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### Roman v. State Appellant's Reply Brief Dckt. 47815

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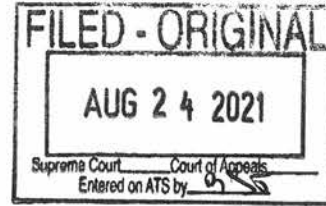
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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALFREDO HOLGUIN ROMAN, )  
 )  
 Petitioner-Appellant )  
 )  
 vs. )  
 )  
 STATE OF IDAHO, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

Supreme Court Case No. 47815  
Ada County Case No.  
CV-PC-13-15537



REPLY BRIEF

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

HONORABLE MELISSA MOODY  
District Judge

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COURT OF APPEALS  
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## STATEMENT OF THE CASE

### **i. Nature of the Case**

The nature of this appeal encompasses a court's errors in its Notice of Intent to Dismiss, and the summary dismissal of a petition for post-conviction pursuant to I.C. § 19-4906(b), though material issues of fact exist.

### **ii. The Course of the Proceedings**

This case is derived from the 1989 conviction of Alfredo Holguin Roman, and how a prosecutor's pretense of a trial, with deliberate deception of the court and jury, used false evidence to get a conviction. A timely petition for post-conviction relief was filed by initial post-conviction counsel on February 13, 1991, Case No. HC3256. The course of the proceedings is incorporated herein as written in Appellant's brief.

In this appeal the primary interest is whether there are material issue of facts in the record. Furthermore, The district court with lack of specificity, held that the IDOC Resource Centers were constitutionally adequate, that Roman's miscarriage of justice claims were untimely, and that the “actual innocence” exception did not apply in Idaho. The court summarily disposed of Roman's petition pursuant to I.C. § 19-4906(b), and Roman thus appeals.

### **iii Statement of the Facts**

The statement of facts is incorporated herein as written in the Appellant's Brief.

## **STATEMENT OF THE ISSUE**

Should a court be allowed to summarily dismiss a petition for post-conviction relief when material issues of fact exist on every issue of law formed by Roman's filing of his petition for post-conviction relief?



## ARGUMENT

### A. Introduction

Judgment dismissing Roman's petition for post-conviction relief was entered using the summary jurisdiction clause of I.C. § 19-4906(b). The filing of Roman's fourth successive petition for post-conviction relief, includes a determination of whether the claims asserted were presented within a reasonable period of time.

### B. Standards

The Court of Appeal exercises free review over interpretation of a statute. Garza v. State, 139 Idaho 533, 535-536, 82 P.3d 445, 447-448, (2003).

### B. Analysis

Respondent's brief places in stark contrast the question of appellate review of sua sponte dismissal of a petition for post-conviction relief: Is application of I.C. § 19-4906(b) enforced by the same standard utilized by a trial court when it examines whether petitioner's admissible evidence asserts facts which if true, would entitle the petitioner to relief?

Respondent contend, despite the clear language of I.C. § 19-4906(b), that Roman's petition was properly dismissed; because the district court considered the petition and record filed by Roman. The court's determination that Roman was not entitled to post-conviction relief, and no purpose would be served by any further proceeding was argued as proper. Respondent thus champion the lower court's view that the Idaho statute at issue gives the district court authority to dismiss Roman's petition when the court is satisfied, on the basis of the application, that the applicant is not entitled to post-conviction relief, and no purpose would therefore be served.

The Respondents misinterpret the standard of review for I.C. § 19-4906(b) cases. They argue that “over questions of law, this Court exercises free view.” Citing Rhoades v. State, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009)(The state moved for summary dismissal and the court granted the

motion.)

The power of the lens through which this Court has to review Roman's claims is not a question of law; but by how this Court interprets I.C. § 19-4906(b). The issue is whether the district court has authority to dismiss a petition under this statute when material issues of fact exist on every issue of law formed by Roman's pleadings, depositions, affidavits, and documents on record. Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007).

I.C. § 19-4906(b) provides: When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. In light of the reply, or on default thereof, the court may order the application dismissed . . . . The **edict** being, disposition on the pleadings and record is not proper if there exists a material issue of fact.

The plain meaning of this statute gives authority to a court to dismiss a petition on its own initiative based on any appropriate ground, however if there exist material issues of fact it has to conduct an evidentiary hearing. See Martinez v. State, 130 Idaho 530, 533, 944 P.2d 127, 130 (Ct. App. 1997). In e.g. Kirkland v. State, 143 Idaho 544, 546, 149 P.3d 819, 821 (2006) the Supreme Court reasoned that since a court may only dismiss a petition when there are no issues of material fact, the court needed to determine whether the documents in the record created a genuine issue of material fact. The Court held the district court erred in dismissing the petition under I.C. § 19-4906(b); because there were issues of material fact as to the issue of timeliness in Kirkland's petition.

In this case material issues of fact exist that demonstrate why and how Roman's alibi defense was inadequately raised, and why a *Napue* claim was not asserted. More, denial of meaningful access to the court by two court appointed attorneys, and then by the Idaho Department of Correction



Resource Centers which presented material issues of fact that demonstrated cause and prejudice.

While the court did not have to accept the conclusory allegations of Roman's application, in this case Roman provided evidence supporting all of his assertion that the petition and supporting documents provided sufficient reason to permit a Fourth Successive Petition for Post-Conviction Relief.

#### CONCLUSION

WHEREFORE, Appellant-Petitioner Roman request this case be remanded to the District Court for an evidentiary hearing.

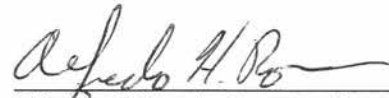
DATED this 13<sup>th</sup> day of August, 2021.

  
Alfredo Holguin Roman, pro se  
Petitioner-Appellant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 13<sup>th</sup> day of August 2021, I did tender to the Saguaro Correctional Facility legal mail system, pursuant to the Mailbox Rule, **Idaho v. Lee**, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990), a true and correct copy of the Appellant Reply Brief, postage pre-paid to the following:

Justin R. Porter  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010

  
\_\_\_\_\_  
Alfredo Holguin Roman, Pro se  
Petitioner-Appellant