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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46550-2018
Plaintiff-Respondent,)	
)	FRANKLIN COUNTY
v.)	NO. CR-2018-310
)	
DONALD NELSON BARGER,)	
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF FRANKLIN**

HONORABLE MITCHELL W. BROWN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Donald Nelson Barger, a 60-year old homeless man who calls himself a traveler and a genius, pled guilty to felony possession of a controlled substance after two hydrocodone pills were found in his vehicle, and was sentenced to a unified term of five years, with one year fixed. Despite substantial evidence that Mr. Barger could not understand the proceedings against him and could not assist in his defense, the district court never ordered a competency evaluation. Mr. Barger contends the district court violated his constitutional right to due process by failing to order a competency evaluation pursuant to Idaho Code § 18-211, as the court should have entertained a bona fide doubt as to Mr. Barger's competence based in part on his irrational behavior and demeanor before the court. He also contends the district court erred in denying his pro se motion to dismiss for lack of jurisdiction.

Statement of Facts and Course of Proceedings

Mr. Barger was driving to the courthouse on April 16, 2018, when a police officer saw him, knew he did not have a valid driver's license, and arrested him for driving without privileges. (Conf. Exs., p.3.) The police conducted an inventory search of Mr. Barger's vehicle and located, among other things, two hydrocodone pills he had from an old prescription. (Conf. Exs., p.3; 10/25/18 Tr., p.47, Ls.4-6.) The State charged Mr. Barger by Information with felony possession of a controlled substance. (R., pp.50-51.) The State filed an Information Part II alleging Mr. Barger is a persistent violator within the meaning of Idaho Code § 19-2514. (R., pp.52-53.)

At his initial appearance, Mr. Barger appeared pro se, and told the magistrate court, "I don't understand why I'm here without committing a crime. Was it Karen that said I hurt her or

who did I harm?” (4/17/18 Tr., p.6, Ls.13-15.) The magistrate court appointed Mr. Marler, a public defender, to represent Mr. Barger. (4/17/18 Tr., p.6, L.16 – p.7, L.23.) The magistrate court instructed Mr. Barger he was on pretrial release and, among other things, was “not to possess alcohol or possess illegal drugs” and would be required to submit to alcohol and drug testing upon request. (4/17/18 Tr., p.8, Ls.4-13.) Mr. Barger asked “to have the showing of the jurisdiction for this pending jury trial.” (4/17/18 Tr., p.11, Ls.7-8.) He explained:

That will be the name of the man, the statement of the claim, and all that so I can finish it off where I've accepted all of the charges pending certification. I'd like to have a showing that there is certification, please, from the clerk. The statement of the crime and the victim's words.

I require that for the hearing tomorrow so I know what I'm working with for the jury trial. I don't understand any of that. I've been railroaded up into this jury trial in a week, but I don't know what is going on. I do not understand why, who, any of the points on that either.

(4/17/18 Tr., p.11, Ls.9-20.)

At his next appearance, Mr. Barger again questioned the magistrate court's jurisdiction.

The following exchange took place between Mr. Barger and the magistrate court:

MR. BARGER: I'm only here challenging jurisdiction with a special appearance. I just want to see the paperwork. And when I see the claim of damages under penalty of perjury, I can pay that and be done. I haven't seen anything along those lines yet. I haven't seen the proof of your jurisdiction I don't know what to do.

THE COURT: Sir, how is that you are challenging jurisdiction?

MR. BARGER: As far as I can tell I'm the only man in here. I'm the only person that can act as man. The rest are acting as government agents. I don't know who is the man that is accusing me.

THE COURT: It's the State of Idaho.

MR. BARGER: That part of the due process that they call the jurisdiction, there's like seven points of jurisdiction. Name the accuser, name the accused. The statement of the victim's own words. The claim of perjury, the penalty of perjury from the claimant. I don't remember them all off the top of my head, you know. Due process they call it.

THE COURT: All right. Part of the due process is make sure that you are informed. I put that on the record already. I don't have any basis by which to give you any relief for lack of jurisdiction.

MR. BARGER: Do your job and get that filed now.

(5/8/18 Tr., p.5, L.22 – p.6, L.21.)

Mr. Barger said he intended to waive his preliminary hearing, and the following exchange took place:

THE COURT: And on the bottom [of the waiver of preliminary hearing form] it says do you read and understand the English language and you put do not know. Were you able to read and understand this form?

MR. BARGER: I can't be sure.

THE COURT: All right. Mr. Marler has attempted to assist you in this case already, is that correct?

MR. BARGER: Yes. He tries to lead me down the commercial path and makes claims that I'm this and that.

(5/8/18 Tr., p.12, Ls.17-24.) Mr. Barger continued, "Who is the accuser? I hear State of Idaho, but I've never seen them walking. The first question is the jurisdiction and we'll have to go from there. That's not your job, that's the accuser's job." (5/8/18 Tr., p.13, Ls.7-10.) The district court asked Mr. Marler if he had the impression Mr. Barger could assist in his defense, and Mr. Marler answered, "Yes." (5/8/18 Tr., p.13, Ls.11-13.) The magistrate court bound the case over to district court. (5/8/18 Tr., p.14, Ls.3-23.)

At his arraignment, Mr. Marler explained to the district court the difficulty he was having in representing Mr. Barger. He said as he tried to "work through the criminal information with [Mr. Barger], he just simply won't acknowledge that it's a proper document." (5/24/18 Tr., p.7, Ls.11-14.) He explained, "So the problem I have is, anything other than shadow counsel, to respond to any questions he might have, it becomes problematic." (5/24/18 Tr., p.7, Ls.15-17.)

Mr. Marler explained, “I have represented Mr. Barger in the past and it’s always been pretty basically as shadow counsel because, again, he and I can’t communicate. His rules are different than the rules I’m obligated to abide by. So that ends up being are we able to communicate effectively? The answer to that question is no.” (5/24/18 Tr., p.8, Ls.2-7.) The district court confirmed Mr. Barger was eligible for representation by a public defender, and then formally appointed Mr. Marler, stating, “I will deal with issues as they may arise if you feel you can no longer ethically continue to represent Mr. Barger.” (5/24/18 Tr., p.11, Ls.14-16.)

At that point, Mr. Marler informed the district court that Mr. Barger took a drug test pursuant to the terms of his pretrial release, and tested presumptively positive for methamphetamine and marijuana. (5/24/18 Tr., p.12, Ls.18-19; R., pp.55-56.) Mr. Barger requested a confirmatory test, and the district court scheduled the matter for further proceedings. (5/24/18 Tr., p.13, Ls.17-24.)

Mr. Barger appeared before the district court for further proceedings after the confirmatory test came back positive. (6/13/18 Tr., p.5, Ls.2-8.) Mr. Barger continued to challenge the court’s jurisdiction, arguing:

I have no showing of jurisdiction available. I have seen no jurisdiction. I asked to see the name of the accusers, I’ve asked to see the accuser statement. I asked to see the proof that I’m not a man. I’ve asked the accuser what the damages are and she states that she was not harmed and there are no damages.

(6/13/18 Tr., p.7, L.25 – p.8, L.5.) After a brief exchange with Mr. Barger, the district court denied what it construed as his pro se motion to dismiss for lack of jurisdiction. (6/13/18 Tr., p.10, Ls.3-4.) Mr. Barger continued to challenge the court’s jurisdiction and said he felt threatened. (6/13/18 Tr., p.10, L.9 – p.12, L.5.) The district court found Mr. Barger to be in contempt of court, and ordered him to serve two days of local incarceration as a sanction. (6/13/18 Tr., p.12, Ls.12-20; R., pp.63-69.)

The district court held an evidentiary hearing on Mr. Barger's alleged violation of the conditions of pretrial release, and Mr. Barger continued to challenge the district court's jurisdiction, saying he was "only here to challenge jurisdiction with a special appearance." (7/12/18 Tr., p.12, Ls.3-9.) The district court concluded it had jurisdiction. (7/12/18 Tr., p.13, Ls.3-7.) The district court found Mr. Barger violated his pretrial release, and ordered him to serve eight days of local incarceration as a sanction. (7/12/18 Tr., p.47, Ls.21-24; R., p.71.) Mr. Marler told the district court Mr. Barger "is struggling with a whole bunch of issues" and is "not quite understanding the process." (7/12/18 Tr., p.45, Ls.8-10.)

Mr. Barger ultimately entered into a plea agreement with the State, pursuant to which he agreed to plead guilty, reserving his right to challenge the district court's adverse rulings relating to jurisdiction, and the State agreed to dismiss any pending misdemeanor charges and recommend probation. (8/23/18 Tr., p.7, L.23 – p.9, L.5; 8/30/18 Tr., p.5, Ls.1-23; R., pp.81-90.) The district court commended Mr. Barger for reaching a plea deal with the State. The district court told Mr. Barger, "In my experience there hasn't been a lot of willingness on your part to work with counsel and to work towards an end that is in your best interests. I commend you for that, for whatever that is worth to you." (8/23/18 Tr., p.15, Ls.4-7.) Mr. Barger admitted he "did have the pill" and the district court accepted his guilty plea. (8/30/18 Tr., p.19, Ls.15-22.)

At sentencing, Mr. Barger, through counsel, moved to stay sentencing so he could consider moving to withdraw his guilty plea. (10/25/18 Tr., p.7, Ls.1-2, p.8, Ls.1-12.) Mr. Marler explained Mr. Barger believed "the purpose of the sentence was just simply to be able to send it up [to the Supreme Court] without any other action happening." (10/25/18 Tr., p.6, Ls.11-15.) The district court denied "the motion to continue the sentencing to explore avenues or issues

relative to a possible motion to withdraw his guilty plea.” (10/25/18 Tr., p.9, Ls.15-17.)

Mr. Barger was given the opportunity to address the court, and said:

I don't know what to do. I've got many, many hours of questions

I don't understand what is going on. I supposedly have a right to understand. The first line here is a mistake, a question of jurisdiction. It has a trade name here instead of my true name that the court is supposed to be acting on for me as a man. Yet it has my trade name as a corporation or trust. So without dealing with issues like that, I don't know where to proceed

In fact, as far as the probation, where we have the victim now and I've agreed to accept the charges pending certification, all we really need is for Karen to state that I harmed her and state the amount of damages and then I have already agreed to be bound by that.

(10/25/18 Tr., p.38, L.8 – p.40, L.6.) The district court sentenced Mr. Barger to a unified term of five years, with one year fixed. (10/25/18 Tr., p.47, Ls.14-22.) The judgment of conviction was entered on October 31, 2018, and Mr. Barger filed a timely notice of appeal on November 20, 2018. (R., pp.95-102.)

ISSUES

- I. Did the district court violate Mr. Barger's constitutional right to due process by failing to order a competency evaluation pursuant to Idaho Code § 18-211?
- II. Did the district court err in denying Mr. Barger's pro se motion to dismiss for lack of jurisdiction?

ARGUMENT

I.

The District Court Violated Mr. Barger's Constitutional Right To Due Process By Failing To Order A Competency Evaluation Pursuant To Idaho Code § 18-211

A. Introduction

In light of the substantial evidence that Mr. Barger could not understand the proceedings against him and could not assist in his defense, the district court should have entertained a bona fide doubt as to Mr. Barger's competence, and should have ordered a competency evaluation pursuant to Idaho Code § 18-211. The district court's failure to order a competency evaluation violated Mr. Barger's constitutional right to due process and constituted fundamental error.

B. Standard Of Review

This Court reviews constitutional claims de novo. *State v. Lankford*, 162 Idaho 477, 484 (2017). Because Mr. Barger did not request a competency evaluation in the district court, and did not argue he was incompetent within the meaning of Idaho Code § 18-210, he must demonstrate that the district court's failure to order a competency evaluation constituted fundamental error. *See id.* Fundamental error is error that "(1) violates one or more of the defendant's unwaived constitutional rights; (2) plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision); and (3) was not harmless." *State v. Perry*, 150 Idaho 209, 228 (2010).

C. The District Court's Failure To Order A Competency Evaluation Violated Mr. Barger's Constitutional Right To Due Process

"The failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial."

State v. Lovelace, 140 Idaho 53, 62 (2003) (citing *Pate v. Robinson*, 383 U.S. 375 (1996)). “The test for competency to stand trial is whether a defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him.” *State v. Hawkins*, 159 Idaho 507, 512, 363 P.3d 348, 353 (2015) (quotation marks, brackets, and citation omitted). Consistent with this authority, Idaho Code § 18-210 provides that “[n]o person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.” Idaho Code § 18-211(1) requires that when there is reason to doubt a defendant’s fitness to proceed under section 18-210, “the court shall appoint at least one (1) qualified psychiatrist or licensed psychologist . . . to examine and report upon the mental condition of the defendant to assist counsel with defense or understand the proceedings.”

Even when the defendant’s competency has not explicitly been raised as an issue, “the trial court must sua sponte inquire as to the defendant’s competency . . . if the court entertains or reasonably should entertain a good faith doubt as to the capacity of the defendant to understand the nature and consequences of the plea.” *State v. Hawkins*, 148 Idaho 774, 778 (Ct. App. 2009) (citations omitted). “A trial judge must conduct a competency hearing, regardless of whether one is requested, whenever the evidence before the judge raises a bona fide doubt about the defendant’s competence to stand trial.” *Id.*; see also *State v. Fuchs*, 100 Idaho 341, 346 (1979) (“The trial court judge must always be on guard to make certain that there is no violation of federal Fourteenth Amendment due process in any action in criminal court.”) (citations omitted); *State v. Potter*, 109 Idaho 967, 969 (Ct. App. 1985) (stating “a trial judge is under a continuing duty to observe a defendant’s ability to understand the proceedings against him”).

Here, the district court had a duty to order a competency hearing of Mr. Barger because the evidence before the court raised a bona fide doubt as to Mr. Barger's competence. A bona fide doubts regarding a defendant's competence exists "if there is substantial evidence of incompetence." *Hawkins*, 148 Idaho at 778 (citation omitted). "Although no particular facts signal a defendant's incompetence, suggestive evidence includes the defendant's demeanor before the trial judge, irrational behavior of the defendant, and available medical evaluations of the defendant's competence to stand trial." *Id.* (citation omitted).

Here, the district court heard Mr. Barger question the court's jurisdiction on multiple occasions. Mr. Barger's jurisdictional arguments were irrational, and his demeanor was so offensive to the court that it resulted in a finding of summary contempt. (R., p.63.) Mr. Barger argued to the district court:

I have no showing of jurisdiction available. I have seen no jurisdiction. I asked to see the name of the accusers, I've asked to see the accuser statement. I asked to see the proof that I'm not a man. I've asked the accuser what the damages are and she states that she was not harmed and there are no damages.

(6/13/18 Tr., p.7, L.25 – p.8, L.5.) The district court denied what it construed as Mr. Barger's pro se motion to dismiss for lack of jurisdiction, but Mr. Barger continued to challenge the court's jurisdiction. (6/13/18 Tr., p.10, Ls.3-4.) The district court wrote that Mr. Barger "became disruptive speaking in a loud disruptive voice and repeatedly interrupting, speaking over, and arguing with the Court." (R., p.63.) Mr. Barger continued his "disruptive behavior" despite being advised by the district court "on more than would occasion" that he would be afforded an opportunity to speak at a later point. (R., p.63.) Based on Mr. Barger's demeanor and behavior, the district court should have had a bona fide doubt as to his competence.

In addition, Mr. Barger's appointed counsel made multiple statements to the district court that should have raised a bona fide doubt as to whether Mr. Barger could understand the

proceedings against him and assist in his defense. At Mr. Barger's arraignment, Mr. Barger's counsel explained he was having difficulty in representing Mr. Barger. He said as he tried to "work through the criminal information with [Mr. Barger], he just simply won't acknowledge that it's a proper document." (5/24/18 Tr., p.7, Ls.11-14.) He said, "So the problem I have is, anything other than shadow counsel, to respond to any questions he might have, it becomes problematic." (5/24/18 Tr., p.7, Ls.15-17.) He explained to the court he had represented Mr. Barger in the past "and it's always been pretty basically as shadow counsel because, again, he and I can't communicate." (5/24/18 Tr., p.8, Ls.2-4.) He said, "So that ends up being are we able to communicate effectively? The answer to that question is no." (5/24/18 Tr., p.8, Ls.5-7.) The district court understood Mr. Barger's counsel to be raising an ethical question regarding his representation, but failed to realize these statements also raised a bona fide issue with respect to Mr. Barger's competence. In a later proceeding, Mr. Barger's appointed counsel told the district court Mr. Barger "is struggling with a whole bunch of issues" and is "not quite understanding the process." (7/12/18 Tr., p.45, Ls.8-10.)

At sentencing, the district court had additional information that should have raised a bona fide doubt as to Mr. Barger's competence. The presentence investigation report reflects that Mr. Barger was 60 years old, homeless, and unemployed, but referred to himself as "a traveler" and "a genius." (Conf. Exs., pp.3, 14, 15.) Mr. Barger stated during the presentence interview he was not close to any of his family members because, "They don't understand me. The prophet has shown me the meaning of life. It has been overwhelming." (Conf. Exs., p.13.) He said he was "[n]ot allowed to say" what was important to him, and identified his goals in life as to "[b]attle gravity, entropy and evil." (Conf. Exs., p.18.) Both the GAIN evaluation and mental health

examination report noted Mr. Barger might benefit from a formal mental health evaluation, yet no formal evaluation was ever conducted. (Conf. Exs., pp.28, 34-35.)

At sentencing, Mr. Barger, through counsel, moved to stay sentencing so he could consider moving to withdraw his guilty plea. (10/25/18 Tr., p.7, Ls.1-2, p.8, Ls.1-12.) Mr. Barger's counsel explained Mr. Barger believed "the purpose of the sentence was just simply to be able to send it up [to the Supreme Court] without any other action happening." (10/25/18 Tr., p.6, Ls.11-15.) The district court proceeded with sentencing, notwithstanding these concerns, and Mr. Barger addressed the court as follows:

I don't know what to do. I've got many, many hours of questions

I don't understand what is going on. I supposedly have a right to understand. The first line here is a mistake, a question of jurisdiction. It has a trade name here instead of my true name that the court is supposed to be acting on for me as a man. Yet it has my trade name as a corporation or trust. So without dealing with issues like that, I don't know where to proceed

In fact, as far as the probation, where we have the victim now and I've agreed to accept the charges pending certification, all we really need is for Karen to state that I harmed her and state the amount of damages and then I have already agreed to be bound by that.

(10/25/18 Tr., p.38, L.8 – p.40, L.6.) Despite these bizarre statements, the district court never ordered a competency evaluation.

In *State v. Fuchs*, our Supreme Court held the defendant's capacity "was not placed in question" considering the evidence before the trial judge. 100 Idaho at 347. The Court noted the defendant "was alert and responsive to the judge's questions" and "[h]er courtroom demeanor was beyond reproach." *Id.* The Court also noted "she appeared to be quite capable of understanding the proceedings [during sentencing] and of making a rational choice among the alternatives." *Id.* Similarly, in *State v. Longoria*, 133 Idaho 819 (Ct. App. 1999), the Court of Appeals held the district court did not abuse its discretion in denying the defendant's motion for

a mental examination because, among other things, there was “no indication that [the defendant] could not conform his behavior to the decorum of the court.” *Id.* at 823. The Court noted the defendant was “appropriate, coherent and responsive to the court’s questions [at sentencing].” *Id.*

The case at bar presents a completely different factual scenario. Mr. Barger’s courtroom behavior was irrational and he could not conform his behavior to the decorum of the court. His responses to the district court’s questions were neither appropriate nor coherent, and there are multiple indications from Mr. Barger and his attorney that Mr. Barger could neither understand the proceedings against him nor assist in his defense.

In *State v. Hawkins*, the Court of Appeals held the district court should have entertained a reasonable doubt as to the defendant’s competence either to stand trial or represent himself. 148 Idaho at 782. The Court noted the defendant was capable of preparing and arguing in his own defense, was alert and coherent, and understood and was actively involved in the process. *Id.* at 779. The Court also noted, however, that the defendant exhibited delusional characteristics both before and during trial, indicating he might have been out of touch with reality and did not have a rational understanding of the proceedings. *Id.* The Court determined “there was enough evidence in this case to put the district court on notice that [the defendant’s] competence was in question,” and the district court therefore abused its discretion in failing to sua sponte order a competency evaluation. *Id.* at 782-83.

Like in *Hawkins*, there was enough evidence in this case to put the district court on notice that Mr. Barger’s competence was in question. Though the district court may have believed a guilty plea was in Mr. Barger’s best interests, based on its statement commending Mr. Barger for reaching a plea deal, *see* 8/23/18 Tr., p.15, Ls.4-7, the district court had a duty to order a

competency evaluation under Idaho Code § 18-211, and violated Mr. Barger's constitutional right to due process by failing to order such an evaluation.

D. The District Courts' Error Plainly Exists And Was Not Harmless

In order to demonstrate fundamental error, Mr. Barger must show the district court's error in failing to order a competency evaluation "plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision)" and "was not harmless." *Perry*, 150 Idaho at 228. Mr. Barger can demonstrate fundamental error in this case.

First, the district court's error plainly exists, and there is no way Mr. Barger's attorney's failure to request a competency evaluation can be seen as a tactical decision. It cannot be a tactical decision for an attorney to decide his client should be convicted and sentenced when he is incompetent, in contravention of United States Supreme Court authority, Idaho Supreme Court authority, and Idaho Code § 18-210. While Mr. Barger's counsel may have believed his client was competent, that does not absolve the district court of responsibility from itself assuring Mr. Barger's competence. *See Fuchs*, 100 Idaho at 346 ("The trial court judge must always be on guard to make certain that there is no violation of federal Fourteenth Amendment due process in any action in criminal court.") (citations omitted); *Potter*, 109 Idaho at 969 (stating "a trial judge is under a continuing duty to observe a defendant's ability to understand the proceedings against him").

Second, the district court's failure to order a competency evaluation could not be harmless, because there is no way to conclusively determine whether Mr. Barger was convicted and sentenced while incompetent. If Mr. Barger was convicted and sentenced while incompetent,

then his due process rights were violated, and the error was not harmless. *See Lovelace*, 140 Idaho at 62, *Pate*, 383 U.S. 375.

At this point, the proper remedy is to vacate Mr. Barger's conviction, and remand this case to the district court with instructions to order a competency evaluation, and proceed further based on the results of that evaluation. *See Hawkins*, 148 Idaho at 783 (vacating defendant's judgment of conviction and leaving the State free to retry defendant if he is found to be competent because "it is not possible to retroactively make a determination as to [his] competency at the time he was tried").

II.

The District Court Erred In Denying Mr. Barger's Pro Se Motion To Dismiss For Lack Of Jurisdiction

Mindful of the lack of legal authority supporting his position, Mr. Barger contends the district court erred in denying his pro se motion to dismiss for lack of jurisdiction because, among other things, the State failed to identify the victim in this case, and failed to identify any damages caused by his conduct. Mr. Barger has been concerned from the outset that the district court lacked jurisdiction in this case. Though he was represented by counsel in the district court, he repeatedly challenged the district court's jurisdiction without the assistance of counsel, and was ultimately held in contempt of court, because he wanted to be heard on jurisdiction even after the district court ruled against him. (6/13/18 Tr., p.7, L.25 – p.8, L.5, p.10, L.9 – p.12, L.5, p.12, Ls.12-20; 7/12/18 Tr., p.12, Ls.3-9; 10/25/18 Tr., p.38, L.8 – p.40, L.6; R., pp.63-69.) Mr. Barger entered a conditional guilty plea, reserving his right to challenge the district court's adverse rulings relating to jurisdiction. (8/23/18 Tr., p.7, L.23 – p.9, L.5; 8/30/18 Tr., p.5, Ls.1-

23; R., pp.81-90.) He now asks this Court to review these jurisdictional rulings, and conclude the district court lacked jurisdiction over this case.

CONCLUSION

Mr. Barger respectfully requests that this Court vacate his judgment of conviction, and remand this case to the district court with instructions to order a competency evaluation pursuant to Idaho Code § 18-211, and proceed with further proceedings based on the results of that evaluation. Alternatively, he requests that this Court vacate his judgment of conviction for lack of jurisdiction.

DATED this 5th day of June, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas