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IN THE SUPREME COURT OF THE STATE OF IDAHO

JUAN ROBERT JIMENEZ,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

SUPREME COURT NO. 46211-2018

Twin Falls County No. CV42-16-0287

REPLY BRIEF OF APPELLANT JUAN ROBERT 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. ROBERT ESTABLISHED INEFFECTIVE ASSISTANCE OF COUNSEL

A. 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

Mr. Jimenez was suffering opiate and benzodiazepine withdrawal during his testimony in a trial that hinged on the jury's determination whether he or his brother were telling the truth. The district court's findings that he was seemingly coherent and able to pass notes does not speak to whether Mr. Jimenez's *testimony* was adversely effected. Trial counsel's conduct in failing to address Robert's medical condition prior to his testimony was objectively unreasonable and prejudiced him by depriving him of his fundamental right to testify.

In response, the state suggests Mr. Jimenez must find the district court's factual findings "inconvenient" because he "completely ignores" them in his brief. Respondent's Brief, p. 7. However, the portion of the appellant's brief cited by the state contains a summary of the trial transcript — facts which the district court judicially noticed. *See* Appellant's brief, p. 7-11. Mr. Jimenez does not "ignore" the district court's factual findings but, rather, argued those facts establish that he is entitled to post-conviction relief.

The state relies on the district court's findings that Mr. Jimenez did not inform his attorney he was "unable to assist in his own defense" or that he was "unable or unwilling to continue with his trial or to proceed in any way" and that counsel did not "observe" any inability to participate in his own defense. Respondent's Brief, p. 5-7. However, as argued in Mr. Jimenez's opening brief, these findings do not defeat Mr. Jimenez's argument that the undisputed

facts — such as his withdrawal from narcotics and suffering pain during his testimony — establish his claim for relief.

The state also argues, on the one hand, that Mr. Jimenez failed to establish prejudice for his attorney's failure to address his medical condition while claiming he did not argue his right to testify was "somehow infringed." Respondent's Brief, p. 7. However, Mr. Jimenez specifically alleged that he was prejudiced by counsel's deficient performance because his testimony "was greatly impacted and affected by the lack of medications that he had now gone 36 hours without," was in pain "not in a state of mind to testify in his trial. R. 98-100. Mr. Jimenez alleged that he had not been sleeping, was in terrible pain, and was experiencing withdrawal symptoms that effected his testimony. R. 98.

In closing arguing, Mr. Jimenez argued: "a person's ability to adequately testify in his own defense is clearly inhibited when that person is suffering from pain, blurred vision, headaches, pains and lack of focus due to lack of medication. [Mr. Jimenez's] entire testimony was tainted from the effects the lack of medication." R. 496. Mr. Jimenez argued that trial counsel was deficient and such deficiency prejudiced Mr. Jimenez "by inhibiting his ability to properly testify at trial." R. 497.

Accordingly, Mr. Jimenez plainly argued that trial counsel's deficient performance prejudiced him by negatively impacting his ability to testify in his own defense. Because Mr. Jimenez's issue and position are the same in the trial court and this Court, it is appropriate for the the specific legal authorities used to support the position to evolve. *See State v. Hoskins*, 165

Idaho 217, 443 P.3d 231, 235–36 (2019); *State v. Gonzalez*, 165 Idaho 95, 99, 439 P.3d 1267, 1271 (2019).

The state’s claim that Mr. Jimenez did not raise his claim that trial counsel’s deficient performance prejudiced his right to testify is without merit. As explained in Mr. Jimenez’s opening brief, he established ineffective assistance of counsel and the district court erred in denying his petition for post-conviction relief.

B. Counsel Provided Ineffective Assistance By Failing To File A Motion To Suppress

According to the state, a suppression motion would not be granted because officers were merely “detaining all people at the scene because they had no idea who the shooter could be.” Respondent’s Brief, p. 10. However, the record shows Mr. Jimenez was the only one detained and questioned. *See* Jury Trial Tr. p. 121, ln. 12 - p. 122, ln. 2 (neighbor “kinda” interviewed and asked to complete form); p. 175, ln. 20 - p. 176, ln. 13 (brother received medical attention when police arrived). More importantly, the inquiry is not whether the officers had grounds to detain Mr. Jimenez or to draw the guns as a “safety precaution” but whether they so restricted his movement to convey he was under arrest.

The state also argues the district court correctly found that a motion to suppress would not change the outcome of trial even if granted because he made similar statements to 911. The Court rejected a similar argument in *Carter v. State*, 108 Idaho 788, 702 P.2d 826 (1985), which also involved a statement subject to suppression and a similar statement to 911 in a self-defense case. The Court held introduction of the suppressible statement was harmless because it would

have had a cumulative effect and could have impacted the jury's credibility determination.

Carter, 108 Idaho at 795, 702 P.2d at 833.

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.

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. The fact the district court would have erroneously denied a motion to suppress does not make trial counsel's decision — based on ignorance of the law — objectively reasonable. Mr. Jimenez established that he received ineffective assistance of counsel for counsel's failure to file a motion to suppress and the district court erred in denying his petition for post-conviction relief.

B. 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 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. it. 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 rubber-stamped counsel's explanations as untouchably "strategic."

In response, the state characterizes this argument "blatantly false" because the district court itemizes trial counsel's testimony over several pages in its memorandum decision. Respondent's Brief, p. 14-15. The state misunderstands the argument. The district court's wholesale acceptance of counsel's individual explanations constitutes the "rubber-stamp," not its failure to discuss the counsel's response to Mr. Jimenez's claims.

As argued in Mr. Jimenez's opening brief, 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.

III. CONCLUSION

For all the reasons stated above and in Mr. Jimenez's opening brief, the district court erred in denying his 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 21st day of January, 2020.

FYFFE LAW, LLC

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

CERTIFICATE OF SERVICE

I CERTIFY that on January 21, 2020, 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