, 717, 390 P.3d 439, 443 (2017); *Booth v. State*, 151 Idaho 612, 617, 262 P.3d 255, 260 (2011); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct. App. 1992). Ineffective assistance of counsel presents a mixed question of law and fact in which this Court defers to the district court's factual findings if supported by substantial evidence and exercises free review over the application of the relevant law to those facts. *Wurdemann*, 161 Idaho at 717, 390 P.3d at 443; *Booth*, 151 Idaho at 617, 262 P.3d at 260.

B. Robert Established that He Received Ineffective Assistance of Counsel

The Sixth Amendment guarantees the right to effective assistance of counsel at all critical stages of criminal prosecutions. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Ineffective assistance of counsel requires a finding that (1) the attorney's performance was deficient and (2) the defendant was prejudiced by the deficiency. *Icanovic v. State*, 159 Idaho 524, 529, 363 P.3d 365, 370 (2015); *Wurdemann*, 161 Idaho at 717, 390 P.3d at 443. A post-conviction applicant establishes that his attorney provided deficient performance by proving the representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688; *Wurdemann*, 161 Idaho at 717, 390 P.3d at 443; *McKay v. State*, 148 Idaho 567, 570, 225 P.3d 700, 703 (2010).

Although the post-conviction applicant faces a strong presumption that counsel was competent and diligent in his or her representation of the defendant, counsel's "strategic and tactical decisions" justify relief when the decision resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review. *McKay v. State*, 148 Idaho 567, 570, 225 P.3d 700, 703 (2010); *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008). Ultimately, courts evaluate attorney performance under an objective reasonableness standard under prevailing professional norms. *Wurdemann*, 161 Idaho at 717, 390 P.3d at 443; *State v. Mathews*, 133 Idaho 300, 306, 986 P.2d 323, 329 (1999).

To demonstrate prejudice, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome. The likelihood of a different result must be substantial, not just conceivable."

Harrington v. Richter, 562 U.S. 86, 112 (2011). *State v. Abdullah*, 158 Idaho 386, 418, 348 P.3d 1, 33 (2015)

1. Counsel’s ineffective assistance prejudiced Robert’s fundamental right to testify in his own defense under the Sixth and Fourteenth Amendments to the United States Constitution

The evening of the first day of trial, Robert was pepper-sprayed and arrested on an unrelated incident. Trial Transcript, p. 238, ln. 5-20; p. 239, ln.3-6. The following morning, Robert appeared in court with neither sleep nor his medication. Trial Transcript, p. 238, ln. 5-20; p. 239, ln.3-6; *see also* R. 524. By the third day of trial, the jail had still refused to administer Robert’s pain and anti-anxiety medication and he was suffering acute withdrawal. After the lunch recess, trial counsel requested that the district allow Robert to take some of his medication, stating: “Mr. Jimenez has indicated to me, Your Honor, that with regard to the med issue, the medicine issue, he’s asking him to be allowed to take the methadone, the half of methadone that he took yesterday. He’s starting to lose balance. It’s impacting his ability to testify.” Trial Transcript, p. 530, ln. 6-11. Robert addressed the Court: “Your Honor, I’ve tried to avoid it all morning long. I’ve gone all morning avoiding it. I wouldn’t be asking. I know it’s a problem.” Trial Transcript, p. 531, ln.16-19. The district court determined it would conclude Robert’s testimony before allowing Robert to be seen by the jail’s medical staff to determine if the medication could be administered. Trial Transcript, p. 531, ln.20-24.

After Robert testified, the district court excused the jury and made the following record:

I am well aware that Mr. Jimenez has had medication, that he has been prescribed medication. I’m well aware that he is in custody and has been in custody since Tuesday night as a result of the new charges that we are all aware of. I have observed him testify

on the stand. I will -- I do conclude that he is experiencing some level of pain 'cause I can see it in his face from time to time, but with regard to the last testimony that just occurred, I do not find any significant change in his demeanor or his ability to think or answer [the prosecutor's] questions beyond that which was-- he was experiencing throughout the rest of his testimony.

Trial Transcript, p. 535, ln. 8-18. The district court called the jail nursing director as a witness and the following exchange occurred:

- Q: Okay. Is the jail currently prescribing or giving to him any medication?
A: Yes.
Q: What type of medication?
A: We are at this time giving him a blood medication and also a medication for his diabetes.
...
Q: Okay. Are you aware that he has been prescribed any other medication?
A: No.
Q: Has anybody tendered to the jail or brought to the jail either methadone, oxycodone, or any other type of drug, requesting that he be given that medication?
A: Yes. His girlfriend or someone had been contacting Dick's Pharmacy.
...
Q: Are you familiar with those three medications?
A: Yes.
Q: And do any of those medications cause -- what's the purpose of those medications, as far as you know, for this defendant? Pain control?
A: They're narcotic medications. Methadone is used for pain control. The other, oxycodone, is used for pain control, and alprazolam is used for anxiety.
Q: And given the prescribed doses, if you know this, if you don't, then please tell me, are those prescribed doses, if given to the defendant in this case, likely to affect his concentration or ability to participate in this trial?
A: I'm not a physician, but I -- so it would just be my opinion.
Q: And what would that opinion be?
A: That it would affect him.

Trial Transcript, p. 539, ln.11 - p. 540, ln.2. Robert testified:

I've been on the medicine for a long time. I've been on it for a long, long time, and over two years. I've been on the methadone for over a year. I've been on oxycodone for over

three years. I was -- I'm the one that asked to be taken off the oxycodone, I used to be on another one. I asked to be taken off it because I didn't like the way it was making me feel, and I stopped taking the methadone after a while. I thought I was better, I thought it was something that would go away. When I stopped, I ended up going into a seizure and ended up going back into the hospital. I was then informed by the doctor that I can't stop it right away, that's why I kept getting sick. You can't stop it right away. Everything's been blurry. I can hold it, but barely. The ground feels like it's going to fall. I'll try to hold out for the sake of the jury and my family sitting behind me, but everything is getting blurry, my head's starting to get really bad. My back's been hurting me since this morning . . . It's getting to where I'm having a hard time focusing, and I've been trying to avoid -- I've been trying all day, all day yesterday. And it's something that you're not -- you can't just stop. You have to be tapered off it.

Trial Transcript, p. 543, ln.25 – p.544, ln.24. Shortly thereafter, the Court was informed by the bailiff that Petitioner's medication was available, to which the Court responded, "Well, then, that solves the problem." Trial Transcript, p. 547, ln.13-16.

A criminal defendant's right to testify in his own behalf, which is even more fundamental than the right to self-representation, stems from his rights to call favorable witnesses as protected under the Sixth Amendment's Compulsory Process Clause and his opportunity to be heard in his own defense as protected by the Due Process Clause of the Fourteenth Amendment requirement that a criminal defendant be given an and logically includes the right of an accused, under the Sixth Amendment's Compulsory Process Clause, to call favorable witnesses. *Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987); *United States v. Ferrarini*, 219 F.3d 145, 152 (2d Cir. 2000); *see also State v. Fields*, 127 Idaho 904, 912, 908 P.2d 1211, 1219 (1995); *DeRushe v. State*, 146 Idaho 599, 603-04, 200 P.3d 1148, 1152-53 (2009); *Kuehl v. State*, 145 Idaho 607, 611, 181 P.3d 533, 537 (Ct. App. 2008). The right to testify on his own behalf is even more fundamental than the right to self-representation. *Rock*, 483 U.S. at 51-52; *Ferrarini*, 219 F.3d at 152.

Here, despite opiate withdrawal and pain, trial counsel failed to seek a continuance, mistrial or otherwise address the violation to Robert's fundamental right to testify. In concluding trial counsel was not ineffective, the district court focused on trial counsel's claim Robert did not complain to him and that he seemed able to assist in his own defense. R. 526. The district court noted Robert was "coherent" and wrote notes to trial counsel without problem.

However, the rights to testify, to be present, and to assist in the preparation of one's defense have separate and distinct sources, scopes and purposes and the fact that a defendant has the physical capacity to be present at trial and to assist his defense counsel does not necessarily mean that he is also capable of testifying. *Ferrarini*, 219 F.3d at 152. The right to testify stems from the due process requirement that a criminal defendant be given an opportunity to be heard in his defense and logically includes the right of an accused, under the Sixth Amendment's Compulsory Process Clause, to call favorable witnesses. *Rock*, 483 U.S. at 51-52; *Ferrarini*, 219 F.3d at 152. Conversely, the constitutional right to be present at trial is more circumscribed and obtains only to the extent that a fair and just hearing would be thwarted by the defendant's absence. *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987); *Ferrarini*, 219 F.3d at 152. Although the privilege of presence is not guaranteed when presence would be useless, or the benefit but a shadow but there is no similar limitation on the right to testify, that is, a criminal defendant enjoys the constitutional right to testify even when to do so would not be useful. *Ferrarini*, 219 F.3d at 152. The district court's generic conclusion that the defendant is physically able to proceed to trial cannot satisfy the obligation to find whether the defendant had the capacity to testify. *Ferrarini*, 219 F.3d at 152.

Robert was suffering opiate withdrawal during his testimony in a trial that hinged on the jury's determination whether he or his brother were telling the truth. Regardless of whether Robert was seemingly coherent and able to pass notes, his condition certainly effected his testimony in ways that cannot be quantified. Moreover, the condition was easily remedied by insisting the trial be continued until Robert's medical condition was addressed. Indeed, the solution was eventually implemented, too late to save Robert's chance to make impress with the jury. The district court erred in denying Robert's petition for post-conviction relief.

2. Counsel provided ineffective assistance by failing to file a motion to suppress

A critical inquiry in determining whether counsel provided ineffective assistance for failing to file a motion is whether the motion, if filed, should have been granted. *Wurdemann*, 161 Idaho at 717–18, 390 P.3d at 443–44; *State v. Dunlap*, 155 Idaho 345, 385, 313 P.3d 1, 41 (2013); *Hollon v. State*, 132 Idaho 573, 579, 976 P.2d 927, 933 (1999). Once the court determines a motion should have been granted, the petitioner must show the decision not to file the meritorious motion was within the wide range of permissible discretion and trial strategy. *Wurdemann*, 161 Idaho at 717–18, 390 P.3d at 443–44.

Here, counsel failed to move to suppress Robert's statements taken during police questioning at gunpoint. Miranda rights arise when the interviewee is subjected to custodial interrogation. *State v. Medrano*, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992). "Custody" refers to a situation where a person's freedom of action is curtailed to a degree associated with formal arrest. *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984); *State v. Myers*,

118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990). Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly in those types of situations in which the concerns that powered the decision are implicated. *Howes v. Fields*, 565 U.S. 499, 514 (2012)

Here, trial counsel testified that he did not file a motion to suppress because the officer's testimony conflicted as to whether "the defendant was under custodial arrest for purposes of *Miranda*, or whether the defendant was simply being detained for investigative purposes." R. 540. The district court concurred, concluding a motion would not have been successful because Robert was "lawfully" detained. R. 542.

However, the "determination of custody depends on the *objective* circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994) (emphasis added). To determine whether a suspect is in custody, the relevant inquiry is how a reasonable person in the suspect's position would have understood his or her situation. *Berkemer*, 468 U.S. at 442; *Myers*, 118 Idaho at 611, 798 P.2d at 456. The United States Supreme Court has stated that relevant factors include the following: "the location, timing, and length of the interview, the nature and tone of the questioning, whether the defendant came to the place of questioning voluntarily, the use of physical contact or physical restraint, and the demeanor of all of the key players, both during the interview and in any proceedings held in court." *Thompson v. Keohane*, 516 U.S. 99, 118 (1995); *State v. Hamlin*, 156 Idaho 307, 313, 324 P.3d 1006, 1012 (Ct. App. 2014); *Berkemer*, 468 U.S. at 440.

Whether the officers believed Robert was subject to custodial interrogation was irrelevant and trial counsel's decision to not file a motion based on a misunderstanding of the law was objectively unreasonable. Moreover, held at gunpoint, Robert's freedom of movement was curtailed to a degree associated with formal arrest and a motion to suppress should have been granted. Regardless of whether Robert made a similar statement to a 911 operator, his statement to law enforcement undoubtedly impacted the jury in a case that turned entirely on Robert's credibility.

3. Trial counsel's failure to adequately cross-examine Jorge and otherwise present impeaching evidence could not be considered sound strategic decisions and individually and cumulatively prejudiced the result

Trial counsel failed to adequately cross-examine Jorge regarding statements he made concerning the argument; Jorge's inconsistent statements about who shot him; and (3) that he lied about having a concealed weapon's permit. R. 532-33. Trial counsel had varying rationales for failing to introduce such evidence, including that the "primary defense" was not what Jorge said but whether he exited his vehicle with his gun drawn. *id.* R. 534-35. In his closing argument, Robert detailed each short-coming, how it was objectively unreasonable and impacted the outcome. R. 482-488. The district court did not individually consider these arguments but simply rubber-stamped counsel's explanations as untouchably "strategic."

However, state courts are not to indulge post hoc rationalization for counsel's decision-making that contradicts the available evidence of counsel's actions. *Richter*, 562 U.S. at 109; *Wiggins v. Smith*, 539 U.S. 510, 526-27 (2003). For the reasons argued to the district court, trial

counsel's decisions revealed shortcomings capable of an objective evaluation and objectively unreasonable.

Moreover, even if these shortcomings or the prejudice from the ineffective assistance of counsel discussed above were not individually prejudicial, they combined to deprive Robert of his constitutional right to a fair trial. Under the cumulative error doctrine, an accumulation of irregularities, each of which might be harmless in itself, may in the aggregate reveal the absence of a fair trial in contravention of the defendant's right to due process. *State v. Abdullah*, 158 Idaho 386, 449, 348 P.3d 1, 64 (2015); *Adams v. State*, 161 Idaho 485, 500, 387 P.3d 153, 168 (Ct. App. 2016); *Stevens v. State*, 156 Idaho 396, 421, 327 P.3d 372, 397 (Ct. App. 2013), *disapproved in later proceedings sub nom. Stevens v. Carlin*, 286 F. Supp. 3d 1092 (D. Idaho 2018).

No reasonable trial strategy could explain trial counsel's failure to cross-examine Jorge on critical issues at trial where the entire defense rested on his claim of self-defense. Trial counsel was deficient by failing to raise the key issues to support Robert's defense and such deficiency individually and cumulatively prejudiced Robert.

C. Newly Discovered Mitigating Evidence

Section 19-4901(a)(4) provides for post-conviction relief where the applicant demonstrates that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice. This provision does not afford an opportunity for resentencing based upon changes in the offender's character, health, or mental condition occurring after the pronouncement of sentence which may, in hindsight, make

the sentence appear more lengthy than necessary. *Knutsen v. State*, 144 Idaho 433, 441, 163 P.3d 222, 230 (Ct. App. 2007); *Bure v. State*, 126 Idaho 253, 254, 880 P.2d 1241, 1242 (Ct. App. 1994). An applicant must present evidence of facts that existed at the time of sentencing that would have been relevant to the sentencing process and that indicate the information available to the parties or the trial court at the time of sentencing was false, incomplete, or otherwise materially misleading. *Bure*, 126 Idaho at 254–55, 880 P.2d at 1242–43; *See also Vick v. State*, 131 Idaho 121, 125, 952 P.2d 1257, 1261 (Ct. App. 1998); *Knutsen*, 144 Idaho 433, 440, 163 P.3d at 229.

At the time of sentencing, the only documentation regarding Robert’s mental health status was contained within one paragraph of a one-page letter from the Idaho Department of Health and Welfare. R. 481. Shortly after sentencing, a neuropsychological evaluation conducted for a federal sentencing revealed mental health issues including post-traumatic stress disorder and attention deficit disorder. *Id.*

This neuropsychological evaluation reveals that the information provided to the sentencing court was incomplete and omitted critical information that would have impacted the district court’s sentencing determination. Robert was entitled to post-conviction relief based on newly discovered evidence and the district court erred in denying his application for post-conviction relief.

IV. CONCLUSION

For all the reasons stated above, the district court erred in denying Robert's petition for post-conviction relief. Accordingly, this Court should reverse the district court's judgment and remand with instruction to grant his requested relief.

Respectfully submitted this 23rd day of August, 2019.

FYFFE LAW, LLC

/s/ Robyn Fyffe
ROBYN FYFFE
Attorney for Juan Robert Jimenez

CERTIFICATE OF SERVICE

I CERTIFY that on August 23, 2019, I served the foregoing document via the File and Serve system to the email that was identified as the service contact for the Criminal Appellate Unit of the Office of the Attorney General.

/s/ Robyn Fyffe
ROBYN FYFFE