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8-18-2017

### Rome v. State Clerk's Record Dckt. 45140

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SONNY ROME,	)	
	)	SUPREME COURT
PLAINTIFF-APPELLANT,	)	CASE NO. 45140
	)	
VS.	)	
	)	
STATE OF IDAHO,	)	
	)	
RESPONDENT	)	
<hr/>		

CLERK'S RECORD ON APPEAL

ERIC D FREDERICKSEN  
State Appellate Public Defender  
PO Box 2816  
Boise, ID 83701

LAWRENCE G WASDEN  
Attorney General  
PO Box 83720  
Boise, ID 83720

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

Sonny Charles Rome, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
3/11/2016	NCPD	LEU	New Case Filed - Post Conviction Relief	Clerk, Mag. Ct.
		LEU	Filing: H2e - Post-Conviction act proceedings * Paid by: state Receipt number: 0010455 Dated: 3/11/2016 Amount: \$.00 (Cash) For:	Clerk, Mag. Ct.
	ADMR	LEU	Administrative assignment of Judge	Lansing L. Haynes
	PETN	LEU	Petition And Affidavit For Post Conviction Relief	Lansing L. Haynes
	MOTN	LEU	Motion And Affidavit In Support Of Appointment Of Counsel	Lansing L. Haynes
3/15/2016	ANSW	LEU	Motion And Affidavit For Permission To Proceed On Partial Payment Of Court Fees (Prisoner)	Lansing L. Haynes
		HICKS	Respondent's Answer to Petition for Post Conviction Relief	Lansing L. Haynes
		HAYDEN	Order Re: Partial Payment of Court Fees (Prisoner) - Granted	Lansing L. Haynes
		HAYDEN	Certificate Of Delivery	Lansing L. Haynes
6/13/2016	NOTC	HAYDEN	Order Granting Motion for Appointment of Counsel - Anderson obo Petitioner	Lansing L. Haynes
		HAYDEN	Notice of Assignment Change - Walsh obo Anderson	Lansing L. Haynes
6/20/2016	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 07/27/2016 03:30 PM)	Lansing L. Haynes
		SVERDSTEN	Notice of Hearing	Lansing L. Haynes
7/27/2016	DCHH	SVERDSTEN	Hearing result for Status Conference scheduled on 07/27/2016 03:30 PM: District Court Hearing Held Court Reporter: Kim Hannan Number of Transcript Pages for this hearing estimated:	Lansing L. Haynes
7/28/2016	HRSC	SVERDSTEN	Hearing Scheduled (Court Trial Scheduled 02/21/2017 09:00 AM) 2 days	Lansing L. Haynes
		SVERDSTEN	Notice of Trial	Lansing L. Haynes
10/6/2016	NOTC	HICKS	Notice of Assignment Change - M Palmer, PD in place of S Walsh PD obo plaintiff	Lansing L. Haynes
11/8/2016	PETN	DIXON	First Amended Petition For Post-Conviction Relief	Lansing L. Haynes
11/17/2016	ANSW	LEU	Respondent's Answer To First Amended Petition For Post-Conviction Relief	Lansing L. Haynes
12/23/2016	BRIE	DIXON	Brief In Support Of Motion For Summary Dismissal	Lansing L. Haynes
		DIXON	Motion For Summary Dismissal	Lansing L. Haynes
12/29/2016	HRSC	SVERDSTEN	Hearing Scheduled (Motion 01/27/2017 09:30 AM) Motion for Summary Disposition, PA	Lansing L. Haynes
1/10/2017	NOTH	KOZMA	Notice Of Hearing	Lansing L. Haynes

Sonny Charles Rome, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
1/23/2017	MISC	FLODEN	Response to State's Motion for Summary Dismissal	Lansing L. Haynes
	MOTT	FLODEN	Motion to Allow Telephonic Appearance at Hearing	Lansing L. Haynes
	PLTX	KOZMA	Exhibit List for PCR Petition and Hearing on State's Motion for Summary Dismissal	Lansing L. Haynes
1/24/2017	ORDR	SVERDSTEN	Order Allowing Telephonic Appearance at Hearing	Lansing L. Haynes
1/27/2017	DCHH	SVERDSTEN	Hearing result for Motion scheduled on 01/27/2017 09:30 AM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Motion for Summary Disposition, PA PLAINTIFF APPEARING TELEPHONICALLY 208-476-3655 EXT 265	Lansing L. Haynes
2/2/2017	SUBF	KOZMA	Subpoena Return/found-JL	Lansing L. Haynes
2/6/2017	NOTC	FLODEN	Notice of Filing Under Seal (Motion to Transport and Order to Transport)	Lansing L. Haynes
	MOTN	FLODEN	Motion to Transport Petitioner Document sealed	Lansing L. Haynes
	PLWL	JLEIGH	Plaintiff's Witness List	Lansing L. Haynes
	DFWL	JLEIGH	Defendant's Witness List For Trial	Lansing L. Haynes
	DEFX	JLEIGH	Defendant's Exhibit List For Trial	Lansing L. Haynes
2/7/2017	ORDR	SVERDSTEN	Order of Trial Priorities (#1 of 2)	Lansing L. Haynes
2/13/2017	ORDR	TBURTON	Order To Transport Document sealed	Lansing L. Haynes
2/14/2017	HRSC	SVERDSTEN	Hearing Scheduled (Court Trial Scheduled 02/22/2017 09:00 AM)	Lansing L. Haynes
	HRVC	SVERDSTEN	Hearing result for Court Trial Scheduled scheduled on 02/21/2017 09:00 AM: Hearing Vacated 2 days	Lansing L. Haynes
		SVERDSTEN	Notice of Hearing	Lansing L. Haynes
		SVERDSTEN	AMENDED Notice of Trial	Lansing L. Haynes
2/21/2017	FACT	KOZMA	Proposed Findings Of Fact and Conclusions Of Law	Lansing L. Haynes
2/22/2017	MISC	SVERDSTEN	List of Exhibits	Lansing L. Haynes
	DCHH	EVANS	Hearing result for Court Trial Scheduled scheduled on 02/22/2017 09:00 AM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: 80 pages	Lansing L. Haynes
	CTST	SVERDSTEN	Court Trial Started	Lansing L. Haynes
3/2/2017	FJDE	DIXON	Order Granting Motion For Directed Verdict	Lansing L. Haynes

## Sonny Charles Rome, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
4/12/2017	CVDI	LEU	Civil Disposition entered for: State of Idaho Post Conviction Relief, Other Party; Rome, Sonny Charles, Subject. Filing date: 4/12/2017
	FJDE	LEU	Judgment
	STAT	LEU	Case status changed: Closed
5/11/2017	AFFD	HAYDEN	Declaration Regarding Indigency
	AFIS	HAYDEN	Affidavit of Michael G Palmer in Support of Motion to Appoint State Appellate Public Defender
	MISC	HAYDEN	Request to Waive Appellate Fees
	MOTN	LEU	Motion To Appoint State Appellate Public Defender
		LEU	Filing: L4a - Appeal – Post Conviction Relief Paid by: Palmer, Conflict Public Defender, Michael G. (attorney for Rome, Sonny Charles) Receipt number: 0017685 Dated: 5/12/2017 Amount: \$.00 (Cash) For: Rome, Sonny Charles (subject)
5/12/2017	APDC	LEU	Notice Of Appeal
	STAT	LEU	Case status changed: closed
5/15/2017	ORDR	LEU	Order For Appointment Of State Appellate Public Defender
6/14/2017	ORDR	LEU	Order Conditionally Dismissing Appeal - Idaho Supreme Court
	ORDR	LEU	Corrected Order Conditionally Dismissing Appeal - Idaho Supreme Court
7/14/2017	NLTR	LEU	Notice Of Transcript Lodged - 80 pgs - Valerie Nunemacher
7/17/2017	FJDE	LEU	Final Judgment
7/24/2017	APSC	LEU	Amended Notice Of Appeal
7/25/2017	ORDR	LEU	Order To Withdraw Conditional Dismissal And Reinstate Appeal - Idaho Supreme Court
8/18/2017	NLTR	LEU	Notice Of Transcript Lodged - 12 pgs - Valerie Nunemacher



5. Check whether a finding of guilty was made after a plea:

Of guilty

Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes  No

If so, what was the Docket Number of the Appeal? \_\_\_\_\_

7. State concisely all the grounds on which you base your application for post

conviction relief: (Use additional sheets if necessary.)

(a) My Attorney Say Logston FAILED to bring  
out that, I was shown a Receipt for stolen

(b) Items, also the officer offered my a Deal  
if I was I inform on my w DEFENDANT - Amara

(c) George - SHE is willing to testify on my behalf  
in court, to prove my innocence.

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? N/A

b. Any other petitions, motions, or applications in any other court? yes

c. If you answered yes to a or b above, state the name and court in which each petition, motion or application was filed:

United States Supreme Court

PETITION FOR POST CONVICTION RELIEF - 2

Revised: 10/13/05

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) My Attorney Jay Logston didn't object to any thing, He did not bring out certain

(b) Facts for me, He just sat there and said nothing. I had to speak on my own

(c) Defense

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

Yes      [ ] No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

Yes      [ ] No

12. State specifically the relief you seek:

TRIAL  
I would like a new trial to prove my innocence. In a or the same or a higher court, whatever convenient.

PETITION FOR POST CONVICTION RELIEF - 3

Revised: 10/13/05



13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 1 day of March, 2016.

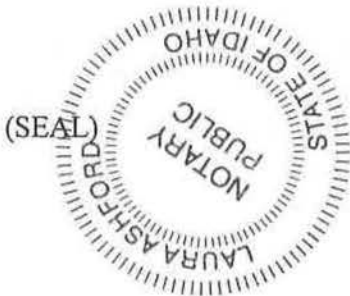
[Signature]  
Petitioner

STATE OF IDAHO )  
County of Clearwater ) ss

Sonny Rome, being sworn, deposes and says that the party is the Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

[Signature]  
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 1<sup>st</sup> day of March, 2016.



[Signature]  
Notary Public for Idaho  
Commission expires: July 26 2017

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 8 day of MARCH, 2016, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

Kootani County County Prosecuting Attorney  
P.O. Box 9000 C  
Coeur D'Alene ID 83816-9000

  
\_\_\_\_\_  
Petitioner

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

STATE OF IDAHO )  
COUNTY OF Clearwater ) ss

Sonny Rome, being first duly sworn on oath, deposes and says:

I WAS MIS REPRESENTED AT MY TRIAL - PARTS THAT SHOULD HAVE BEEN BROUGHT OUT TO THE JURY WAS NOT SAID. MY ATTORNEY JAY LOGSTON FAILED TO OBJECT OBJECT WHEN NEEDED TO OBJECT DIDNT SPEAK WHEN HE SHOULD OF SPOKE. I WAS SENTENCE TO 4 TO 12 YEARS IN PRISON FOR SUPPLYING I ALSO REPEALED OUR LAWS OF IDAHO NOT ONE SENTENCE SAYS THAT SUPPLYING IS NOTHING BUT A MISDEMEANOR NOT A FELONY. PLUS WAS CHARGED WITH OBSTRUCTIVE OFFENDER FROM CRIMES FOR ALL READY DID TIME FOR. I HAVE A WITNESS NOW SOMETHING I DIDNT HAVE IN MY TRIAL SHE MY CO DEFENDANT WILL TESTIFY IN COURT THAT ALL EDID WAS DRIVE THE VEHICLE THATS IT, I DIDNT COMMIT ANY CRIME - SPECIFICLY A FELONY OR ANYTHING ELSE.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Further your affiant sayeth not.

*[Signature]*  
Signature of Affiant

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 8<sup>th</sup> day of  
March, 2016.



*[Signature]*  
Notary Public for Idaho  
My Commission Expires: July 26 2017

**ORIGINAL**

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800  
Facsimile: (208) 446-1833

ASSIGNED ATTORNEY  
BRYANT BUSHLING

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED:  
2016 MAR 15 AM 10:38  
CLERK DISTRICT COURT  
*Jean Herb*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

**SONNY ROME,**  
Plaintiff,  
vs.  
**STATE OF IDAHO**  
Defendant.

Case No. CV16-2158

**RESPONDENT'S ANSWER TO  
PETITION FOR POST-  
CONVICTION RELIEF**

Respondent, State of Idaho, through the office of the Kootenai County Prosecuting Attorney, responds to the allegations contained in the Petition for Post-conviction Relief filed by the Petitioner and states as follows:

**I**

Respondent denies all allegations not specifically admitted herein.

**II**

Respondent admits the allegations contained in paragraphs 1 through 6 of the Petition for Post-conviction Relief.

### III

Respondent has insufficient knowledge regarding the allegation contained in paragraphs 7 and therefore denies same. Respondent denies the allegation contained in paragraphs 9.

### IV

Paragraphs 10, 11 and 12 of the Petition for Post-conviction Relief do not require an answer by Respondent.

### V

#### DEFENSES

##### First Affirmative Defense

The Petition for Post-Conviction Relief contains bare and conclusory allegations unsubstantiated by affidavits, records or other admissible evidence, and therefore fails to raise genuine issue of material facts.

Respondent, having fully answered all allegations contained in the Petition for Post-Conviction Relief filed herein, Respondent hereby respectfully prays as follows:

- 1 that this matter be dismissed for failure to state a claim;
- 2) that this matter be dismissed on its merits;
- 3) that petitioner take nothing by way of the Petition for Post-Conviction Relief;
- 4) for such further relief as the Court deems just.

DATED this 11<sup>th</sup> day of March, 2016 .



---

BRYANT E. BUSHLING  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of March, 2016, a true and correct copy of the foregoing was caused to be mailed/hand delivered to:

Sonny Rome  
113227  
381 W. Hospital Drive  
Orofino ID83544

A handwritten signature in black ink, appearing to read "Susan", is written above a horizontal line.

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
AND FOR THE COUNTY OF KOOTENAI  
324 W. GARDEN AVENUE  
COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2016 MAR 15 AM 11:51

CLERK DISTRICT COURT

*W. H. ...*  
DEPUTY *CCA*

SONNY CHARLES ROME, PLAINTIFF  
VS  
STATE OF IDAHO, DEFENDANT

)  
) Case No: CV-2016-0002158  
)

**CERTIFICATE OF DELIVERY**

I hereby certify that copies of the Order Granting Motion for Appointment of Counsel were delivered to the parties as follows on March 15th 2016:

Staci Anderson, Attorney

Faxed: 208-676-1683 #372

Dated: Tuesday, March 15, 2016  
Jim Brannon  
Clerk Of The District Court

By: *J. Susan McCoy*  
Deputy Clerk





FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
AND FOR THE COUNTY OF KOOTENAI  
324 W. GARDEN AVENUE  
COEUR D'ALENE, IDAHO 83816-9000

FILED 7/28/2016 AT 11:42 AM  
STATE OF IDAHO, COUNTY OF KOOTENAI SS  
CLERK OF THE DISTRICT COURT  
BY Suzi Sverdsten DEPUTY

SONNY CHARLES ROME, PLAINTIFF  
VS  
STATE OF IDAHO, DEFENDANT

)  
) Case No: CV-2016-0002158  
)  
)  
)  
) **NOTICE OF TRIAL**  
)  
)

NOTICE IS HEREBY GIVEN that the above-entitled case is set for:

**Court Trial Scheduled Tuesday, February 21, 2017 at 09:00 AM**  
**2 days**

**Judge:** Lansing L. Haynes

**Additional Presiding Judges:** Barbara Buchanan; Rich Christensen; Fred Gibler; Charles W. Hosack; John P. Luster; Cynthia K.C. Meyer; John T. Mitchell; Benjamin Simpson; Steven Verby; Scott Wayman.

I certify that copies of this Notice were served as follows on Thursday, July 28, 2016.

SEAN P. WALSH  
CONFLICT PUBLIC DEFENDER  
923 N 3RD STREET  
COEUR D'ALENE, ID 83814

Mailed

KOOTENAI COUNTY PROSECUTOR - CR  
INTEROFFICE DELIVERY - COURT BOX  
COEUR D'ALENE, ID 83814

Dated: Thursday, July 28, 2016  
Jim Brannon  
Clerk Of The District Court

By: Suzi Sverdsten, Deputy Clerk

## UNIFORM PRETRIAL ORDER

In order to assist with the trial of this matter **IT IS HEREBY ORDERED** that:

1. **DISCOVERY:**

All written discovery shall be initiated so that timely responses shall be completed thirty-five (35) days before trial. The last day for taking any discovery depositions shall be twenty-one (21) days before trial.

2. **EXPERT WITNESSES:**

Not later than one hundred fifty (150) days before trial, Plaintiff(s) shall disclose all experts to be called at trial. Not later than one hundred twenty (120) days before, Defendant(s) shall disclose all experts to be called at trial. Such disclosure shall consist of *at least* the information required to be disclosed pursuant to I.R.C.P. 26(b)(4)(A)(1)(i) for individuals retained or specially employed to provide expert testimony in the case or who are employees of the party and I.R.C.P. 26(b)(4)(A)(1)(ii) for individuals with knowledge of relevant facts not acquired in preparation for trial and who have not been retained or specially employed to provide expert testimony. Notice of compliance shall be contemporaneously filed with the Court.

3. **PRETRIAL MOTIONS:**

Motions for summary judgment shall be timely filed so as to be heard not later than sixty (60) days before trial. (NOTICE: DUE TO COURT CONGESTION IT IS ADVISABLE TO CONTACT THE COURT FOR SCHEDULING SUMMARY JUDGMENT MOTIONS AT LEAST 90 DAYS PRIOR TO HEARING.) Motions in limine concerning designated witnesses and exhibits shall be submitted in writing at least seven (7) days before trial. The last day for hearing all other pretrial motions shall be twenty-one (21) days before trial.

**4. MOTIONS FOR SUMMARY JUDGMENT:**

There shall be served and filed with each motion for summary judgment a separate concise statement, together with a reference to the record, of each of the material facts as to which the moving party contends there are no genuine issues of dispute. Any party opposing the motion shall, not later than fourteen (14) days after the service of the motion for summary judgment and the statement of facts, serve and file a separate concise statement, together with a reference to the record, setting forth all material facts as to which it is contended there exist genuine issues necessary to be litigated.

In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy, except and to the extent that such facts are asserted to be actually in good faith controverted by a statement filed in opposition to the motion.

The parties shall also file with the court their briefing and affidavits supporting or opposing a motion for summary judgment pursuant to the same timelines established in I.R.C.P. 56(c). Further, stipulations among the parties for late served and filed briefing are not binding on the court, and hearing dates may be continued by the court upon late filing.

**5. DISCOVERY DISPUTES:**

Unless otherwise ordered, the Court will not entertain any discovery motion, except those brought by a person appearing pro se and those brought pursuant to I.R.C.P. 26(c) by a person who is not a party, unless counsel for the moving party files with the Court, at the time of filing the motion, a statement showing that the lawyer making the motion has made a reasonable effort to reach agreement with opposing counsel on the matters set forth in the motion. The motion shall not refer the Court to other documents in the file. For example, if the sufficiency of an answer to an interrogatory is in issue, the motion shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

**6. EXHIBITS AND EXHIBIT LISTS:**

Exhibit lists and copies of exhibits shall be prepared and exchanged between parties at least fourteen (14) days before trial. The original exhibits and exhibit lists should be filed with the Clerk at the time of trial. Using the attached form, each party shall prepare a list of exhibits, it expects to offer. Two copies of the exhibit list are to be filed with the Clerk, and a copy is to be provided to opposing parties. Exhibits should be listed in the order that the party anticipates they will be offered. Each party shall affix exhibit labels to their exhibits before trial. After the labels are marked and attached to the original exhibit, copies should be made. Plaintiff's exhibits should be marked in numerical sequence. Defendant's exhibits should be marked in alphabetical sequence. The civil action number of the case and the date of the trial should also be placed on each of the exhibit labels. It is expected that each party will have a copy of all exhibits to be used at trial.

**7. LIST OF WITNESSES:**

Witness lists shall be prepared and exchanged between parties and filed with the Clerk at least fourteen (14) days before trial. Each party shall provide opposing parties with a list of the party's witnesses and shall provide the Court with two copies of each list of witnesses. Witnesses should be listed in the order they are anticipated to be called.

**8. JURY INSTRUCTIONS, IF JURY TRIAL REQUESTED:**

Jury instructions shall be prepared and exchanged between the parties and filed with the Clerk at least seven (7) days before trial. The Court has prepared stock instructions; copies may be obtained from the Court. The parties shall meet in good faith to agree on a statement of claims instruction which shall be submitted to the Court with the other proposed instructions. In the absence of agreement, each party shall submit their own statement of claims instruction. All instructions shall be prepared in accordance with I.R.C.P. 51(a).

**9. BRIEFS AND MEMORANDA:**

In addition to any original brief or memorandum filed with the Clerk of Court, a copy shall be provided to the Court. To the extent counsel rely on legal authorities not contained in the Idaho Reports, a copy of each case or authority cited shall be attached to the Court's copy of the brief or memorandum.

**10. TRIAL BRIEFS:**

Trial briefs shall be prepared and exchanged between the parties and filed with the Clerk at least seven (7) days before trial.

**11. PROPOSED FINDINGS AND CONCLUSIONS:**

If the trial is to the Court, each party shall at least seven (7) days prior to trial file with the opposing parties and the Court, proposed Findings of Fact and Conclusions of Law Supporting their position.

**12. MODIFICATION:**

This Pretrial Order may be modified by stipulation of the parties upon entry of an order by the Court approving such stipulation. Any party may, upon motion and for good cause shown, seek leave of Court modifying the terms of this order, upon such terms and conditions as the Court deems fit. Any party may request a pretrial conference pursuant to I.R.C.P. 16(i).

**13. SANCTIONS FOR NONCONFORMANCE:**

Failure to timely comply in all respects with the provisions of this order shall subject non-complying parties to sanctions pursuant to I.R.C.P. Rule 16(i), which may include:

(a) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence, and/or limiting or prohibiting witness testimony;

(b) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(c) In lieu of any of the foregoing orders or in addition thereto, an order threatening as a contempt of Court the failure to comply;

(d) In lieu of or in addition to any other sanction, the Judge shall require the party or the attorney representing such party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the Judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

**14. MOTION OR STIPULATION TO CONTINUE:**

A hearing or trial may be continued only by the Court in its discretion. Continuances may be granted by stipulation, but only if the actual parties signify that they agree with the stipulation of the lawyers.

**IT IS FURTHER ORDERED** that any vacation or continuation of a trial date will not change or alter any of the dates established by this Uniform Pretrial Order, including, but not limited to, discovery, disclosure and the hearing dates for motions. Any party may, upon motion and for good cause shown, request that the discovery, disclosure and motion hearing dates be altered on vacation or continuance of the trial date.

Lansing L. Haynes  
Lansing L. Haynes, District Judge



STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]*  
2016 OCT -6 PM 2:07

MICHAEL G. PALMER  
CONFLICT PUBLIC DEFENDER  
PALMER GEORGE & TAYLOR PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814  
Telephone: (208) 665-5778  
Facsimile: (208) 765-4636  
ISBN: 5488

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY *[Signature]*

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

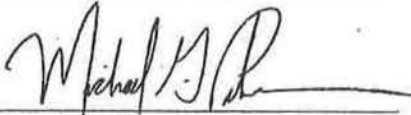
SUNNY ROME,	)	
	)	Case No. CV 16-2158
Plaintiff,	)	
	)	<b>NOTICE OF ASSIGNMENT</b>
vs.	)	<b>CHANGE</b>
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	
	)	

NOTICE IS HEREBY GIVEN that MICHAEL G. PALMER, CONFLICT PUBLIC DEFENDER, of the law firm of PALMER GEORGE & TAYLOR PLLC, is assuming responsibilities from SEAN P. WALSH, CONFLICT PUBLIC DEFENDER, in the above-entitled matter and all inquires regarding this action should be directed to him as attorney of record for Plaintiff herein.



DATED this 6<sup>th</sup> day of October, 2016.

PALMER GEORGE & TAYLOR PLLC

By   
Michael G. Palmer  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6<sup>th</sup> day of October, 2016, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
PO Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL  
 HAND DELIVERED  
 OVERNIGHT MAIL  
 TELECOPY (FAX) to: (208) 446-2168

  
Jessica K. McGovern

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED

*[Signature]*

2016 NOV -8 AM 8:48

CLERK DISTRICT COURT

*[Signature]*  
DEPUTY *[Signature]*

Michael Palmer  
Conflict Public Defender  
PALMER GEORGE & TAYLOR PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814  
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ISBN: 5488

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

)  
) Case No. CV-2016-2158  
)

) **FIRST AMENDED PETITION FOR**  
) **POST-CONVICTION RELIEF**  
)

COMES NOW, the above-entitled Petitioner, SONNY C. ROME, by and through his attorney of record, MICHAEL PALMER of the firm Palmer George & Taylor PLLC, Conflict Public Defender, and hereby files his first amended petition for post-conviction relief.

Circumstances and Context

On December 11, 2013, Sonny Rome drove to a Walmart store in Post Falls. Testimony established that a woman took a vacuum cleaner from the store and entered Rome's truck with it; Rome was driving and left the area with the woman and vacuum. Rome was charged with aiding and abetting a burglary (the theft of the vacuum). Rome was convicted, but the trial attorney did not request a correct jury instruction for aiding and abetting of a burglary.

During trial, testimony was admitted concerning a non-custodial interrogation of Mr. Rome. Rome's responses were not voluntarily made due to threats and promises of the interrogating police officer. Rome's trial attorney did not move to suppress those statements.

During Rome's testimony the State conducted improper hearsay examination regarding Rome's daughter, Amanda George. Rome's trial counsel did not object to the testimony elicited about Ms. George.

Rome was also charged with a persistent violator enhancement pursuant to Idaho Code §19-2514. Rome did not want to testify as to his prior convictions, but was called to the stand by his trial attorney during Part 2 of the trial. Nothing in the record reflects the need for such testimony from the defense. The trial attorney was ineffective in calling Rome to the stand.

The State submitted improper evidence of Rome's birthdate which the trial court allowed into evidence over a defense objection. Rome's appellate attorney did not raise the issue of the Court's improper ruling that allowed into evidence Rome's date of birth. Nor did the appellate attorney challenge the sufficiency of the evidence supposedly connecting Rome with a prior conviction for a 2008 forgery, among other errors.

**FOR HIS PETITION FOR POST-CONVICTION RELIEF, MR. ROME ALLEGES:**

**COUNT I**

**Failure to file a motion to suppress involuntary statements.**

1.

That I am currently in custody, housed at the Idaho Correctional Institution – Orofino (ICIO), 381 West Hospital Drive, Orofino, ID 83544.

2.

That I was charged, convicted and sentenced in the First Judicial District, Kootenai County District Court, with one count of aiding and abetting a burglary (with a persistent violator enhancement) in Kootenai County case number CR-2014-3761. The Hon. Lansing Haynes was the trial judge and sentencing judge.

3.

That I was sentenced on April 10, 2015 to a 12 (twelve) year unified sentence with 4 (four) years determinate and 8 (eight) years indeterminate. I was also ordered to pay restitution.

4.

That I appealed from that conviction and sentence. An opinion upholding the verdict and sentence was issued by the Idaho Court of Appeals on March 14, 2016; *State v. Rome*, 160 Idaho 40, 368 P.3d 660 (Ct.App. 2016). A remittitur issued on April 11, 2016. As of July 25, 2016, I have not filed any petitions in state or federal courts for habeas corpus relief.

5.

I repeat and incorporate herein by reference all the factual and legal allegations contained in the "Circumstances and Context" section of this petition.

6.

During trial, the State elicited information from Det. Nowels regarding statements I made to him on or about December 12, 2013.

7.

Those statements were made as a result of threats by the officer to have me arrested if I did not tell him who was with me at Walmart, and promised to not arrest me or, as I understood

it, charge me at all if I told him who was with me. I was overly-pressured into giving Det. Nowels information and denials.

8.

My trial attorney did not object by pretrial motion or at trial as to the involuntary nature of my statements.

9.

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the trial would probably have been different. The statements would not have been made and the jury would not have convicted me of burglary.

## COUNT II

### Failure to object to testimony concerning Amanda George.

10.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

11.

During the trial, the State elicited hearsay and inadmissible testimony from Det. Nowels about Amanda George and her relation to me and Deborah George, and testimony about Deborah George. My attorney did not properly object to the substance of the testimony.

12.

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the

outcome of the trial probably would have been different. The testimony would not have come in and the jury would not have known of Amanda George and the relation between myself and Amanda George. I would not have been found not guilty of aiding and abetting the burglary.

### **COUNT III**

#### **Trial counsel's failure to track down vacuum receipt.**

13.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

14.

During trial I testifies to a receipt shown to me reflecting the purchase of a vacuum cleaner. My attorney, in preparation for trial, did not obtain proof of the receipt and payment for a vacuum cleaner, nor did he present such proof at trial.

15.

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the trial probably would have been different. The jury would not have found me guilty of aiding and abetting a burglary.

**COUNT IV**

**Failure to properly object to conviction records coming into evidence.**

16.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

17.

My attorney did not properly object to the admissibility, foundation, relevancy and prejudicial effect of my prior convictions during the trial which would have kept out proof of my prior convictions.

18.

My attorney did not properly object to the admissibility and foundation of proof of my prior convictions and my date of birth during Part 2 of the trial which would have excluded those prior convictions from evidence.

19.

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the trial probably would have been different. The prior convictions would not have enhanced the sentence I received.

**COUNT V**

**Failure to object and properly advise client regarding testifying.**

20.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

21.

I did not want to testify about my prior convictions during the trial.

22.

My attorney did not object to questions put to me about my prior convictions nor advise me properly about testifying about them. He improperly called me to the stand during Part 2 of the trial.

23.

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the trial probably would have been different. The prior convictions would not have been proven and my sentence would not have been enhanced.

## COUNT VI

**Failure to obtain a correct jury instruction for "aiding and abetting" and arguing the same.**

24.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

25.

My attorney failed to obtain a proper jury instruction for "aiding and abetting" and did not properly argue against the elements needed to prove the crime I was charged with.

26.

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the



outcome of the trial probably would have been different. The jury probably would not have convicted me of aiding and abetting a burglary.

## **COUNT VII**

### **Failure to present mitigation at sentencing and Rule 35 hearing.**

**27.**

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

**28.**

At sentencing my attorney had access to Amanda George, who could have and would have presented mitigating information to the court for sentencing. My sentencing was in April of 2015, while Amanda had already pled guilty to this burglary in October of 2014. He did not present any information from her. In addition, he had access to my wife, Deborah George, to present mitigating information to the court, but he did not do so.

**29.**

The actions of trial counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the sentence would probably have been different. The sentence would have resulted in a shorter period of incarceration.

**COUNT VIII**

**Failure of appellate counsel to raise issue of testimony about defendant's identity.**

30.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

31.

During trial, my attorney objected to testimony concerning my identity and date of birth. The court improperly over-ruled the objection.

32.

Had the testimony been properly excluded, I would not have been found guilty of having prior convictions.

33.

My appellate attorney did raise this issue for the appellate court to decide, and it was a stronger argument for reversal than the issues that were raised on appeal.

34.

The actions of appellate counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the appeal probably would have been different.

**COUNT IX****Failure of appellate counsel to raise the issue of sufficiency of proof of prior convictions.**

35.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

36.

The trial court ruled that a prior conviction for forgery had been proven, but the evidence was not sufficient. Proof of other prior convictions were likewise insufficient. This was fundamental error and should have been raised as an issue on appeal.

37.

My appellate attorney did raise this issue for the appellate court to decide, and it was a stronger argument for reversal than the issues that were raised on appeal.

38.

The actions of appellate counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the appeal probably would have been different. My sentence would not have been enhanced as a result of these prior convictions.

**COUNT X****Failure of appellate counsel to raise the issue of cumulative errors.**

39.

I hereby repeat and incorporate herein by reference all the factual and legal allegations made previously in this petition.

40.

Even if any one of the errors alleged in this Petition is not sufficient to grant relief, the cumulative effect of all of them prejudiced my case and requires correction to abide by due process and to grant me a fair trial.

41.

The cumulative error in this case constituted fundamental error and should have been raised as an issue on appeal.

42.

My appellate attorney did not raise this issue for the appellate court to decide, and it was a stronger argument for reversal than the issues that were raised on appeal.

43.

The actions of appellate counsel as alleged above fell below an objective standard of reasonableness, and prejudiced my case in that but for counsel's deficient performance the outcome of the appeal probably would have been different, with a new trial granted.

44.

This petition is accompanied by my declaration swearing that the above matters are true.

WHEREFORE petitioner requests:

- 1) That the conviction for burglary be set aside and a new trial ordered;
- 2) Alternatively, that case be set for re-sentencing.
- 3) Such other relief as the Court deems appropriate.

DATED this 0<sup>th</sup> day November, 2016.

By:


  
MICHAEL PALMER  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <sup>NOVEMBER</sup> 8 day of ~~July~~, 2016, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Bryant Bushling  
Kootenai County Prosecutor's Office  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 446-1833 <sup>2168</sup>

By:   
Amber Morris

**DECLARATION PURSUANT TO IDAHO CODE §9-1406**

I, Sonny C. Rome, hereby declare under penalty of perjury pursuant to Idaho Code §9-1406 and Idaho law that I am the Petitioner in the above-entitled matter, I have read the foregoing First Amended Petition for Post-Conviction Relief, know the contents thereof and believe the same to be true to the best of my knowledge, information and belief.

DATED this 2 day of <sup>August</sup>~~July~~, 2016.



Sonny Rome  
Declarant / Petitioner

ORIGINAL

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2016 NOV 17 PM 3:44

CLERK DISTRICT COURT  
*Debra J. ...*  
DEPUTY

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800  
Facsimile: (208) 446-1833

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

**SONNY ROME,**  
Petitioner,  
vs.  
**STATE OF IDAHO**  
Respondent.

Case No. CV 16-2158

**RESPONDENT'S ANSWER TO  
FIRST AMENDED PETITION  
FOR POST-CONVICTION  
RELIEF**

Respondent, State of Idaho, through the office of the Kootenai County Prosecuting Attorney, responds to the allegations contained in the First Amended Petition for Post-conviction Relief filed by the Petitioner and states as follows:

**I**

Respondent denies all allegations not specifically admitted herein.

**II**

Respondent denies the allegations contained in Counts 1 through 10 of the First Amended Petition for Post-conviction Relief.

**III**

**DEFENSES**

First Affirmative Defense

The Petition for Post-Conviction Relief contains bare and conclusory allegations unsubstantiated by affidavits, records or other admissible evidence, and therefore fails to raise genuine issue of material facts.

Respondent, having fully answered all allegations contained in the Petition for Post-Conviction Relief filed herein, Respondent hereby respectfully prays as follows:

- 1 that this matter be dismissed for failure to state a claim;
- 2) that this matter be dismissed on its merits;
- 3) that petitioner take nothing by way of the Petition for Post-Conviction Relief;
- 4) for such further relief as the Court deems just.

DATED this 10<sup>th</sup> day of November, 2016



---

BRYANT E. BUSHLING  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November, 2016, a true and correct copy of the foregoing was caused to be sent via justware to:  
Michael Palmer



---



ORIGINAL

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800  
Facsimile: (208) 446-1833

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2016 DEC 23 AM 10:13

CLERK DISTRICT COURT

*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

**SONNY ROME,**  
Petitioner,  
vs.  
**STATE OF IDAHO**  
Respondent.

Case No. CV16-2158

**BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY  
DISMISSAL**

**Petitioner's Allegations**

Petitioner alleges that his counsel was ineffective for failing to file a motion to suppress statements that were made during a non-custodial encounter, for failure to object to certain testimony, for failure to find a receipt, failure to object to conviction records, failure to properly advise and prepare regarding testifying, failure to obtain a correct jury instruction, failure to present mitigation evidence at sentencing and the Rule 35 hearing, and the failure of appellate counsel to raise certain issue.

**Failure to move to suppress statements**

Petitioner claims that he was pressured into given "statements and denials" to Lt. Nowels. Petitioner claims that his counsel was ineffective in failing to move to suppress these statements. It is incumbent on Petitioner to show 1) which statements were coerced, 2) that he notified his

counsel that they were coerced, and 3) that the admission of these statements resulted in prejudice. Petitioner fails to identify the statements complained of or the circumstances rendering them coerced. It is important to note there is no indication that the statements resulted in any investigative avenues being taken, that the statements were made when Petitioner was not in custody, and that the statements were denials.

Because the allegations contained in the Petition regarding this count are so inchoate, and because the burden is on the Petitioner to present evidence supporting his Petition, this allegation should be dismissed. Bare or conclusory allegations, unsubstantiated by any fact, are inadequate to entitle a petitioner to an evidentiary hearing. *Roman*, 125 Idaho at 647, 873 P.2d at 901; *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986); *Stone*, 108 Idaho at 826, 702 P.2d at 864. If a petitioner fails to present evidence establishing an essential element on which he bears the burden of proof, summary dismissal is appropriate. *Mata v. State*, 124 Idaho 588, 592, 861 P.2d 1253, 1257 (Ct. App. 1993).

Here, all Petitioner does is claim that Lt. Nowels pressured him into giving statements. This is an example of the “bare or conclusory” allegations spoken of in *Roman*, supra. The statements to Lt. Nowels were essentially denials. Petitioner fails to show how his statements were involuntarily made, and, if they were, how the trial result would have been different if they had been excluded.

#### **Failure to object to testimony re: Amanda George**

“[I]t is well established that counsel's choice of witnesses, manner of cross-examination, and lack of objection to testimony fall within the area of tactical, or strategic, decisions. *Giles v. State*, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994).” *State v. Grove* 151 Idaho 483. Even assuming, without admitting, that the testimony as adduced was inadmissible, the question is

whether Petitioner was prejudiced. The evidence was clearly relevant (Amanda George pled guilty to the same burglary in case); Petitioner even alleges that Amanda George should have testified at his sentencing hearing. The evidence could have been proven by other means. In order to establish prejudice, Petitioner must show a reasonable probability that, but for his attorney's deficient performance, the outcome of the trial would have been different.

“Because of the distorting effects of hindsight in reconstructing the circumstances of counsel's challenged conduct, there is a strong presumption that counsel's performance was within the wide range of reasonable professional assistance -- that is, ‘sound trial strategy.’” *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989) (quoting *Strickland*, 466 U.S. at 689-90); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). A petitioner must overcome a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment to establish that counsel's performance was “outside the wide range of professionally competent assistance.” *Claibourne v. Lewis*, 64 F.3d 1373, 1377 (9th Cir.1995) (quoting, *Strickland*, 466 U.S. at 690). Failure to object to arguably inadmissible evidence is insufficient alone to overcome the presumption that the decision was based on sound legal strategy. *Storm v. State* 112 Idaho 718, 722.

### **Failure to track down receipt**

In *Mata v. State* 124 Idaho 588, the court stated:

“An applicant for post-conviction relief claiming ineffective assistance of counsel is not automatically entitled to an evidentiary hearing. Like a civil litigant resisting a motion for summary judgment, an applicant opposing summary dismissal under I.C. section 19-4906, must present evidence to support every controverted element of the claim for relief. (Citations omitted). If the applicant fails to present evidence establishing an essential element on which he or she bears the burden of proof, summary dismissal is appropriate. Because Mata offered no evidence on an essential element of his claim—**that he was**

**prejudiced by his attorney’s failure to inform him of his right of allocution**—the district court correctly dismissed Mata’s application as to this claim”. (Emphasis added).

There is no evidence presented that a receipt existed, and that even if one existed, that the failure to produce it was prejudicial. Petitioner claims that he asked to see a receipt from the thief in order to assure himself that the vacuum was not stolen. It would have been a poor defense strategy to rely on that defense as, not only does it sound contrived, it would also show that Petitioner had some suspicions about the legitimacy of his co-defendant’s motive in going to Walmart. Indeed, Amanda George pled guilty to the burglary in case F14-3690.

In *Parrot v. State*, 117 Idaho 272, at page 275 the Court reiterated the clear rule that prejudice must be shown: “Even if one accepts Parrott’s allegations that his attorney’s pretrial investigation was inadequate, there has been no showing that a more thorough investigation would have produced a different result at trial”.

**Failure to object to conviction records being admitted**

Petitioner fails to show how the records were not admissible.

**Failure to advise regarding testifying**

Petitioner fails to detail whether he had had any discussions with counsel about testifying, what advise was given to him, and fails to show how his testifying prejudiced him.

**Failure to obtain a correct “aiding and abetting” instruction**

The propriety of jury instructions is an appellate issue and is therefore not a proper subject for a post conviction hearing. I.C. §19-4901(b).

**Failure to present mitigation evidence**

Petitioner fails to show that there was mitigation evidence available, and that the failure to produce it was prejudicial.

## Failure of appellate counsel to raise issues

Petitioner asserts appellate counsel was ineffective because he or she did not raise certain issues on appeal. This argument is contrary to established case law providing that appellate counsel has no constitutional obligation to raise every non-frivolous issue requested by the defendant. *Jones v. Barnes*, 463 U.S. 745, at 751-53; *Aragon v. State* 114 Idaho 758, at p. 765. The Court should therefore reject this argument. Whether appellate counsel should be required to raise certain claims on appeal was addressed in *Mintun v. State* 144 Idaho 656. In *Mintun*, the Court of Appeals noted,

“Mintun's claims that he was denied the effective assistance of counsel because appointed counsel should have raised certain additional issues on appeal are subject to the standards set forth in *Strickland*, and Mintun therefore must show that appellate counsel's performance was deficient and caused prejudice in the outcome of the appeal. *Bell*, 535 U.S. at 697-98, 122 S.Ct. at 1851-52, 152 L.Ed.2d at 928-29; *Sparks v. State*, 140 Idaho 292, 297, 92 P.3d 542, 547 (Ct. App. 2004). An indigent defendant does not have a constitutional right to compel appointed appellate counsel to press all nonfrivolous arguments that the defendant wishes to pursue. *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312, 77 L.Ed.2d 987, 993 (1983). Rather, the process of winnowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being the evidence of incompetence, is the hallmark of effective appellate advocacy. *Smith v. Murray*, 477 U.S. 527, 536, 106 S.Ct. 2661, 2667, 91 L.Ed.2d 434, 445 (1986).

“Notwithstanding *Barnes*, it is still possible to bring a *Strickland* claim based on counsel's failure to raise a particular claim, but it is difficult to demonstrate that counsel was incompetent.’ *Smith v. Robbins*, 528 U.S. 259, 288, 120 S.Ct. 746, 765, 145 L.Ed.2d 756, 781 (2000). ‘[O]nly when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.’ *Id.* (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)). 144 Idaho at 661, 168 P.3d at 45 (citation omitted).

Petitioner fails to present any evidence to show that the issues that he complains were not raised were “clearly stronger” than the issue appellate counsel chose to raise on appeal. As the petitioner, he bears the same burden of proof imposed upon a civil plaintiff. *Paradis v. State*, 110

Idaho 534, 536; *Esquivel v. State*, 149 Idaho 255, 258 n.3. If Petitioner believes appellate counsel was ineffective for failing to raise a claim on appeal regarding certain trial motions and issues, it is incumbent upon him to present evidence to the district court demonstrating why counsel's failure to do so resulted in constitutionally ineffective assistance. Therefore, ineffectiveness has not been shown. Even if Petitioner could establish that counsel's strategic decision to not appeal certain issues was below an objective standard, he failed to show any prejudice therefore—he has not shown that there would have been a result favorable to him.

For the reasons stated above, Respondent respectfully requests that the Petition be dismissed.

Dated this 22<sup>nd</sup> day of December, 2016



---

BRYANT E. BUSHLING  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November, 2016, a true and correct copy of the foregoing was caused to be sent via justware to:  
Michael Palmer



---

ORIGINAL

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800  
Facsimile: (208) 446-1833

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2016 DEC 23 AM 10:12

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

**SONNY ROME,**  
Petitioner,  
vs.  
**STATE OF IDAHO**  
Respondent.

Case No. CV 16-2158

**MOTION FOR SUMMARY  
DISMISSAL**

COMES NOW, BRYANT BUSHLING, Deputy Prosecuting Attorney for Respondent, State of Idaho, and hereby moves this Honorable Court to enter Summary Dismissal of the Petition for Post-Conviction Relief for the reasons stated in the Brief In Support of Motion for Summary Dismissal.

Dated this 22<sup>nd</sup> day of December, 2016

*[Signature of Bryant Bushling]*

Bryant Bushling  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of December, 2016, a true and correct copy of the foregoing was caused to be sent via justware to:  
Michael Palmer

A handwritten signature in black ink, appearing to read "Susan", is written above a horizontal line.



MICHAEL PALMER  
 Attorney at Law  
 PALMER GEORGE & TAYLOR PLLC  
 923 N. 3<sup>rd</sup> Street  
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 Phone: (208) 665-7400  
 Fax: (208) 765-4636  
 ISBN No.: 5488

STATE OF IDAHO } SS  
 COUNTY OF KOOTENAI }  
 FILED: *JMP*  
 2017 JAN 23 PM 1:20  
 CLERK DISTRICT COURT  
 DEPT. *Grades*

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,	)	
	)	Case No. CV-2016-2158
Plaintiff,	)	
	)	
vs.	)	<b>RESPONSE TO</b>
	)	<b>STATE'S MOTION</b>
STATE OF IDAHO,	)	<b>FOR SUMMARY DISMISSAL</b>
	)	
Defendant.	)	

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and responds to the State's Motion for Summary Dismissal of plaintiff/petitioner's Amended Petition for Post-Conviction Relief.

Circumstances

**Note regrading declarations:** Declarations from Sonny Rome, Debra George and Amanda George are referenced and included in this Response based upon information provided to defense counsel. However, the signed declarations have not arrived as of January 23, 2017 so this Response is filed with unsigned declarations. It is expected that the signed declarations will be available at the time of the hearing on January 27.

Sonny Rome filed a petition for post-conviction relief raising many points of error. The State has asked that his claims be dismissed for various legal reasons. Rome maintains that there are genuine issues of fact on some claims that must be resolved at trial. On other claims, the State is not correct in its legal reasoning.

### Regarding Count I of the PCR Petition

#### **(Failure to file a motion to suppress involuntary statements.)**

On pages 1 and 2 of its Motion, the State challenges Rome's claim that his trial attorney should have filed a motion to suppress statements Rome made to Officer Nowels.

The State argues that the statements are not specified; that Rome does not allege he told his counsel of the coercion, and that prejudice was not shown. The statements are those relayed to the jury by Officer Nowels; Rome advised his counsel as shown by his affidavits and his trial testimony about the coercion; Debra George witnessed the coercive factors as shown by her declaration, Exhibit 6; and these erroneously-admitted statements prejudiced Rome by adding material weight to the state's case.

#### Factual support

Initial factual support for Count I comes *via* Rule 201, Idaho Rules of Evidence, regarding the taking of judicial notice. Rome requests that the Court take judicial notice of the following documents, copies of which are being provided to court and counsel. Rome requests that these documents be entered as part of the record in his PCR case, Kootenai County CV-2016-2158:

- 1) Trial transcript on appeal filed in *State v. Rome*, Kootenai County case CR-2014-3761. (Exhibit #1.) This shows Rome's testimony at trial indicating coercion by Officer Nowels when obtaining Rome's statements. (See below for references to some of the pages of the transcript.)

2) The Clerk's Record on Appeal filed in *State v. Rome*, Kootenai County case CR-2014-3761. (Exhibit #2.)

3) The court's complete file in *State v. Rome*, Kootenai County case CR-2014-3761, including the trial exhibits and appellate documents. (Exhibit #3.) This shows that no motion to suppress statements was filed by the defense.

Additionally, Mr. Rome did tell his attorney of the coercion and offers made by Officer Nowels to obtain Rome's statements. (See Exhibit #4, Supplemental Declaration by Sonny Rome.)

At trial, Officer Nowels testified that he was armed, dressed for work and with his official identification. (See Exhibit #1, trial transcript, p. 50.) Nowels threatened Rome more than once and his wife as well, and offered immunity if Rome would testify against Amanda George. (See Exhibit #1, trial transcript, pp. 98 and 112-113.)

Rome's companion Debra George witnessed the police tactics. (See Exhibit #6, Debra George's declaration.)

**Ineffective trial counsel.**

Trial counsel did not file a motion to suppress the coerced statements made by Rome. Given the context of the interrogation and the intimidation by Nowels, a motion to suppress the statements should have been made. It would have succeeded.

In determining the voluntariness of statements made by a defendant to police officers, the court must look to the "totality of the circumstances." *State v. Radford*, 134 Idaho 187 at 191, 998 P.2d 80 at 84 (2000); *State v. Fabeny*, 132 Idaho 917 at 922, 980 P.2d 581 at 586 (Ct.App. 1999); *State v. McLean*, 123 Idaho 108 at 111, 844 P.2d 1358 at 1361 (Ct.App. 1992). A statement will be deemed involuntary if the defendant's will was overborne by police coercion or

overreaching. *Arizona v. Fulminante*, 499 U.S. 279 at 287-88, 111 S.Ct. 1246 at 1252-53, 113 L.Ed.2d 302 at 316-17 (1991).

The use against a criminal defendant of a statement that the defendant made involuntarily violates the Due Process Clause. *Miller v. Fenton*, 474 U.S. 104 at 109-10, 106 S.Ct. 445 at 448-49 (1985); *Haynes v. Washington*, 373 U.S. 503 at 514-15, 83 S.Ct. 1336 at 1343 (1963); *State v. Doe*, 131 Idaho 709 at 712, 963 P.2d 392 at 395 (Ct.App. 1998). The exclusionary rule "applies to any confession that was the product of police coercion, either physical or psychological, or that was otherwise obtained by methods offensive to due process." *State v. Doe*, 130 Idaho 811 at 814, 948 P.2d 166 at 169 (Ct.App. 1997).

A statement is voluntary if it is the product of a free will. *State v. Powers*, 96 Idaho 833, 537 P.2d 1369 (1975). Under this standard, it must be determined that the statement was not extracted "by any sort of threats or violence, nor obtained by any direct or implied promises... ." *Bram v. United States*, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897).

Promises of immunity or threats used to gain admissions are methods that easily undercut the voluntariness of incriminating statements. See this explanation from *State v. Valero*, 153 Idaho 910 at 915, 285 P.3d 1014 at 1019 (Ct.App. 2012):

Promises made by law enforcement officers without the authority to fulfill such promises may render a confession involuntary. See *State v. Kysar*, 114 Idaho 457, 459, 757 P.2d 720, 722 (Ct.App. 1988). The State asserts that "rather than make any such promise, [the detective] merely stated generally that telling the truth would be better for Valero than lying." However, while the detective may have made no direct promises, by virtue of the themes developed and tactics used by the detective, how "telling the truth would be better" than lying certainly implicated matters outside of the detective's control. By stating that "they [the accusations] are not like some major issue that you and I can't get resolved today," the detective implied that he could make the matter go away if Valero would only tell the truth. By claiming that the polygraph was admissible and that "I have to go to court now and say absolutely

one hundred percent Jose touched [the victim's] breasts," the detective impliedly promised admission of evidence in court conclusive in regard to proof of guilt.

In the case of *State v. Kysar*, 114 Idaho 457, 757 P.2d 720 (Ct.App. 1988), cited above in the *Valero* case, an officer's statements that defendant would probably be out in time to see his baby born and that officer would inform the prosecutor of his cooperation rendered the confession involuntary. If, in light of all the circumstances, "the government obtained the statement by physical or psychological coercion *or by improper inducement* so that the suspect's will was overborne," the resulting confession is not considered voluntary. *Derrick v. Peterson*, 924 F.2d 813 at 817 (9th Cir. 1990) [Emphasis added; citations omitted.]

Statements obtained by police in violation of an accused's right to counsel may not be used in the State's case-in-chief, but are admissible to impeach the accused if he testifies at trial. *Harris v. New York*, 401 U.S. 222 at 224, 91 S.Ct. 643 at 645 (1971); *Michigan v. Harvey*, 494 U.S. 344 at 350-51, 110 S.Ct. 1176 at 1180 (1990). However, statements made involuntarily are inadmissible for all purposes, including impeachment. *Harvey*, 494 U.S. at 351, 110 S.Ct. at 1180-81, 108 L.Ed.2d at 302-03.

When a defendant seeks suppression of a confession as having been involuntarily given, it is the prosecution's burden to prove by a preponderance of the evidence that the confession was voluntary. *Lego v. Twomey*, 404 U.S. 477 at 481, 92 S.Ct. 619 at 622-23 (1972); *State v. Carey*, 122 Idaho 382 at 384, 834 P.2d 899 at 901 (Ct.App. 1992); *State v. Dillon*, 93 Idaho 698 at 710, 471 P.2d 553 at 565 (1970).

If the defendant's free will is undermined by threats, or through direct or implied promises, then the statement is not voluntary and is inadmissible. *Wilson*, 126 Idaho 926 at 929, 894 P.2d 159 at 162 (Ct.App. 1995).

### Prejudice

Rome made statements (among others) placing him at the scene of the crime, admitting to helping a woman remove a vacuum cleaner from Walmart and denying that the woman was Amanda George. These were all incriminating statements in the context of the trial, and all of them were used against Rome during trial.

The State, on page 2 of its brief, argues that “[t]he statements to Lt. Nowels were essentially denials,” as if that eliminated any prejudice. The U.S. Supreme Court long ago put that approach to rest, quoting from a well-reasoned state case:

But the State says this was a denial of guilt and not a confession. It was a declaration which the State used to procure a conviction; and it is not for the State to say the declaration did not prejudice the prisoner's case. Why introduce it at all unless it was to lay a foundation for the prosecution? The use which was made of the prisoner's statement precluded the State from saying that it was not used to his prejudice.

*Bram, supra*, 168 U.S. 532 at 542, 18 S.Ct. 183 (1897).

Had Rome's attorney made a motion to suppress, it would have been granted and his statements would not have been admitted. The outcome of the case would likely have been different. Rome was prejudiced by the failure of his attorney to suppress his confessions and statements.

### Remedy

The proper remedy is for a new trial to be held, with a motion to suppress Rome's statements to Lt. Nowels.

**Regarding Count II of the PCR Petition**

**(Failure to Object to Testimony re: Amanda George)**

**Factual support**

During the trial, the prosecutor asked witness Nowels about conversations he had with Mr. Rome about Amanda George being involved. Rome stated that Amanda was not the person who was with him. (Trial transcript p. 55.) There was no objection by the trial attorney to either lines of inquiry. That error of not objecting was exacerbated when the trial attorney asked Nowels on cross-examination about the officer's search of photos and an investigation he conducted on Amanda George. (Tr. p. 58-59.) The attorney did not object on the vast amount of hearsay testimony given to reach the conclusion that the woman Nowels saw in the truck was Amanda George. The rules of evidence do not allow this hearsay – see Idaho Rules of Evidence, Rule 801 *et seq.* Finally there was no objection when the prosecutor re-directed Nowels to say that Amanda George was the person he saw in the truck leaving Walmart with the vacuum, cleaner. (Tr. p. 59.) Such testimony was based upon hearsay information.

Later in the trial Mr. Rome was asked by the prosecutor about telling Nowels that the woman with him was Ramona Bridgett, not Amanda George, thereby compounding the attention to this area of inadmissible evidence. There was no objection when the prosecutor testified that there are only two Ramona Bridgetts in the USA, both black and both living in Pennsylvania. (Tr. p. 113, l. 21-24.)

**Ineffective trial counsel.**

There was no strategic advantage possible by having Rome's statements about Amanda George admitted. Along with the hearsay testimony from Nowles that he identified Amanda

George as the woman with Rome (which was not objected to by trial counsel) and Rome's denials, the State argued that Rome was covering for his girlfriend's daughter.

"Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), Idaho Rules of Evidence. Nowles testified that he looked at data bases and photos and like items when he testified that the information or statements in those bases told him that Amanda George was the person he saw leaving Walmart in the truck with Rome.

Furthermore, the prosecutor is not allowed to testify about contested matters in a trial, especially without taking an oath. (See Idaho Rules of Professional Responsibility, §3.7.) The lack of objection cannot be justified.

### **Prejudice**

The testimony about Amanda George and Ramona Bridgett led to argument that Rome was lying and protecting Amanda, substantially contributing to his conviction.

### **Remedy.**

A new trial free from the improper testimony about Amanda and Ramona cures the error.

### **Regarding Count III of the PCR Petition**

#### **Trial counsel's failure to track down vacuum receipt.**

Petitioner withdraws Count III from his Petition for Post-Conviction Relief.



### Regarding Count IV of the PCR Petition

#### **Failure to properly object to conviction records coming into evidence.**

The State argues that there is not a showing that the judgments of conviction were inadmissible. Certainly, if the records were admissible and confirm that the Sonny Rome on trial is the same Sonny Rome named in the judgments, there was no error or prejudice. However, that is not what occurred.

#### **Factual support**

During trial the State presented evidence of Rome's convictions, and his date of birth. (See transcript pages 123 through 132.) The gist of that testimony was that a person named Sonny C. Rome with a date of birth of 1965 had some convictions. At trial, the defendant testified that he had a felony conviction for forgery. This forgery conviction was admitted to impeach Rome's credibility. Trial exhibits 2, 3 and 4 were admitted, but those did not establish convictions for the person on trial – Sonny Rome born in 1965. Those convictions reflected in trial exhibits 2, 3 and 4 were for someone born in 1955.

Evidence claiming that Sonny Rome's birthday was in 1955 was not admitted. See Tr. p. 124, l. 12-13: "I'm going to sustain that objection [as to the date of birth] and that answer is stricken from the jury..." Also see TR. p. 130, l. 21-22: "I'm going to sustain the objection on lack of discovery of Exhibit 6 [Sonny Rome's driver's license.]"

Even though Mr. Rome admitted during his testimony that he had a felony forgery conviction in 2008, that does not change the fact that trial exhibits 2, 3 and 4 relate to a man named Sonny Rome born in 1955. However, the evidence at trial when the State rested established that the man on trial was born in 1965 and he also had a forgery conviction in 2008.

The records that the fact-finder was reviewing related to a person born in 1955, and the person at trial was born in 1965 according to the evidence.

Rome's trial attorney objected to the Court's use of the records before Part 2 of the trial took place, and moved for a judgment of acquittal as to the allegation of Rome being a persistent violator. The trial court erroneously denied the Rule 29 motion for judgment of acquittal. (See Tr. pp. 133-136.)

**Ineffective counsel.**

Rome's trial attorney properly objected to the use of the exhibits. The trial court erred in denying the motion. However, Rome's trial attorney thereafter erred in calling him to the stand to testify about them.

The use of a prior felony to impeach credibility does not establish prior convictions for the purpose of the persistent violator statutes. See *State v. Haggard*, 94 Idaho 249 at 252-253, 486 P.2d 260 at 263-64 (1971):

Appellant objects to questions posed by the prosecutor with respect to his prior felony convictions when the information revealed by these questions was instrumental in convicting him of recidivism. Appellant concedes that when a defendant takes the stand in his own defense, he is subject to impeachment as any other witness. It may be shown that the witness (defendant) has been convicted of a felony. I.C. s 9-1209. In an opinion released June 10, 1971, this Court reversed the rule in *State v. Owen*, 73 Idaho 394, 253 P.2d 203 (1953) and held:

'Our statutes cited in *Dunn*, i.e., I.C. s 9-1209, s 9-1302 and s 19-2110, do not require disclosure of either the number or the nature of the felony or felonies of which an accused has been previously convicted, to be used for impeachment purposes when he has taken the stand in his own defense.'

*State v. Shepherd*, 94 Idaho 227 at 229, 486 P.2d 82 at 84 (1971).

The prosecution in this case went much further in its cross-examination than this but counsel for the defendant made no objection at time of trial and therefore the propriety of this cross-examination will not be considered on appeal. *Koch v. Elkins*, 71

Idaho 50, 225 P.2d 457 (1950). *Appellant objects however to the procedure utilized in the second part of the trial whereby the testimony elicited by the prosecution in the first portion of the proceeding regarding former felony convictions was introduced in the proceedings (conducted after the trial for burglary and assault) to prove prior convictions wherein the appellant was tried for recidivism.* This Court agrees with the appellant since:

‘\* \* \* while a defendant taking the witness stand may be asked if he has been convicted of a felony, that question goes only to his credibility, and this rule would exclude the testimony of defendant in this case so far as the issue of prior conviction is concerned.’

*People v. Carrow*, 207 Cal. 366, 278 P. 857 (1929); *People v. Johnson*, 57 Cal. 571 (1881).

It remains to be considered, however, whether the prosecution presented sufficient evidence of recidivism without considering Haggard's own testimony, to warrant the imposition of a harsher sentence and the other incidents flowing from an adjudication of recidivism. The record reveals that the prosecution introduced two district court files pertaining to Haggard's prior convictions. However it was not established, except for Haggard's own testimony, that the same Haggard, who was just convicted of first degree burglary and assault with a deadly weapon, had been convicted of the prior felonies. ***In the absence of some link confirming the identity of Haggard, independent of his own testimony, the conviction for recidivism must fall.*** *State v. Polson*, 92 Idaho 615, 448 P.2d 229 (1970); *Angus v. State*, 136 Tex.Cr.R. 159, 124 S.W.2d 349 (1939); *State v. Harkness*, 1 Wash.2d 530, 96 P.2d 460 (1939); *State v. Furth*, 5 Wash.2d 1, 104 P.2d 925 (1940). In this case there was no link or connection so the conviction of recidivism must be reversed. [Footnotes omitted. Emphasis added.]

Thus, in this case, Rome's admission to the felony forgery for impeachment purposes did not establish a prior felony for recidivism purposes. Nor was Rome's continued testimony necessary or warranted for Part II. (See Tr. p. 132, l. 13: "State rests," followed by Tr. p. 138, ll. 20-21: "Does the defense intend to produce any evidence? *Mr. Logsdon*: I would call Mr. Sonny Rome.")

By calling Rome to the stand a second time, the trial attorney fell below an objective standard of reasonableness because the State had already rested with insufficient evidence to prove the prior felony convictions. Part I included evidence of a felony to impeach Rome's credibility. Cross examination is limited, as said in *State v. Hairston*, 133 Idaho 496 at 503, 988 P.2d 1170 at 1177 (1999):

'Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness,' but control of the scope of cross-examination is left to the discretion of the trial court. IRE 611(b); *State v. Jesser*, 95 Idaho 43, 49, 501 P.2d 727, 734 (1972). ***The trial court's discretion to allow cross-examination of criminal defendants about matters outside the subject matter of direct examination is limited by the privilege against self-incrimination. Brown v. U.S., 356 U.S. 148, 78 S.Ct. 622, 2 L.Ed.2d 589 (1958). However, the privilege against self-incrimination is waived for all "matters raised" by the defendant's testimony during direct examination. Jesser, at 49, 501 P.2d at 734 (citing Brown ). [Emphasis added.]***

Rome's prior convictions as such were not raised at trial, although the trial Court did allow evidence of one felony forgery conviction to be used to impeach. That was not sufficient to prove two or more prior felony convictions required by the persistent violator statute.

A certified copy of a judgment of conviction bearing the same name as a defendant, with nothing more, is insufficient to establish the identity of the person formerly convicted beyond a reasonable doubt. *State v. Martinez*, 102 Idaho 875 at 880, 643 P.2d 555 at 560 (Ct.App. 1982). Where a defendant is not sufficiently identified as the same individual who was previously convicted, the judgment of conviction finding him or her to be a persistent violator must be vacated. *State v. Polson*, 92 Idaho 615 at 622, 448 P.2d 229 at 236 (1968).

See also *State v. Medrain*, 143 Idaho 329 at 332-333, 144 P.3d 34 at 37-38 (Ct.App. 2006):

Rather, the only evidence before the jury connecting Medrain to the "McGavin O. Medrain" listed in the judgments of conviction was the similarity between the two names. That Medrain bore the same name as the person referred to in the judgments of conviction from 1996, with nothing more, was legally insufficient to prove Medrain's identity as that person beyond a reasonable doubt. Therefore, we conclude that the state failed to produce substantial evidence upon which a reasonable jury could have found that the state sustained its burden of proving Medrain was a persistent violator.

Likewise in this case, the only connection between the person on trial and the person named in the conviction records was the similarity of names, and that both persons had a felony conviction for forgery. But there was also a decade-long difference in birthdates between the two people.

**Prejudice.**

Rome received an enhanced sentence because of his prior felonies. His sentence was a unified 12 years, even though the maximum for burglary is 10 years. (See Tr. p. 217.)

Had the trial judge ruled correctly, there would have been no conviction of the persistent violator allegation contained in Part 2 of the Information.

This raises an issue of where the error lies. Because the trial attorney objected to the use of the priors based upon the lack of proper evidence showing the defendant's date of birth, the attorney did not error, even though the judge did. But because the trial attorney did not properly advise his client about testifying, the jury was given evidence of his priors that would not have come in without his testimony. (See Count V, below.)

Also, because Rome's appellate counsel did not raise the issue on appeal, it was not reviewed by the appellate courts, where relief would have been granted. (See Counts VIII and IX, below.)

**Remedy**

A dismissal of the persistent violator charge, and a remand for resentencing, would provide appropriate relief as to this count.

**Regarding Count V of the PCR Petition****Failure to properly advise client regarding testifying.****Factual support**

As pointed out in Count IV, the State had rested under Part II of the trial when the Defendant was called to the stand. His trial attorney had not advised him of the danger of testifying as to Part II of the Information when no testimony was needed or helpful. His trial attorney did not inform him of the weakness in the State's case and how testifying would only confirm the prior convictions, leading to a potential life sentence. (See Exhibit #4, Sonny Rome's Supplemental affidavit.)

**Ineffective trial counsel.**

No strategic purpose existed for Mr. Rome to testify. There was nothing to be gained, and no rational reason to have him testify and admit his prior felony convictions. His trial attorney erred by having him testify and not properly advising Rome.

**Prejudice**

Rome received an enhanced sentence because of his prior felonies. His sentence was a unified 12 years, even though the maximum for burglary is 10 years. (See Tr. p. 217.)

Similar to the arguments in Count IV, incorporated herein, prejudice has been shown.

**Remedy**

A new sentencing must be ordered where the maximum unified sentence is 10 years.

### Regarding Count VI of the PCR Petition

**Failure to obtain and argue a correct jury instruction for “aiding and abetting.”**

#### Factual support

The Court instructed the jury as to the crime of burglary, and the Defendant’s trial attorney requested standard Idaho Criminal Jury Instruction 312 on aiding and abetting. (See Exhibit #2, Defendant’s Requested Jury Instruction number 4 filed on August 25, 2014.)

That instruction focused upon Rome’s intentional aiding in a burglary with the intent to promote or assist that crime, and that, if proven, such participation equates to that of a principal.

However, the defense attorney did not argue that, with a receipt from the woman who entered the store, and the circumstances preceding that, that Rome was an accessory after the fact, not a pre-crime aider and abettor.

#### Ineffective trial counsel.

The jury should have been instructed, and the trial attorney should have argued, that Rome’s involvement *after* the burglary does not make him a principal. As set forth in *United States v. Short*, 493 F.2d 1170 (9th Cir. 1974):

An essential element of armed bank robbery as charged here is that the principal was armed and used the weapon to jeopardize the life of the teller. It is this conduct that Short must be shown to have aided and abetted. “[An] aider and abettor is made punishable as a principal . . . and the proof must encompass the same elements as would be required to convict any other principal.” *Hernandez v. United States*, 9 Cir., 1962, 300 F.2d 114, 123. ***Thus the jury must be told that it must find that Short knew that Seymour was armed and intended to use the weapon, and intended to aid him in that respect.*** Cf. *United States v. Greer*, 7 Cir., 1972, 467 F.2d 1064, 1068-1069. The trial judge’s instructions specifically dispensed with this element. The government’s assertion that this error is harmless is untenable. The conviction must be reversed.  
[Emphasis added.]

Further, Idaho also requires more than mere knowledge, assent or acquiescence to be guilty of aiding and abetting:

It is true that one who aids and abets a crime is guilty as a principal. I.C. § 18-204. However, "aiding and abetting" requires some proof that the accused either participated in or assisted, encouraged, solicited, or counseled the crime. *United States v. Peoni*, 100 F.2d 401 (2d Cir.1938); *Johnson v. United States*, 195 F.2d 673 (8th Cir.1952); *State v. Gladstone*, 78 Wash.2d 306, 474 P.2d 274, 42 A.L.R.3d 1061 (1970). ***Mere knowledge of a crime and assent to or acquiescence in its commission does not give rise to accomplice liability.*** *State v. Brooks*, 103 Idaho 892, 655 P.2d 99 (Ct.App.1983); *State v. Sensenig*, 95 Idaho 218, 506 P.2d 115 (1973); *State v. Schrag*, 21 Or.App. 655, 536 P.2d 461 (1975); *Morrison v. State*, 518 P.2d 1279 (Okl.Cr.1974). Failure to disclose the occurrence of a crime to authorities is not sufficient to constitute aiding and abetting. *Bird v. United States*, 187 U.S. 118, 23 S.Ct. 42, 47 L.Ed. 100 (1902); *State v. Grant*, 26 Idaho 189, 140 P. 959 (1914). Rather, under the Idaho Criminal Code, ***failure to report a felony makes a person guilty only as an accessory, not as an accomplice.*** I.C. § 18-205. [Emphasis added.]

*State v. Randles*, 117 Idaho 344, 787 P.2d 1152 at 1155 (1990).

### Prejudice

Given that a conviction for aiding and abetting would not have occurred if Rome's attorney would have properly argued that there was insufficient evidence of aiding and abetting the burglary. The evidence shows that Rome arrived with the woman who later took the vacuum, but not evidence that he had planned the crime ahead of time, or conspired or aided with knowledge of the burglary.

Also, given the presence of the receipt for a vacuum cleaner, a serious question as to Rome's aiding a burglary conviction arises. It could be argued that he had not been informed of the scope of the woman's plan, or that he might be guilty of aiding a theft, after-the-fact.



**Remedy**

A new trial on the charge of burglary is needed to correct the error.

**Regarding Count VII of the PCR Petition****Failure to present mitigation at sentencing and Rule 35 hearing.****Factual support**

Rome was sentenced to 12 years imprisonment, even though this was a commercial theft while the store was open to the public, not a residential burglary in the middle of the night.

Although Mr. Rome's past record does not help him, a lesser sentence was entirely possible had his "wife" Debra George and Debra's daughter Amanda provided testimony or letters for sentencing. (See Exhibits 6 and 7, the women's affidavits.)

**Ineffective trial counsel.**

Both Debra and Amanda were available for sentencing. Debra was told that her testimony would not help. Amanda was not contacted. Both would have testified to the help and support Sonny provided for them. Even though he has a prior record, Sonny has helped others and has redeeming qualities. There is no tactical reason to not submit mitigation material to the judge at sentencing.

**Prejudice**

Given that no mitigation from family was presented, it is likely that a sentence lower than 12 years would have been entered had the defense attorney used Debra and Amanda at Rome's sentencing.

**Remedy**

A new sentencing should be ordered.

Regarding Count VIII of the PCR Petition

**Failure of appellate counsel to raise issue of testimony about defendant's identity.**

**Factual support**

As set forth above related to Count IV, and incorporated herein, Rome's appellate attorney did not raise a trial error made by the Court in not granting an acquittal to Rome as to his prior felony convictions.

During trial the State presented evidence of Rome's convictions, and his date of birth. (See transcript pages 123 through 132.) The gist of that testimony was that a person named Sonny C. Rome with a date of birth of 1965 had some convictions. During Part I of the burglary trial, the defendant testified that he had a felony conviction for forgery. This forgery conviction was admitted to impeach Rome's credibility. Trial exhibits 2, 3 and 4 were admitted, but those did not establish convictions for the person on trial – Sonny Rome born in 1965. Those convictions reflected in Trial Exhibits 2, 3 and 4 were for someone born in 1955.

Evidence claiming that Sonny Rome's birthday was in 1955 was not admitted. See Tr. p. 124, l. 12-13: "I'm going to sustain that objection [as to the date of birth] and that answer is stricken from the jury..." Also see TR. p. 130, l. 21-22: "I'm going to sustain the objection on lack of discovery of Exhibit 6 [Sonny Rome's driver's license.]"

Even though Mr. Rome admitted during his testimony that he had a felony forgery conviction in 2008, that does not change the fact that trial exhibits 2, 3 and 4 relate to a man named Sonny Rome born in 1955. However, the evidence at trial when the State rested established that the man on trial was born in 1965 and he also had a forgery conviction in 2008.

The records that the fact-finder was reviewing related to a person born in 1955, and the person at trial was born in 1965 according to the evidence.

Rome's trial attorney objected to the Court's use of the records before Part 2 of the trial took place, and moved for a judgment of acquittal as to the allegation of Rome being a persistent violator. The trial court erroneously denied the Rule 29 motion for judgment of acquittal. (See Tr. pp. 133-136.) However, defense counsel then made the error of having Sonny Rome needlessly testify in Part II, which then established the validity of the convictions and that Sonny was the person named in the documents, notwithstanding the error in birth dates.

**Ineffective appellate counsel.**

Rome's appellate attorney did not ask the Supreme Court for leave to have Rome file a supplemental brief to pursue unraised, non-frivolous issues such as this one – the error by the trial court to deny Rome's Rule 29 judgment of acquittal.

The State argues that failure to raise the issue by an appellate attorney is not ineffective by law. But an exception exists for issues not raised on appeal that were superior to the issues that were raised by appellate counsel. Also, an arrangement whereby a defendant cannot raise non-frivolous issues himself, only through an attorney, then also prohibit the defendant from raising the issue in a post-conviction relief case unconstitutionally (due process) prohibits Rome from raising issues on appeal.

Such a system creates a constitutional violation by preventing review of federal questions. Failure to file for reconsideration or review forecloses any federal habeas corpus remedies. See, for example, *O'Sullivan v. Boerckel*, 526 U.S. 838 at 848, 119 S. Ct. 1728 at 1734 (1999):

Thus, Boerckel's *failure to present* three of his federal habeas claims to the Illinois Supreme Court in a timely fashion has

*resulted in a procedural default of those claims. See Coleman v. Thompson, 501 U.S., at 731-732, 111 S.Ct. 2546; Engle v. Isaac, 456 U.S. 107, 125-126, n. 28, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982). [Emphasis added.]*

Nothing prevented appellate counsel from raising this issue on appeal. (Whatever argument that Rome's testimony in Part 2 cured any error ignores that the testimony itself was the result of ineffective advice from his trial counsel.)

### **Prejudice**

Without the finding of prior convictions they could not have been used to enhance Rome's sentence, which would have been the result on a correctly filed appeal.

### **Remedy**

Allow new appellate counsel to file an appeal alleging this error.

## **Regarding Count IX of the PCR Petition**

**Failure of appellate counsel to raise issue of sufficient proof of prior convictions.**

### **Factual support**

Again, as more fully set forth in Count IV and Count VIII, there was insufficient proof of the prior convictions at trial. The Court's file in CR-2014-3761, including the appellate entries, show that there was no appellate argument on this point.

### **Ineffective appellate counsel.**

Challenging the trial court errors would have resulted in a ruling vacating the conviction for being a persistent violator.

### **Prejudice**

The sentence would have been less than the 12 years that was imposed.

### **Remedy**

A new appeal addressing the trial court errors must be allowed.

**Regarding Count X of the PCR Petition**

**Cumulative Errors.**

**Factual support.**

The various errors set forth above, incorporated herein by reference, when combined, resulted in a defective conviction.

**Ineffective counsel.**

The combined errors resulted in a conviction for burglary and an enhancement for prior convictions.

**Prejudice.**

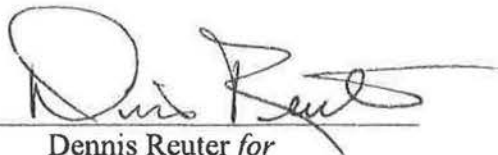
The conviction and sentence resulted from the errors.

**Remedy**

A new trial or sentence is required.

DATED this \_\_\_\_ day of January, 2017.

PALMER GEORGE & TAYLOR PLLC

By   
Dennis Reuter for  
Michael G. Palmer  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of January, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
PO Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 446-2168



Amber Morris



SONNY ROME hereby declares that:

1. I am over the age of 18 years of age and competent to testify to the matters herein.
2. I am the Petitioner in the above-entitled matter, and re-affirm the affidavit and information contained in my Amended Petition for Post-Conviction.
3. Long before trial I told my attorney that Officer Nowels threatened and coerced me when obtaining statements from me. This included an immunity offer if I would testify against Amanda George and threats of incarceration for non-cooperation.
- 4) I told my attorney about Amanda George showing me a receipt for a vacuum cleaner.
- 5) My trial attorney did not completely advise me that I need not testify nor tell me of the weakness in the State's case and how testifying would only confirm the prior convictions, leading to a potential life sentence. Had I been told, I would not have testified as to Part II.

**DECLARATION PURSUANT TO IDAHO CODE §9-1406**

I, Sonny C. Rome, hereby declare under penalty of perjury pursuant to Idaho Code §9-1406 and Idaho law that I am the Petitioner in the above-entitled matter, I have read the foregoing "Supplemental Declaration in Response to State's Motion for Summary Dismissal," know the contents thereof and believe the same to be true to the best of my knowledge, information and belief.

DATED this \_\_\_\_\_ day of January, 2017.

\_\_\_\_\_  
Sonny Rome  
Declarant / Petitioner



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_\_\_ day of January, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
PO Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 446-2168

\_\_\_\_\_  
Amber Morris

MICHAEL PALMER  
 Attorney at Law  
 PALMER GEORGE & TAYLOR PLLC  
 923 N. 3<sup>rd</sup> Street  
 Coeur d'Alene, ID 83814  
 Phone: (208) 665-7400  
 Fax: (208) 765-4636  
 ISBN No.: 5488

*Attorneys for Petitioner*

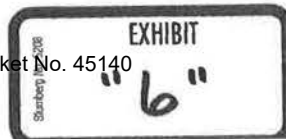
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,	)	
	)	Case No. CV-2016-2158
<i>Petitioner,</i>	)	
	)	<b>DECLARATION OF</b>
vs.	)	<b>DEBRA GEORGE</b>
	)	
STATE OF IDAHO,	)	
	)	
<i>Defendant.</i>	)	

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and provides a declaration from Debra George in response to the State's Motion for Summary Dismissal.

DATED this 23<sup>rd</sup> day of January, 2017.

PALMER GEORGE & TAYLOR PLLC  
 By *Michael Palmer*  
 Michael Palmer  
 Attorney for Plaintiff



DEBRA GEORGE hereby declares that:

1. I am over the age of 18 years of age and competent to testify to the matters herein.
2. I am a close friend of Sonny Rome, the Petitioner in the above-entitled matter, and was present when Officer Nowels threatened and coerced Mr. Rome when obtaining statements from him the day after the alleged burglary. This included offers of immunity for information and threats of incarceration for non-cooperation. I observed Lt. Knowles threaten me and Sonny Rome with incarceration, and promised to not arrest if Sonny would talk to him about the Walmart theft.
3. I was available to give testimony at Sonny Rome's September 2014 trial, as well as for pretrial motions and for the later sentencing.
4. Although Sonny and I were going through difficulties, I wanted to help him at sentencing by showing support and providing information to the sentencing Judge. Rome's defense attorney told me it would not make a difference.

**DECLARATION PURSUANT TO IDAHO CODE §9-1406**

I, Debra George, hereby declare under penalty of perjury pursuant to Idaho Code §9-1406 and Idaho law that I am a potential witness in the above-entitled matter, I have read the foregoing Declaration, know the contents thereof and believe the same to be true to the best of my knowledge, information and belief.

DATED this \_\_\_\_\_ day of January, 2017.

---

Debra George  
Declarant

**DECLARATION OF DEBRA GEORGE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_\_\_ day of January, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
PO Box 9000  
Coeur d'Alene, ID 83816-9000

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- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 446-2168

\_\_\_\_\_  
Amber Morris

MICHAEL PALMER  
 Attorney at Law  
 PALMER GEORGE & TAYLOR PLLC  
 923 N. 3<sup>rd</sup> Street  
 Coeur d'Alene, ID 83814  
 Phone: (208) 665-7400  
 Fax: (208) 765-4636  
 ISBN No.: 5488

*Attorneys for Petitioner*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,

*Petitioner,*

vs.

STATE OF IDAHO,

*Defendant.*

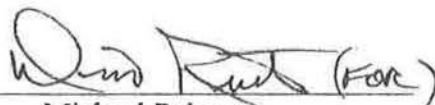
)  
 ) Case No. CV-2016-2158  
 )

) **DECLARATION OF**  
 ) **AMANDA GEORGE**  
 )  
 )  
 )  
 )  
 )  
 )

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and provides a declaration from Amanda George in response to the State's Motion for Summary Dismissal.

DATED this 23<sup>rd</sup> day of January, 2017.

PALMER GEORGE & TAYLOR PLLC

By   
 Michael Palmer  
 Attorney for Plaintiff

**DECLARATION OF AMANDA GEORGE**

Sonny Rome vs State Of Idaho

Docket No. 45140



AMANDA GEORGE hereby declares that:

1. I am over the age of 18 years of age and competent to testify to the matters herein.
2. I am a close friend of Sonny Rome, the Petitioner in the above-entitled matter, and have pled guilty to the burglary which is the subject matter of Sonny Rome's conviction.
3. During or shortly after the crime I showed a receipt for a vacuum cleaner to Sonny Rome to justify my possession of the vacuum cleaner, although the receipt was for a different vacuum.
4. I was already sentenced and willing to attend Mr. Rome's sentencing to tell the judge of my involvement, and of many of Sonny Rome's good qualities but was not asked by his defense attorney.

**DECLARATION PURSUANT TO IDAHO CODE §9-1406**

I, Amanda George, hereby declare under penalty of perjury pursuant to Idaho Code §9-1406 and Idaho law that I am a witness in the above-entitled matter, I have read the foregoing Declaration, know the contents thereof and believe the same to be true to the best of my knowledge, information and belief.

DATED this \_\_\_\_\_ day of January, 2017.

---

Amanda George  
Declarant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_\_\_ day of January, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
PO Box 9000  
Coeur d'Alene, ID 83816-9000

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- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 446-2168

\_\_\_\_\_  
Amber Morris

MICHAEL PALMER  
 Attorney at Law  
 CONFLICT PUBLIC DEFENDER  
 PALMER GEORGE & TAYLOR PLLC  
 923 N. 3rd Street  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 665-5778  
 Facsimile: (208) 765-4636  
 ISBN: 5488

STATE OF IDAHO } SS  
 COUNTY OF KOOTENAI }  
 FILED: *[Signature]*  
 2017 JAN 23 PM 1:12  
 CLERK DISTRICT COURT  
*[Signature]*  
 DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,	)
	) Case No. CV-2016-2158
Plaintiff/Respondent,	)
	) <b>EXHIBIT LIST FOR</b>
vs.	) <b>PCR PETITION AND</b>
	) <b>HEARING ON</b>
STATE OF IDAHO,	) <b>STATE'S MOTION FOR</b>
	) <b>SUMMARY DISMISSAL</b>
Defendant/Appellant.	)
	)

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and provides the Court and counsel with the an Exhibit List for use in the upcoming hearing on the State's Motion for Summary Dismissal of Passons' PCR petition. In addition, specific requests for judicial notice are set forth below.

DATED this 23<sup>rd</sup> day of January, 2017.

PALMER GEORGE & TAYLOR PLLC

By: *[Signature]* (For)  
 MICHAEL PALMER  
 Attorney for Petitioner



## PLAINTIFF'S LIST OF EXHIBITS

CASE NUMBER: CV-2016-2158

DATE OF HEARING: JANUARY 27, 2017.

TITLE OF CASE: *SONNY ROME v. STATE OF IDAHO*

PETITIONER'S EXHIBITS (listed numerically)

No.	Description	By Stip.	Offered	Received	Refused	Reserve
1	Reporters Transcript on appeal (CR-2014-3761)					
2	Clerk's Record on appeal (CR-2014-3761.)					
3	Court's entire file in CR-2014-3761.					
4	Supplemental declaration by Sonny Rome.					
5	Receipt for a vacuum cleaner					
6	Declaration from Debra George.					
7	Declaration from Amanda George					

### Request for Judicial Notice

Pursuant to Idaho Rules of Evidence, Rule 201, petitioner Sonny Rome requests that he Court take judicial notice of the following matters: Exhibits 1, 2 and 3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of January, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
Mr. Bryant Bushling  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL  
 HAND DELIVERED  
 OVERNIGHT MAIL  
 FAX to: (208) 446-2168



---

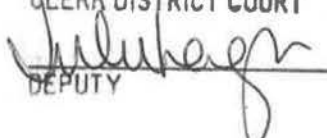
Amber Morris

 ORIGINAL

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

BARRY MCHUGH  
Kootenai County Prosecuting Attorney  
501 N. Government Way/P.O. Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone Number: (208) 446-1800  
Fax Number: (208) 446-2168

2017 FEB -6 PM 3: 13

CLERK DISTRICT COURT  
  
DEPUTY

Assigned Attorney  
Bryant E Bushling

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

**SONNY CHARLES ROME,**  
  
Petitioner,  
  
vs.  
  
STATE OF IDAHO,  
  
Respondent.

Case No. CRCV16-2158

**PLAINTIFF'S WITNESS  
LIST**

The Plaintiff may call the following witnesses at trial, although not necessarily in the same order as listed.

Jay Logsdon, 1607 Lincoln Way Coeur d Alene, ID 83814

John Nowels, Spokane County Sheriff's Office

The State reserves the right to supplement discovery as it becomes available.

DATED this 3rd day of February, 2017.

BARRY MCHUGH  
Kootenai County Prosecuting Attorney



Bryant E Bushling  
Deputy Prosecuting Attorney

PLAINTIFF'S WITNESS LIST

Page 1 of 2

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of February, 2017, a true and correct copy of the foregoing was caused to be delivered as follows:  mailed  faxed  hand delivered  emailed  JusticeWeb  
Conflict Public Defender  
Michael Palmer



---

MICHAEL PALMER  
 Attorney at Law  
 CONFLICT PUBLIC DEFENDER  
 PALMER GEORGE & TAYLOR PLLC  
 923 N. 3rd Street  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 665-5778  
 Facsimile: (208) 765-4636  
 ISBN: 5488

STATE OF IDAHO }  
 COUNTY OF KOOTENAI } SS  
 FILED:  
 2017 FEB -6 PM 4:39  
 CLERK DISTRICT COURT  
*[Signature]*  
 DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,	)	
	)	Case No. CV-2016-2158
Plaintiff/Respondent,	)	
	)	
vs.	)	<b>WITNESS LIST</b>
	)	<b>FOR TRIAL</b>
STATE OF IDAHO,	)	
	)	
Defendant/Appellant.	)	
	)	

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and provides the Court and counsel with the Witness List for trial, presently set for February 21, 2017.

DATED this 6<sup>th</sup> day of February, 2017.

PALMER GEORGE & TAYLOR PLLC

By: *[Signature]* (FOR)  
 MICHAEL PALMER  
 Attorney for Petitioner

## PLAINTIFF'S LIST OF WITNESSES

CASE NUMBER: CV-2016-2158

Date of Hearing: February 21, 2017.

TITLE OF CASE: *SONNY ROME v. STATE OF IDAHO*

**1. Sonny Rome**

Idaho Corr. Institution

Sonny Rome #113227

Orofino, C1

381 W Hospital Drive

Orofino ID 83544

Phone Number: 208-476-3655

**2. Debra George**

Address not known.

Phone number available upon request.

**3. Jay Logsdon**

Public Defender's Office

1607 Lincoln Way

Coeur d'Alene, Idaho 83814

208-446-1700.

**4. Amanda George**

Address and phone not known.

Request for Judicial Notice

Pursuant to Idaho Rules of Evidence, Rule 201, petitioner Sonny Rome requests that he Court take judicial notice of the following matters:

- 1) The court file in Kootenai County case CR-14-3690, *State v. Amanda George*, showing at least her date of plea and sentencing, and the Information.
- 2) The court file in Kootenai County case CR-14-3761, *State v. Sonny Rome*, including the transcript on appeal, exhibits showing past alleged crimes, briefs on appeal and the Clerk's Record on Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of February, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
Mr. Bryant Bushling  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- FAX to: (208) 446-2168



Amber Morris

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *le*

2017 FEB -6 PM 4:39

CLERK DISTRICT COURT  
*J. L. ...*  
DEPUTY

MICHAEL PALMER  
Attorney at Law  
CONFLICT PUBLIC DEFENDER  
PALMER GEORGE & TAYLOR PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814  
Telephone: (208) 665-5778  
Facsimile: (208) 765-4636  
ISBN: 5488

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,	)	
	)	Case No. CV-2016-2158
Plaintiff/Respondent,	)	
	)	
vs.	)	<b>EXHIBIT LIST</b>
	)	<b>FOR TRIAL</b>
STATE OF IDAHO,	)	
	)	
Defendant/Appellant.	)	
	)	

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and provides the Court and counsel with the Exhibit List for trial, presently set for February 21, 2017.

DATED this 6<sup>th</sup> day of February, 2017.

PALMER GEORGE & TAYLOR PLLC

By: *Michael Palmer* (FOR)  
MICHAEL PALMER  
Attorney for Petitioner



LIST OF EXHIBITS

CASE NUMBER: CV-2016-2158 DATE FEB 6, 2017

TITLE OF CASE SONNY ROME VS. STATE OF IDAHO

Plaintiff's Exhibits (List Numerically)

Defendant's Exhibits (List Alphabetically)

Third Party Exhibits (State Party)

Additional Defendants (Contact Judge's Clerk for Directions)


#	Description	Admitted/ Admitted By Stip	Offered	Refused	Reserve Ruling
1	CRIMINAL FILE CR-14-3761				
2	CLERK'S RECORD ON APPEAL CR-14-3761				
3	TRANSCRIPT ON APPEAL CR-14-3761				
4	PRIOR CONVICTION RECORDS IN CR-14-3761				
5	CRIMINAL FILE CR-14-3690				
6	CRIM FILE CR-14-3761 BRIEFS ON APPEAL				

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of February, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
Mr. Bryant Bushling  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- FAX to: (208) 446-2168

  
 \_\_\_\_\_  
 Amber Morris

STATE OF IDAHO )  
 County of Kootenai )<sup>ss</sup>  
 FILED 2-7-17  
 AT 11:34 O'Clock MA  
 CLERK, DISTRICT COURT  
Deputy  
 Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

ORDER OF TRIAL PRIORITIES

Good cause appearing, IT IS ORDERED that the following cases are scheduled for trial commencing on **February 21, 2017, at 9:00 a.m.**, in the following priority:

<u>Priority</u>	<u>Case No.</u>	<u>Case</u>	<u>Plaintiff Counsel</u>	<u>Defense Counsel</u>	<u>Est. Trial Days</u>	<u>Type</u>
1	CV 16-2158	Sonny Rome vs Idaho	Dennis Reuter	Bryant Bushling	2	Court
2	CV 15-6942	Farm Bureau v Eyer	Robert Anderson	Arthur Bistline	5	Jury

Dated this 6 day of February, 2017.

Lansing L. Haynes  
 LANSING L. HAYNES  
 DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 7 day of February, 2017, a true and correct copy of the foregoing Notice of Trial Priorities was faxed to the following attorneys:

Bryant Bushling  
Attorney at Law  
Fax: 208-446-2168

Dennis Reuter  
Attorney at Law  
Fax: 208- 676-1683

Robert Anderson  
Attorney at Law  
Fax: 208-344-5510

Arthur Bistline  
Attorney at Law  
Fax: 208-665-7290

Pete Barnes  
Bailiff  
Fax: 208-446-1766

Trial Court Administrator  
Fax: 446-1224

JIM BRANNON  
CLERK OF THE COURT

By Ken Swickston  
Deputy Clerk

#7020

MICHAEL PALMER  
Attorney at Law  
CONFLICT PUBLIC DEFENDER  
PALMER GEORGE & TAYLOR PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814  
Telephone: (208) 665-5778  
Facsimile: (208) 765-4636  
ISBN: 5488

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *MP*  
2017 FEB 21 PM 3:36  
CLERK DISTRICT COURT  
*Marek [Signature]*  
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY C. ROME,	)	
	)	Case No. CV-2016-2158
Plaintiff/Respondent,	)	
	)	<b>PROPOSED</b>
vs.	)	<b>FINDINGS OF FACT</b>
	)	<b>AND</b>
STATE OF IDAHO,	)	<b>CONCLUSIONS OF LAW</b>
	)	
Defendant/Appellant.	)	
	)	

Comes now SONNY ROME, by and through undersigned attorney Michael Palmer of the firm PALMER GEORGE & TAYLOR PLLC, and provides the Court and counsel with proposed findings of fact and conclusions of law relating to the upcoming trial set for February 22, 2017.

DATED this 21<sup>ST</sup> day of ~~January~~ FEBRUARY, 2017.

PALMER GEORGE & TAYLOR PLLC

By: *[Signature]*  
MICHAEL PALMER  
Attorney for Petitioner

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**As to Count I**  
(Failure to file Motion to Suppress Statements)

**Proposed findings of fact:**

1. That on or about December 12, 2013 Lt. Nowels went to Defendant Sonny Rome's home wearing his work clothes and carrying a gun and badge.
2. That prior to speaking with Sonny Rome that day, co-tenant Debra George asked Lt. Nowels to leave the home, but he did not.
3. That promises were made to not arrest Mr. Rome if he would speak with Lt. Nowels about the burglary or theft that had occurred at Walmart the night before.
4. That threats were made to arrest Debra George if Rome would not speak.
5. That Rome was threatened with arrest several times if he did not speak.
6. That Rome's trial attorney was aware of these factors, but did not file a motion to suppress the statements made by Rome.
7. That no objective reason existed for the attorney to not file such a motion.
8. That the statements from Rome that were admitted contributed to his conviction.

**Proposed conclusions of law:**

1. That Rome's trial attorney's failure to file a motion to suppress fell below an objective standard of reasonableness.
2. That had such a motion been filed, it probably would have succeeded.
3. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the trial would have been different.
4. That a proper remedy to correct this error is to have a new trial.

**As to Count II**

(Failure to object to testimony about Amanda George and Ramona Bridgett)

**Proposed findings of fact:**

1. That Lt. Nowels testified at trial to information he acquired about Amanda George and Debra George.
2. That Lt. Nowels' information came from data banks and other second-hand sources.
3. That the trial attorney did not object to Lt. Nowels' testimony.
4. That the prosecutor at trial testified about women named Ramona Bridgett.
5. That the trial attorney did not object to the prosecutor's testimony.
6. That there was no objectively reasonable justification to not object to the testimony by Nowels and the prosecutor.

**Proposed conclusions of law:**

1. That had Rome's trial attorney objected to the admission of Nowels' testimony, the objection would have been sustained and the jury would not have heard about the results of Nowels' search of the data bases and hearsay statements about the information he obtained. This includes comments made about the relation between Amanda and her mother and Amanda and Mr. Rome.
2. That had Rome's trial attorney objected to the admission of the prosecutor's testimony, the objection would have been sustained and the jury would not have heard about women named Ramona Bridgett who were not the Ramona Bridgett that Rome testified about.
3. That Rome's trial attorney's failure to object to Nowels' testimony fell below an objective standard of reasonableness.

4. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the trial would have been different.

5. That a proper remedy to correct this error is to have a new trial.

**As to Count III**

(Failure to track down the vacuum cleaner receipt)

**Proposed findings of fact:**

1. That Mr. Rome has withdrawn this claim.

**Proposed conclusions of law:**

1. That this claim be dismissed.

**As to Count IV**

(Failure to object to Rome's felony record)

**Proposed findings of fact:**

1. That the trial attorney did object to the admission of Rome's alleged prior convictions for purposes of Part II of the Information alleging prior felony convictions.

2. That the Court erred by overruling the objection.

3. That Rome's trial attorney erred by thereafter calling Rome to the stand to testify as to Part II issues.

4. No objective reason existed to call Rome to testify in Part II of the trial.

**Proposed conclusions of law:**

1. That the trial attorney's actions fell below an objective standard of reasonableness.



2. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the trial would have been different.

3. That a proper remedy to correct this error is to have a new sentencing.

**As to Count V**

(Failure to properly advise client)

**Proposed findings of fact:**

1. That Rome's trial attorney did not review with him the advantages and disadvantages to testifying as to Part II of the case.

2. That there was no apparent legal or factual advantage to Rome testifying as to Part II.

**Proposed conclusions of law:**

1. That the trial attorney's actions fell below an objective standard of reasonableness.

2. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the trial would have been different.

3. That a proper remedy to correct this error is to have a new sentencing.

**As to Count VI**

(Jury Instruction on Aid and Abet)

**Proposed findings of fact:**

1. That an instruction on accessory after the fact would have been given to the jury had it been requested, but no such request was made.

2. That the jury probably would have considered the defense.

**Proposed conclusions of law:**

1. That the trial attorney's actions in not asking for an instruction for and arguing about accessory after the fact fell below an objective standard of reasonableness.
2. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the trial would have been different.
3. That a proper remedy to correct this error is to have a new trial.

**As to Count VII**

(Lack of mitigating information at sentencing and at the Rule 35 hearing)

**Proposed findings of fact:**

1. That mitigating information for sentencing and at the Rule 35 hearing existed *via* Debra George.
2. That Rome's attorney did not obtain written or in-person testimony to present to the court for mitigation at the sentencing, nor at the Rule 35 hearing.
3. That nothing prevented the defense attorney from subpoenaing or otherwise obtaining Debra George's presence at sentencing, or to obtain written information to provide to the court.

**Proposed conclusions of law:**

1. That the trial attorney's actions in not providing the court with mitigating information fell below an objective standard of reasonableness.
2. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the trial would have been different.
3. That a proper remedy to correct this error is to have a new sentencing.

**As to Count VIII**

(Failure of appellate counsel to raise insufficiency of proof)

**Proposed findings of fact:**

1. That appellate counsel did not raise the issue of insufficient evidence of Rome's prior felony convictions.
2. That such an issue would have succeeded and was a better issue than the ones that were raised on appeal.

**Proposed conclusions of law:**

1. That the appellate attorney's actions in not raising the issue of lack of proof establishing the prior felony convictions fell below an objective standard of reasonableness.
2. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the appeal would have been different.
3. That a proper remedy to correct this error is to allow a new appellate argument raising that issue.

**As to Count IX**

(Failure of appellate counsel to challenge prior convictions)

**Proposed findings of fact:**

1. That no challenge to the foundation or admissibility of Rome's prior convictions was made by Rome's appellate counsel.

**Proposed conclusions of law:**

1. That the appellate attorney's actions in not challenging Rome's prior felony convictions fell below an objective standard of reasonableness.

2. That a reasonable probability exists that, but for the attorney's deficient performance, the outcome of the appeal would have been different.

3. That a proper remedy to correct this error is to allow a new appellate argument raising that issue.

**As to Count X**  
(Cumulative error)

**Proposed findings of fact:**

1. That more than one error occurred by Rome's trial and appellate attorneys.
2. That the errors, when combined, demonstrate that Rome's trial was defective.

**Proposed conclusions of law:**

1. That the appellate and trial attorney's actions fell below an objective standard of reasonableness and show the absence of a fair trial.
2. That a reasonable probability exists that, but for the attorneys' deficient performance, the outcome of the trial and appeal would have been different.
3. That a proper remedy to correct this error is to allow a new trial.

DATED this 21<sup>st</sup> day of February, 2017.

PALMER GEORGE & TAYLOR PLLC

By:   
MICHAEL PALMER  
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of February, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
Mr. Bryant Bushling  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- FAX to: (208) 446-2168



Amber Morris

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 55

LIST OF EXHIBITS

2017 FEB 22 AM 7:48

CASE NUMBER: CV-2016-2158

DATE FEB 28 2017  
CLERK OF DISTRICT COURT  
IDAHO

TITLE OF CASE SONNY ROME VS. STATE OF IDAHO

- Plaintiff's Exhibits (List Numerically)
- Defendant's Exhibits (List Alphabetically)
- Third Party Exhibits (State Party)
- Additional Defendants (Contact Judge's Clerk for Directions)

#	Description	Admitted/ Admitted By Stip	Offered	Refused	Reserve Ruling
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7. TRIAL TRANSCRIPT - PAGES <sup>54-57;</sup> 94-99 AND 111-114.

8. TRIAL TRANSCRIPT - PAGES 58-61 AND 111-114.

9. TRIAL TRANSCRIPT - PAGES 58-61; 123-146.

10. TRIAL TRANSCRIPT - PAGES 58-61; 74-77; + 123-146

11. APPELLANT'S OPENING BRIEF Page 4.

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED:

2017 MAR -2 AM 11:48

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY *[Signature]*

**SONNY ROME,**  
Petitioner,  
vs.  
**STATE OF IDAHO**  
Respondent.

Case No. CV16-2158

**ORDER GRANTING MOTION  
FOR DIRECTED VERDICT**

This matter having come before the Court upon the conclusion of the Petitioner's presentation of evidence in the evidentiary hearing in support of the Petition for Post Conviction Relief; Petitioner having been represented by Dennis Reuter; Respondent having been represented by Bryant Bushling; the Court having considered arguments on this matter, now therefore

IT IS HEREBY ORDERED that the Respondent's Motion for a Directed Verdict is granted for the reasons stated on the record and the Amended Petition is dismissed.

The Court makes a further finding that Petitioner's evidence regarding trial counsel's failure to request a jury instruction on Accessory was insufficient to show that counsel's representation fell below a reasonable expectation of professional representation. Further, even if trial counsel had requested an Accessory instruction, no evidence or basis in law was presented to establish that the trial judge would have so instructed the jury. Lastly, even if the trial counsel had successfully obtained a jury instruction on Accessory, the outcome would not have been

**ORDER GRANTING MOTION FOR DIRECTED VERDICT**

different because the trial jury unanimously found that the State had proved the charged offense of Burglary beyond a reasonable doubt.

ENTERED this 1 day of March, 2017

Launing L. Hayes  
JUDGE, District Court

ORDER GRANTING MOTION FOR DIRECTED VERDICT



**CERTIFICATE OF SERVICE**

I hereby certify that on the 2 day of March, 2017 that a true and correct copy of the foregoing was delivered as indicated below:

- Kootenai County Prosecuting Attorney (email: [kcpareports@kcgov.us](mailto:kcpareports@kcgov.us))
- Coeur d'Alene Prosecuting Attorney (email: [cdaprosnotices@cdaid.org](mailto:cdaprosnotices@cdaid.org))
- Post Falls Prosecuting Attorney (email: [legalservices@postfallspolice.com](mailto:legalservices@postfallspolice.com))
- Rathdrum Prosecuting Attorney (email: [legalservices@postfallspolice.com](mailto:legalservices@postfallspolice.com))
- Kootenai County Public Defender (email: [pdfax@kcgov.us](mailto:pdfax@kcgov.us))

Defendant/Defendant's Attorney: Michael Palmer amber@cdalawoffice.com

- Kootenai County Jail (email: [warrants@kcgov.us](mailto:warrants@kcgov.us))
- Kootenai County Work Release (email: [workrelease@kcgov.us](mailto:workrelease@kcgov.us); [jailsqts@kcgov.us](mailto:jailsqts@kcgov.us))
- Community Service (email: [dzook@kcgov.us](mailto:dzook@kcgov.us))
- Adult Misdemeanor Probation (email: [kemp@kcgov.us](mailto:kemp@kcgov.us))
- Probation & Parole (email: [dist1@idoc.idaho.gov](mailto:dist1@idoc.idaho.gov); [ccdsentencingteam@idoc.idaho.gov](mailto:ccdsentencingteam@idoc.idaho.gov))
- Idaho Department of Transportation (fax: 208-334-8739)
- BCI (fax: 208-884-7193)
- Idaho Department of Corrections (email: [centralrecords@idoc.idaho.gov](mailto:centralrecords@idoc.idaho.gov))
- Other: \_\_\_\_\_

Other: \_\_\_\_\_

Other: \_\_\_\_\_

JIM BRANNON

CLERK OF THE DISTRICT COURT

By: Susan McCoy

ORDER GRANTING MOTION FOR DIRECTED VERDICT

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED:

2017 APR 12 AM 11:03

CLERK, DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY ROME,  
  
Petitioner,  
  
vs.  
  
STATE OF IDAHO,  
  
Respondent.

Case No. CV- 16-2158

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petition for Post Conviction relief is dismissed following a Court trial in which the Court granted Respondent's motion for a directed verdict pursuant to Idaho Rule of Civil Procedure 50(a).

DATED this 11 day of April, 2017.

*Lansing L. Haynes*  
\_\_\_\_\_  
Lansing Haynes, District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12 day of April, 2017 copies of the foregoing document(s) were mailed, postage prepaid, or sent by facsimile or inter office mail to:

- Deputy Prosecuting Attorney for Kootenai County FAX 208-446-1833 *#1162*
- Defense Counsel Kootenai County Public Defender FAX 208- 446-1701
- Defense Counsel FAX Michael Palmer email: amber@cdalawoffice.com
- Defendant \_\_\_\_\_
- Kootenai County Sheriff's Department [jailsqts@kcgov.us](mailto:jailsqts@kcgov.us)
- Idaho Probation & Parole - [Dist1@idoc.idaho.gov](mailto:Dist1@idoc.idaho.gov)
- Idaho Department of Correction FAX 208-327-7445
- CCD Sentencing Team -- [CCDSentencingTeam@idoc.idaho.gov](mailto:CCDSentencingTeam@idoc.idaho.gov)
- Idaho Department of Transportation FAX 208-334-8739
- Community Service Interoffice Mail or FAX 208-446-1193  
[nvigil@kcgov.us](mailto:nvigil@kcgov.us)
- BCI (Bureau of Criminal Investigation) FAX 208-884-7193
- Kootenai County Law Library/Transcription FAX 208-446-1187
- Central Records [CentralRecords@idoc.idaho.gov](mailto:CentralRecords@idoc.idaho.gov)
- Idaho State Police FAX 208-884-7197
- Idaho Industrial Commission FAX 208-332-7559

JIM BRANNON  
CLERK OF THE DISTRICT COURT

By : *Jusan Mccay*  
Deputy Clerk

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED: 04

2017 MAY 11 PM 3:48

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

MICHAEL G. PALMER  
PALMER GEORGE & TAYLOR PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814  
Telephone: (208) 665-5778  
Facsimile: (208) 676-1683  
Email: amber@cdalawoffice.com  
ISBA# 5488

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI


SONNY ROME,	)	
	)	Case No. CV 16-2158
Petitioner/Appellant,	)	
	)	<b>MOTION TO APPOINT STATE</b>
vs.	)	<b>APPELLATE PUBLIC DEFENDER</b>
	)	
STATE OF IDAHO,	)	
	)	
Respondent/Appellee.	)	
_____	)	

COMES NOW, the above-named Petitioner, by and through his attorney, MICHAEL G. PALMER of the law office of PALMER GEORGE & TAYLOR PLLC, and hereby moves the Court for an Order pursuant to Idaho Code §§ 19-867-19-872, and Idaho Appellate Rule 45.1, for its order appointing the State Appellate Public Defender's Office to represent Petitioner in all further appellate proceedings and allowing counsel for Petitioner to withdraw as counsel of record for purpose of the appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of May, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office	<input type="checkbox"/>	U.S. MAIL
501 Government Way	<input type="checkbox"/>	HAND DELIVERED
P.O. Box 9000	<input type="checkbox"/>	OVERNIGHT MAIL
Coeur d'Alene, ID 83816-9000	<input checked="" type="checkbox"/>	TELECOPY (FAX) to: (208) 446-2168
State Appellate Public Defender	<input type="checkbox"/>	U.S. MAIL
P.O. Box 83720	<input type="checkbox"/>	HAND DELIVERED
Boise, ID 83720-0005	<input type="checkbox"/>	OVERNIGHT MAIL
	<input checked="" type="checkbox"/>	TELECOPY (FAX) to: (208) 334-2985
Lawrence G. Wasden	<input type="checkbox"/>	U.S. MAIL
Attorney General	<input type="checkbox"/>	HAND DELIVERED
P.O. Box 83720	<input type="checkbox"/>	OVERNIGHT MAIL
Boise, ID 83720-0010	<input checked="" type="checkbox"/>	TELECOPY (FAX) to: (208) 854-8071

  
\_\_\_\_\_  
Amber D. Morris

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED: v. ca

2017 MAY 11 PM 3:46

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

MICHAEL G. PALMER  
PALMER GEORGE & TAYLOR PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814  
Phone: (208) 665-5778  
Fax: (208) 676-1683  
Email: amber@cdalawoffice.com  
ISBA# 5488

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY ROME,	)	
	)	Case No. CV 16-2158
Petitioner/Appellant,	)	
	)	<b>NOTICE OF APPEAL</b>
vs.	)	
	)	
STATE OF IDAHO,	)	
	)	
Respondent/Appellee.	)	
	)	

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-referenced Petitioner, Sonny Rome, hereinafter referred to as "Appellant," appeals against the above-named Respondent/Appellee, the State of Idaho, to the Idaho Supreme Court, the judgment, rulings and orders entered in the Kootenai County District Court, Judge Lansing L. Haynes presiding, on April 11, 2017 and filed with the Clerk on April 12, 2017.

Copies of the judgment and orders appealed from are attached.

The appeal is taken upon matters of both fact and law.

2. The party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described above are appealable pursuant to Idaho Code §19-4909 and Idaho Appellate Rules, Rule 11(a)(1).

3. A preliminary statement of the issues on appeal, which the Appellant intends to assert in the appeal and shall not prevent him from asserting other issues on appeal, are:

(a) District Court abused its discretion in granting directed verdict to the State.

(b) District Court erred in ruling that evidence did not support the suppression of Rome's statements made to police.

(c) District court erred in ruling that Rome's prior record of convictions was properly entered and proven at his criminal trial; or that his criminal trial attorney was effective in preventing the prior record from entering into evidence.

4. No order has been entered sealing any portion of the record.

5. Pursuant to Idaho Code §19-4909, on appeal the State is represented by the attorney general.

6. Pursuant to Idaho Appellate Rules, Rule 17(h), Appellant requests a standard transcript, hard copy, of the trial held on February 21 and 22, 2017, the Honorable Lansing L. Haynes presiding.

7. Pursuant to Idaho Appellate Rules, Rules 17(i) and 17(j), Appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28:

(a) All filings and exhibits by Plaintiff.

(b) All filings and exhibits by Defendant.

(c) All filings by the Court.

8. I certify:

(a) That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Valerie Nunemacher  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000  
(208) 446-1205

(b) That service has been made upon all parties required to be served pursuant to Rule 20 and the Attorney General of Idaho pursuant to § 67-1401(1), Idaho Code.

(c) That appellant is exempt from paying fees for the reporter's transcript because he is indigent, and pursuant to Idaho Appellate Rules, Rule 17(l), 23(c) and 23(d).

(d) That appellant is exempt from paying fees for the Clerk's record because he is indigent, and pursuant to Idaho Appellate Rules, Rule 17(l), 23(c) and 23(d).

(e) That appellant is exempt from paying the appellate filing fees because he is indigent, and pursuant to Idaho Appellate Rules, Rule 17(l), 23(c) and 23(d).

DATED this 11 day of May, 2017.

PALMER GEORGE & TAYLOR PLLC

By 

Michael G. Palmer  
Attorney for Petitioner/Appellant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of May, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office 501 Government Way P.O. Box 9000 Coeur d'Alene, ID 83816-9000	<input type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> OVERNIGHT MAIL <input checked="" type="checkbox"/> TELECOPY (FAX) to: (208) 446-2168
State Appellate Public Defender P.O. Box 83720 Boise, ID 83720-0005	<input type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> OVERNIGHT MAIL <input checked="" type="checkbox"/> TELECOPY (FAX) to: (208) 334-2985
Lawrence G. Wasden Attorney General P.O. Box 83720 Boise, ID 83720-0010	<input type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> OVERNIGHT MAIL <input checked="" type="checkbox"/> TELECOPY (FAX) to: (208) 854-8071
Valerie Nunemacher Court Reporter for Judge Haynes P.O. Box 9000 Coeur d'Alene, ID 83816-9000	<input type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> OVERNIGHT MAIL <input checked="" type="checkbox"/> TELECOPY (FAX) to: (208) 446-1132



Amber D. Morris

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 APR 12 AM 11:03

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY ROME,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV- 16-2158

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petition for Post Conviction relief is dismissed following a Court trial in which the Court granted Respondent's motion for a directed verdict pursuant to Idaho Rule of Civil Procedure 50(a).

DATED this 11 day of April, 2017.

Lansing L. Haynes  
Lansing Haynes, District Judge

JUDGMENT- 1

Sonny Rome vs State Of Idaho

Docket No. 45140

RECEIVED  
APR 12 2017  
113 of 132

BY:

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12 day of April, 2017 copies of the foregoing document(s) were mailed, postage prepaid, or sent by facsimile or inter office mail to:

- Deputy Prosecuting Attorney for Kootenai County FAX 208-446-1833 *#1111*
- Defense Counsel Kootenai County Public Defender FAX 208- 446-1701
- Defense Counsel FAX Michael Palmer email: amber@cdalawoffice.com
- Defendant \_\_\_\_\_
- \_\_\_\_\_ Kootenai County Sheriff's Department [jailsqts@kcgov.us](mailto:jailsqts@kcgov.us)
- \_\_\_\_\_ Idaho Probation & Parole - [Dist1@idoc.idaho.gov](mailto:Dist1@idoc.idaho.gov)
- \_\_\_\_\_ Idaho Department of Correction FAX 208-327-7445
- \_\_\_\_\_ CCD Sentencing Team -- [CCDSentencingTeam@idoc.idaho.gov](mailto:CCDSentencingTeam@idoc.idaho.gov)
- \_\_\_\_\_ Idaho Department of Transportation FAX 208-334-8739
- \_\_\_\_\_ Community Service Interoffice Mail or FAX 208-446-1193
- \_\_\_\_\_ [nvigil@kcgov.us](mailto:nvigil@kcgov.us)
- \_\_\_\_\_ BCI (Bureau of Criminal Investigation) FAX 208-884-7193
- \_\_\_\_\_ Kootenai County Law Library/Transcription FAX 208-446-1187
- \_\_\_\_\_ Central Records [CentralRecords@idoc.idaho.gov](mailto:CentralRecords@idoc.idaho.gov)
- \_\_\_\_\_ Idaho State Police FAX 208-884-7197
- \_\_\_\_\_ Idaho Industrial Commission FAX 208-332-7559

JIM BRANNON  
CLERK OF THE DISTRICT COURT

By: *Jusan Mccay*  
Deputy Clerk

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 MAR -2 AM 11:48

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI ~~DEPUTY~~ CLERK DISTRICT COURT

**SONNY ROME,**  
Petitioner,  
vs.  
**STATE OF IDAHO**  
Respondent.

Case No. CV16-2158

**ORDER GRANTING MOTION  
FOR DIRECTED VERDICT**

This matter having come before the Court upon the conclusion of the Petitioner's presentation of evidence in the evidentiary hearing in support of the Petition for Post Conviction Relief; Petitioner having been represented by Dennis Reuter; Respondent having been represented by Bryant Bushling; the Court having considered arguments on this matter, now therefore

IT IS HEREBY ORDERED that the Respondent's Motion for a Directed Verdict is granted for the reasons stated on the record and the Amended Petition is dismissed.

The Court makes a further finding that Petitioner's evidence regarding trial counsel's failure to request a jury instruction on Accessory was insufficient to show that counsel's representation fell below a reasonable expectation of professional representation. Further, even if trial counsel had requested an Accessory instruction, no evidence or basis in law was presented to establish that the trial judge would have so instructed the jury. Lastly, even if the trial counsel had successfully obtained a jury instruction on Accessory, the outcome would not have been

**ORDER GRANTING MOTION FOR DIRECTED VERDICT**

Sonny Rome vs State Of Idaho

Docket No. 45140

**RECEIVED**  
MAR 02 2017

different because the trial jury unanimously found that the State had proved the charged offense of Burglary beyond a reasonable doubt.

ENTERED this 1 day of March, 2017

Laursing L. Hayes  
JUDGE, District Court

**ORDER GRANTING MOTION FOR DIRECTED VERDICT**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2 day of March, 2017 that a true and correct copy of the foregoing was delivered as indicated below:

- Kootenai County Prosecuting Attorney (email: [kcpareports@kcgov.us](mailto:kcpareports@kcgov.us))
- Coeur d'Alene Prosecuting Attorney (email: [cdaprosnotices@cdaid.org](mailto:cdaprosnotices@cdaid.org))
- Post Falls Prosecuting Attorney (email: [legalservices@postfallspolice.com](mailto:legalservices@postfallspolice.com))
- Rathdrum Prosecuting Attorney (email: [legalservices@postfallspolice.com](mailto:legalservices@postfallspolice.com))
- Kootenai County Public Defender (email: [pdfax@kcgov.us](mailto:pdfax@kcgov.us))
- Defendant/Defendant's Attorney: Michael Palmer amber@cdalawoffice.com
- Kootenai County Jail (email: [warrants@kcgov.us](mailto:warrants@kcgov.us))
- Kootenai County Work Release (email: [workrelease@kcgov.us](mailto:workrelease@kcgov.us);  
[jailsqts@kcgov.us](mailto:jailsqts@kcgov.us))
- Community Service (email: [dzook@kcgov.us](mailto:dzook@kcgov.us))
- Adult Misdemeanor Probation (email: [kcmp@kcgov.us](mailto:kcmp@kcgov.us))
- Probation & Parole (email: [dist1@idoc.idaho.gov](mailto:dist1@idoc.idaho.gov);  
[ccdsentencingteam@idoc.idaho.gov](mailto:ccdsentencingteam@idoc.idaho.gov))
- Idaho Department of Transportation (fax: 208-334-8739)
- BCI (fax: 208-884-7193)
- Idaho Department of Corrections (email: [centralrecords@idoc.idaho.gov](mailto:centralrecords@idoc.idaho.gov))
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

JIM BRANNON

CLERK OF THE DISTRICT COURT

By: Gusman McCoy

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 MAY 15 PM 1:32

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SONNY ROME,	)	
	)	Case No. CV 16-2158
Petitioner/Appellant,	)	
	)	<b>ORDER FOR APPOINTMENT OF</b>
vs.	)	<b>STATE APPELLATE PUBLIC</b>
	)	<b>DEFENDER</b>
STATE OF IDAHO,	)	
	)	
Respondent/Appellee.	)	

---

THE COURT having reviewed and considered the Petitioner's Motion for Appointment of State Appellate Public Defender; and for good cause appearing; NOW, THEREFORE;

IT IS HEREBY ORDERED that the State Appellate Public Defender's Office is appointed to represent Petitioner in all further appellate proceedings.

IT IS FURTHER ORDERED that MICHAEL G. PALMER of the law firm of PALMER GEORGE & TAYLOR PLLC, shall remain local counsel to represent Petitioner in all regards in proceedings before the First District Court in Kootenai County.

DATED this 12 day of May, 2017.

*Lansing L. Haynes*  
\_\_\_\_\_  
Hon. Lansing L. Haynes

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of May, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kootenai County Prosecutor's Office  
501 N. Government Way  
P.O. Box 9000  
Coeur d'Alene, ID 83816-9000

- U.S. MAIL
- EMAIL to: kcpareports@kcgov.us
- TELECOPY (FAX) to: (208) 446-2168

Michael G. Palmer  
Palmer George & Taylor PLLC  
923 N. 3rd Street  
Coeur d'Alene, ID 83814

- U.S. MAIL
- EMAIL to: amber@cdalawoffice.com
- TELECOPY (FAX) to: (208) 676-1683

State Appellate Public Defender  
P.O. Box 83720  
Boise, ID 83720-0005

- U.S. MAIL
- TELECOPY (FAX) to: (208) 334-2985 #962

Lawrence G. Wasden  
Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. MAIL
- TELECOPY (FAX) to: (208) 854-8071 #963

Idaho Supreme Court  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. MAIL
- TELECOPY (FAX) to: (208) 334-2530 #964  
#970  
#976

JIM BRANNON  
CLERK OF THE DISTRICT COURT

By: Jusan McRay  
DEPUTY



STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

2017 JUL 14 PM 12: 12

CLERK DISTRICT COURT

*[Signature]*  
DEPUTY *ps*

SONNY ROME,	)	
	)	
Petitioner/Appellant,	)	SUPREME COURT NO.:
vs.	)	45140
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	KOOTENAI COUNTY NO.:
	)	CV-2016-2158

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on July 13, 2017, I lodged an original transcript, totaling 80 pages, and three copies of the following hearing(s):  
BENCH TRIAL held on February 22, 2017, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.

*Valerie Nunemacher*

Valerie Nunemacher, CSR, CCR, RPR



**CERTIFICATE OF SERVICE**

I certify that on this 17 day of July, 2017, I caused a true and correct copy of this document to be served, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Bryant Bushling  
P.O. Box 9000  
Coeur d'Alene, ID 83816

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax: (208) 446-1833 #561
- E-mail:

Michael Palmer  
923 N. 3<sup>rd</sup> St.  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax: (208) 765-4636
- E-mail: *amber@cdalawoffice.com*

*Ausan McCoy*  
Deputy Clerk

*Fax to Supreme Court  
7/18/17  
Debra DeLuca*

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: SM #587  
2017 JUL 24 AM 10:49

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

SONNY ROME,  
Petitioner-Appellant,  
v.  
STATE OF IDAHO,  
Respondent.

CASE NO. CV 2016-2158  
S.C. DOCKET NO. 45140  
AMENDED  
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, BARRY MCHUGH, KOOTENAI COUNTY PROSECUTOR, P.O. BOX C-9000, COEUR D'ALENE, ID 83814, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment, ~~ruling and orders entered in the Kootenai County District Court~~, the Honorable Lansing L. Haynes, presiding, ~~on April 11, 2017~~ and filed with the clerk on ~~April 12, 2017~~ July 17, 2017.

~~Copies of the judgment and orders appealed from are attached.~~

~~The appeal is taken upon matters of both fact and law.~~

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a), I.A.R.

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) District Court abused its discretion in granting directed verdict to the State.

(b) District Court erred in ruling that evidence did not support the suppression of the Rome's statement made to police.

(c) District court erred in ruling that Romes' prior record of convictions was properly entered and proven at his criminal trial; or that his criminal trial attorney was effective in preventing the prior record from entering into evidence.

(d) Did the district court err in dismissing the appellant's Petition for Post-Conviction Relief?

4. No order has been entered sealing any portion of the record.

5. ~~Pursuant to Idaho Code § 19-4909, on appeal the State is represented by the attorney general.~~

6. ~~Pursuant to Idaho Appellate Rules, Rule 17(h), Appellant requests a standard transcript, hard copy, of the trial held on February 21 and 22, 2017, Honorable Lansing L. Haynes presiding.~~ Reporter's Transcript. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) Motion for Summary Disposition Hearing held January 27, 2017 (Court Reporter: Valerie Nunemacher, no estimation of pages is listed on the Register of Actions); and
- (b) Court Trial held on February 21-22, 2017 (Court Reporter: Valerie Nunemacher, estimation of 80 pages is listed on the Register of Actions); and
7. Pursuant to Idaho Appellate Rules, Rules 17(i) and 17(j). Clerk's Record. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(1). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(1):
- (a) All filings and exhibits by Plaintiff;
- (b) All filings and exhibits by Defendant;
- (c) All filings by the Court;
- (d) Certificate of Delivery filed March 15, 2016;
- (e) Notice of Trial filed July 28, 2016;
- (f) Notice of Assignment Change – M. Palmer, PD in place of S. Walsh PD obo Plaintiff filed October 6, 2016;
- (g) Brief in Support of Motion for Summary Dismissal filed December 23, 2016;
- (h) Motion for Summary Dismissal filed December 23, 2016;
- (i) Response to State's Motion for Summary Dismissal filed January 23, 2017;
- (j) Exhibit List for PCR Petition and Hearing on State's Motion for Summary Dismissal filed January 23, 2017;

- (k) Plaintiff's Witness List filed February 7, 2017;
- (l) Defendant's Witness List for Trial filed February 7, 2017;
- (m) Defendant's Exhibit List for Trial filed February 7, 2017;
- (n) Order of Trial Priorities (#1 of 2) filed February 7, 2017;
- (o) Proposed Findings of Fact and Conclusions of Law;
- (p) List of Exhibits filed February 22, 2017;
- (q) Order Granting Motion for Directed Verdict filed March 2, 2017;
- (r) Any items the district court took judicial notice; and
- (s) Any exhibits, affidavits, objections, responses, briefs or memorandums, including all attachments or copies of transcripts, filed or lodged, by the state, the appellate, or the court in support of, or in opposition to, the dismissal of the post-conviction petition; except that any pictures or depictions of child pornography necessary to the appeal need not be sent, but may be sought later by motion to the Idaho Supreme Court.

8. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Valerie Nunemacher;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent ~~Rule 17(1), 23(e), and 23(d)~~ (I.C. §§ 31-3220, 31-3220A, I.C. § 19-4904, I.A.R. 27(f));
- (c) ~~That appellant is exempt from paying the appellate filing fees because he is indigent, and pursuant to Idaho Appellate Rule, Rule 17(1), 23(e), and 23(d).~~

That there is no appellate filing fee since this is an appeal in a post- conviction case (I.C. §§ 31-3220, 31-3220A, I.A.R. 23(a)(10));

(d) ~~That appellant is exempt from paying fees for the reporter's transcript because he is indigent, and pursuant to Idaho Appellate Rules, Rule 17(1), 23(e), and 23(d).~~ That arrangements have been made with Kootenai County who will be responsible for paying for the reporter's transcript, as the client is indigent, (I.C. §§ 31-3220, 31-3220A, I.A.R. 24(h)); and

(e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 20<sup>th</sup> day of July, 2017.



ERIK R. LEHTINEN  
Chief, Appellate Unit



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I have this 21<sup>st</sup> day of July, 2017, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

SONNY ROME  
INMATE #113227  
ICIO  
381 W HOSPITAL DRIVE  
OROFINO ID 83544

VALERIE NUNEMACHER  
COURT REPORTER  
PO BOX 9000  
COEUR D'ALENE ID 83814

MICHAEL G PALMER  
ATTORNEY AT LAW  
923 N 3RD STREET  
COEUR D'ALENE IDAHO 83814

BARRY MCHUGH  
KOOTENAI COUNTY PROSECUTOR  
PO BOX C-9000  
COEUR D'ALENE ID 83814

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL - CRIMINAL DIVISION  
Hand delivered to Attorney General's mailbox at Supreme Court

  
MARY ANN LARA  
Administrative Assistant

ERL/mal

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 AUG 18 AM 10:31

CLERK DISTRICT COURT

DEPUTY

SONNY ROME,	)	
	)	
Petitioner/Appellant,	)	SUPREME COURT NO.:
vs.	)	45140
	)	
STATE OF IDAHO,	)	
	)	
Respondent.	)	KOOTENAI COUNTY NO.:
	)	CV-2016-2158

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on August 18, 2017, I lodged an original transcript, totaling 12 pages, and three copies of the following hearing(s):  
MOTION FOR SUMMARY DISPOSITION held on January 27, 2017, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.

*Valerie Nunemacher*

Valerie Nunemacher, CSR, CCR, RPR

IN THE SUPREME COURT OF THE STATE OF IDAHO

SONNY ROME,	)	SUPREME COURT NOS.
	)	45140
Plaintiff- Appellant,	)	
VS.	)	
	)	DISTRICT COURT
STATE OF IDAHO,	)	CASE NO. CV 2016-2158
Respondent,	)	
_____	)	

CLERK'S CERTIFICATE OF EXHIBITS

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

I further certify that the following documents will be submitted as exhibits to the Record:

Plaintiff's Exhibits:

1. Exhibit No. 7 - Document, Admitted February 22, 2017
2. Exhibit No. 8 - Document, Admitted February 22, 2017
3. Exhibit No. 9 - Document, Admitted February 22, 2017
4. Exhibit No. 10 - Document Admitted February 22, 2017

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 18th day of August 2017.

Jim Brannon  
Clerk of the District Court

  
Deputy Clerk



1-Clerk's Certificate of Exhibits

IN THE SUPREME COURT OF THE STATE OF IDAHO

SONNY ROME,	)	
	)	SUPREME COURT
PETITIONER-APPELLANT,	)	Case NO. 45140
	)	
VS.	)	
	)	
STATE OF IDAHO,	)	
	)	
RESPONDENT.	)	
_____	)	

CLERK'S CERTIFICATE OF SERVICE

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and Transcripts to each of the Attorneys of record in this cause as follows:

ERIC D FREDERICKSEN  
State Appellate Public Defender  
PO Box 2816  
Boise, ID 83701

LAWRENCE G WASDEN  
Attorney General  
PO Box 83720  
Boise, ID 83720

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 18 day of August 2017.

Jim Brannon  
Clerk of District Court

By: Jim Brannon



IN THE SUPREME COURT OF THE STATE OF IDAHO

SONNY ROME,	)	
	)	SUPREME COURT
PLAINTIFF-APPELLANT,	)	CASE NO. 45140
	)	
VS.	)	
	)	
STATE OF IDAHO,	)	
	)	
RESPONDENT	)	
_____	)	

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record and Transcripts were complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 18 day of August 2017.

I do further certify that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 18 day of August 2017.

JIM BRANNON  
Clerk of the District Court

By: [Signature]  
Deputy Clerk

