

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**JUAN ROBERTO JIMENEZ,** )  
 ) **No. 46211-2018**  
 **Petitioner-Appellant,** )  
 ) **Twin Falls County Case No.**  
 **v.** ) **CV42-16-287**  
 )  
 **STATE OF IDAHO,** )  
 )  
 **Defendant-Respondent.** )  
 \_\_\_\_\_ )

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**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**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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## STATEMENT OF THE CASE

### Nature Of The Case

Juan Roberto Jimenez appeals from the denial of his petition for post-conviction relief after an evidentiary hearing.

### Statement Of The Facts And Course Of The Proceedings

Jimenez filed a petition for post-conviction relief from his convictions for aggravated battery and being a felon in possession of a firearm. (R., pp. 10-14, 108-27.) Jimenez asserted the following claims: (1) ineffective assistance of counsel because of a conflict of interest (R., pp. 109-10); (2) ineffective assistance of counsel for failing to provide discovery to Jimenez and present evidence at trial (R., pp. 111-17); (3) ineffective assistance of counsel in addressing Jimenez's medical issues at trial (R., pp. 117-21); (4) newly discovered evidence (R., pp. 121-22); (5) ineffective assistance of counsel for not filing a motion to suppress evidence (R., pp. 122-23); (6) ineffective assistance of counsel for failing to object to evidence presented by the state or effectively cross-examine state's witnesses (R., pp. 124-25); and (7) newly discovered sentencing evidence (R., pp. 125-26). The district court denied his petition after an evidentiary hearing. (R., pp. 517-50.) Jimenez timely appealed from the denial of his petition. (R., pp. 565-74.)

## ISSUES

Jimenez states the issues on appeal as:

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?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Has Jimenez failed to show error in the district court's denial of his claim of ineffective assistance of counsel in addressing Jimenez's medical issues during trial?
2. Has Jimenez failed to show error in the district court's denial of his claim of ineffective assistance of counsel for not filing a motion to suppress his statements?
3. Has Jimenez failed to show error in the district court's denial of his claim of ineffective assistance of counsel regarding evidence presented at trial?
4. Has Jimenez failed to show error in the district court's denial of his claim of newly discovered sentencing evidence?

## ARGUMENT

### I.

#### Jimenez Has Shown No Error In The District Court's Denial Of His Claim Of Ineffective Assistance Of Counsel In Addressing Jimenez's Medical Issues During Trial

##### A. Introduction

Jimenez alleged that his trial counsel was ineffective in handling his “medical issues at trial.” (R., pp. 117-21 (capitalization and bolding omitted).) The district court stated the claim was that trial counsel “provided ineffective assistance of counsel regarding his medication and health issues beginning on the second day of trial.” (R., p. 542.) The district court found that neither prong of the ineffective assistance of counsel standard had been proven by Jimenez. (R., pp. 543-44.)

Specifically, as to the deficient performance prong the district court found that Jimenez had been arrested after the first day of trial on “new criminal charges” arising from a “physical altercation at his home” and was being held in the jail. (R., pp. 524, 542.) The next day, at trial, the trial judge was informed that Jimenez was having trouble getting his medications (“Oxycodone, Methadone and Alprazolam”) in the jail. (R., pp. 524, 542.) Resolving a conflict in the testimony, the district court found counsel’s testimony supported by the record, and Jimenez’s testimony belied by the record. (R., pp. 527, 543.) Based on this credibility determination, the district court found that “at no time during the entire trial” did Jimenez ever indicate to counsel that 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.” (R., pp. 527, 543.) Nor did counsel “observe” any inability of Jimenez to participate in his own defense. (R., p. 543.) The record and trial counsel’s testimony “demonstrate[ed] that [Jimenez] did not appear to struggle in any regard with his testimony.” (R., p. 543.)



The district court found that Jimenez “was physically uncomfortable at various times throughout his trial in the underlying case; however, [Jimenez] never communicated to [trial counsel], or to the trial court, that he was physically unable to continue or to assist in his own defense.” (R., p. 544.)

As to the prejudice prong the district court found that Jimenez “[had] not provided any evidence of how [trial counsel’s] failure to demand the relief from the Court would have, in any possible way, affected the outcome of the trial.” (R., p. 544.) The record was “completely silent” regarding how Jimenez’s “testimony or participation in the trial would have been any different.” (R., p. 544.)

On appeal Jimenez argues the district court erred. (Appellant’s brief, pp. 7-11.) Jimenez’s argument, however, lacks merit because it argues a legal theory not pled and fails to address the facts found by the district court.

B. Standard Of Review

When reviewing a trial court’s decision on a claim of ineffective assistance of counsel, “the Court will defer to the district court’s factual findings if supported by substantial evidence, but will exercise free review over the application of the relevant law to those facts.” Marr v. State, 163 Idaho 33, 37, 408 P.3d 31, 35 (2017) (internal quotations omitted). See also Booth v. State, 151 Idaho 612, 617, 262 P.3d 255, 260 (2011) (“When reviewing a district court’s decision to grant or deny a petition for post-conviction relief following an evidentiary hearing, this Court will not disturb the district court’s factual findings unless they are clearly erroneous.”).

C. The District Court’s Uncontested Findings Of Fact Support The Denial Of Jimenez’s Claim Of Ineffective Assistance Of Counsel In Addressing Jimenez’s Medical Issues At Trial

To prevail on a claim of ineffective assistance of counsel, “an applicant for post-conviction relief must demonstrate: (1) counsel’s performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s errors, the outcome would have been different.” Thumm v. State, 165 Idaho 405, 447 P.3d 853, 861 (2019). “Proceedings for post-conviction relief are civil in nature, rather than criminal, and the applicant must therefore prove the allegations in the request for relief by a preponderance of the evidence.” State v. Dunlap, 155 Idaho 345, 361, 313 P.3d 1, 17 (2013).

“To show counsel was deficient, the defendant has the burden of showing that his attorney’s representation fell below an objective standard of reasonableness.” Thompson v. State, 164 Idaho 821, 825, 436 P.3d 642, 646 (2019) (internal quotations omitted). To meet this burden, the petitioner must overcome a “strong presumption that counsel made all significant decisions in the exercise of reasonable professional judgment.” State v. Johnson, 163 Idaho 412, 420, 414 P.3d 234, 242 (2018) (internal quotations omitted). Because of this presumption, “[j]udicial scrutiny of counsel’s performance must be highly deferential.” Padilla v. State, 161 Idaho 624, 626, 389 P.3d 169, 171 (2016). In addition, “counsel’s strategic and tactical decisions cannot justify relief unless the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review.” Wurdemann v. State, 161 Idaho 713, 717, 390 P.3d 439, 443 (2017) (internal quotations omitted). If the claim of deficient performance alleges failure to file a motion, a determination the motion would not have been granted

shows no deficient performance, but even if the motion would have been granted “the petitioner is still required to overcome the presumption that the decision not to file the motion was within the wide range of permissible discretion and trial strategy.” Adamcik v. State, 163 Idaho 114, 124, 408 P.3d 474, 484 (2017).

To show prejudice, a petitioner must “show counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” State v. Hall, 163 Idaho 744, 816, 419 P.3d 1042, 1114 (2018). To meet this standard petitioner must prove “there is a reasonable probability that, but for counsel’s deficiencies, the result of the proceeding would have been different.” Thompson, 164 Idaho at 825, 436 P.3d at 646 (internal citations omitted).

The district court found that although Jimenez suffered some physical discomfort as a result of temporarily lacking access to some medications during trial, he “never” told trial counsel that he was “having difficulty testifying” or that he was “unable to assist in his own defense.” (R., pp. 526, 543.) When Jimenez expressed “concern about his physical condition or medication issues,” trial counsel brought those concerns to the attention of the trial court, which ruled that Jimenez would be able to take his medications after testifying, which occurred four minutes later. (R., pp. 525-26, 543.) Jimenez “continued to coherently communicate at trial, both by writing notes to [trial counsel] and by discussing the case at counsel’s table without any difficulty.” (R., p. 526.) Jimenez did not support his claim of deficient performance with “sufficient evidence,” and did not present “any” evidence of prejudice. (R., p. 544.)

Application of the law to the facts found by the district court show no error. Trial counsel called the issue he was aware of to the attention of the trial court, which addressed

the situation. At no point was Jimenez unable to participate in his defense, and the temporary lack of access to medications did not affect his testimony. Trial counsel's response to the issue was objectively reasonable and the trial court found no inadequate preparation, ignorance of the relevant law or other shortcoming capable of objective review. Moreover, the district court found that there was no evidence of how the proceedings, much less the outcome of the trial, would have been different.

On appeal, perhaps finding them inconvenient, Jimenez completely ignores the district court's factual findings. (Appellant's brief, pp. 7-11.) Moreover, Jimenez argues, for the first time, that his right to testify was somehow infringed. (Appellant's brief, pp. 10-11.) He excuses his failure to present evidence of prejudice with the claim that the effects of counsel's actions on his testimony "cannot be quantified." (Appellant's brief, p. 11.) Because Jimenez's argument on appeal does not challenge the district court's factual findings, which factual findings in turn support the district court's denial of relief on this claim, Jimenez has failed to present even a cognizable claim of error.

## II.

### Jimenez Has Failed To Show Error In The District Court's Denial Of His Claim Of Ineffective Assistance Of Counsel For Not Filing A Motion To Suppress His Statements

#### A. Introduction

Jimenez alleged that counsel was ineffective for not filing a motion to suppress his statements on a theory of a *Miranda*<sup>1</sup> violation. (R., pp. 122-23.) The district court found that Jimenez, prior to being told of his *Miranda* rights, had told an officer that "his brother [the victim of the aggravated battery] had been shot and that, after hearing a shot, Petitioner

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

came out of his house and saw a male in a black hoodie and black pants running from the area.” (R., pp. 539-40.) Counsel elected to not file a motion to suppress the statement because police reports were not clear whether Jimenez was in custody or merely detained; that the trial judge had denied similar motions to suppress; and because Jimenez had already made a similar statement during a 911 call, and therefore the statement in question “would have had little to no evidentiary impact on the trial.” (R., p. 540.)

The district court concluded that Jimenez had not met his burden as to either prong of the ineffective assistance of counsel test. (R., p. 541.) First, Jimenez had not shown “by a preponderance of the evidence that he would have been successful regarding a motion to suppress” because, even though officers made the initial detention at gunpoint (because they were responding to a potential shooter at large), such alone did not demonstrate custody for purposes of when the statement was made. (R., pp. 541-42.) “Furthermore, even if a motion to suppress would have been granted, it still was not error for [trial counsel] to not have filed the motion, since Petitioner’s nearly identical statement to the 911 operator would have been admissible in any event.” (R., p. 542.)

Jimenez argues the motion would have been granted if made, that counsel’s reason for not filing the motion was based on a mistake of law, and that the statement “undoubtedly impacted the jury.” (Appellant’s brief, pp. 11-13.) Again, Jimenez has failed to address the facts found by the district court, much less show them to be clearly erroneous. His argument fails on the facts.

#### B. Standard Of Review

The standard of review is set forth *supra*, page 4.

C. Jimenez Has Not Claimed, Much Less Shown, That The District Court's Factual Findings Regarding Not Filing A Motion To Suppress Are Clearly Erroneous

The legal standards relating to the two-prong ineffective assistance of counsel test, deficient performance and prejudice, are set forth *supra*, pages 5-6. The district court concluded that trial counsel's performance was not deficient because the motion to suppress would not have succeeded and because counsel made reasonable tactical decisions to not bring it in the first place. (R., pp. 539-42.) The district court also concluded there was no showing of prejudice because, even if evidence of the statement at issue had been suppressed, a "nearly identical statement to the 911 operator would have been admissible in any event." (R., p. 542.)

The district court correctly concluded that the suppression motion would not have been granted. "The requirement for *Miranda* warnings is triggered by custodial interrogation." State v. Beck, 157 Idaho 402, 407, 336 P.3d 809, 814 (Ct. App. 2014) (citing State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992)). "*Miranda* provides that, in the context of a criminal case, the prosecution may not use statements stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." State v. Harms, 137 Idaho 891, 894, 55 P.3d 884, 887 (Ct. App. 2002) (citing Miranda, 384 U.S. at 444). "*Miranda's* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." Id. (citing Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980); State v. Frank, 133 Idaho 364, 370, 986 P.2d 1030, 1036 (Ct. App. 1999)). Evidence of otherwise voluntary statements obtained in violation of *Miranda* safeguards is admissible as impeachment evidence. Kansas v. Ventris, 556 U.S. 586, 593-94 (2009).

The evidence showed that officers, responding to a report of an active shooter, initially confronted Jimenez and the victim with weapons drawn and at “low ready,” “not directly pointed at the subject.” (4/12/18 Tr., p. 165, L. 23 – p. 166, L. 23; p. 169, Ls. 2-16.) Officers at that time were merely detaining all people at the scene because they had no idea who the shooter could be. (4/12/18 Tr., p. 175, L. 3 – p. 177, L. 11.) Within “a minute or two” of confronting Jimenez, officers asked about the shooter and Jimenez stated that the shooter was a male in dark clothes who had run from the scene. (4/12/18 Tr., p. 171, L. 9 – p. 172, L. 19.) This evidence supports the district court’s conclusion that, despite responding to the situation with drawn weapons, it did not violate *Miranda* to question the people at the scene about the location and identity of the shooter. (R., pp. 540-42.)

Jimenez argues that he was in custody because he was “held at gunpoint.” (Appellant’s brief, p. 13.) Jimenez’s argument ignores all facts but the gun, however. Because the drawn guns were part of a safety precaution used while all persons at the scene were detained until the identity and location of the shooter could be ascertained there was no reason for Jimenez to feel that he had been arrested or the functional equivalent thereof. Jimenez has failed to show error once all the relevant facts are considered. Because the district court correctly concluded that the motion to suppress would not have been granted, it correctly denied the claim of ineffective assistance of counsel for not making the motion.

The district court also found valid strategic reasons other than its potential merit to not file the motion: trial counsel’s belief that the evidence did not support the motion, his belief that the trial judge would not grant the motion, and the conclusion that suppressing the evidence would not improve Jimenez’s odds of prevailing at trial. (R., p. 540.) The

reasonableness of the first two beliefs are shown by the record set forth above: the fact the district court that heard the post-conviction action concluded that the motion would have been denied shows that trial counsel's beliefs that the evidence did not support the motion and that it would not have been granted were reasonable. Moreover, the finding that Jimenez's statement to the officers "was simply duplicative of his statements during the 911 call" (R., p. 540) supports the conclusion that counsel's tactical choice to not pursue the motion because it would not affect the outcome of the trial was reasonable and that Jimenez was not prejudiced (R., p. 542).<sup>2</sup>

On appeal Jimenez first argues the district court erred because trial counsel made his decision to not file the motion "based on a misunderstanding of the law," specifically a belief that the officers' subjective beliefs were controlling. (Appellant's brief, p. 13.) There are, however, no factual findings to support this claim. Indeed, there is no evidence in the record supporting this claim.

Jimenez also argues that he was prejudiced despite the admissibility of an identical statement of his because the "statement to law enforcement undoubtedly impacted the jury in a case that turned entirely on [Jimenez's] credibility." (Appellant's brief, p. 13.) Jimenez has failed to show clear error by merely disagreeing with the district court's factual

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<sup>2</sup> The prosecutor argued that trial counsel's decision to not seek suppression was not prejudicial because, even if the motion were successful, the statement would still have been used to impeach Jimenez at the trial. (4/13/18 Tr., p. 100, L. 13 – p. 102, L. 13.) Although the district court did not rely on this argument, the state presents it here as an alternative ground to affirm the district court. Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 580, 850 P.2d 724, 731 (1992) (appellate court will affirm under correct legal theory). Because the *only* evidentiary value of the statement to the state was to impeach Jimenez's trial claim of self-defense, and because statements obtained in violation of Miranda are admissible as impeachment, the evidence would have come in regardless of the outcome of the suppression motion.



finding. Jimenez has failed to show clear error, much less that the trial hinged on whether Jimenez made two, instead of only one, statements contradicting his trial claim of self-defense.

The district court denied Jimenez’s claim of ineffective assistance of counsel for not filing a motion to suppress his statement to officers on several grounds, including that the motion would have been denied, that counsel made a reasonable tactical choice to not file the motion, and that there was no prejudice whether the motion was denied or granted. The findings of fact support the district court’s analysis. Jimenez has failed to show clear error.

### III.

#### Jimenez Has Failed To Show Error In The District Court’s Denial Of His Claim Of Ineffective Assistance Of Counsel Regarding Evidence Presented At Trial

##### A. Introduction

Jimenez argued trial counsel was ineffective for not cross-examining the victim regarding: “(1) Possible statements by the victim that there was an argument between Petitioner and the victim immediately prior to the shooting; (2) That the victim made inconsistent statements about who shot him; and (3) That the victim did not have a concealed weapons permit.” (R., p. 532.) The district court found that trial counsel made reasonable tactical decisions regarding cross-examination. (R., pp. 534-39.) The district court also found no prejudice from any failure to cross-examine the victim on his false statement to officers that he had a concealed weapons permit. (R., p. 539.)

Jimenez argues on appeal that the district court “did not individually consider these arguments,” “rubber-stamped counsel’s explanations,” and indulged in “post hoc

rationalization” of counsel’s decisions. (Appellant’s brief, p. 13.) These claims are without merit, as each is directly contrary to the record.

B. Standard Of Review

The standard of review is set forth *supra*, page 4.

C. The District Court Applied The Correct Legal Standards To The Facts Found

The legal standards relating to the two-prong ineffective assistance of counsel test, deficient performance and prejudice, are set forth *supra*, pages 5-6. The district court applied these correct standards to conclude, under the facts found, that Jimenez had failed to prove deficient performance in trial counsel’s tactical decisions regarding what topics to address in cross-examination of the victim. (R., pp. 534-39.)

The district court found that trial counsel had five reasons for not cross-examining the victim about possible statements made by the victim to medical personnel that the victim and Jimenez argued before the shooting: (1) the statements were not clear in the medical records (in fact, the report’s author testified that he had not included any direct quotes by the victim); (2) there was other evidence that the victim and Jimenez had been “arguing throughout the day”; (3) the victim was “hostile” and engaging him on this issue would be of “limited value”; (4) the victim likely could provide an explanation for any argument; and (5) trial counsel could lose credibility by “arguing over the point” of an argument when the claim of self-defense relied not on an argument, but on the victim having exited his car armed. (R., pp. 535-36.) The trial court correctly concluded that there was no evidence that the decision to not cross-examine the victim about alleged prior

inconsistent statements about whether he and Jimenez argued before the shooting was based on an objective shortcoming. (R., p. 536.)

The district court found that trial counsel's primary reason for not cross-examining the victim on possible inconsistent statements regarding who shot him included the fact that the defense planned on presenting Jimenez's testimony admitting he in fact shot his brother, but claiming he did so in self-defense. (R., p. 537.) In addition, the value of "small inconsistent statements" could be nullified by a "good prosecutor"; quibbling about small points that were irrelevant to the defense "risks losing the goodwill and respect of the jury on the bigger issues"; and it's "doubtful" such cross-examination would elicit any admission of lying. (R., p. 537.) The trial court correctly concluded that there was no evidence that the decision to not cross-examine the victim about alleged prior inconsistent statements regarding his identification of Jimenez as the shooter was based on an objective shortcoming. (R., pp. 536-37.)

Finally, the district court found that trial counsel "weighed the evidentiary value of attempting to impeach the victim" about falsely telling a police officer he had a concealed weapons permit, but "determined that the issue ... would have little or no impact on the jury's determination." (R., pp. 538-39.) The district court agreed with trial counsel's assessment of the value of the evidence, and thus found neither deficient performance nor prejudice. (R., p. 539.) The district court correctly concluded that Jimenez had failed to carry his burden of proving deficient performance or prejudice.

On appeal Jimenez first argues the district court erred by "not individually consider[ing]" the claims of ineffective cross-examination and "simply rubber-stamp[ing] counsel's explanations." (Appellant's brief, p. 13.) The claim that the district court did

not individually consider the claims is blatantly false. The district court considered each claim under a separate subheading and gave each an independent analysis. (R., pp. 532-39.) Likewise, the district court's determination that trial counsel's explanations for his choices were reasonable is hardly "rubber-stamping."

Jimenez next argues the district court engaged in "post hoc rationalization for counsel's decision-making that contradicts the available evidence." (Appellant's brief, pp. 13-14 (citing Harrington v. Richter, 562 U.S. 86, 109 (2011) ("Although courts may not indulge *post hoc* rationalization for counsel's decisionmaking that contradicts the available evidence of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions." (internal quotations and citations omitted); Wiggins v. Smith, 539 U.S. 510, 526-27 (2003) ("When viewed in this light, the 'strategic decision' the state courts and respondents all invoke to justify counsel's limited pursuit of mitigating evidence resembles more a *post hoc* rationalization of counsel's conduct than an accurate description of their deliberations prior to sentencing.").) Tellingly absent from this argument is any actual example of how counsel's (or the court's) explanations for tactical decisions "contradicts the available evidence." The cited cases do not relieve Jimenez of either his burden of overcoming the presumption that counsel exercised reasonable professional judgment, or of showing clear error in the factual findings of the district court. Jimenez met neither burden, and therefore has failed to show error.

Finally, Jimenez invokes the cumulative error doctrine and argues that counsel's "shortcomings" and the "prejudice" therefrom "combined" in some unspecified way to deprive him of his "constitutional right to a fair trial." (Appellant's brief, p. 14.) However, having failed to show any "shortcomings" or "prejudice," Jimenez has failed to show error.

Because counsel's decisions were tactical and reasonable, Jimenez has shown neither clear error in the district court's factual findings nor any erroneous application of the law.

#### IV.

#### Jimenez Has Shown No Error In The District Court's Rejection Of His Claim Of Newly Discovered Evidence For Sentencing

##### A. Introduction

Jimenez alleged that, after his sentencing, he obtained newly discovered evidence in the form of a diagnosis of "mental health issues that were not addressed by the sentencing Court." (R., pp. 125-26.) The district court evaluated the report prepared by the evaluator and found it "paint[ed] the picture of an individual with an above average intelligence, no neurocognitive deficits, who 'most likely' suffers from some form of PTSD." (R., pp. 545-46.) However, the district court also found the report contained "a number of glaring omissions." (R., p. 546.) Those omissions included that it did not "indicate the nature or extent of any PTSD"; was "somewhat ambiguous" as to whether Jimenez was actually diagnosed as having PTSD; did not indicate any effects PTSD might have had on Jimenez, including on his behavior the night of the shooting, other than to make him "hypervigilant"; and did not indicate whether the PTSD developed before or after the sentencing hearing months earlier or the shooting before that. (R., pp. 546-47.) The district court then found that Jimenez had failed to prove three of the four elements of his claim, specifically: materiality, that the evidence probably would have produced a different result, and that failure to obtain the evidence was not the result of a lack of diligence. (R., pp. 457-59.)

On appeal Jimenez argues that the district court erred because the evidence "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.” (Appellant’s brief, pp. 14-15.) Jimenez’s general claim of error, which addresses neither the district court’s factual findings nor its analysis, fails to show error.

B. Standard Of Review

When the district court conducts an evidentiary hearing and enters findings of fact and conclusions of law, an appellate court will disturb the findings of fact only if they are clearly erroneous, but will freely review the conclusions of law drawn by the district court from those facts. Mitchell v. State, 132 Idaho 274, 276-77, 971 P.2d 727, 729-30 (1998). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. Peterson v. State, 139 Idaho 95, 97, 73 P.3d 108, 110 (Ct. App. 2003). A trial court’s decision that a post-conviction petitioner has not met his burden of proof is entitled to great weight. Sanders v. State, 117 Idaho 939, 940, 792 P.2d 964, 965 (Ct. App. 1990).

C. Jimenez Has Shown Neither Clear Error In The District Court’s Factual Findings Nor Error In Application Of The Relevant Law

“The request for a new trial in a post-conviction proceeding based on newly discovered evidence is the same as a motion for new trial subsequent to a jury verdict.” Johnson v. State, 156 Idaho 7, 12, 319 P.3d 491, 496 (2014). The four elements of a newly discovered evidence claim are that the evidence be ““newly discovered”” and was ““unknown”” at the time of trial; that the evidence is ““material, not merely cumulative or impeaching””; that the evidence would ““probably produce an acquittal””; and that failure to learn of the evidence for trial was ““due to no lack of diligence on the part of the

defendant.” Id. (quoting State v. Drapeau, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976)). Application of this standard shows the district court correctly held Jimenez had failed to prove three of the elements of his claim.<sup>3</sup>

In concluding that Jimenez had failed to prove the materiality of the evaluation, the district court found that Jimenez “produced no evidence” that he “was suffering from the effects of PTSD at the time of the shooting,” 21 months prior to the evaluation, or at the sentencing, seven months before. (R., p. 548.) On appeal, Jimenez presents no challenge to these findings and analysis. (Appellant’s brief, pp. 14-15.) Because the evaluation’s determination of possible PTSD did not show any relevance of that determination to the sentencing, the district court properly found Jimenez had failed to prove its materiality.

The district court next determined that Jimenez had failed to show the outcome of the sentencing would have been affected by the evaluation. (R., p. 548.) The “mere existence of a PTSD diagnosis” is insufficient to prove the probability of a different outcome. (R., p. 548.) On appeal Jimenez argues the information was “critical” and “would have impacted the district court’s sentencing determination” (Appellant’s brief, p. 15), but does not state how or why. Jimenez’ naked and unsupported claim that showing the diagnosis is alone enough to entitle him to relief shows no error.

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<sup>3</sup> Jimenez actually failed to prove any of the elements of his claim. An expert’s opinion regarding known evidence is not “newly discovered.” State v. Stevens, 146 Idaho 139, 146, 191 P.3d 217, 224 (2008) (failure to present experts’ opinions at the original proceedings “does not make the evidence on which they rely newly discovered”). Evidence of Jimenez’ mental health was available to him at sentencing, and a new diagnosis based on information known to Jimenez at the time of sentencing is not “newly discovered.”

Finally, the district court concluded that the defense had ample time and opportunity to secure an evaluation for sentencing, and Jimenez “offered no evidence as to why he did not undergo a neuropsychological examination in the seven months prior to his sentencing.” (R., pp. 548-49.) Jimenez offers no argument addressing this finding. (Appellant’s brief, pp. 14-15.) The record supports the district court’s determination that Jimenez failed to show that his failure to timely procure this evidence was not the result of strategic choice or lack of diligence.

On appeal, rather than address the district court’s findings or analysis, Jimenez argues that the proper standard is whether he has proven the existence of “material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interests of justice.” (Appellant’s brief, pp. 14-15 (citing 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)). This language is taken from the applicable statute. I.C. § 19-4901(a)(4). Jimenez does not argue that the four-element Drapeau test is inconsistent with this statutory language, or that the district court employed an incorrect legal test. (Appellant’s brief, pp. 14-15.) Indeed, such an argument would be futile. See Johnson, 156 Idaho at 12, 319 P.3d at 496 (adopting Drapeau test for I.C. § 19-4901(a)(4) claims).

Jimenez did not prove the existence of “material facts” for the reasons stated by the district court—Jimenez failed to prove that he suffered from PTSD at the time of the crime or the sentencing. Nor did Jimenez prove that the PTSD quasi-diagnosis required “vacation” of his sentence “in the interests of justice” for the reasons stated by the district court—Jimenez failed to prove that the outcome of the sentencing hearing would probably have been different with the evidence, and failed to prove that he was blameless in the



failure to present it. Jimenez has failed to demonstrate that the district court erred in denying his claim of newly discovered sentencing evidence.

CONCLUSION

The state respectfully requests this Court to affirm the district court's denial of post-conviction relief.

DATED this 15th day of November, 2019.

/s/ Kenneth K. Jorgensen  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of November, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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