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Andrus v. State Clerk's Record Dckt. 45297

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)	
	)	SUPREME COURT NO. 45297
Petitioner/Appellant,	)	DISTRICT COURT NO. CV42-16-720
)	
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the County of Twin Falls

HONORABLE JOHN K. BUTLER
District Judge

ERIC FREDRICKSEN
State Appellate Public Defender
322 East Front Street, Suite 570
Boise, Idaho 83702

LAWRENCE WASDEN
Attorney General
Statehouse Mail Room 210
P.O. Box 83720
Boise, Idaho 83720-0010

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

TWIN FALLS COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CV42-16-0720

Lawrence Andrus
 Petitioner,
 vs. State of Idaho
 Respondent.

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Location: **Twin Falls County District Court**
 Judicial Officer: **Butler, John K.**
 Filed on: **03/02/2016**
 Case Number History:
 Appellate Case Number: **44686-2016 45297**

CASE INFORMATION

Case Type: **H1c- Post Conviction Act Proceedings (District Court)**

DATE CASE ASSIGNMENT

Current Case Assignment

Case Number CV42-16-0720
 Court Twin Falls County District Court
 Date Assigned 03/08/2016
 Judicial Officer Butler, John K.

PARTY INFORMATION

Petitioner Andrus, Lawrence Scott

Lead Attorneys
Zollinger, Clayne S., Jr
Court Appointed
 208-436-1122(W)
















Respondent State of Idaho

DATE EVENTS & ORDERS OF THE COURT INDEX



















03/02/2016	New Case - Post Conviction Relief	
03/02/2016	Motion and Affidavit for Fee Waiver <i>Permission to Proceed on Partial Payment of Court Fees (Prisoner)</i>	
03/02/2016	Petition for Post-Conviction Relief	
03/02/2016	Affidavit in Support of Petition	
03/02/2016	Motion & Affidavit <i>in Support for Appointment of Counsel</i>	
03/08/2016	Order of Assignment - Administrative <i>Assign to Judge Butler</i>	
03/15/2016	Order <i>Order Re: Partial Payment of Court Fees (Prisoner)</i>	
03/15/2016	Order <i>Order Granting Motion for Appointment of Counsel</i>	
03/15/2016	Order <i>Post Conviction Petition Pre-Trial Procedural Order Pursuant to I.R.C.P. 16--Felony Case</i>	

CASE SUMMARY
CASE NO. CV42-16-0720

Only










03/17/2016	 Order <i>Order RE: Lodging Transcript on Appeal</i>
04/13/2016	 Motion <i>to Extend Time to Amend Petition</i>
04/18/2016	 Order <i>Order to Extend Time to Amend Petition</i>
04/19/2016	 Transcript Filed <i>Lodged per order on 3-17-2016 Bond Reduction Hearing June 20, 2014</i>
04/19/2016	 Transcript Filed <i>Lodged per order on 3-17-2016 June 6, 2014 Hearing Motion of Defendant June 30, 2014 Pretrial Conference</i>
04/19/2016	 Transcript Filed <i>Lodged per order on 3-17-2016 Jury Trial Day 1 Nov. 6, 2014; Jury Trial Day 2 Nov. 7, 2014; Sentencing Dec. 5, 2014</i>
04/20/2016	 Ex-Parte Motion <i>to Appoint Special Conflict Public Defender</i>
04/21/2016	 Order Appointing Public Defender <i>Order Appointing Special Conflict Public Defender</i>
06/15/2016	 Answer <i>Respondent's</i>
07/11/2016	 Notice of Intent to Dismiss
07/26/2016	 Motion <i>for Extension of Time</i>
08/24/2016	 Order <i>Extending Time</i>
09/26/2016	 Order Dismissing Petition With Prejudice
09/26/2016	 Judgment
09/26/2016	Civil Disposition Entered
10/27/2016	 Letter <i>From Petitioner RE: Case Summary</i>
11/02/2016	Appeal Filed in District Court
11/10/2016	

CASE SUMMARY
CASE NO. CV42-16-0720

-  Notice of Appeal
- 11/10/2016  Motion & Affidavit
in Support for Appointment of Counsel
- 11/10/2016  Motion and Affidavit for Fee Waiver
- 12/05/2016  Order Appointing State Appellate Public Defender
- 12/05/2016  Clerk's Certificate of Appeal
- 01/06/2017  Supreme Court Document Filed-Misc
Notice of Appeal -- No Specific Transcripts Requested
- 01/06/2017  Supreme Court Document Filed-Misc
Order Conditionally Dismissing Appeal
- 01/09/2017  Judgment
Amended
- 02/06/2017  Supreme Court Document Filed-Misc
Response to Conditional Dismissal
- 02/09/2017  Supreme Court Document Filed-Misc
Order Withdrawing Conditional Dismissal Order
- 02/09/2017  Supreme Court Document Filed-Misc
Order Withdrawing Conditional Dismissal Order - Clerk's Record Due 4-12-2017
- 03/03/2017  Notice of Appeal
Amended
- 03/06/2017  Supreme Court Document Filed-Misc
*Amended Notice of Appeal **Due Date for Clerk's Record Remains as Set for 4-12-17***
- 04/04/2017  Supreme Court Document Filed-Misc
Notice of Substitution of Nevin Benjamin McKay as Conflict Counsel in Place and Stead of the State Appellate Public Defender as Counsel for Appellant
- 05/30/2017  Motion for Relief from Final Judgment (Rule 60b)/(IRFLP 809)
- 06/08/2017  Objection
to Motion for Relief from Judgment - State's
- 06/15/2017  Order
Order Denying Motion for Relief from Judgment
- 06/19/2017  Letter
from Lawrence Andrus
- 06/19/2017

CASE SUMMARY

CASE NO. CV42-16-0720

-  Supreme Court Document Filed-Misc
Filed Proof of Service - Suspended to 7-14-17 for New Counsel or Proceed Pro Se & Reset Briefing
- 07/25/2017  Notice of Appeal
- 07/25/2017  Motion & Affidavit
in Support for Appointment of Counsel
- 07/25/2017  Motion and Affidavit for Fee Waiver
- 07/25/2017 Appeal Filed in Supreme Court
- 07/27/2017  Order Appointing State Appellate Public Defender
- 07/27/2017  Clerk's Certificate of Appeal
- 08/17/2017  Supreme Court Document Filed-Misc
Reset Due Date - Appellant's Brief Due 9-14-17
- 08/23/2017  Supreme Court Document Filed-Misc
*Notice of Appeal - Transcripts Requested **Due Date Set - Clerk's Record Shall be Filed with this Court by 10-23-2017*
- 09/11/2017  Supreme Court Document Filed-Misc
*Notice of Appeal - Transcripts Requested **Due Date Set - Clerk's Record Shall be Filed with this Court by 10-23-2017***

2016 MAR -2 PM 12:32

BY _____ CLERK

PS

DEPUTY

LAWRENCE SCOTT ANDRUS, IDOC N° 113829

Full Name of Party Filing This Document

IDAHO STATE CORRECTIONAL CENTER

Mailing Address (Street or Post Office Box)

P.O. BOX 70010

City, State and Zip Code

BOISE, IDAHO 83707

Telephone Number

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Case No.: CV42-10-120

LAWRENCE SCOTT ANDRUS,

Plaintiff,

vs.

STATE OF IDAHO

Defendant.

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
) ss.
County of ADA)

Plaintiff [] Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Post-Conviction Relief . I

believe I'm entitled to get what I am asking for.

2. I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: LAWRENCE SCOTT ANDRUS Other name(s) I have used: N/A
N/A

Address: 14601 So. Pleasant Valley Rd., Kuna, Idaho

How long at that address? 12 months Phone: N/A

Date and place of birth: 18 Sep 1961, Salt Lake City, Utah, USA

DEPENDENTS:

I am single married. If married, you must provide the following information:

Name of spouse: N/A
N/A

My other dependents (including minor children) are: N/A
N/A
N/A

INCOME:

Amount of my income: \$ 0 per [] week [] month
 Other than my inmate account I have outside money from: Occasional gift of nominal funds via money order from persons.
 My spouse's income: \$ N/A per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>N/A</u>					
<u>N/A</u>					

List all other property owned by you and state its value.

Description (provide description for each item)	Value
<u>Cash</u>	<u>0.00</u>
<u>Notes and Receivables</u>	<u>0.00</u>
<u>Vehicles:</u>	<u>0.00</u>
<u>Bank/Credit Union/Savings/Checking Accounts</u>	<u>0.00</u>
<u>Stocks/Bonds/Investments/Certificates of Deposit</u>	<u>0.00</u>
<u>Trust Funds</u>	<u>0.00</u>
<u>Retirement Accounts/IRAs/401(k)s</u>	<u>0.00</u>
<u>Cash Value Insurance</u>	<u>0.00</u>
<u>Motorcycles/Boats/RVs/Snowmobiles:</u>	<u>0.00</u>
<u>Furniture/Appliances</u>	<u>0.00</u>
<u>Jewelry/Antiques/Collectibles</u>	<u>0.00</u>

Description (provide description for each item)	Value
TVs/Stereos/Computers/Electronics	0.00
Tools/Equipment	0.00
Sporting Goods/Guns	0.00
Horses/Livestock/Tack	0.00
Other (describe)	0.00
N/A	

EXPENSES: List all of your monthly expenses.

Expense	Average Monthly Payment
Rent/House Payment	0.00
Vehicle Payment(s)	0.00
Credit Cards: (list each account number)	
N/A	0.00
N/A	
Loans: (name of lender and reason for loan)	
N/A	0.00
N/A	
Electricity/Natural Gas	0.00
Water/Sewer/Trash	0.00
Phone	0.00
Groceries	0.00
Clothing	0.00
Auto Fuel	0.00
Auto Maintenance	0.00
Cosmetics/Haircuts/Salons	0.00
Entertainment/Books/Magazines	0.00
Home Insurance	0.00

Expense	Average Monthly Payment
Auto Insurance	0.00
Life Insurance	0.00
Medical Insurance	0.00
Medical Expense	0.00
Other	0.00
N/A	
N/A	

MISCELLANEOUS:

How much can you borrow? \$ 0.00 From whom? N/A

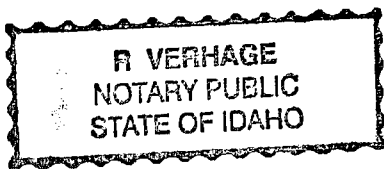
When did you file your last income tax return? 2010 Amount of refund: \$ N/A

PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name	Address	Phone	Years Known
MARK HOLMSTEAD, CPA,	401 CODDING ST. N.,	TWIN FALLS, ID,	208-734-2077, 30
SCOTT E. MALONE,	2179 BITTERROOT DR.,	TWIN FALLS, ID,	208-733-8823, 40

Lawrence Scott Andrus
 Signature
LAWRENCE SCOTT ANDRUS
 Typed or Printed Name

SUBSCRIBED AND SWORN TO before me this 25th day of February, 2016.



R
 Notary Public for Idaho
 Residing at Canyon County
 My Commission expires 5/13/19

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 02/25/2016 =

Doc No: 113829 Name: ANDRUS, LAWRENCE SCOTT
 Account: CHK Status: ACTIVE

ICC/UNIT G PRES FACIL
 TIER-1 CELL-3

Transaction Dates: 02/25/2015-02/25/2016

Beginning Balance	Total Charges	Total Payments	Current Balance
500.14	1348.75	871.11	22.50

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
02/25/2015	SI0703028-007	100-CR INM CMM		2.38	502.52
03/06/2015	HQ0704107-001	950-10 DAY HOLD EX	IBSUSPCHK	0.00	502.52
03/17/2015	IC0705092-353	099-COMM SPL		119.94DB	382.58
03/17/2015	IC0705092-354	099-COMM SPL		374.28DB	8.30
03/24/2015	HQ0705851-003	011-RCPT MO/CC	MAILROOM	100.00	108.30
03/24/2015	IC0705883-329	099-COMM SPL		3.18DB	105.12
03/24/2015	IC0705883-330	099-COMM SPL		1.75DB	103.37
03/27/2015	HQ0706447-014	011-RCPT MO/CC	MAILROOM	25.00	128.37
03/31/2015	IC0706791-314	099-COMM SPL		15.20DB	113.17
03/31/2015	IC0706791-315	099-COMM SPL		85.66DB	27.51
04/01/2015	II0706954-002	072-METER MAIL	005900	0.96DB	26.55
04/02/2015	IC0707114-009	070-PHOTO COPY	007201	1.10DB	25.45
04/07/2015	IC0707748-313	099-COMM SPL		16.45DB	9.00
04/14/2015	IC0708545-350	099-COMM SPL		3.60DB	5.40
04/17/2015	HQ0709096-011	011-RCPT MO/CC	MAILROOM	100.00	105.40
04/20/2015	IC0709342-019	070-PHOTO COPY	007221	0.40DB	105.00
04/21/2015	IC0709404-277	099-COMM SPL		47.56DB	57.44
04/28/2015	IC0710075-308	099-COMM SPL		24.86DB	32.58
04/29/2015	IC0710289-010	071-MED CO-PAY	713829	5.00DB	27.58
05/05/2015	HQ0710872-013	011-RCPT MO/CC	MAILROOM	20.00	47.58
05/05/2015	IC0711045-313	099-COMM SPL		19.71DB	27.87
05/12/2015	IC0712053-367	099-COMM SPL		18.63DB	9.24
05/13/2015	II0712307-008	072-METER MAIL	007340	0.96DB	8.28
05/15/2015	IC0712575-008	070-PHOTO COPY	007341	1.20DB	7.08
05/18/2015	HQ0712658-007	011-RCPT MO/CC	MAILROOM	100.00	107.08
05/19/2015	IC0712766-360	099-COMM SPL		3.84DB	103.24
05/26/2015	IC0713498-325	099-COMM SPL		36.92DB	66.32
06/02/2015	IC0714264-340	099-COMM SPL		36.17DB	30.15
06/08/2015	HQ0715154-021	011-RCPT MO/CC	MAILROOM	100.00	130.15
06/09/2015	IC0715325-342	099-COMM SPL		22.97DB	107.18
10/07/2015	HQ0729698-001	013-RCPT RDU	CLARK	125.55	232.73
10/13/2015	IC0730366-352	099-COMM SPL		58.05DB	174.68
10/13/2015	IC0730366-353	099-COMM SPL		39.12DB	135.56
10/20/2015	IC0731180-315	099-COMM SPL		47.13DB	88.43
10/23/2015	IC0731823-005	071-MED CO-PAY	797649	5.00DB	83.43
10/27/2015	IC0732106-335	099-COMM SPL		34.36DB	49.07
10/27/2015	IC0732106-336	099-COMM SPL		3.18DB	45.89
11/03/2015	IC0732915-287	099-COMM SPL		14.85DB	31.04
11/06/2015	IC0733621-015	100-CR INM CMM		3.18	34.22

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 02/25/2016 =

Doc No: 113829 Name: ANDRUS, LAWRENCE SCOTT
 Account: CHK Status: ACTIVE

ICC/UNIT G PRES FACIL
 TIER-1 CELL-3

Transaction Dates: 02/25/2015-02/25/2016

Beginning Balance	Total Charges	Total Payments	Current Balance
500.14	1348.75	871.11	22.50

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
11/09/2015	HQ0733919-014	011-RCPT MO/CC	MAILROOM	50.00	84.22
11/10/2015	IC0734004-368	099-COMM SPL		3.18DB	81.04
11/10/2015	IC0734004-369	099-COMM SPL		24.02DB	57.02
11/17/2015	IC0734928-329	099-COMM SPL		22.52DB	34.50
11/23/2015	IC0735543-341	099-COMM SPL		12.80DB	21.70
12/01/2015	IC0736401-341	099-COMM SPL		6.70DB	15.00
12/04/2015	II0737046-016	072-METER MAIL	0016438	13.48DB	1.52
12/08/2015	HQ0737475-004	011-RCPT MO/CC	MAILROOM	20.00	21.52
12/15/2015	IC0738279-392	099-COMM SPL		15.62DB	5.90
12/21/2015	HQ0739060-007	011-RCPT MO/CC	MAILROOM	100.00	105.90
12/21/2015	IC0739203-006	070-PHOTO COPY	00106435	0.30DB	105.60
12/22/2015	IC0739253-383	099-COMM SPL		5.35DB	100.25
12/22/2015	HQ0739324-001	011-RCPT MO/CC	MAILROOM	20.00	120.25
12/28/2015	HQ0739727-007	011-RCPT MO/CC	MAILROOM	10.00	130.25
12/29/2015	IC0739925-392	099-COMM SPL		60.20DB	70.05
12/30/2015	IC0740169-001	071-MED CO-PAY	801264	5.00DB	65.05
01/04/2016	II0740664-002	072-METER MAIL	028855	0.48DB	64.57
01/05/2016	IC0740741-340	099-COMM SPL		25.95DB	38.62
01/08/2016	II0741453-004	072-METER MAIL	028879	0.49DB	38.13
01/08/2016	IC0741493-002	070-PHOTO COPY	028878	0.15DB	37.98
01/08/2016	IC0741494-006	070-PHOTO COPY	028856	0.15DB	37.83
01/12/2016	IC0741813-403	099-COMM SPL		11.24DB	26.59
01/13/2016	IC0742020-010	071-MED CO-PAY	810987	3.00DB	23.59
01/14/2016	HQ0742176-016	011-RCPT MO/CC	MAILROOM	20.00	43.59
01/19/2016	IC0742570-381	099-COMM SPL		10.59DB	33.00
01/20/2016	HQ0742675-009	011-RCPT MO/CC	MAILROOM	25.00	58.00
01/26/2016	IC0743258-350	099-COMM SPL		18.00DB	40.00
01/29/2016	HQ0743659-013	011-RCPT MO/CC	MAILROOM	50.00	90.00
02/02/2016	IC0743984-310	099-COMM SPL		25.00DB	65.00
02/05/2016	II0744681-016	072-METER MAIL	028578	0.49DB	64.51
02/09/2016	IC0745120-379	099-COMM SPL		14.36DB	50.15
02/11/2016	IC0745462-006	070-PHOTO COPY	028577	0.15DB	50.00
02/16/2016	IC0745770-336	099-COMM SPL		15.00DB	35.00
02/23/2016	IC0746715-335	099-COMM SPL		12.50DB	22.50

I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Date: 2/25/16

Signature: 

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113829
Address IDAHO STATE CORRECTIONAL CENTER
P.O. Box 70010
BOISE, IDAHO 83707
Petitioner

2016 MAR -2 PM 12: 29

BY _____ CLERK
PS _____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)
)
) Petitioner,)
)
) vs.)
)
STATE OF IDAHO)
)
) Respondent.)
)
)

Case No. CV42-16-720
VERIFIED
PETITION AND AFFIDAVIT
FOR POST CONVICTION
RELIEF

Trial Court Judge,
Hon. Randy J. Stoker

The Petitioner alleges:

1. Place of detention if in custody: IDAHO STATE CORRECTIONAL CENTER.
2. Name and location of the Court which imposed judgement/sentence: FIFTH JUDICIAL DISTRICT, COUNTY OF TWIN FALLS, IDAHO, HONORABLE RANDY J. STOKER, DISTRICT JUDGE.
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: CR 2014-0002897
 - (b) Offense Convicted: DRIVING UNDER THE INFLUENCE
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: 05 DECEMBER 2014
 - b. Terms of Sentence: TEN YEARS - TWO YEARS FIXED, EIGHT INDETERMINATE; \$2,500 FOR PUBLIC DEFENDER SERVICES

PETITION FOR POST CONVICTION RELIEF - 1
Revised: 10/13/05

CV42-16-0720
PETN
Petition
61629



cc: prosecutor

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? 42878

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) Abuse of discretion by the Court for the Disqualification and Order to Reassign Judge by Hon. G. Richard Bevan; (R., 92.) and Judge Bevan's Order of Assignment to Hon. Randy J. Stoker. (R., 96.) On 5/15/2014 the State moved to disqualify Alternate Judge Robert Elgee. (R., 74.) The assignment of Judge Stoker left Andrus to fend for himself against prejudice and personal

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

a. Petitions in State or Federal Court for habeas corpus? NO

b. Any other petitions, motions, or applications in any other court? NO

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

N/A

N/A

N/A

bias. By disqualifying himself Judge Bevan effectively sanctioned the State's judge-shopping. This violated Andrus' due process rights under Idaho Constitution, Article I, § 13; U.S. Constitution, Amendments 5 and 14.

(b) Abuse of discretion by the Court for the failure of Hon. Randy T. Stoker to disqualify himself by reason of prejudice and personal bias as regards business and real property interests having affected Andrus and the Judge. About 2003 Andrus complained of Messrs Derek Molesworth and Stoker to U.S. Commerce Department officials in Washington, D.C., asserting probable cause for a federal investigation of their involvement with importation of motor vehicles to the United States from Canada. The storage of said motor vehicles mired Andrus in a municipal zoning variance dispute with the Judge's associate Molesworth in which Andrus prevailed. Further, Andrus contended with officials of the City of Twin Falls over the Judge's foot-dragging in addressing noxious weed abatement on vacant land adjacent to Andrus' business. On 6/6/2014 Andrus made his first appearance before Judge Stoker who remarked, "I know you. You're Scott Andrus," using Andrus' familiar moniker over his given name. For failing to disqualify himself as Judge the Court violated Andrus' due process rights under Idaho Constitution, Article I, § 13; U.S. Constitution, Amendments 5 and 14.

PETITION FOR POST-CONVICTION RELIEF -PG. 2A

Revised 10/24/05

(c) Abuse of discretion by the Court for denying Andrus' Motion for Dismissal of Counsel. (R., 100.) The Court failed to conduct such necessary inquiry as might ease Andrus' dissatisfaction, distrust and concern. U.S. v. Adelzo-Gonzalez, 268, F.3d 772, 777 (9th Cir. 2001) (citing U.S. v. Garcia, 924 F.2d 925, 926 (9th Cir. 1991)). The inquiry focused on the competence of the court-appointed attorney without consideration of the relationship between defense counsel and Andrus. U.S. v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2001). This violated Andrus' due process and constitutional rights under Idaho Code § 3-203; Idaho Code § 19-852; Idaho Constitution, Article 1 § 13; U.S. Constitution, Amendments 6 and 14.

(d) Abuse of discretion by the Court for admonishing parties and jurors with a de facto jury instruction out of order bearing on facts as regards for what reason, cause or purpose, and with what motive peace officers arrested Andrus. The Judge rephrased a question asked of Koopmans before the Court, "why was this defendant arrested?" (Tr., p.278, Ls.5-6.) Then the Judge said, "Which is totally irrelevant in this case, by the way," (Tr., p.278, Ls.8-9.) This violated Andrus' due process rights under Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 5 and 14.

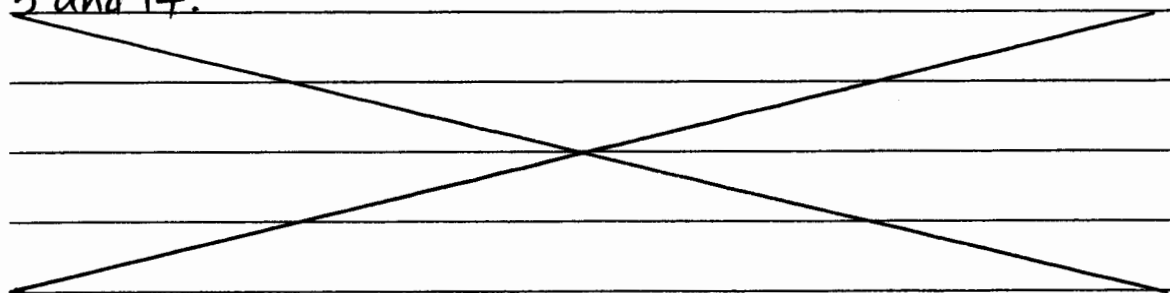
e) Fundamental error affecting the framework within which the trial proceeded when the Court failed to exclude State's

PETITION FOR POST-CONVICTION RELIEF-PB. 2B

Revised 10/24/05

witness Idaho State Police Lieutenant Robert Rausch from the evidentiary proceedings while defense witness Robert La Pier testified. By sanctioning Rausch's comportment distracting the jury during La Pier's testimony the Court so prejudiced the rights of Andrus as to make a fair trial impossible. This violated Andrus' due process and constitutional rights under I.R.E. 615; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 5 and 14.

f) Selective prosecution motivated by a desire to punish Andrus beyond the parameters codified by statute for the lesser offense of public intoxication. The State selectively prosecuted pursuant to a felony driving under the influence statute disregarding contrary evidence that Andrus was walking and was never witnessed in the driver's position of the motor vehicle with the motor running or with the vehicle moving. This violated Andrus' due process and constitutional rights under Idaho Code § 18-8004; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 5 and 14.



PETITION FOR POST-CONVICTION RELIEF PG. 2C

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) Ineffective assistance of trial counsel for failure to remedy a conflict of interest by neglecting wholly to move to disqualify Hon. Randy J. Stoker pursuant to Andrus' attorney-client disclosures regarding concerns of prejudice and personal bias which merited further inquiry and Motion to Disqualify Judge without cause.

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:

Petitioner prays that his sentence be vacated, and that his conviction be overturned, and that his criminal case be remanded to district court for proceedings consistent with due process of law; and for such further or other relief as the nature of the case may require, and as may be agreeable to equity and good conscience.

This violated Andrus' due process and constitutional rights under I.C.R. 25; Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

b) Ineffective assistance of trial counsel for failure to move to suppress breathalyzer results upon sworn testimony from State's witness peace officer Aaron Koopmans that county agents disregarded their duty to closely observe Andrus for the requisite fifteen minute period proceeding the tests. State v. DeFranco, 143 Idaho 335, 144 P.3d 40 (Ct. App. 2006); State v. Utz, 125 Idaho 127, 867 P.2d 1001 (Ct. App. 1993).

"Q: You've got to keep eyes on the person, right? A: Yes, sir." (Tr., p.263, Ls.24-25.) "Q: So in this case we may not have eyes on, right? A: It's possible." (Tr., p.265, Ls.5-7.)

This violated Andrus' due process and constitutional rights under Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

c) Ineffective assistance of trial counsel for failure to move to dismiss criminal complaint against Andrus absent evidence in support of probable cause for arrest. The court record established that no witness or witnesses observed Andrus in actual physical control of a motor vehicle. State's witness peace officer Chris Bratt testified that he saw Andrus, "Walking. That's all I saw." (Tr., p.176, L.13.) Further, State's witness

PETITION FOR POST-CONVICTION RELIEF-PG. 3A

Revised 10/24/05

Koopmans testified that he had no actual knowledge of Andrus' driving under the influence. "Q: So you actually can't tell this jury whether Mr. Andrus was under the influence of alcohol while he was in actual physical control of the vehicle, can you? A: No, sir." (Tr., p.270, Ls.13-16.) This violated Andrus' due process and constitutional rights under Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

d) Ineffective assistance of trial counsel for failure to impeach Koopmans with his Probable Cause Affidavit in Support of Arrest. In sworn "D.U.I. NOTES" Koopmans affirmed Andrus exhibited no slurred speech and no bloodshot eyes. (R., 18.) Koopmans' trial testimony contradicted his Affidavit when examined by the prosecutor: "Q: Now you noticed, you said, a slight slurring at the jail in Mr. Andrus' speech? A: Yes, ma'am." (Tr., p.276, Ls.24-25 - p.277, L.1.) For failing to rigorously impeach Koopmans counsel was ineffective. This violated Andrus' due process and constitutional rights under Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

e) Ineffective assistance of trial counsel for failure to raise a defense and rebut Koopmans' trial testimony that Andrus exuded the odor of alcohol, "the stale smell, that it had been there a while, not just

PETITION FOR POST-CONVICTION RELIEF - PG. 3B

Revised 10/24/05

poured out." (Tr., p.205, ls.20-21.) In failing to call a witness, or witnesses, in rebuttal to confute the State's proffered suggestion that Andrus had consumed alcohol for "a while" and, thus, emitted a "Stale smell" about his person counsel was ineffective. This violated Andrus' due process and constitutional rights under Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

f) Ineffective assistance of trial counsel for failure to make timely and proper objections, namely: failing to object to the admission into evidence Andrus' BAC results; failing to object to trial testimony of Andrus' clergy Kear in disregard of religious privilege; failing to object to exclude State's witness Rausch from the courtroom while the defense put on its case; failing to object to cumulative prejudicial evidence as regards the sanctity bestowed by the prosecutor on Kear as someone belonging to a religious denomination thoroughly known in the community: In calling next State's witness the prosecutor announced, "Bishop Matthew Kear," invoking Kear's standing in the Church of Jesus Christ of Latter-day Saints, the Mormons; (Tr., p.235, l.1.) doctrinal deference to Kear continued in the trial record; and, failing to object to remarks of counsel wherein the State committed prosecutorial misconduct during closing arguments: Speaking of Andrus before the jury the prosecutor stated,

PETITION FOR POST-CONVICTION RELIEF PG. 3C

Revised 10/24/05

"He knows how to speak, He knows how to present, and he's so good he's won an Emmy"; (Tr., p.590, L.25- p.591, L.1.) by contradicting Andrus' testimony the prosecutor, in effect, did present unsworn testimony to the jury: Counsel was ineffective for failing to object. State v. Gerardo, 147, Idaho 22, 205 P.3d 671 (2009). This violated Andrus' due process and constitutional rights under I.R.E. 505; I.R.E. 615; I.R.E. 603; I.R.E 103(c); Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

g) Ineffective assistance of trial counsel for failure to adequately advise defendant with regard to investigation, evidence, court proceedings, and the availability of a remedy of a conflict of interest, namely, a rule to disqualify Hon. Randy J. Stoker without cause. This violated Andrus' due process rights under I.C.R. 25; Idaho Code § 19-852; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

h) Ineffective assistance of appellate counsel for failure to put the State's case through a rigorous adversarial testing. Before the Idaho Supreme Court appellate counsel fell short and wholly failed to thoroughly contend Andrus' judgment of conviction in district court, raising only sentencing issues as regards abuse of discretion by the Court. This violated Andrus' due process rights under Idaho Code § 19-852; Idaho Constitution,

PETITION FOR POST-CONVICTION RELIEF -PG. 3D

Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

i) Ineffective assistance of appellate counsel for failure to contend abuse of discretion by the district court for its order of the reimbursement of twenty-five hundred dollars (\$2,500) for public defender services rendered on Andrus' behalf. Idaho law requires that a defendant presently have the means to pay for an attorney's services before a reimbursement award can be entered. State v. Weaver, 135 Idaho 5, 13 P.3d 5 (Ct. App. 2000). By simply admonishing Andrus, "You will someday," the Judge lacked any reasoned finding that the reimbursement would not impose a manifest hardship, and further ignored Andrus' present ability to pay. (Tr., p.630, L.1.) This violated Andrus' due process and constitutional rights under Idaho Code § 19-852; Idaho Code § 19-854; Idaho Constitution, Article 1, § 13; U.S. Constitution, Amendments 6 and 14.

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

DATED this 25 day of February, 2016.

Lawrence Scott Andrus
Petitioner

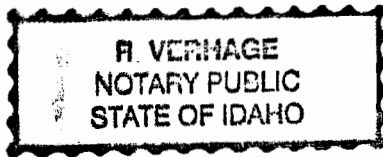
STATE OF IDAHO)
) ss
County of ADA)

LAWRENCE SCOTT ANDRUS, 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.

Lawrence Scott Andrus
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 25th day of February, 2016.

(SEAL)



[Signature]
Notary Public for Idaho
Commission expires: 5/3/19

Residing at Carleton County

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25 day of February, 2016, I mailed a
VERIFIED AND AFFIDAVIT
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:

TWIN FALLS County Prosecuting Attorney

CLERK OF THE DISTRICT COURT

FOR THE COUNTY OF TWIN FALLS

Lawrence Scott Anderson
Petitioner

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

2016 MAR -2 PM 12:30

STATE OF IDAHO)
) SS
COUNTY OF ADA)

BY _____ CLERK
PS DEPUTY

CV 42-16-720

LAWRENCE SCOTT ANDRUS, being first duly sworn on oath, deposes and says:

1. That I am the Petitioner seeking post-conviction relief in the foregoing instrument.

2. That I do believe the relief sought is entitled to me.

3. That, on information and belief, I declare Hon. Randy J. Stoker knew, or would have known by reason, of public records inquiries by me as regarded the Judge's real property interests and dealings with Mr. Derek Molesworth within the State of Idaho.

4. That about 2003 on initiative I engaged the U.S. Commerce Department in Washington, D.C., via telephone and facsimile to proffer the names of Messrs Molesworth and Stoker as parties in the transport of automobiles across the U.S. border from Canada for sale in Idaho and elsewhere, and provided a Commerce official with multiple VIN markings from suspect vehicles.

5. That, on information and belief, I came into the displeasure of Judge Stoker after effectively scuttling a Special Use Permit application for a vehicle storage lot on vacant land sold, or being sold, or ownership transferred from Judge Stoker to Mr. Molesworth for temporarily storing automobiles.



cc: Prosecutor

7. That I inferred a duplicitous ruling by the Court in denying my Motion for Dismissal of Counsel that left me to fend for myself even after thoroughly telling the myriad troubles to Judge Stoker with the appointed defense attorney, including a breakdown in communication.

8. That in a pre-trial attorney-client conference at the jail I rigorously aired my real and true concerns regarding Judge Stoker's probable prejudice and personal bias to defense counsel Timothy J. Williams who stated, "Well, he won't recuse himself," and shrugged off the issue leaving me circumspect about being given proper due process in court proceedings.

9. That in both written correspondence and verbal declaration I cautioned defense counsel regarding the inordinate influence and expression to hold sway over the Court should clergy of the Church of Jesus Christ of Latter-day Saints testify at trial in violation of religious privilege and, in fact, Mr. Matthew Kear identified as "Bishop Kear" on the witness stand despite my personal objection.

10. That authorities of the Church of Jesus Christ of Latter-day Saints extended written "apologies" to me as regards my expressed disappointment over the lack of sanctity Kear displayed in breaking the clergy-penitent sacred privilege.

11. That on 07 November 2014 I observed Idaho State Police Lieutenant Robert Rausch aggressively flailing his arms and openly mouthing contrary commentary to the jury even as expert defense witness Robert La Pier testified, and Rausch's stupefying exhibition only ceased upon a whispered admonition by legal assistant Andie Cooper.

12. That post jury verdict and prior to sentencing counsel advised me, "I didn't jump up and object," at trial.

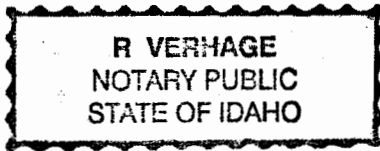
13. That addenda accompany this affidavit for edification.

Further your affiant sayeth not.

Lamarr Scott
Signature of Affiant

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 25th day of

February, 2016.



[Signature]
Notary Public for Idaho
My Commission Expires: 5/13/19

Residing at Canyon County

D.U.I. NOTES

Sobriety Tests X Meets Decision Points?

Odor of alcoholic beverage	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Gaze Nystagmus	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Admitted drinking alcoholic beverage	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Walk & Turn	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Slurred speech	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	One Leg Stand	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Impaired Memory	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Crash Involved	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Glassy/bloodshot eyes	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Other:

Drugs Suspected	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Injury	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Reason Drugs are Suspected:		Drug Recognition Evaluation Performed	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

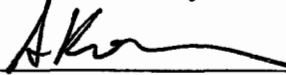
Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code.

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Sections 18-8003 and 18-8004(4), Idaho Code and the standards and methods adopted by the Department of Law Enforcement.

BAC: .247/.248 by: Breath Instrument Type: Life Lock Alco Sensor Serial #: 68-013349
Blood AND/OR Urine Test Results Pending? Yes No (Attached)
 Name of person administering breath test: Deputy Jeremy Thomas


Defendant refused the test as follows:

Dated this 15th day of March, 2014



 Affiant

Subscribed and sworn before me on this 15th day of March, 2014.




 NOTARY PUBLIC FOR IDAHO
 Residing at: Rupert ID
 My Commission expires: 9-24-16



DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2014 MAY 30 PM 4:11

BY _____ CLERK
 DEPUTY


IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO ,)
Plaintiff,)
vs.)
LAWRENCE SCOTT ANDRUS,)
Defendant.)

Case No. CR-2014-0002897
DISQUALIFICATION AND ORDER
TO REASSIGN

Comes now, G. Richard Bevan, District Judge in the above entitled Court, disqualifies himself from hearing the above entitled case and petitions and requests Administrative District Judge, G. Richard Bevan, to appoint another judge to hear the above entitled case.

DATED this 30th day of May, 2014.


G. RICHARD BEVAN
District Judge

JUN -3 2014 9:20a.m.
By _____ Clerk
_____ Deputy Clerk

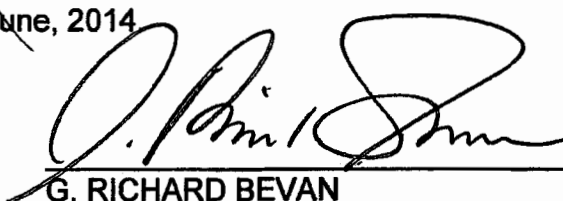
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 LAWRENCE SCOTT ANDRUS,)
)
 Defendant.)
 _____)

CASE NO. CR 2014-2897
ORDER OF ASSIGNMENT

IT IS HEREBY ORDERED that the above-entitled case be assigned to
Honorable Randy J. Stoker for all further proceedings.

DATED this 3rd day of June, 2014



G. RICHARD BEVAN
Administrative Judge
Fifth Judicial District

C:

JUN - 6 2014

By [Signature] Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
DISTRICT DIVISION

COURT MINUTES

CR-2014-0002897

State of Idaho vs. Lawrence Scott Andrus ^{Is} (Present) / Not Present)

Hearing type: Motion

Hearing date: 6/6/2014

Time: 01:30 PM

Courtroom: 2

Judge: Randy J. Stoker

Court reporter: Tracy Barksdale

Minutes Clerk: Angela Aguirre

Defense Attorney: Williams

Prosecutor: Harvey

(145) Court outlined assignment of case and Motion
filed by Defendant. (147) Mr. Andrus made comments.
(149) The Court admonished Defendant of legal representation.
(153) The Defendant commented (153) The
Court denied motion. (154) Court and Counsel
discussed trial date.

Jury trial date will remain as
set with a second setting of Aug 5 @ 8:30 AM.
(156)

1 A Correct.
2 Q Where were you when you saw the pickup?
3 A Would you like me to notate where the person
4 was when I first saw him as well?
5 Q Sure.
6 A So that's my first visual indication, first
7 visual indication, visual contact, perhaps the best way
8 to put it.
9 Q He wasn't out in the desert, though, you're
10 just pointing --
11 A Just this point on the bridge. Just getting
12 out onto the walking path. It's kind of tough to tell
13 because it's depth perception thing.
14 I saw the vehicle, to answer your question,
15 sir, at about point C. Within a matter of seconds, I
16 was able to look past him and see the vehicle.
17 Q And then somewhere up there we've got the old
18 Golf Course Road?
19 A Yeah. Golf Course Road would be up here, but
20 it's on the map. I didn't leave enough road.
21 Q You made a U-ey at Golf Course Road?
22 A No. Actually the barrier here -- well, if you
23 want me to redraw a map.
24 Q No.
25 A It's a short -- I would put it up in this

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1 Well, it wasn't a stroll, by any stretch, because I
2 wanted to get to him as quickly as I could. It wasn't
3 much past the front end of my vehicle.
4 Q Oh, okay. Now, there is a pedestrian walkway.
5 A Correct.
6 Q Is that what Mr. Andrus was on?
7 A Yes.
8 Q Okay. He wasn't outside that on the river
9 side?
10 A No.
11 Q Besides appearing to talk on the phone, what
12 else was Mr. Andrus doing?
13 A Walking. That's all I saw.
14 Q Not at that time trying to climb over or
15 anything like that?
16 A No.
17 Q Okay. When did you first notice the odor of
18 alcohol?
19 A Well, wasn't until I had an opportunity to
20 kind of get him up closer to me that -- well, you're
21 asking for the time that I noticed him?
22 Q No. Not the exact time. I'm asking relative
23 to occurrences.
24 A Oh. Gosh, probably within 15 or 20 seconds of
25 actually making contact with him as we began to

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1 range if you're kind of going off what my scale
2 drawing. I would put it up here, so I would have to go
3 all the way past to flip a U-ey past the barrier.
4 Q Not quite up to Golf Course Road?
5 A I would guess it's about halfway between the
6 end of the bridge and Golf Course Road there's a little
7 bit of way between Golf Course Road and there.
8 Q I got you. You came back heading south?
9 A Correct.
10 Q Where -- you parked your car somewhere and got
11 out of your car?
12 A I'm sorry?
13 Q You parked your car somewhere and got out of
14 your car?
15 A Yes.
16 Q Mark where you parked your car.
17 A (Marks on exhibit.)
18 Q Where was Mr. Andrus when you parked the car?
19 A I'm going to estimate here, then we'll call
20 that, if that's okay.
21 Q And then you had hands on?
22 A At that same location.
23 Q Okay. Did you run up and after him or
24 something?
25 A No. All I did was just exit my vehicle.

175

1 converse briefly.
2 Q Okay. And were you both on the pedestrian
3 walkway?
4 A No. He was on the pedestrian walkway, and I
5 was still in the roadway leaning across the railing.
6 Q Hands on him?
7 A Yes.
8 Q How did you call hands on him? That was your
9 next entry, the dispatch's next entry?
10 A Yeah.
11 Q You have his shoulder?
12 A Yeah. This is here so I can hit it like that.
13 That's why it's this. I don't remember actually having
14 him tied up and keying it up like this. It would be a
15 support hand thing so it would be a left hand deal just
16 saying, dispatch, I've got hands on the subject.
17 Q Okay. And all of that, if I recall, and you
18 can look at my copy of the exhibit, between your first
19 eyes on stopping -- well, flipping a U-ey, hands on is
20 actually, I think it's about 50 seconds.
21 A If I've got to do the minutes math, yeah,
22 roughly 50 seconds.
23 Q Okay. How long did you stand there talking to
24 Mr. Andrus?
25 A We talked for, it would be, if you're asking

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1 difference between stale odors and nonstale odors, I
2 guess, is a foundational question. I'll sustain the
3 objection at this point. You go ahead and lay more
4 foundation and proceed.
5 BY MS. HARRINGTON:
6 Q Deputy Koopmans, are you familiar with the
7 odor of alcohol?
8 A Yes, ma'am.
9 Q Is that something you're familiar with through
10 your training?
11 A Yes, ma'am.
12 Q Is it also something you're familiar with just
13 as a human being?
14 A Yes, ma'am.
15 Q And now, you didn't remember how many DUIs
16 you've been called to?
17 A Unfortunately, no.
18 Q Had you made DUI arrests before this incident?
19 A Yes, ma'am.
20 Q And when you are dealing with people out on
21 the street, have you also dealt with people who were
22 drunk in public or drunk at a party?
23 A Yes, ma'am.
24 Q So through that experience of yours, have you
25 gained kind of knowledge of the various smells of

202

1 Q Okay.
2 A Is that --
3 Q Was the defendant checked out by a doctor?
4 A Yes, ma'am.
5 Q After all of this, was he medically cleared?
6 A Yes, ma'am.
7 Q And was he given, placed back in your custody?
8 A Yes, ma'am.
9 Q What happened after the hospital released the
10 defendant back to your custody?
11 A I transported Mr. Andrus to the Twin Falls
12 County sheriff's office -- excuse me, criminal justice
13 facility to be booked in.
14 Q And as you were driving back, did you also
15 notice the smell inside your patrol vehicle?
16 A Yes, ma'am.
17 Q Did you notice anything about -- this is at
18 the hospital, so I need to go back in time. Did you
19 notice anything about the defendant's speech when you
20 were at the hospital?
21 A I did note that I was surprised with how well
22 Mr. Andrus was functioning with his speech, with his
23 balance. There was a -- it was -- what I was smelling
24 and what I was seeing in the behavior weren't -- didn't
25 quite add up, if that makes sense.

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1 alcohol?
2 A Yes, ma'am.
3 Q So when you say that you thought through your
4 experience that this defendant's smell was stale, what
5 do you mean by that?
6 MR. WILLIAMS: Your Honor, I'm going to object
7 as to speculation as well as foundational for this, and
8 I'd like to ask a couple questions in aid.
9 THE COURT: I'll overrule the objection. I
10 think there's sufficient foundation, and it's not
11 speculative. It's just his observations. You can
12 cross examine him at a later point.
13 Do you have the question? Do you need the
14 question read back, sir?
15 THE WITNESS: Yes, please.
16 (Record read by the reporter.)
17 THE WITNESS: What I meant by that was I was
18 under the impression that this is not someone who was
19 just drinking. Forgive me. This is difficult to
20 articulate. That this person has probably been -- he's
21 drinking as a lifestyle, that there was probably a --
22 it wasn't like a particular instance where they were
23 drinking, but that they probably drink a lot and
24 therefore kind of smell like that all the time.
25 BY MS. HARRINGTON:

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1 Q Deputy Koopmans, when you say a smell was
2 coming from a person, I mean, I suppose that you can
3 just pour vodka onto a jacket or something, right? Did
4 it seem to be like it was spilled alcohol, or was this
5 a different kind of smell?
6 A No. This smell, I could tell when he breathed
7 that it was coming from inside and not just something
8 that was spilled in the back seat of my car or
9 something along those lines. It was something that was
10 exuding from his person, if you will.
11 Q Deputy Koopmans, through your training and
12 experience as a law enforcement officer, that kind of
13 smell, that smell that you said was coming from the
14 defendant, is that a smell that comes from alcohol that
15 is very recently -- if I was to tip this, let's pretend
16 there's nothing other than water in here, if I were to
17 tip this back, is that the kind of smell you'd smell on
18 me immediately?
19 A No. That's what I was trying to articulate,
20 that's the stale smell, that it had been there a while,
21 not just poured out.
22 Q So it has to kind of go through body before
23 you start smelling that?
24 MR. WILLIAMS: I'm going to object as leading.
25 THE COURT: Sustained.

205

1 then?
2 MS. HARRINGTON: I am, Your Honor.
3 THE COURT: Okay. Let's bring the jury back.
4 (Jurors entered the courtroom.)
5 THE COURT: Thank you. Please be seated
6 again.
7 Let the record show it's 4:49 by the courtroom
8 clock. The jury has returned and is properly seated.
9 Ladies and gentlemen, we had a bit of a
10 witness scheduling issue. So what's going to happen is
11 this: The State has completed its examination of
12 Deputy Koopmans. Obviously the defense has an
13 opportunity for cross-examination. We did that, and
14 then this other witness needs to testify today because
15 of some scheduling issues, we'd be here till all night
16 long, and I intend to watch the football game tonight
17 at 6:30, as do you, so we're not going to be here all
18 night.
19 What we're going to do is call this witness
20 out of order with the gracious consent of the defense
21 in this case. We'll hear the cross-examination of
22 Deputy Koopmans first thing in the morning.
23 So let's put the State's witness on.
24 MS. HARRINGTON: Thank you, Your Honor. Your
25 Honor, I'm going to make this as quick as I can:

234

1 Bishop Matthew Kear.
2 THE COURT: Sir, if you'll please come forward
3 to my right and take the witness stand.
4 BISHOP MATTHEW KEAR,
5 called as a witness, and having been first duly sworn,
6 was examined and testified as follows:
7 THE COURT: Thank you. Please be seated, sir.
8 Ms. Harrington, whenever you're ready.
9 MS. HARRINGTON: Thank you, Your Honor.
10 DIRECT EXAMINATION
11 BY MS. HARRINGTON:
12 Q Would you state your first and last name.
13 A Matthew Kear, K-e-a-r.
14 Q Sir, where do you work?
15 A I work at a local engineering firm.
16 Q And do you have another job, so to speak?
17 A As an ecclesiastical leader for the church,
18 yes, as a bishop.
19 Q And through that work, do you know a person by
20 the name of Lawrence Scott Andrus?
21 A Yes.
22 Q How do you know Mr. Andrus, sir?
23 A He and I have had conversations, counseling
24 conversations in the past.
25 Q Do you see the person you know as Lawrence

235

1 Scott Andrus in the courtroom today?
2 A Yes.
3 Q Would you please point him out and describe
4 what he is wearing.
5 A Gray suit, yellow tie.
6 MS. HARRINGTON: Would the record please
7 reflect identification.
8 THE COURT: It will.
9 MS. HARRINGTON: Thank you.
10 BY MS. HARRINGTON:
11 Q Bishop Kear, what were you doing Saturday,
12 March 15, 2014, I'm going to say around noon, 1:00?
13 A I was attending an event with my children at
14 their alpaca event. Alpaca event.
15 Q Alpaca event.
16 Did you receive a phone call at that time at
17 that event?
18 A I did.
19 Q Who was that phone call from?
20 A It was actually from my wife trying to locate
21 me.
22 Q Why was your wife trying to locate you?
23 A I didn't have my cell phone. There was
24 someone else there at the event that she reached first
25 to get ahold of me.

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1 Q And did somebody eventually contact you, your
2 wife contacted you?
3 A Yes. I ended up calling her back, and she
4 told me that Scott Andrus was trying to get in touch
5 with me.
6 Q What did you do?
7 A I went home and then called Scott Andrus.
8 Q So you contacted Scott Andrus personally?
9 A I did.
10 Q From a home phone?
11 A From my cell phone that was left at home.
12 Q Okay. Do you remember when you made that
13 call?
14 A It was so long ago I don't remember the exact
15 time.
16 Q Could be mid-morning afternoon, late
17 afternoon?
18 A It was afternoon, had to be.
19 Q When you made that phone call to Mr. Andrus on
20 March 15th, what did he tell you?
21 A Said that he was distraught, and as I
22 recollect, going to commit suicide.
23 Q Did he tell you where he was planning to
24 commit suicide?
25 A I believe he said he was going to go to

237

1 Q Who is it?
2 A Deputy Thomas, and that's his badge number,
3 1180.
4 Q Okay. That's all I need for this one. If you
5 want to give it to madam clerk. The admitted copy
6 of -- the admitted original, excuse me.
7 Okay. My prior question was whether you, for
8 each individual test, knew if there was a built-in plus
9 or minus margin of error. Okay? This is a different
10 question. Does the machine, the current model -- well,
11 let's go back to the model before this one Intoxilyzer
12 5000 current model and then the Intoxilyzer 5000 that
13 is a few years old, either one of them, do you know if
14 the machine itself for all tests actually has a
15 built-in percentage margin of error that we take into
16 account for all tests?
17 A No, sir.
18 Q On the observation time period that you
19 testified about there's some rules about giving a BAC
20 test, right?
21 A Yes, sir.
22 Q The observation time period is one of these
23 rules?
24 A Yes, sir.
25 Q Why do we have rules?

262

1 Q And according to the standards, eyes on the
2 person, it means that, doesn't it, you've got to watch
3 this person?
4 A Yes, sir.
5 Q Okay. In the video we saw lots of people
6 coming and going, including yourself.
7 A Yes, sir.
8 Q We didn't have eyes on that person for 15
9 minutes, did we?
10 A I would have to go and look at the tape in the
11 pat-down area. I did not have eyes on the person for
12 15 minutes.
13 Q Well, we did two mouth checks. I remember
14 this because I was looking for that 15 minutes.
15 A Yes, sir.
16 Q There's an original pat-down, and that's where
17 he got all patted down, and his hands on the wall?
18 A That's correct.
19 Q Remember this because I thought, well, he's
20 not going all the way back to then, is he? Then there
21 was the other one where I said, ah, here's what he's
22 talking about when you did it with your fingers?
23 A Yes, sir.
24 Q In his mouth. Okay. Is that the one you're
25 talking about where you start your 15 minutes?

264

1 A To ensure accuracy in this instance.
2 Q What is this waiting period that you were
3 talking about?
4 A The time amount or what is the -- it's 15
5 minutes.
6 Q Okay. So why do we do that?
7 A To make sure that there's no alcohol that's
8 come up from the -- come up into the mouth that could
9 skew the results.
10 Q And according to the NHTSA standards, that
11 waiting period is 15 minutes, right?
12 A Yes, sir.
13 Q And what do you have to do during that 15
14 minutes?
15 A Clear the mouth of any foreign objects and
16 make sure that the person --
17 Q We saw you do that?
18 A Right.
19 Q On the video.
20 A Right.
21 Q And then make sure that? I'm sorry to
22 interrupt.
23 A The person doesn't burp, belch, or vomit.
24 Q You've got to keep eyes on the person, right?
25 A Yes, sir.

263

1 A Yes, sir.
2 Q Okay. Because it was after that one that we
3 saw people coming and going in the room?
4 A Yes, sir.
5 Q So in this case we may not have had eyes on,
6 right?
7 A It's possible.
8 Q Okay. Why do we want eyes on?
9 A To make sure that the person doesn't burp,
10 belch, or vomit.
11 Q For burping or belching, you're not
12 necessarily talking about something that's going to
13 shake the walls, okay. That can be -- that's why it's
14 eyes on so you can tell if somebody is expelling
15 something that you don't know, so you're right there,
16 you're watching them so we know something's going on,
17 right?
18 A Yes, sir.
19 Q That's the reason for the training, right?
20 A Yes, sir.
21 Q Because if something like that occurs, what
22 happens?
23 A Alcohol could get into the mouth.
24 Q Could throw off the test a bit, can't it?
25 A Yes, sir.

265

1 A Correct.
2 Q You don't know how long Mr. Andrus was sitting
3 in a vehicle parked with the engine off out by the
4 Perrine Bridge that day?
5 A Correct.
6 Q And you don't know how quickly Mr. Andrus may
7 have consumed alcohol or whether it was on an empty
8 belly or not?
9 A Correct.
10 Q Except I think he told you he was three days
11 without eating or something?
12 A Hadn't eaten in three days, yes.
13 Q So you actually can't tell this jury whether
14 Mr. Andrus was under the influence of alcohol while he
15 was in actual physical control of the vehicle, can you?
16 A No, sir.
17 MR. WILLIAMS: I have no further questions,
18 Your Honor.
19 THE COURT: Any redirect, Madam Prosecutor?
20 MS. HARRINGTON: Thank you.
21 REDIRECT EXAMINATION
22 BY MS. HARRINGTON:
23 Q Deputy Koopmans, you're not a breath testing
24 specialist, are you?
25 A Correct.

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1 A Many times.
2 Q Did you do that in a wet lab situation with
3 people who'd been drinking?
4 A Yes, ma'am.
5 Q How many times have you done a wet lab?
6 A Just once.
7 Q Just once? Did you go through a field
8 training program where you actually had to be out on
9 the street?
10 A Yes, ma'am.
11 Q You have an officer that stood over the top of
12 you, real life situation?
13 A Yes, ma'am.
14 Q Made sure you knew what you were doing?
15 A Yes, ma'am.
16 Q You weren't thrown out into the street having
17 just taken a college course?
18 A No, ma'am.
19 Q You were actually given an officer that looked
20 over you while you were out practicing, almost like an
21 apprenticeship?
22 A Yes, ma'am.
23 Q Did you successfully complete all phases
24 of your field training?
25 A Yes, ma'am.

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1 Q And you are not a drug recognition expert, are
2 you?
3 A Correct.
4 Q Have you been trained to run field sobriety
5 tests?
6 A Yes, ma'am.
7 Q All right. Now, you took those, that training
8 at the College of Southern Idaho?
9 A Yes, ma'am.
10 Q It was a college course, correct?
11 A Yes, ma'am.
12 Q College courses, do they come with textbooks?
13 A There was -- it was not a book, but yes, there
14 was a handout.
15 Q Okay. So you were trained by someone, though,
16 to run those field sobriety tests?
17 A Yes, ma'am.
18 Q What are those field sobriety tests again?
19 A Horizontal gaze nystagmus, one-leg stand,
20 walk-and-turn.
21 Q And did you actually have to practice those?
22 A Yes, ma'am.
23 Q Did you practice them on other people?
24 A Yes, ma'am.
25 Q Did you do that many times?

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1 Q Where that was done?
2 A Here at Twin Falls County.
3 Q Who was your field training officer, do you
4 recall?
5 A I had several.
6 Q You had several?
7 A I had several.
8 Q So several different officers had to make sure
9 that you knew what you were doing?
10 A Yes, ma'am.
11 Q Did any other officer actually watch you run
12 the horizontal gaze nystagmus?
13 A Yes, ma'am.
14 Q Who?
15 A Sergeant Mencl.
16 Q So Sergeant Mencl was there when you were
17 running that?
18 A Yes, ma'am. He was standing behind me.
19 Q Could you see him on the thing here?
20 A No, ma'am.
21 Q Now, why are there three standard field
22 sobriety tests? Why not just one?
23 A Three will get -- more than one will check the
24 other tests.
25 Q So like checks and balances?

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1 A Correct.
2 Q Like in government?
3 A Yes, ma'am.
4 Q Because there are -- there's more than one
5 kind of nystagmus, isn't there?
6 A Yes, ma'am.
7 Q Is that why you don't just run the horizontal
8 gaze nystagmus?
9 A Yes, ma'am.
10 Q You actually have to check it out with the
11 other tests, right?
12 A Yes, ma'am.
13 Q Because it's possible that people can have
14 nystagmus from something else?
15 A Yes, ma'am.
16 Q But you had had Mr. Andrus checked out at the
17 hospital, correct?
18 A Yes, ma'am.
19 Q And they cleared him and sent him to you?
20 A Yes, ma'am.
21 Q A doctor was there?
22 A Yes, ma'am.
23 Q Nurses?
24 A Yes.
25 Q Now, when you saw the outcome that you did in

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1 vomits during the Intoxilyzer test?
2 A Alcohol can be put into the mouth from the
3 stomach.
4 Q You didn't see this defendant burp, belch, or
5 vomit?
6 A No, ma'am.
7 Q What happens when mouth alcohol is introduced,
8 and it's recorded by an Intoxilyzer instrument? What
9 happens?
10 A I've never seen it done. I'm assuming it
11 would skew the results.
12 Q Skew the results. So you've never had to run
13 three tests on an Intoxilyzer?
14 A Yes, I have.
15 Q Why did you have -- in this case did you run
16 three?
17 A No, ma'am.
18 Q Why not?
19 A Because the Intoxilyzer accepted two valid
20 samples.
21 Q So two valid samples were taken by the
22 Intoxilyzer?
23 A Yes.
24 Q Now, you noticed, you said, a slight slurring
25 at the jail in Mr. Andrus' speech?

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1 the horizontal gaze nystagmus test, I think it was five
2 points?
3 A Yes, ma'am.
4 Q What did you think?
5 A That Mr. Andrus was --
6 MR. WILLIAMS: Never mind. Withdrawn.
7 THE WITNESS: Mr. Andrus was under the
8 influence of alcohol.
9 BY MS. HARRINGTON:
10 Q Did you want to make sure, though, by testing
11 him in other ways?
12 A Yes, ma'am.
13 Q So what did you do?
14 A The one-leg stand and the walk-and-turn test.
15 Q Did he not -- he failed those tests as well,
16 correct?
17 A Yes, ma'am.
18 Q And so when he failed those tests, what did
19 you conclude that the nystagmus that you saw in his
20 eyes was due to?
21 A The consumption of alcohol.
22 Q Did he report that he had any naturally
23 occurring nystagmus to you?
24 A No, he did not.
25 Q What happens when someone burps, belches, or

275

1 A Yes, ma'am.
2 Q Did you notice that slurring at the hospital?
3 A Yes, ma'am.
4 Q Did you notice the smell of alcohol at the
5 hospital?
6 A Yes, ma'am.
7 Q You noticed it at the jail in the Intoxilyzer
8 room?
9 A Yes, ma'am.
10 Q Deputy Koopmans, why did you place this
11 defendant under arrest for DUI?
12 A Based on his statements that he had driven to
13 the bridge, based on the statements of the reporting
14 party, the fact that his vehicle was still at the
15 scene, and his level of intoxication. It was plain to
16 me that he had to have been driving under the
17 influence, was under the influence at the time that he
18 was driving to the bridge.
19 Q So you believed that he was under the
20 influence at the time that he was driving to the
21 bridge?
22 A Yes, ma'am.
23 MR. WILLIAMS: Objection, Your Honor, no
24 foundation for the expertise of that answer.
25 MS. HARRINGTON: Your Honor, we laid plenty of

277

1 foundation yesterday.
2 THE COURT: Pardon me?
3 MS. HARRINGTON: We laid a great deal of
4 foundation yesterday.
5 THE COURT: The question was, why was this
6 defendant arrested?
7 MS. HARRINGTON: Yes.
8 THE COURT: Which is totally irrelevant in
9 this case, by the way. Nevertheless, that was the
10 question. And now we have gone to expressing why he
11 was arrested, and that was without objection,
12 Mr. Williams.
13 I'm going to let the answer stand. I'll let
14 you recross on that.
15 BY MS. HARRINGTON:
16 Q Would you have arrested someone that you
17 believed had not driven while intoxicated?
18 A No.
19 MR. WILLIAMS: Objection, relevance.
20 THE COURT: Overruled.
21 BY MS. HARRINGTON:
22 Q Why not?
23 A Because that doesn't fit the -- that doesn't
24 fit the crime of driving under the influence of
25 alcohol. I have to actually believe that they were

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1 What's your objection?
2 MR. WILLIAMS: Beyond the scope of cross.
3 We're going into the booking stuff now. I never went
4 into that.
5 THE COURT: That's true. Sustained.
6 MS. HARRINGTON: Your Honor, the reason for
7 the question is to ask what the charge was --
8 THE COURT: Sustained.
9 MS. HARRINGTON: Thank you, Your Honor. No
10 further questions.
11 Thank you, Deputy Koopmans.
12 THE COURT: Mr. Williams, limited cross on
13 those issues?
14 MR. WILLIAMS: Thank you, Your Honor.
15 RECROSS-EXAMINATION
16 BY MR. WILLIAMS:
17 Q Why did you believe that Mr. Andrus -- upon
18 what training did you believe Mr. Andrus was in actual
19 physical control of a motor vehicle while under the
20 influence?
21 A Upon what training?
22 Q Yes. Do you have training in the timing and
23 physical absorption of alcohol by the human body?
24 A No, sir.
25 Q Do you have training in the metabolism of

280

1 under -- in control of the vehicle while they were
2 intoxicated.
3 Q Deputy Koopmans, did you book this defendant
4 into the jail or have him booked into the jail?
5 A Yes, ma'am.
6 MS. HARRINGTON: Could this witness please be
7 shown State's Exhibit 6. I think there are two pieces
8 of paper stapled together.
9 BY MS. HARRINGTON:
10 Q Do you recognize State's Exhibit 6,
11 Deputy Koopmans?
12 A Yes, ma'am. That's booking paperwork that I'm
13 responsible for, the arrest form, and then the printout
14 of the program that the jail uses for their inmates, so
15 his information, Mr. Andrus' information.
16 Q So you helped gather Mr. Andrus' information
17 and entered it into that system?
18 A Yes.
19 MR. WILLIAMS: I'll object. It's beyond the
20 scope of cross.
21 BY MS. HARRINGTON:
22 Q It's already answered, but I just wanted to
23 make sure that you were aware of that.
24 THE COURT: Counsel, when there's an
25 objection, wait. I have to rule on it.

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1 alcohol once it's absorption has taken place?
2 A No, sir.
3 Q Do you have training in determining the speed
4 at which levels of alcohol increase or decrease in the
5 human body?
6 A No, sir.
7 Q The call from dispatch went out at 1341,
8 correct?
9 A Yes, sir.
10 Q The BAC test took place -- that's 1:30. The
11 BAC test took place at 2:25 -- 3:25, correct? 1525.
12 Do you need to see that again?
13 A If I could see it again, yes. That sounds
14 right, but I don't remember the number exactly. Oh,
15 yes, I do remember that number on the screen. 1525.
16 Q So how long is that? 1341 to --
17 A Can I pen it out real quick?
18 Q About a couple of hours, right?
19 A Yes, sir.
20 Q Okay. So we know that Mr. Andrus hadn't drank
21 for at least a couple hours?
22 A Yes, sir.
23 Q So without any training on metabolizing,
24 absorption, or anything else that the physical body
25 does alcohol, you can't say whether he was actually in

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1 bottle. Remember a fifth, 750 milliliters, 25.36
2 ounces. If he had poured ounces into a water bottle,
3 there would have only been 5.36 ounces left in the
4 bottom of that bottle, that bottle that Mr. Biggers
5 found. Why is he coming up with the 20 ounces story?
6 Because he needs to try to get his BAC up to .247.
7 Mr. Biggers didn't find five ounces in the bottom of
8 the bottom. He found a two thirds full bottle of
9 vodka.
10 This defendant told you that he hadn't had
11 anything to drink prior to this, yet he smelled of
12 stale alcohol. I am going by the physical evidence
13 found at the scene, not the story that I have been
14 told, one story amongst a lot of stories.
15 Let's go over those stories. The defendant
16 lied to Bishop Kear about his whereabouts. He lied to
17 Kear, Swearingen, Moeller, Cahoon, Williams, and
18 Nebeker about his suicidal, ideations, and he's saying
19 that he was depressed that day, but you also heard what
20 happened at that hospital. I'm not suicidal anymore.
21 I just want help with my hip. He manipulated those
22 people. He manipulated the sheriff's deputies and the
23 dispatchers and the medical staff, and now he's trying
24 to manipulate you. He's good at it. One of the best
25 I've ever seen. He knows how to speak. He knows how

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1 tonight, maybe they won't. Things can still happen in
2 the course of trials. It is possible that you could be
3 called back in here to join the deliberations. You
4 still can't talk about the case with anyone, can't form
5 any opinions about it, I guess, other than with
6 yourself, you've heard the evidence now.
7 Do you have a cell phone?
8 JUROR: Yes.
9 THE COURT: If you will give that number to
10 Jay, we will call you if we need you back or if the
11 jury reaches a verdict, and you are discharged. Okay.
12 You can go where you want to go. Were you planning on
13 leaving Twin tonight?
14 JUROR: Yeah. I was actually live in Buhl.
15 THE COURT: Okay. That's fine. Go home. The
16 odds of you having to come back here are pretty slim.
17 Still possible. Go home, do what you're going to do,
18 and we'll let you know one way or the other.
19 Obviously important to have an alternate, and
20 we appreciate your time and service in this case.
21 Has that food come?
22 THE BAILIFF: It's in there.
23 THE COURT: Take a little whatever on your way
24 home if you want or if not, sir, you do need to leave
25 your notes with Jay. I'll send you into the jury room

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1 to present, and he's so good he's won an Emmy. He also
2 told you that what he really wanted that day was human
3 contact, a friend. He wouldn't tell his friends where
4 he was. He was manipulating them; now he's trying to
5 manipulate you. Don't be manipulated. Please find the
6 defendant guilty. Thank you.
7 THE COURT: Thank you, counsel.
8 Bailiffs, can you both come forward and be
9 sworn.
10 (Bailiffs sworn.)
11 THE COURT: One of you, please. This is how
12 we select the alternate, by this high tech method. You
13 thought the lawyers had technology issues.
14 THE BAILIFF: Did I have two?
15 THE COURT: You did. What the heck here. No,
16 you didn't. All right.
17 Let me tell you who the alternate is. This is
18 the, I think, cruelest part about trials. One of you
19 has sat through this and endured us for two days and
20 most likely are not going to participate in the
21 deliberations.
22 The alternate is Shad Babington. Okay? Let
23 me explain what that means. You're still not done with
24 this case. Jury's going to go start their
25 deliberations tonight. Maybe they'll reach a verdict

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1 and get you on your way. Okay. Thank you very much,
2 sir.
3 Folks, just a second. We will send you in the
4 jury room, and you can begin your deliberations.
5 Again, I want to caution you about this issue. One of
6 the difficult things of having cases go to a jury late
7 is that we don't want you to make a rushed decision.
8 We've got a very important decision here. This case is
9 obviously important to the State of Idaho, it's
10 important to Mr. Andrus. We want you to take your time
11 and make a reasoned decision, not rush through this.
12 Okay? When you get to the late hour, there's a
13 tendency to do that. People get tired. I know when I
14 get tired, I just want to get things done, you know?
15 And there gets to be a point where conversations don't
16 work much longer. I don't know where that is. Some
17 people can work all night long, some people have to go
18 to bed at 9:00. I'll leave that up to you.
19 We'll let you deliberate for a reasonable
20 period of time, see how things go. Worst case
21 scenario, if you can't reach a verdict tonight, don't
22 worry about it. We can bring you back at a later time.
23 Probably won't be tomorrow, but we'll address that
24 issue if we need to.
25 With that, Jay, are you ready for them?

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1 today. You will someday. And I'm going to order a
2 penitentiary sentence of two years fixed, eight years
3 indeterminate, to be served in this case.
4 Specifically rejecting probation. I am
5 rejecting a rider. I want to tell you why I am doing
6 that, Mr. Andrus: Because you talked me into doing
7 that today. Your allocution convinced me that you are
8 not ready for either probation or riders. You did it
9 to yourself.
10 I will order a license suspension of two
11 years, absolute, following release from incarceration,
12 followed by a two-year interlock requirement under the
13 statute. You do you have the right to – you of
14 course, will be given credit for time served in this
15 case.
16 Do you agree, Madam Prosecutor, it's 266 days?
17 MS. HARRINGTON: I have no reason to argue
18 with that.
19 THE COURT: We'll actually put that in this
20 order that that's the amount of credit for time served.
21 You are remanded – if you wish to appeal this
22 decision, you must perfect that appeal within 42 days
23 of today. Notify Mr. Williams. He will perfect that
24 appeal.
25 I will remand your custody to the sheriff,

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1 sir, for transport to the penitentiary system. Good
2 luck to you.
3 (End of proceedings at 2:57 p.m.)
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631

from the Jailhouse Desk of
Lawrence "Scott" Andrews
Inmate No 65069

TWIN FALLS COUNTY JAIL
P.O. Box 306
TWIN FALLS, ID 83303-0306

Mr. Jim Williams, Esq.
Attorney-at-Law
401 FLOODING ST N
PO BOX 282
TWIN FALLS, ID 83303-0282

14 JULY 2014

REF. Case No CR2014-2897

DEAR MR. WILLIAMS:

Thank you for the handling of my criminal case(s) No CR 2014-2897. I write to you in the hope of learning what more may be required of me in preparation for my trial on Wednesday 30 July 2014. As you might expect, I am anxious.

Your office knows the circumstances and facts of my arrest at the Perrine Bridge on Saturday 15 March 2014 as explained by me, and outlined by the prosecution. Having witnessed juries - and having been a juror - I do know that citizens take the rule-of-law seriously. So, while my faith in the collective jurors remains strong, anxiety stems from the aggressive nature of the prosecutor, e.g., the outrageous claims of long-term illegal narcotics use.

I do hope that jury instructions include a rightly-stated definition of what it lawfully means to be in control of a motor vehicle. Never did it occur to me that I could be charged with driving under the influence while standing apart from a motor vehicle and consuming alcohol.

My political activism while working to disestablish the historic Old Towne Business Improvement District a couple of years ago concerns me. I ruffled a lot of feathers.

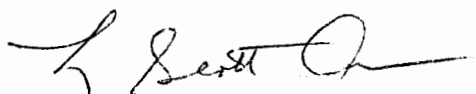
Mr Jim Williams, Esq.
Continued from page 1

THE RESULTING B-I-D DECISION COST THE CITY OF TWIN FALLS ROUGHLY \$300,000 PER YEAR IN FEES, ~~IN~~, TAXES. I FURTHER ANTAGONIZED A FORMER INVESTMENT PARTNER OF HON RANDY STOKER BY THE NAME OF DEREK MOLES WORTH. I SUCCESSFULLY BLOCKED A ZONING VARIANCE ALONG MAIN AVE E FOR A PIECE OF VACANT PROPERTY ONCE OWNED BY MESSRS STOKER, MOLES WORTH AND ROBERT LATHAM, JR.

IN THE MATTER OF THE VIOLATION OF A PROTECTION ORDER I DO DESIRE A TRIAL. THE CIRCUMSTANCES ARE MORE OF A CIVIL, RATHER THAN CRIMINAL, NATURE. MY MOTHER HAS BEEN MENTALLY UNSTABLE FOR YEARS AND WAS ONCE COMMITTED TO CANYON VIEW BEHAVIORAL SERVICES HOSPITAL. I SUFFERED YEARS OF EMOTIONAL AND SEXUAL ABUSE BY HER. SHE USED TO MAKE ME GAZE AT PHOTOGRAPHS A MISTRESS OF MY FATHER SENT IN THE MAIL. THE PHOTOGRAPHS WERE OF DAD AND THE WOMAN, "LORETTA ORR," NAKED IN BED TOGETHER. I WAS ONLY ELEVEN OR TWELVE YEARS OLD.

ONCE AGAIN, I THANK YOU FOR YOUR KIND ATTENTION AND CONSIDERATION. AFTER MORE THAN FOUR (4) MONTHS IN JAIL I AM EAGER TO SETTLE MY CRIMINAL MATTERS WITH THE STATE OF IDAHO AND, PERHAPS, RETURN TO LAS VEGAS AND SEVER MYSELF FROM A TOXIC FAMILY ENVIRONMENT.

VERY TRULY YOURS,



L. SCOTT ANDRUS
DEFENDANT

Tim Williams

From: GettingOut Customer Care [notifications@telmate.com]
Sent: Tuesday, May 13, 2014 11:43 AM
To: Tim Williams
Subject: Grievance Thread #000587228

Grievance #000587228

Name: Lawrence Andrus **Status:** Closed
Facility Name: Twin Falls, ID
Date: 05/13/14 04:59:00
Category: LEGAL REQUEST
Label: Private Attorney

Summary of request: Notarized affidavits

Do you have a private attorney or conflict attorney?: Yes

What is your Attorneys name?: Mr Tim Williams, Esq

What is your case number?: CR 14-2897

Please provide a brief description of why you wish to speak to your attorney. Do not disclose any information about your case.: Mr Williams -- Please ask the Office of the Prosecuting Attorney, County of Twin Falls, to provide transcripts of telephone messages left by me to Mr Steve Andrus (brother), as well as the duly notarized affidavits of those persons -- any members of The Church of Jesus Christ of Latter-day Saints -- who are to be called as witnesses against me. I want to peruse the documents for inaccuracies. You had indicated to me that the prosecutor and/or police had some information from those persons in the matter of Violation of a Protection Order. Also, please obtain for me the police reports filed by Mrs Janeal Long (mother) related to my supposed "parking" outside of her home. The sworn and notarized affidavit from whomever makes the untruthful claims about my supposed history of illicit narcotics abuse is necessary for my review, too. With all due respect, I find it prudent to get such things on the record, and sort through the stuff that is pure fabrication. Additionally, did my LDS Bishop Matthew Kear tell the police/prosecutor that I had, in fact, manipulated the 16th ward of the Church? I would consider such a statement outside the bounds of the clergy/congregant privilege. In any case I request the affidavit of Bishop Kear be added to the list. Thank you very much. Please try to appreciate my concerns with regard to what witnesses are stating about me. Respectfully, L Scott Andrus

MAILED
5/14/14

Date	Type	Grievance
No Responses yet		

We will send all discovery responses in the various cases as we receive them.

Tim

THE CHURCH OF
JESUS CHRIST
OF LATTER-DAY SAINTS

CORRECTIONAL SERVICES
780 West 800 South
Salt Lake City, Utah 84104-1427
Phone: 1-801-240-2644

May 11, 2015

Lawrence Scott Andrus #113829
Idaho Department of Corrections I-115B
PO Box 70010,
Boise, ID 83707

Dear Lawrence,

Your letter dated May 1, 2015 has been referred to this office for a response.

Based on the serious accusations contained in your letter we felt that it was best referred to Bishop Kear's Stake President for consideration and possible action.

We are therefore sending a copy of your letter to the Twin Falls Idaho South Stake president. Any further contact or action will originate with him.

We extend our apologies and hope that you will see beyond the actions of a man and see the truth and importance of the Gospel message and reconnect yourself with the Church in a forgiving way. Remember that the bishop, like you, is human and may make a mistake.

We send our best wishes for your success.

Sincerely,


Elder Kinghorn
Sister Kinghorn
Correctional Services

2016 MAR -2 PM 12:31

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113829
Address IDAHO STATE CORRECTIONAL CENTER
P.O. BOX 70010
BOISE, IDAHO 83707

BY _____
PS _____
CLERK
DEPUTY

Petitioner

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV42-10-720

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, LAWRENCE SCOTT ANDRUS, Petitioner in the above
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden Randy Blades,
of the Idaho State Correctional Center.

2. The issues to be presented in this case may become to complex for the Petitioner
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner/~~Respondent~~ required assistance completing these pleadings, as he/~~she~~
was unable to do it him/~~herself~~.
self

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/13/05

CV42-16-0720
MOAF
Motion & Affidavit
61631



4. Other: As a practical matter initial review collateral proceedings require the State to appoint counsel.
DATED this 25 day of February, 2016.

Laura Scott Andrus
Petitioner

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

LAWRENCE SCOTT ANDRUS, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho State Correctional Center, under the care, custody and control of Warden Randy Blades;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

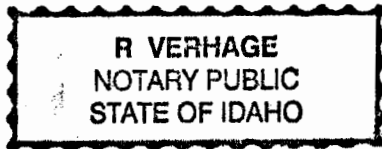
WHEREFORE, Petitioner respectfully prays that this Honorable Court issue its Order granting Petitioner's Motion for Appointment of Counsel to represent his/~~her~~ interest, or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

DATED This 25 day of February, 2016.

Lawrence Scott
Petitioner

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 25th day of February, 2016.

(SEAL)



R
Notary Public for Idaho
Commission expires: 5/13/19
Residing at Canyon County

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25 day of February, 2016, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

TWIN FALLS County Prosecuting Attorney
CLERK OF THE DISTRICT COURT
FOR THE COUNTY OF TWIN FALLS

Lawrence Scott Anderson
Petitioner

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Lawrence Andrus
Petitioner,
vs.
State of Idaho
Respondent.

Case No. CV42-16-0720

Order of Reassignment

Event Code: ORRA

The above-mentioned case pending in Twin Falls County is currently assigned to the Honorable G. Richard Bevan. However, in the interest of judicial economy, it has become necessary to reassign the case.

NOW THEREFORE, IT IS HEREBY ORDERED that the above-entitled case be reassigned to the Honorable John K. Butler, for all further proceedings. By this order, Judge G. Richard Bevan is not recusing himself.

IT IS SO ORDERED.

Dated: Signed: 3/8/2016 08:46 AM



G. RICHARD BEVAN
Administrative Judge
Fifth Judicial District

CERTIFICATE OF SERVICE

I certify that on Signed: 3/8/2016 02:47 PM _____, I served a copy of the attached to:

Lawrence Scott Andrus #113829 Idaho State Correctional Facility Po Box 70010 Boise Id 83707	<input checked="" type="checkbox"/> By mail <input type="checkbox"/> By email <input type="checkbox"/> By fax (number) _____ <input type="checkbox"/> By personal delivery <input type="checkbox"/> Overnight delivery/Fed Ex
Grant Loeb inbox.pros@co.twin-falls.id.us	<input type="checkbox"/> By Mail <input checked="" type="checkbox"/> By Email

Teresa Yocham, Deputy Clerk
tyocham@co.twin-falls.id.us

By email
By: 
Deputy Clerk

FILED By: [Signature] Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

LAWRENCE SCOTT ANDRUS IDOC N° 113829

Full Name of Party Submitting This Document

IDAHO STATE CORRECTIONAL CENTER

Mailing Address (Street or Post Office Box)

P.O. BOX 70010

City, State and Zip Code

BOISE, IDAHO 83707

Telephone Number

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,

Plaintiff,

vs.

STATE OF IDAHO

Defendant.

Case No.: CV42-10-120

ORDER RE: PARTIAL PAYMENT OF
COURT FEES (PRISONER)

Having reviewed the ~~///~~ Plaintiff's [] Defendant's Motion and Affidavit for Partial Payment of Court Fees,

THIS COURT FINDS AND ORDERS:


[] The average monthly deposits in the prisoner's inmate account total \$ _____, the average monthly balance in the prisoner's inmate account during the last six months has been \$ _____; 20% of the greater of these amounts is \$ _____ and must be paid as a partial initial fee at the time of filing. The prisoner shall make monthly payments of not less than 20% of the preceding month's income credited to the prisoner's inmate account until the remainder of the court filing fees in the amount of \$ _____ are paid in full. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid

or [] The prisoner has no assets and need not pay any fee at this time. The prisoner shall make monthly payments of not less than 20% of the preceding month's income credited to the prisoner's inmate account until the court filing fees in the amount of \$ _____ are paid in

full. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid.

or THIS COURT DENIES the motion because
 the prisoner did not comply with all the requirements
 the Court finds the prisoner has the ability to pay t

DENIED
Signed: 3/15/2016 02:31 PM



Date: _____

Judge

CLERK'S CERTIFICATE OF SERVICE

I certify that a copy was served:

To Prisoner:
Name: Lawrence Scott Andrus IDOC 113829

Hand-delivery

Address: P.O.Box 70010

Mailing

City, State, Zip: Boise, ID 83707

Fax to (number) _____

To counsel for the county sheriff the department of correction or the private correctional facility:

Name: Twin Falls Prosecutor

Hand-delivery

Address: _____

Mailing


City, State, Zip: _____

Fax to (number) _____

Email to inbox.pros@co.twin-falls.id.us

Signed: 3/15/2016 02:48 PM

Date: _____



Deputy Clerk

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113829
Address IDAHO STATE CORRECTIONAL CENTER
P.O. BOX 70010
BOISE, IDAHO 83707

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

Case No. CV42-10-120
**ORDER GRANTING
MOTION FOR
APPOINTMENT
OF COUNSEL**

IT IS HEARBY ORDERED that the Petitioner's Motion for Appointment of Counsel is granted and Twin Falls Public Defender (attorney's name), a duly licensed attorney in the State of Idaho, is hereby appointed to represent said defendant in all proceedings involving the post conviction petition.

DATED this ___ day of _____, 20
Signed: 3/15/2016 02:30 PM



District Judge

Clerks Certificate of Service

I hereby certify that on this _____ day of _____, 20____, I served a true and correct copy of the _____ herein by delivering the same to each of the following, by the method indicated below, addressed as follows:

Lawrence Scott Andrus IDOC 113829 ISCC P.O. Box 70010 Boise, ID 83707

Twin Falls Prosecutor

E-Mail

Twin Falls Public Defender

E-Mail

Signed: 3/15/2016 02:54 PM



Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS	)	Case No. CV 2016-720
)	
Petitioner,	)	POST CONVICTION PETITION
	)	PRE-TRIAL PROCEDURAL
vs.,	)	ORDER PURSUANT TO
	)	I.R.C.P. 16---Felony Case Only
State of Idaho,	)	(Effective May 1, 2013)
)	
Respondent.)	

In order to (1) expedite the disposition of this action; (2) establish early and continuing control by the court; and (3) improve the quality of the legal work “through more thorough preparation,” as suggested by I.R.C.P. 16(a), the Court hereby enters the following procedural Order which shall govern the prosecution and defense of this case:

A. APPLICATION OF THE CIVIL RULES OF PROCEDURE/DISCOVERY. The Idaho

Rules of Civil Procedure govern this proceeding. Idaho Criminal Rule 57(b) provides:

The petition for post-conviction relief shall be filed by the clerk of the court as a separate civil case and be processed under the Idaho Rules of Civil Procedure except as otherwise ordered by the trial court; *provided the provisions for discovery in the Idaho Rules of Civil Procedure shall not apply to the proceedings unless and only to the extent ordered by the trial court.* (Emphasis added).

Accordingly, the discovery process is not available to the parties unless ordered by the Court after motion and hearing.

B. PETITIONER'S APPLICATION MUST COMPLY WITH THE RULES AND STATUTES GOVERNING THIS CASE.

In addition to the requirements of I.C.R. 57(a), the petitioner's application¹ filed in this case must also comply with the statutory framework for the petitioner's claims set forth in the *Uniform Post-Conviction Procedure Act*, codified at Idaho Code §19-4901 *et. seq.* Section 19-4903 specifically requires that any application shall:

[1] identify the proceedings in which the applicant was convicted, [2] give the date of the entry of the judgment and sentence complained of, [3] specifically set forth the grounds upon which the application is based, and [4] clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth [5] separately from other allegations of facts and shall be [6] verified as provided in section 19-4902. [7] Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall [8] identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. (Emphasis added).

C. ORDER RE PLEADINGS. As noted by the Court in *Griffin v. State*, 142 Idaho 438, 441, 128 P.3d 975, 978 (Ct. App. 2006), “[a]s often occurs with pro se filings, the allegations of [the] post-conviction petition are not artful or entirely clear.” Therefore, pursuant to Idaho Code 19-4906(a), counsel for the Petitioner will within **60 days** of the date of this Order file with the Court and serve on opposing counsel an Amended Application for Post-Conviction Relief if necessary to comply with the statute and rules.

¹ Since the Uniform Post-Conviction Procedure Act clearly specifies that the proceedings are initiated by filing an “application,” such term will be used synonymously with the word “petition.” The “party filing the same shall be designated as the . . . ‘petitioner’” pursuant to I.R.C.P. 3(a)(1).

Counsel shall consult with the petitioner prior to the preparation of an Amended Petition about any proposed amendments to the petitioner's claims of relief. The Petitioner shall certify under oath that "I have consulted with counsel as to any proposed amendments to the petition and that after consultation with counsel I agree and consent to the proposed amendments to my petition for post-conviction relief." The Amended Application *must*: 1) fully comply with the required format of I.C.R. 57(a); 2) *specifically* set forth the grounds upon which the application is based, and 3) *clearly* state the relief desired as required by Idaho Code §19-4903.² The purpose of this order is to expedite "the disposition of the action" pursuant to Rule 16(a)(1) and to improve the quality of the proceedings through "more thorough preparation" pursuant to Rule 16(a)(4).

Within 30 days of service of any Amended Application the State shall file an Answer thereto (or a Motion for Summary Dismissal if appropriate). Pursuant to I.C. § 19-4906(a), if the petition or amended petition is not accompanied by the record of underlying criminal proceeding challenged therein, the Respondent shall file with its Answer the records and transcripts or portions thereof that are material to the claims/issues raised in the petition or amended petition. If there was no direct appeal the Respondent shall submit to the court a motion and proposed order for the preparation of transcripts relevant to the claims of the petition and in the case of a direct appeal the Respondent shall contact Idaho Attorney General Appellate Division and

² An application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records, or other evidence supporting its allegations must be attached or a reason for their non-inclusion given. *Downing v. State*, 132 Idaho 861, 979 P.2d 1219 (Ct. App. 1999). If the relevant portions of the records or transcripts of the underlying criminal proceeding at issue are not attached, then the petitioner/counsel shall make application to the court for preparation of the relevant records or transcripts, if there was no direct appeal and in the case of a direct appeal the petitioner/counsel shall contact appellate counsel/SAPD and obtain copies of the relevant records and transcripts to be attached to the petition or amended petition.

obtain copies of the relevant records and transcripts to be attached to the petition or amended petition.

D. I.R.C.P. 11(a)(1) CERTIFICATION. As in any civil proceeding, counsel for the Petitioner is not merely a passive bystander. In filing the Amended Application, he or she must certify “that the attorney . . . has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” I.R.C.P. 11(a)(1). Counsel for the petitioner will be held to such a standard regarding any claims which will be asserted in the Amended Application.

E. SCHEDULING AND HEARINGS. Pretrial hearings in this case shall be heard on the Court's regularly scheduled civil calendar which is normally every Monday at 1:30 p.m. Absent an order shortening time, all motion practice other than Motions for Summary Dismissal will be governed by I.R.C.P. 7. As a matter of courtesy, counsel are expected to contact the Court's Deputy Clerk, Traci Brandebourg (phone 208-644-2601) to schedule hearings and then to confirm the availability of opposing counsel for proposed hearing dates before noticing any matters for hearing. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (**except pre-trial conferences, motions for summary disposition or hearings at which testimony is to be offered**) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4). Counsel requesting a hearing by conference call will be responsible for

arranging for placement of the call to the court phone at 208-644-2682 and must contact the clerk before noticing the matter for hearing to insure that the calendar can accommodate a telephone conference. If a hearing is held by conference call, all attorneys are required to appear by telephone.

F. MOTIONS GENERALLY (Applies to **every** motion).

One additional copy marked or stamped “**Judge’s Copy**” of the motion and of all moving or opposing papers (including affidavits, and briefs) must be submitted to the judge’s chambers when such documents are filed or lodged with the clerk of the court. If a party relies upon any case decided by an appellate court outside of Idaho, a copy of such case must be attached to the copy of the brief submitted to the judge’s chambers.

G. MOTIONS FOR SUMMARY DISPOSITION. The following procedures shall apply to summary disposition motions:

1. The party moving for summary disposition shall prepare as **separate** documents: (i) the motion, (ii) a concise statement of the claimed undisputed material facts. Each statement of an undisputed fact shall include a reference to the record which supports that fact, and (iii) a legal memorandum specifying the reasons in support of the motion.

2. The party opposing a motion for summary disposition shall prepare as **separate** documents: (i) a concise statement of the agreed upon undisputed material facts and a concise statement which are claimed genuine issues of material fact and/or which are material facts omitted from the moving party’s statement of facts. Each statement of a fact shall include a reference to the record which supports that fact, and (ii) a legal memorandum specifying the reasons in opposition to the motion.

3. The procedures and time requirements specified in I.R.C.P. 56 shall govern the procedures for Motions for Summary Disposition.

4. **MOTIONS FOR SUMMARY DISPOSTION MUST BE FILED AND ARGUED AT LEAST 30 DAYS PRIOR TO THE SCHEDULED PRETRIAL CONFERENCE.**

H. OBJECTIONS/MOTIONS TO STRIKE

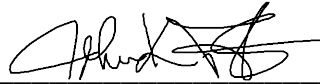
Any party objecting to an opposing party's affidavit(s) **MUST** file a written objection and motion to strike and have the matter noticed for hearing in order to preserve the objection and to give the court and the parties sufficient notice regarding the same. Oral objections regarding any affidavit **WILL NOT** be considered, and the right referenced in *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 782-83, 839 P.2d 1192, 1196-97 (1992) to make oral objections at a summary disposition hearing is hereby specifically **PROHIBITED**. I.R.C.P. (16)(b); *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 15, 175 P.3d 172, 177 (2007).

I. JUDICIAL NOTICE: If either party requests the court to take judicial notice of any documents or other items not contained in the post-conviction file, counsel shall provide, under separate cover, all such documents or items with that party's written request for judicial notice. Any objection to the request for judicial notice shall be made in writing within **7 days** of receipt of the request. Failure to object within this time frame shall constitute a WAIVER of objection thereto. The Court shall only take judicial notice of documents or items that are submitted under separate cover unless it is impossible to submit the document(s) or items in such a manner.

J. SANCTIONS. A post conviction proceeding is a civil proceeding. Therefore the rules of civil procedure shall apply in this case. Specifically any sanctions available to either party pursuant to the rules are applicable in this case.

K. PRETRIAL AND EVIDENTIARY HEARING. The Court recognizes that this case may be resolved by a Motion(s) for Summary Disposition or pursuant to a Notice of Intent to Dismiss issued by the Court. However, by separate Order the Court sets this case for pretrial and an evidentiary hearing at this time. These settings will permit expeditious resolution of this matter in the event this matter is not resolved by agreement or motion. Counsel for petitioner shall be responsible to arrange for transport of petitioner if petitioner is incarcerated at the time of evidentiary hearing.

Dated this Signed: 3/15/2016 12:12 PM day of _____, 2016.



John K. Butler
District Judge

CERTIFICATE OF MAILING/DELIVERY

I, , hereby certify that on the _____ day of _____, 20__, a true and correct copy of the foregoing Order was mailed, postage paid, and/or hand-delivered to the following persons:

Lawrence Scott Andrus
IDOC No. 113829
ISCC
P.O. Box 70010
Boise, Idaho 83707

U.S. Mail

Twin Falls Public Defender

U.S. Mail
 Hand delivered
 Faxed
 Court Folder
 E-mail tfcpubdef@co.twin-falls.id.us

Twin Falls County Prosecutor

U.S. Mail
 Hand delivered
 Faxed
 Court Folder
 E-mail inbox.pros@co.twin-falls.id.us

Signed: 3/15/2016 02:39 PM



Deputy Clerk

FILED By: _____ Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,)	
)	
vs.	)	Case No. CV42-16-720
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

ORDER RE: LODGING TRANSCRIPT ON APPEAL

The petitioner having filed a Petition for Post-Conviction Relief and the petitioner having pursued a direct appeal in the underlying criminal matter, Twin Falls County Case No. CR-2014-2897;

IT IS HEREBY ORDERED, that the Clerk of the Court shall lodge in this pending action a copy of the Reporter’s Transcript prepared for the direct appeal in CR-2014-2897 and that the Clerk shall provide a copy of the Transcript to counsel of record.

IT IS SO ORDERED.

DATED this _____ day of _____, 2016

Signed: 3/16/2016 09:55 AM

John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 17 day of March, 2016 a true and correct copy of the foregoing ORDER RE: LODGING TRANSCRIPT ON APPEAL was mailed, postage paid, and/or hand-delivered to the following persons:


Twin Falls Public Defender

tfcpubdef@co.twin-falls.id.us

Twin Falls County Prosecutor

inbox.pros@co.twin-falls.id.us

Signed: 3/17/2016 08:24 AM



Deputy Clerk

OFFICE OF THE PUBLIC DEFENDER
Attorneys at Law
P.O. Box 126
Twin Falls, ID 83303-0126
(208)734-1155
ISB# 4444

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE ANDRUS,)	
)	
Petitioner,	)	Case No. CV42-16-720
)	
)	
vs.	)	MOTION TO EXTEND
	)	TIME TO AMEND PETITION
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

This motion is being made upon the grounds and for the reasons that efforts are being made to locate conflict Post Conviction counsel, as neither the main public defender’s office nor the office of Mr. Williams are able to represent Mr. Andrus

The State has been contacted and have no objection to this motion.

RESPECTFULLY SUBMITTED this 13th day of April, 2016.

/s/ Marilyn B. Paul
MARILYN B. PAUL
Chief Public Defender

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that a true and correct copy of the foregoing MOTION TO EXTEND TIME was delivered to Grant Loeb, Twin Falls County Prosecutor's office on the 13th day of April, 2016.

Grant Loeb
Prosecuting Attorney

inbox.pros@tfco.org

/s/ Betsy Brown
Betsy Brown
Legal Assistant

TWIN FALLS COUNTY
 PUBLIC DEFENDER
 Attorneys at Law
 P.O. Box 126
 Twin Falls, ID 83303-0126
 ISB # 4444

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE ANDRUS,)
)
 Petitioner)
)
 v.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)


Case No. CV42-16-720

ORDER TO EXTEND
 TIME TO AMEND
 PETITION

PURSUANT TO the Motion to Extend Time to Amend Petition being filed and, FOR
 GOOD CAUSE APPEARING THEREFROM:

IT IS HEREBY ORDERED AND THIS DOES ORDER, that the Petitioner's Motion to
 Extend Time to Amend Petition is granted and the Amended Petition is due on the 31 day of
May, 2016.

Signed: 4/18/2016 02:20 PM
 Signed: 4/18/2016 02:19 PM



 District Judge

ORDER

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing to be placed in the following files at the Twin Falls County Court Services Office in Twin Falls, Idaho on the ____ day of _____, 2016.

GRANT LOEBS
Twin Falls County Prosecutor

inbox.pros@tfco.org

MARILYN B. PAUL
Twin Falls County Public Defender

tfcpubdef@tfco.org

Signed: 4/18/2016 05:02 PM



DEPUTY CLERK

ORDER

Williams Law Office Chtd.

Tim J. Williams ISB #3910
PO Box 282
401 Gooding Street N, Suite 201
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

* * * * *

LAWRENCE SCOTT ANDRUS,)
) Petitioner,)
))
))
vs.)
))
STATE OF IDAHO,)
) Respondent,)
_____)

Case No. CV42-16-720

**EX-PARTE MOTION TO APPOINT
SPECIAL CONFLICT PUBLIC DEFENDER**

COMES NOW Defendant, by and through his conflict counsel of record, Tim J. Williams of Williams Law Office and hereby requests this Court order the appointment of special conflict counsel in the above entitled matter. Clayne S. Zollinger Jr. has expressed a willingness to be appointed in the above-entitled case at the county rate of \$60.00 per hour. The undersigned certifies that opposing counsel has been contacted and has no objection to entry of the proposed order submitted herewith.

Dated this 19th day of April, 2016.

1s/ Timothy J. Williams

Tim J. Williams

Williams Law Office Chtd.

Tim J. Williams ISB #3910
 PO Box 282
 401 Gooding Street N, Suite 201
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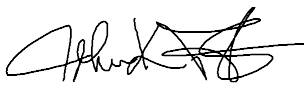
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
 OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
 * * * * *

LAWRENCE SCOTT ANDRUS,)
 Petitioner,)
)
)
 vs.)
)
 STATE OF IDAHO,)
 Respondent,)
 _____)

Case No. CV42-16-720
**ORDER TO APPOINT SPECIAL
 CONFLICT PUBLIC DEFENDER**

Based upon Defendant’s Ex-Parte Motion to appoint special conflict public defender, since the number of normal contractual conflict attorneys has been exceeded, and good cause appearing therein, IT IS HEREBY ORDERED that. Clayne S. Zollinger Jr. shall be appointed as special conflict public defender in the above-entitled case at the county rate of \$60.00 per hour.

Dated this _____ day of April, 2016.

Signed: 4/20/2016 04:00 PM


 Hon. Judge Butler

CERTIFICATE OF DELIVERY

Signed: 4/21/2016 09:28 AM

I HEREBY CERTIFY that on the _____ day of April, 2016, I caused a true and correct copy of the foregoing to be delivered, with all charges prepaid, by the method indicated below, addressed to:

Grant Loeb
inbox.pros@co.twin-falls.id.us

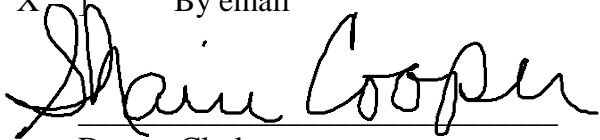
By email

Clayne Zollinger
zollingerlaw@gmail.com

By email

Timothy J. Williams
tim@timjwilliamslaw.com

By email


Deputy Clerk

Grant P. Loebs
Prosecuting Attorney
for Twin Falls County
P.O. Box 126
Twin Falls, Idaho 83303
208-736-4020

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,	)	Case No. CV 42-16-720
)	
Petitioner,)	
)	
vs.	)	ANSWER
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

COMES NOW, the State of Idaho, by and through Jethelyn Harrington, Deputy Prosecuting Attorney for Twin Falls County, Idaho, and does hereby answer Petitioner's ("Andrus") Petition for Post-Conviction Relief in the above-entitled action as follows:

I.

GENERAL RESPONSES TO ANDRUS' POST-CONVICTION ALLEGATIONS

All allegations made by Andrus are denied by the state unless specifically admitted herein.

II.

SPECIFIC ANSWERS TO ANDRUS' POST-CONVICTION ALLEGATIONS

1. Answering paragraphs 1 through 6 of Andrus' Petition for Post-Conviction Relief, the state admits the allegations contained therein.
2. Answering paragraph 7(a) of Andrus' Petition for Post-Conviction Relief the state admits that it did move to disqualify Judge Robert Elgee per I.C.R. 25, and that Judge G. Richard Bevan disqualified himself from this case and appointed Judge Randy J. Stoker, all other allegations in this paragraph the state denies.
3. Answering paragraph 7(b) of Andrus' Petition for Post-Conviction Relief the state is without information or belief to answer the allegations contained therein and therefore denies the same.
4. Answering paragraph 7(c) of Andrus' Petition for Post-Conviction Relief the state admits the petitioner filed a handwritten Motion and Affidavit for Dismissal of Counsel, all other allegations in this paragraph the state denies.
5. Answering paragraph 7(d) of Andrus' Petition for Post-Conviction Relief the state admits the transcript quotes as listed by this petitioner are correct, all other allegations in this paragraph the state denies.
6. Answering paragraph 7(e) of Andrus' Petition for Post-Conviction Relief the state admits that the trial court did not bar the state's expert witness Lt. Robert Rausch from being present while the defense's expert witness Robert LaPier testified, all other allegations contained in this paragraph the state denies.
7. Answering paragraph 7(f) of Andrus' Petition for Post-Conviction Relief the state denies the allegations contained therein.

8. Answering paragraph 8, of Andrus' Petition for Post-Conviction Relief the state believes this allegation to be true, but specifically reserves the right to raise a successive petition/res judicata/procedural default bar or defense should facts come to light indicating that the allegation is in any part false.

9. Answering paragraph 9(a) of Andrus' Petition for Post-Conviction Relief the state admits that defense counsel did not move to disqualify Judge Randy Stoker. The state is without information and belief as to answer the allegations concerning the petitioner's attorney client disclosures and therefore denies the same. All other allegations contained in this paragraph the state denies.

10. Answering paragraph 9(b) of Andrus' Petition for Post-Conviction Relief the state admits that the defense did not seek to move to suppress the breathalyzer results and that the quotes from the transcript as listed by the defendant are correct, all other allegations in this paragraph the state denies.

11. Answering paragraph 9(c) of Andrus' Petition for Post-Conviction Relief the state admits that the defense did not move to dismiss the criminal complaint against the defendant, and that the transcript quotes as listed by the petitioner are correct, all other allegations in this paragraph the state denies.

12. Answering paragraph 9(d) of Andrus' Petition for Post-Conviction Relief the state admits the transcript quotes as listed by this petitioner are correct, all other allegations in this paragraph the state denies.

13. Answering paragraph 9(e) of Andrus' Petition for Post-Conviction Relief the state admits the transcript quotes as listed by this petitioner are correct, all other allegations in this paragraph the state denies.

14. Answering paragraph 9(f) of Andrus' Petition for Post-Conviction Relief the state admits the transcript quotes as listed by this petitioner are correct, and that it referred to witness Matthew Kear as Bishop Kear. The state also admits that defense counsel did not object to the admission of the petitioner's BAC results, to Bishop Kear's testimony or to the state referring to Bishop Kear by his title. All other allegations in this paragraph the state denies.

15. Answering paragraph 9(g) of Andrus' Petition for Post-Conviction Relief the state is without information or belief to answer the allegations and therefore denies the same.

16. Answering paragraphs 9(h) and 9(i) of Andrus' Petition for Post-Conviction Relief the state denies the allegations contained therein.

17. Paragraphs 10 and 11 of Andrus' Petition for Post-Conviction Relief are not allegations and therefore cannot be admitted or denied.

18. Answering paragraph 12 of Andrus' Petition for Post-Conviction Relief the state admits that the petitioner is seeking the relief listed, but denies all allegations contained therein, and objects to any and all relief sought.

19. Answering paragraph 1 of Andrus' Affidavit in Support of Post-Conviction Relief the state admits the allegation contained therein.

20. Answering paragraph 2 of Andrus' Affidavit in Support of Post-Conviction Relief the state admits that the petitioner does believe that he is entitled to relief but denies the allegations contained therein.

21. Answering paragraphs 3 through 5 of Andrus' Affidavit in Support of Post-Conviction Relief the state is without information or belief to answer the allegations contained therein and therefore denies the same.

22. Answering paragraph 7 (the state could not find a paragraph 6) of Andrus' Affidavit in Support of Post-Conviction Relief the state is without information or belief to answer the allegations contained regarding the petitioners inference and therefore denies the same, and denies all other allegations contained therein.

23. Answering paragraph 8 of Andrus' Affidavit in Support of Post-Conviction Relief the state is without information or belief to answer the allegations contained therein and therefore denies the same.

24. Answering paragraph 9 of Andrus' Affidavit in Support of Post-Conviction Relief the state admits that Matthew Kear was identified as Bishop Kear on the witness stand. The state is without information or belief to answer the remaining allegations contained in paragraph 9 and therefore denies the same.

25. Answering paragraphs 10 through 12 of Andrus' Affidavit in Support of Post-Conviction Relief the state is without information or belief to answer the allegations contained therein and therefore denies the same.

26. Answering paragraph 13 of Andrus' Affidavit in support of Post-Conviction Relief the state admits that addenda do accompany the affidavit.

FIRST AFFIRMATIVE DEFENSE

The Petitioner fails to state any grounds upon which relief can be granted. Idaho Code § 19-4901(a); I.R.C.P. 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

To the extent Petitioner's claims should have been raised in the criminal proceedings or on direct appeal, the claims are procedurally defaulted. Idaho Code § 19-4901(b).

THIRD AFFIRMATIVE DEFENSE

To the extent that the petitioner has waived the grounds in the proceeding that resulted in the conviction or sentence, the claims are procedurally defaulted. Idaho Code § 19-4908.

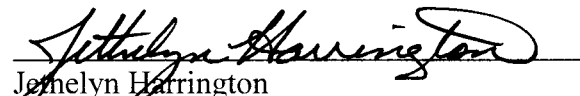
FOURTH AFFIRMATIVE DEFENSE

The Petition for Post-Conviction Relief contains bare and conclusory allegations and therefore fails to raise a genuine issue of material fact. Idaho Code §§ 19-4902(a), 19-4903, and 19-4906.

WHEREFORE, the state prays for relief as follows:

- a) That Andrus' claims for post-conviction relief be denied;
- b) That Andrus' claims for post-conviction relief be dismissed;
- c) for such other and further relief as the court deems necessary in the case.

DATED this 15th day of June, 2016.

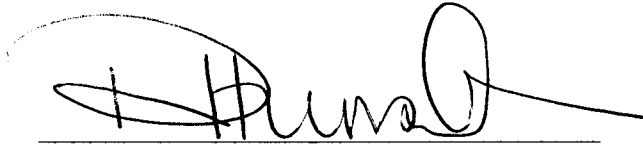

Jemelyn Harrington
Deputy Prosecutor for Twin Falls County

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2016, I served **THE OFFICE OF THE PUBLIC DEFENDER** a copy of the following:

ANSWER

<input type="checkbox"/>	E-Serve
<input checked="" type="checkbox"/>	Court Folder
<input type="checkbox"/>	E-mail
<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Fax



Rachael Hunsaker
Legal Assistant



FILED By: _____ Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,)	
)	
vs.	)	Case No. CV42-16-720
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

NOTICE OF INTENT TO DISMISS

On March 2, 2016 the petitioner filed his Petition for Post-Conviction Relief together with a Motion for Appointment of Counsel.¹ The Court, having reviewed the petition for post-conviction relief filed herein, and in accordance with Idaho Code § 19-4906(b), notifies petitioner that the petition, on its face, fails to meet the requirements of I.C. Section 19-4901 et seq. as set forth in further detail below.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On March 17, 2014 Lawrence Scott Andrus (Andrus) was charged with Driving Under the Influence of Alcohol, a felony. At the time of his initial arraignment he applied for and was

¹ The Motion for Appointment of Counsel was granted and counsel has been appointed for the petitioner.

appointed the Twin Falls County Public Defender. On April 11, 2014 Tim Williams was substituted in as counsel for Andrus. On May 12, 2014 Andrus waived his preliminary hearing and was bound over to district court. The Information was filed May 13, 2014.

After the bind over to district court the case was assigned to Judge Bevan on May 12, 2014.² Andrus was arraigned in district court on May 27, 2014 and on May 30, 2014 Judge Bevan disqualified himself as the presiding Judge and on June 3, 2014 the case was reassigned to Judge Stoker with notice to counsel.

On June 6, 2014 Judge Stoker heard a motion filed by Andrus to dismiss his counsel and, after considering the motion and arguments, denied the motion.

On November 6, 2011 the jury trial commenced. On November 7, 2014 a verdict of guilty was returned by the jury. The defendant was sentenced on December 5, 2014 and the Judgment of Conviction was entered December 8, 2014.

On December 15, 2014 a Rule 35 motion was filed, which was denied by the Court on December 30, 2014. A Notice of Appeal was filed on January 5, 2015. The Judgment of Conviction and sentence was affirmed in an amended unpublished opinion. *State v. Andrus*, 2015 Unpublished Opinion No. 689A, filed January 4, 2016.³

II.

JUDICIAL NOTICE

Pursuant to I.R.E. 201 the Court hereby takes judicial notice of the Transcript on Appeal in CR-2014-2897 (Docket No. 42878) which was lodged in this matter on April 19, 2016 consisting of the following transcripts:

-Motion of Defendant to Dismiss Trial Counsel, June 6, 2014

² On May 13, 2014 the prosecutor disqualified Judge Elgee as an alternate judge pursuant to I.C.R. 25(a)(6).

³ The original unpublished opinion was filed October 15, 2015 and the Remittitur was issued November 27, 2015.

- Motion for Bond Reduction, June 20, 2014
- Pre-Trial Conference, June 30, 2014
- Jury Trial, November 6 & 7, 2014
- Sentencing, December 5, 2014

III.

POST-CONVICTION STANDARD

A petition for post-conviction relief is a civil proceeding, entirely distinct from the underlying criminal action. *Ferrier v. State*, 135 Idaho 797 (2001). If the petition fails to present or be accompanied by admissible evidence supporting its allegations, and making a prima facie case, *i.e.* establishing each essential element of the claim, then summary dismissal is appropriate. *Hernandez v. State*, 133 Idaho 794 (1999); *Martinez v. State*, 126 Idaho 813, 816 (Ct. App. 1995). While the Court is required to accept petitioner's unrebutted allegations, it need not accept petitioner's bare or conclusory allegations. *Berg v. State*, 131 Idaho 517 (1998); *King v. State*, 114 Idaho 442 (Ct. App. 1988). "An application for post-conviction relief differs from a complaint in an ordinary civil action[.]" *Dunlap v. State*, 141 Idaho 50, 56, 106 P.3d 376, 382 (2004) (quoting *Goodwin*, 138 Idaho at 271, 61 P.3d at 628)). The application must contain much more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). *State v. Payne*, 146 Idaho 548, 560, 199 P.3d 123, 135 (2008); *Goodwin*, 138 Idaho at 271, 61 P.3d at 628. The application must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, either pursuant to motion of a party or upon the court's own initiative. Summary dismissal of an application is the procedural equivalent of summary judgment under I.R.C.P. 56. "A claim for post-conviction relief will be subject to summary dismissal . . . if the applicant has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." *DeRushé v. State*, 146 Idaho 599, 603, 200 P.3d 1148, 1152 (2009) (quoting *Berg v. State*, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998)). Thus, summary dismissal is permissible when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Goodwin*, 138 Idaho at 272, 61 P.3d at 629. Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the State does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Payne*, 146 Idaho at 561, 199 P.3d at 136; *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

Idaho Code section 19-4906 authorizes summary dismissal of an application for post-conviction relief pursuant to a motion by a party, which is the procedural equivalent of a motion for summary judgment. *See also* I.R.C.P. 56. Therefore, summary dismissal is only authorized if there is no genuine issue of material fact that, if resolved in the petitioner's favor, would entitle the petitioner to the requested relief. *Gonzales v. State*, 120 Idaho 759, 763 (Ct. App. 1991). Summary dismissal may be appropriate, however, even where the State does not controvert the petitioner's evidence because the Court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. *Roman v. State*, 125 Idaho 644, 647 (Ct. App. 1994). Furthermore, our courts have held that

post-conviction allegations are insufficient for the granting of relief when they are clearly disproved by the record. *Cootz v. State*, 129 Idaho 360, 368 (Ct. App. 1996).

When considering whether there exists a triable issue of fact, the Court should consider those matters of which the Court may take judicial notice as well as the “pleading, depositions, and admissions together with any affidavits on file.” *Ricca v. State*, 124 Idaho 894, 896 (Ct. App. 1993). Because this Court is the trier of fact in post-conviction cases, this Court is not constrained to draw inferences in favor of the non-moving party. This Court is free to arrive at the most probable inferences to be drawn from the uncontroverted evidence. *Hayes v. State*, 146 Idaho 353, 355 (Ct. App. 2008). The Court of Appeals in *Murphy v. State*, set forth the standard for ineffective assistance of counsel in claims of post-conviction relief as follows:

In order to prevail on a claim of ineffective assistance of counsel, the post-conviction applicant must demonstrate both that her attorney's performance was deficient, and that she was thereby prejudiced in the defense of the criminal charge. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct.App.1995); *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct.App.1989). To show deficient performance, a petitioner must overcome the strong presumption that counsel's performance was adequate by demonstrating "that counsel's representation did not meet objective standards of competence." *Roman*, 125 Idaho at 648-49, 873 P.2d at 902-03. See also *Vick v. State*, 131 Idaho 121, 124, 952 P.2d 1257, 1260 (Ct.App.1998). If a petitioner succeeds in establishing that counsel's performance was deficient, she must also prove the prejudice element by showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 697. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

IV.

ANALYSIS

A. Judicial Disqualification and Reassignment

The petitioner alleges that Judge Bevan violated the due process rights of the petitioner when he disqualified himself and reassigned the case to Judge Stoker and granted the State's motion to disqualify Judge Elgee as an alternate judge. The petitioner also alleges that such action constitutes "judge shopping". There is no authority that supports any contention the conduct of disqualification and reassignment is a due process violation and in fact the conduct complained of was within the provisions and the authority of I.C.R. Rule 25. Therefore this claim should be dismissed on the basis that there was no due process violation.

B. Failure of Judge to Disqualify Himself

The petitioner alleges that his trial judge should have disqualified himself based on personal bias and prejudice because the petitioner in 2003 complained to the U.S. Commerce Department concerning the transport of vehicles from Canada for sale in Idaho and that the petitioner had prevented the issuance of a Special Use Permit for certain real property.

The petitioner is referring to an alleged circumstance or event that had occurred approximately 11 years prior to his jury trial in the underlying criminal action. There is no showing that this event was brought to the attention of the trial judge or that he had any present recollection of this event. Further there is no showing that this event had any impact or effect on any decision of the trial judge. Lastly, there is no showing of any actual or implicit bias or prejudice of the trial judge towards the petitioner during the underlying criminal action.

A judge shall disqualify himself where "... the judge has a personal bias or prejudice concerning a party..." Judicial Canon 3(E)(1)(a). There is no showing in the record that the petitioner's trial judge had a present recollection of the circumstances upon which the petitioner believes that the judge should have disqualified himself and there is no showing in the record that the petitioner ever brought to the attention of the trial judge the circumstance upon which the

judge should have disqualified himself. A review of the transcripts of the proceedings in the underlying action does not demonstrate any alleged bias or prejudice on the part of the trial judge.

Pursuant to I.R.C.P. 40(d)(4) a judge may disqualify himself and such a decision is a matter of discretion for that judge. *Woods v. Sanders*, 150 Idaho 53, 244 P.3d 197 (2010). The record does not present any evidence of actual bias or prejudice upon which to base an abuse of discretion. *Roselle v. Heirs and Devisees of Grover*, 117 Idaho 530, 789 P.2d 526 (Ct. App.1990) Therefore this claim should be dismissed as it is not supported by the record.

C. Judge's Denial of Motion to Dismiss Trial Counsel

The petitioner alleges that the trial judge abused his discretion when he denied petitioner's motion to dismiss or remove his appointed counsel. A hearing on the petitioner's motion to dismiss Tim Williams as his trial counsel was conducted on June 6, 2014. The trial judge found that there were insufficient grounds to allow the petitioner to remove or dismiss his appointed counsel. The petitioner has failed to demonstrate how the trial judge "abused his discretion". This claim is not supported by the facts in the record. Further, this is a matter that could have been raised in his direct appeal and was not raised. A petition for post-conviction relief is not a substitute for a direct appeal and matters not raised in a direct appeal are forfeited.

D. Judge's Admonishment of Parties and Jurors

The petitioner alleges that the court "abused its discretion" in the following colloquy between the court and counsel: (Tr. Pg. 278, L5-14)

THE COURT: The question was, why was the defendant arrested?

MS. HARRINGTON: Yes.

THE COURT: Which is totally irrelevant in this case, by the way. Nevertheless, that was the question. And now we have gone to expressing why he was arrested, and that was without objection, Mr. Williams.

I'm going to let the answer stand. I'll let you recross on that.

The defendant has failed to establish that he was prejudiced by the colloquy between the court and the prosecutor. The record shows that the Court was ruling on an untimely objection to a question and the witnesses answer. Evidentiary rulings by the trial court are the subject matter for a direct appeal. A petition for post-conviction relief is not a substitute for a direct appeal and matters not raised in a direct appeal are forfeited.

E. Judge's Failure to Exclude Witnesses

The petitioner alleges a fundamental error occurred when the trial court failed to exclude ISP Lt. Robert Rausch while defense witness Robert La Pier testified and that "Rausch's comportment" distracted "the jury during La Pier's testimony" which was prejudicial and made a fair trial impossible.

The exclusion of witnesses is a matter of discretion for the trial court. I.R.E. 615(a). Further, any failure to exclude a witness is subject to an "abuse of discretion" standard and would be a matter of a direct appeal. A petition for post-conviction relief is not a substitute for a direct appeal and matters not raised in a direct appeal are forfeited.

F. Selective Prosecution

The petitioner alleges that the State engaged in "selective prosecution" when they charged him with felony DUI in lieu of the lesser offense of public intoxication. To make a case for selective prosecution the petitioner is "required to show that the [state] selected [him] from a larger group of non-prosecuted alleged violators because of [his] exercise of a constitutional right. (*citations omitted*)". "He must show that the selection was deliberately based on an

unjustifiable standard. (*citation omitted*)". *Maxfield v. State*, 108 Idaho 493, 498, 700 P.2d 115, 120 (Ct. App. 1985). The petitioner has failed to make a prima facie case of "selective prosecution and this claim should be dismissed.

G. Ineffective Assistance of Trial Counsel

a. Failure to file motion to disqualify judge

Pursuant to I.C.R. Rule 25 a motion to disqualify without cause must be filed no later than 14 days after written notice of the presiding judge. Rule 25(a)(2). In the case of disqualification for cause, such a motion may be filed at any time, however, such a motion must be supported by an affidavit of the party or the party's attorney setting forth the grounds upon which the motion is based. Rule 25(b), (c).

The notice of the assignment of Judge Stoker was filed and served on June 3, 2014. There is no evidence that the petitioner ever asked his attorney to disqualify the judge without cause at any time between June 3, 2014 and June 17, 2014. There is no showing that the petitioner ever provided any information or evidence to his trial attorney that would suggest that counsel should have unilaterally filed a motion to disqualify without cause or that petitioner requested such a motion be filed. Further there is not sufficient evidence in the record to suggest that a motion to disqualify for cause would have been granted. It is the burden of the petitioner to establish a sufficient record to show that such a motion would have been granted, in order to prevail on post-conviction. *Lint v. State*, 145 Idaho 472, 477, 180 P.3d 511, 516 (Ct. App. 2008). Based on the record before this court, this claim should be dismissed.

b. Failure to file motion to suppress breath test results

The petitioner alleges that counsel was ineffective in failing to file a motion to suppress the breathalyzer test results based on the testimony of Officer Koopman "that county agents

disregarded their duty to closely observe Andrus for the requisite fifteen minute period...”. In a post-conviction proceeding challenging an attorney’s failure to pursue a motion in the underlying criminal action, the district court may consider the probability of success of the motion in question in determining whether the attorney’s inactivity constituted ineffective assistance. *Lint v. State*, 145 Idaho 472, 477, 180 P.3d 511, 516 (Ct. App. 2008). Where the alleged deficiency is counsel’s failure to file a motion, a conclusion that the motion, if pursued, would not have been granted by the trial court, is generally determinative of both prongs of the *Strickland* test. *Id.* at 477-78, 180 P.3d at 516-17.

The Court of Appeals reiterated the purpose behind the fifteen minute waiting period in *State v. Stump* when it stated that the observation period is intended to rule out the introduction of alcohol or other substances into the subject’s mouth prior to testing in order to obtain an accurate result. 146 Idaho 857, 860, 203 P.3d 1256, 1259 (Ct. App. 2009) (internal citation omitted). The court further stated that officers need not “stare fixedly” at a subject, but can use a combination of their senses of sight, smell, and hearing during the observation period so long as the officer is continually in a position of surveillance in close physical proximity to the test subject so as to confirm that the purpose of the test is met. *Id.* (internal citations omitted); *see also State v. Remsburg*, 126 Idaho 338, 340, 882 P.2d 993, 995 (Ct. App. 1994).

The petitioner has failed to establish that the officer performing the breath test was not in a position to use his other senses to assure compliance with the test procedures and the petitioner has presented no evidence or testimony that he did anything during the fifteen minute period that would have interfered with the validity of the test results. Therefore, this claim should be dismissed.

c. Failure to file motion to dismiss for lack of probable cause

The petitioner alleges that his attorney was deficient for failing to file a motion to dismiss for lack of probable cause. I.C. § 19-815A does allow for the defendant to file a motion to challenge the evidence presented at a preliminary hearing after a bind over to district court, however, the petitioner waived his right to a preliminary hearing and by waiving his right to such a hearing he essentially conceded that there was sufficient probable cause. Therefore the petitioner previously waived his right to challenge the probable cause evidence and such a motion if filed would have been frivolous and this claim should be dismissed.

d. Failure to impeach Officer Koopman’s testimony

The petitioner alleges that counsel was ineffective in failing to impeach Officer Koopman’s testimony at trial that there was a “slight slurring at the jail in Mr. Andrus’ speech”, with his Probable Cause Affidavit where the officer noted no slurring of speech. The courts have long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Gonzales v. State*, 151 Idaho 168, 172, 254 P.3d 69, 73 (Ct. App. 2011). Based on the record presented this claim should be dismissed.

e. Failure to raise a defense or call witnesses to rebut Officer

Koopman’s testimony

The petitioner alleges that counsel was ineffective in failing to raise a defense or to call witnesses to rebut the testimony of Officer Koopman that Andrus had consumed alcohol “for a while” and “emitted a ‘stale smell’ about his person.” The courts have long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or

other shortcomings capable of objective evaluation. *Gonzales v. State*, 151 Idaho 168, 172, 254 P.3d 69, 73 (Ct. App. 2011).

The petitioner has not identified any witnesses that should have been called as he alleges nor has he presented any affidavits of any such witnesses as to their intended testimony. *Wolfe v. State*, 117 Idaho 645, 791 P.2d 26 (Ct. App. 1990). Therefore, this claim should be dismissed.

**f. Failure to make timely and proper objections to the BAC results;
violation of the religious privilege; to exclude witnesses; to prosecutor
misconduct**

The petitioner alleges that his trial counsel was ineffective in failing to object to the BAC test results; an alleged violation of the religious privilege; the failure of the court to exclude witnesses and prosecutorial misconduct as concerns the prosecutor's closing argument.

The record does not establish that counsel was ineffective in failing to object to the admissibility of the BAC results, for the reasons stated in subsection **b.**, above. Further the petitioner has made no factual or legal showing that such an objection would have been sustained. Therefore, based on the record this claim should be dismissed.

The State called as a witness, Matthew Kear, a Bishop of the Church of Latter Day Saints. Bishop Kear had previously counseled the petitioner. On the day in question the petitioner had called Bishop Kear to report that he was going to end his life at the Singing Bridge. Bishop Kear told the petitioner if the petitioner was serious, that he would have to call 911. The Bishop after the call ended did in fact call 911. A recording of the 911 call was admitted into evidence. Counsel for the petitioner did not object based on religious privilege. I.R.E. 505 (A communication is "confidential" *if made privately and not intended for further disclosure...*", Rule 505(2)). In fact, during the defense examination of the Bishop, the Court

found that the privilege had been waived by the defense. It is clear from the examination by the defense, that they were attempting to establish that the petitioner did not appear to be intoxicated at the time of the communication. The courts have long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law, or other shortcomings capable of objective evaluation. *Gonzales v. State*, 151 Idaho 168, 172, 254 P.3d 69, 73 (Ct. App. 2011).

It appears from the record that the failure to raise the privilege was harmless, and in fact there was a strategic reason for not asserting the privilege since the testimony was relevant to the issue of intoxication or the lack thereof. Therefore this claim should be dismissed.

The petitioner argues that counsel was ineffective in failing to seek to exclude Lt. Rausch. The exclusion of witnesses is a matter of discretion for the trial court. I.R.E. 615(a). In a post-conviction proceeding challenging an attorney's failure to pursue a motion in the underlying criminal action, the district court may consider the probability of success of the motion in question in determining whether the attorney's inactivity constituted ineffective assistance. *Lint v. State*, 145 Idaho 472, 477, 180 P.3d 511, 516 (Ct. App. 2008). Where the alleged deficiency is counsel's failure to file a motion, a conclusion that the motion, if pursued, would not have been granted by the trial court, is generally determinative of both prongs of the *Strickland* test. *Id.* at 477-78, 180 P.3d at 516-17. Lt. Rausch was called as the State's last witness on November 7, 2014. Lt. Rausch was the State's expert relative to the validity defendant's alcohol level. There is no evidence in the record that this witness was present in court prior to his testimony. After the testimony of this witness the State rested its case. The defense then called its expert Robert Franklin La Pier to contest the State's evidence as to the defendant's level of intoxication. After the defense rested, the State called Lt. Rausch as a rebuttal witness. It appears from the record

that this witness was permitted to remain in court during the testimony of La Pier. Under I.R.E. 615(a)(2) the State does have the right to have an officer present in court. There is no showing that the State had any officer in court as a representative other than perhaps Lt. Rausch. Also it is not uncommon for an expert witness to be permitted to remain after offering his or her testimony in the event of the necessity of rebuttal testimony. However, these matters are again a matter of discretion for the trial court and there is no showing made that if a motion to exclude Lt. Rausch would have been made that it would have been granted. Therefore, this claim should be dismissed.

The petitioner also argues “prosecutorial misconduct” during closing arguments about the petitioner when she stated: “He knows how to speak, He knows how to present, and he’s so good he’s won an Emmy”. In her closing argument the prosecutor was suggesting to the jury that based on the testimony offered in the trial, including the testimony of the defendant, that the defendant was a manipulator and that his testimony, based on the evidence, was not credible. By this statement the petitioner asserts that the prosecutor “presented unsworn testimony to the jury” and counsel was ineffective in failing to object.

Closing argument “serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case.” *Herring v. New York*, 422 U.S. 853, 862, 95 S.Ct. 2550, 2555 (1975). “Both sides have traditionally been afforded considerable latitude in closing argument to the jury and are entitled to discuss fully, from their respective standpoint, the evidence and the inferences to be drawn therefrom”. *State v. Sheahan*, 139 Idaho 267, 280, 77 P.3d 956, 969 (2003). There is no showing that the prosecutor presented “unsworn testimony” to the jury. Further, the petitioner has not shown that the conduct complained of was harmful, assuming *arguendo* that it constituted misconduct. Therefore this claim should be dismissed.

**g. Failure to adequately advise defendant as to the evidence;
investigation; and court procedures**

The petitioner alleges that his trial counsel was ineffective in failing to advise him as to the investigation, the evidence and the court procedures. This claim is conclusory and is not supported by any admissible facts or evidence in the record. Therefore, this claim should be dismissed.

H. Ineffective assistance of Appellate Counsel

The petitioner alleges that appellate counsel was ineffective in failing to raise issues on appeal other than sentencing and Rule 35 issues. Appellate counsel is not required to raise every conceivable issue on appeal, but is only required to make a conscientious examination of the case and file a brief in support of the best arguments to be made. *Jakoski v. State*, 136 Idaho 280, 32 P.3d 672 (Ct. App. 2001).

a. Failure to raise issues on appeal other than sentencing issues

The petitioner has not identified any claims that appellate counsel should have raised on appeal that were not otherwise raised. This claim is otherwise conclusory and without any factual support. Therefore, this claim should be dismissed.

**b. Failure to raise on appeal the award of \$2500.00 for public defender
reimbursement**

The petitioner asserts that the trial court abused its discretion by requiring him to reimburse the public defendant \$2,500.00. The petitioner alleges that the appellate counsel was ineffective in challenging on appeal the award of the public defender reimbursement. The petitioner argues that Idaho law requires that he have the “present means” to pay such sums.

State v. Weaver, 135 Idaho 5, 9 13 P.3d 5, 9 (Ct. App. 2000). However, after the issuance of the *Weaver* decision the legislature amended I.C. § 19-854(c), “to allow orders for reimbursement of public defender fees regardless of whether the defendant has the present ability to pay”. *State v. Wilson*, 136 Idaho 771, 40 P.3d 129 (Ct. App. 2001).

Therefore, the petitioner’s reliance upon *State v. Weaver* is misplaced and this claim should be dismissed.

V.

CONCLUSION AND ORDER

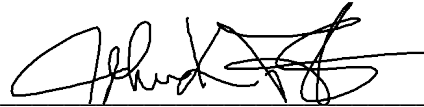
Pursuant to I.C. § 19-4906(b), Petitioner is hereby notified that based upon the Petition and the record presented to the Court, the Court provisionally intends to dismiss the claims for post-conviction relief as set forth above. Petitioner is hereby notified that he is entitled to reply to this Notice of Intent to Dismiss within twenty (20) days following the date of this order. In the

event that the Petitioner fails to respond or fails to make a timely or adequate response, the claims for post-conviction relief will be dismissed without further notice or hearing pursuant to I.C. § 19-4906(b).

IT IS SO ORDERED.

Signed: 7/11/2016 04:23 PM

DATED this _____ day of _____, 2016



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 11th day of July, 2016 a true and correct copy of the foregoing NOTICE OF INTENT TO DISMISS was mailed, postage paid, and/or hand-delivered to the following persons:

Twin Falls County Conflict Public Defender
Clayne Zollinger
zollingerlaw@gmail.com

Twin Falls County Prosecutor
inbox.pros@co.twin-falls.id.us

Signed: 7/11/2016 04:28 PM



Deputy Clerk

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P. O. Box 308

Burley, Idaho 83318

Telephone (208) 436-1122

Facsimile (208) 436-7837

Attorney for Petitioners

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

LAWRENCE SCOTT ANDRUS,
Petitioner,

Case No. CV42-16-720

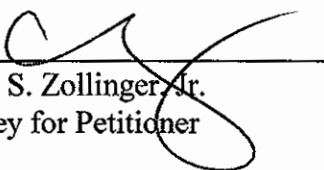
MOTION FOR EXTENSION OF TIME

vs.

STATE OF IDAHO,
Respondent.

COMES NOW Clayne S. Zollinger, Jr., counsel for the Petitioner, LAWRENCE SCOTT ANDRUS, and hereby requests an Extension of Time in which to file a response to file a response in the Notice of Dismissal. The basis for this Motion is that the counsel of the Petitioner has not been able to speak with the Petitioner and obtain further information from him. The Petitioners schedule has not allowed him sufficient time to allow him to respond. Counselor request an additional 30 days.

DATED this 26 day of July, 2016.


Clayne S. Zollinger, Jr.
Attorney for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 24 day of July, 2016, I served a true and correct copy of the within and foregoing document upon the person(s) named below in the manner noted:

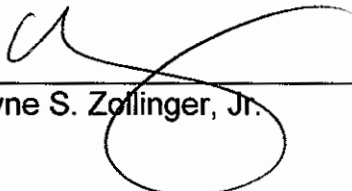
Twin Falls County Prosecutor
Grant Loebs
P.O. Box 126
Twin Falls, Idaho

 By depositing copies of the same in the United States mail, postage prepaid, at the post office in Burley, Idaho.

 By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

 By telecopying copies of the same to said attorney(s) at the telecopied number(s) (208)736-4120, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.


 X By E-Service: inbox.pros@co.twin-falls.id.us



Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr. (ISB #4172)
Attorney-at-Law
P.O. Box 308
Burley, Idaho 83318
Office: (208) 436-1122
Fax: (208) 436-7837

Attorney for Defendant

Signed: 8/24/2016 03:47 PM
FILED By:  Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**


LAWRENCE SCOTT ANDRUS,) CV
) Case No. CR42-16-720
)
Plaintiff,)
)
vs.) **ORDER EXTENDING TIME**
)
STATE OF IDAHO,)
)
Defendant.)

THIS MATTER, having come before the Court, on counsel for the Plaintiff's Motion for a Extension of Time , in good cause appearing;

IT IS HEREBY ORDERED that the Motion is GRANTED;

IT IS FURTHER ORDERED that an additional Thirty (30) Days be given to the Plaintiff and his counsel to respond to the Notice of Dismissal.

DATED this ____ day of July, 2016.

Signed: 8/6/2016 03:13 PM


Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this ^{Signed: 8/24/2016 03:47 PM} _____ day of July, 2016, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr. _____ U.S. Mail, Postage Prepaid
Attorney at Law _____ Hand Delivered/Courtbox
PO Box 308 _____ Facsimile (208) 436-7837
Burley, ID 83318 x E-service: zollingerlaw@gmail.com

Twin Falls Prosecutor _____ U.S. Mail, Postage Prepaid
Grant Loeb _____ Hand Delivered/Courtbox
PO Box 126 _____ Facsimile (208) 736-4120
Twin Falls, ID 83303 X by E-Service: inbox.pros@co.twin-falls.id.us

Clerk of Court

BY: 
Deputy

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,)	
)	
vs.	)	Case No. CV42-16-720
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

**ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF WITH
 PREJUDICE**

On July 11, 2016 the Court entered its Notice of Intent to Dismiss Petitioner’s Petition for Post-Conviction Relief pursuant to I.C. § 19-4906(b). The Court, at the request of counsel for the Petitioner, then granted a 30 day extension within which to respond to the Notice of Intent to Dismiss.¹ The time to respond has now expired and the Petitioner has failed to respond to the Notice of Intent to Dismiss.

For the reasons set forth in the Notice of Intent to Dismiss, it appears that there are no questions of fact and as a matter of law the petition for post-conviction relief fails to raise any

¹ The motion for extension of time was filed on July 26, 2016 and the Court granted the Motion and signed the extension Order on August 6, 2016, however the Order was not served and filed until August 24, 2016.

issues that would require an evidentiary hearing and the petition should be dismissed with prejudice.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that there are no questions of fact and the Respondent is entitled to judgment as a matter of law and for the reasons set forth in the Notice of Intent to Dismiss, the Petitioner's Petition for Post-Conviction Relief is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Signed: 9/26/2016 10:36 AM



John K. Butler, District Judge

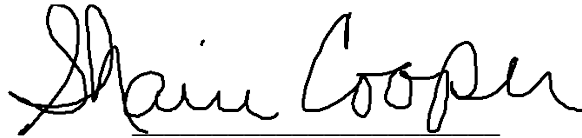
CERTIFICATE OF MAILING/DELIVERY

Signed: 9/26/2016 07:26 PM

I, undersigned, hereby certify that on the _____ day of _____, 2016 a true and correct copy of the foregoing ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF WITH PREJUDICE was mailed, postage paid, and/or hand-delivered to the following persons:

Twin Falls County Conflict Public Defender
Clayne Zollinger
zollingerlaw@gmail.com

Twin Falls County Prosecutor
inbox.pros@co.twin-falls.id.us

A handwritten signature in black ink that reads "Shain Cooper". The signature is written in a cursive style and is positioned above a horizontal line.

Deputy Clerk

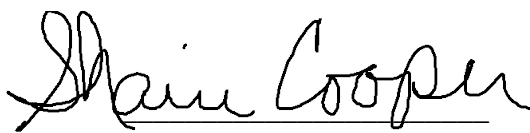
CERTIFICATE OF MAILING/DELIVERY

Signed: 9/26/2016 07:28 PM

I, undersigned, hereby certify that on the _____ day of _____, 2016 a true and correct copy of the foregoing JUDGMENT was mailed, postage paid, and/or hand-delivered to the following persons:

Twin Falls County Conflict Public Defender
Clayne Zollinger
zollingerlaw@gmail.com

Twin Falls County Prosecutor
inbox.pros@co.twin-falls.id.us

A handwritten signature in black ink that reads "Shain Cooper". The signature is written in a cursive style with a horizontal line underneath the name.

Deputy Clerk

INMATE NAME LAWRENCE SCOTT ANDRUS
Inmate No. 113829 Housing Unit I-103B
IDAHO DEPARTMENT OF CORRECTIONS
Institution F.S.C.C.
Address P.O. Box 70010
City BOISE State ID Zip 83707
Intended Correspondence

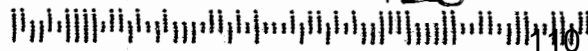
FOREVER
USA



Bank Swallow

CLERK OF THE COURT
FIFTH JUDICIAL DISTRICT
427 SHOSHONE ST. N.
P.O. BOX 126
TWIN FALLS, ID 83303-0126

83303\$0126 8002



2016 NOV 10 AM 10:13

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113829
Address IDAHO STATE CORRECTIONAL CENTER
P.O. BOX 70010
BOISE, IDAHO 83707

CLERK
DEPUTY
AK

Appellant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

LAWRENCE SCOTT ANDRUS,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)

CASE NO. CY42-16-0720
S.C. DOCKET NO. _____
NOTICE OF APPEAL
Post Conviction

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, STATE OF IDAHO, PROSECUTING ATTORNEY 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 entered in the above-entitled action on the 09/24/2016 (DATE), the Honorable John Butler (NAME OF JUDGE) presiding.
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(c)(1-10), 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) Did the district court err in dismissing the appellant's Petition for Post Conviction Relief?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portions of the reporter's transcript:

(a) The Status Hearing held on DENIED (DATE OF HEARING); and

(b) The Evidentiary Hearing held on DENIED (DATE OF HEARING).

6. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). 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)(2):

(a) Any briefs or memorandums, 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;

(b) Any motions or responses, including all attachments, affidavits or copies of transcripts, filed or lodged by the state, appellant or the court in support of, or in opposition to, the dismissal of the Post Conviction Petition; and

(c) (ANY ITEMS FROM THE UNDERLYING CRIMINAL CASE OF WHICH THE COURT TAKES JUDICIAL NOTICE NOTE: UNLESS SPECIFICALLY ASKED FOR, THE PORTIONS OF THE UNDERLYING RECORD WHICH THE DISTRICT COURT TOOK JUDICIAL NOTICE OF WON'T BE INCLUDED IN THE RECORD.)

- (d) Order Dismissing Petition With Prejudice;
(e) Order of Reassignment. - Mormon R. Bevan
"is not recusing himself";
(f) Order to Reassign Judge; (R., 92).
(g) Notice to Clerk of the Court of 24 Oct. 2016.

7. I certify:

- (a) That a copy of this Notice of Appeal has been served on the reporter;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Twin Falls (NAME OF COUNTY) County who will be responsible for paying for the reporter's transcript, as the client is indigent, Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e);
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 7th day of November, 2016.

Lawrence Scott And
Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of November, 2016, I mailed a true and correct copy of the attached NOTICE OF APPEAL via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

**Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010**

Twin Falls County Prosecuting Attorney
P.O. Box 126
Twin Falls, Idaho 83303-0126


Signature

2016 NOV 10 AM 10:15

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113829
Address IDAHO STATE CORRECTIONAL CENTER
P.O. BOX 70010
BOISE, IDAHO 83707
Defendant-Appellant

BY _____ CLERK
AC DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS)
)
 Petitioner-Appellant,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent .)
 _____)

Case No. CV42-16-0720

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, Lawrence Scott Andrus, Petitioner-Appellant in the
above entitled matter and moves this Honorable Court to grant Defendant-Appellant's Motion
for Appointment of Counsel for the reasons more fully set forth herein and in the Affidavit in
Support of Motion for Appointment of Counsel.

1. Petitioner-Appellant is currently incarcerated within the Idaho Department of
Corrections under the direct care, custody and control of Warden Randy Blades,
of the Idaho State Correctional Center.

2. The issues to be presented in this case may become to complex for the Petitioner-
Appellant to properly pursue. Petitioner-Appellant lacks the knowledge and skill needed to
represent him/herself.

3. Petitioner-Appellant required assistance completing these pleadings, as he/she was unable to do it him/herself.

4. Other: PCR appointed counsel Zollinger made no reply.

DATED this 7th day of November, 2016.

Lawrence Scott Andrus
Petitioner-Appellant

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

Lawrence Scott Andrus, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho State Correctional Center, under the care, custody and control of Warden Randy Blades;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;

7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

WHEREFORE, Petitioner-Appellant respectfully prays that this Honorable Court issue it's Order granting Petitioner-Appellant's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Petitioner-Appellant is entitled to.

DATED This 7th day of November, 2016.




Petitioner-Appellant

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 7 day
of November, 2016.

(SEAL)





Notary Public for Idaho
Commission expires: 8/16/2020

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of November, 2016, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

**Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010**

Twin Falls County Prosecuting Attorney

P.O. Box 126

Twin Falls, Idaho 83303-0126


Petitioner-Appellant

NOV 10 2016 AM 10:13

LAWRENCE SCOTT ANDRUS, IDOC N# 113829
Full Name of Party Filing Document

By _____ Clerk
_____ Deputy Clerk

IDAHO STATE CORRECTIONAL CENTER
Mailing Address (Street or Post Office Box)

P.O. BOX 70016
City, State and Zip Code

BOISE, IDAHO 83707
Telephone

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS
Plaintiff,
vs.
STATE OF IDAHO
Defendant.

Case No. CV42-16-0720
MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

Plaintiff Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Appeal of Post-Conviction Relief. I believe I am entitled to get what I am asking for.

2. I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

(Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.)

IDENTIFICATION AND RESIDENCE:

Name: LAWRENCE SCOTT ANDRUS Other name(s) I have used: N/A
N/A

Address: 14601 So. Pleasant Valley Rd., Kuna, Idaho

How long at that address? 22 months Phone: N/A

Year and place of birth: 10 Sep 1961, Salt Lake City, Utah USA

DEPENDENTS:

I am single married. If married, you must provide the following information:

Name of spouse: N/A
N/A

My other dependents including minor children (use only initials and age to identify children) are: N/A
N/A
N/A
N/A

INCOME:

Amount of my income: \$ 0 per week month

Other than my inmate account I have outside money from: Occasional gift of nominal funds via money order from persons.

My spouse's income: \$ N/A per week month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>N/A</u>					<u>0.00</u>
<u>N/A</u>					<u>0.00</u>

List all other property owned by you and state its value.

Description (provide description for each item)	Value
Cash _____	<u>0.00</u>
Notes and Receivables _____	<u>0.00</u>
Vehicles _____	<u>0.00</u>
Bank/Credit Union/Savings/Checking Accounts _____	<u>0.00</u>
Stocks/Bonds/Investments/Certificates of Deposit _____	<u>0.00</u>
Trust Funds _____	<u>0.00</u>
Retirement Accounts/IRAs/401(k)s _____	<u>0.00</u>
Cash Value Insurance _____	<u>0.00</u>
Motorcycles/Boats/RVs/Snowmobiles _____	<u>0.00</u>
Furniture/Appliances _____	<u>0.00</u>
Jewelry/Antiques/Collectibles _____	<u>0.00</u>
Description (provide description for each item)	
TVs/Stereos/Computers/Electronics _____	<u>0.00</u>
Tools/Equipment _____	<u>0.00</u>
Sporting Goods/Guns _____	<u>0.00</u>
Horses/Livestock/Tack _____	<u>0.00</u>

Other (describe) N/A 0.00
N/A 0.00
N/A 0.00

EXPENSES: (List all of your monthly expenses.)

Expense	Average Monthly Payment
Rent/House Payment _____	<u>0.00</u>
Vehicle Payment(s) _____	<u>0.00</u>
Credit Cards (List last four digits of each account number.)	
<u>N/A</u> _____	<u>0.00</u>
<u>N/A</u> _____	<u>0.00</u>
<u>N/A</u> _____	<u>0.00</u>
Loans (name of lender and reason for loan)	
<u>N/A</u> _____	<u>0.00</u>
<u>N/A</u> _____	<u>0.00</u>
Electricity/Natural Gas _____	<u>0.00</u>
Water/Sewer/Trash _____	<u>0.00</u>
Phone _____	<u>0.00</u>
Groceries _____	<u>0.00</u>
Clothing _____	<u>0.00</u>
Auto Fuel _____	<u>0.00</u>
Auto Maintenance _____	<u>0.00</u>
Cosmetics/Haircuts/Salons _____	<u>0.00</u>
Entertainment/Books/Magazines _____	<u>0.00</u>
Home Insurance _____	<u>0.00</u>

Expense	Average Monthly Payment
Auto Insurance _____	0.00
Life Insurance _____	0.00
Medical Insurance _____	0.00
Medical Expense _____	0.00
Other <u>N/A</u> _____	0.00
<u>N/A</u> _____	0.00

MISCELLANEOUS:

How much can you borrow? \$ 0.00 From whom? N/A

When did you file your last income tax return? 2010 Amount of refund: \$ N/A

PERSONAL REFERENCES: (These persons must be able to verify information provided.)

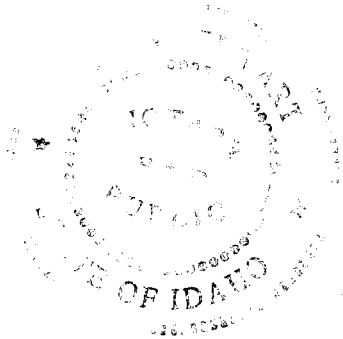
Name	Address	Phone	Years Known
<u>MARK HOLMSTEAD, CPA</u>	<u>401 GOODING ST. N.</u>	<u>TWIN FALLS, ID, 208-734-2077</u>	<u>30</u>
<u>SCOTT E. MALONE</u>	<u>2179 BITTERROOT DR.</u>	<u>TWIN FALLS, ID, 208-733-8883</u>	<u>40</u>

LAWRENCE SCOTT ANDRUS
Typed/printed

Lawrence Scott Andrus
Signature

STATE OF IDAHO)
) ss.
County of ADA)

SUBSCRIBED AND SWORN before me on this 7 day of November, 2016



[Signature]
Notary Public for Idaho
Residing at _____
Commission expires 8/14/2020

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 11/07/2016 =

Doc No: 113829 Name: ANDRUS, LAWRENCE SCOTT
 Account: CHK Status: ACTIVE

ICC/UNIT G PRES FACIL
 TIER-1 CELL-3

Transaction Dates: 11/07/2015-11/07/2016

Beginning Balance 34.22	Total Charges 862.93	Total Payments 1128.71	Current Balance 300.00
-------------------------------	----------------------------	------------------------------	------------------------------

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
11/09/2015	HQ0733919-014	011-RCPT MO/CC	MAILROOM	50.00	84.22
11/10/2015	IC0734004-368	099-COMM SPL		3.18DB	81.04
11/10/2015	IC0734004-369	099-COMM SPL		24.02DB	57.02
11/17/2015	IC0734928-329	099-COMM SPL		22.52DB	34.50
11/23/2015	IC0735543-341	099-COMM SPL		12.80DB	21.70
12/01/2015	IC0736401-341	099-COMM SPL		6.70DB	15.00
12/04/2015	II0737046-016	072-METER MAIL	0016438	13.48DB	1.52
12/08/2015	HQ0737475-004	011-RCPT MO/CC	MAILROOM	20.00	21.52
12/15/2015	IC0738279-392	099-COMM SPL		15.62DB	5.90
12/21/2015	HQ0739060-007	011-RCPT MO/CC	MAILROOM	100.00	105.90
12/21/2015	IC0739203-006	070-PHOTO COPY	00106435	0.30DB	105.60
12/22/2015	IC0739253-383	099-COMM SPL		5.35DB	100.25
12/22/2015	HQ0739324-001	011-RCPT MO/CC	MAILROOM	20.00	120.25
12/28/2015	HQ0739727-007	011-RCPT MO/CC	MAILROOM	10.00	130.25
12/29/2015	IC0739925-392	099-COMM SPL		60.20DB	70.05
12/30/2015	IC0740169-001	071-MED CO-PAY	801264	5.00DB	65.05
01/04/2016	II0740664-002	072-METER MAIL	028855	0.48DB	64.57
01/05/2016	IC0740741-340	099-COMM SPL		25.95DB	38.62
01/08/2016	II0741453-004	072-METER MAIL	028879	0.49DB	38.13
01/08/2016	IC0741493-002	070-PHOTO COPY	028878	0.15DB	37.98
01/08/2016	IC0741494-006	070-PHOTO COPY	028856	0.15DB	37.83
01/12/2016	IC0741813-403	099-COMM SPL		11.24DB	26.59
01/13/2016	IC0742020-010	071-MED CO-PAY	810987	3.00DB	23.59
01/14/2016	HQ0742176-016	011-RCPT MO/CC	MAILROOM	20.00	43.59
01/19/2016	IC0742570-381	099-COMM SPL		10.59DB	33.00
01/20/2016	HQ0742675-009	011-RCPT MO/CC	MAILROOM	25.00	58.00
01/26/2016	IC0743258-350	099-COMM SPL		18.00DB	40.00
01/29/2016	HQ0743659-013	011-RCPT MO/CC	MAILROOM	50.00	90.00
02/02/2016	IC0743984-310	099-COMM SPL		25.00DB	65.00
02/05/2016	II0744681-016	072-METER MAIL	028578	0.49DB	64.51
02/09/2016	IC0745120-379	099-COMM SPL		14.36DB	50.15
02/11/2016	IC0745462-006	070-PHOTO COPY	028577	0.15DB	50.00
02/16/2016	IC0745770-336	099-COMM SPL		15.00DB	35.00
02/23/2016	IC0746715-335	099-COMM SPL		12.50DB	22.50
02/26/2016	II0747217-004	072-METER MAIL	023546	5.04DB	17.46
03/01/2016	IC0747524-365	099-COMM SPL		3.26DB	14.20
03/02/2016	II0747787-010	072-METER MAIL	003631	2.40DB	11.80
03/04/2016	HQ0748134-002	011-RCPT MO/CC	MAILROOM	100.00	111.80
03/04/2016	HQ0748189-003	011-RCPT MO/CC	MAILROOM	50.00	161.80

I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Date: 11/11/16

Signature: [Signature]

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 11/07/2016 =

Doc No: 113829 Name: ANDRUS, LAWRENCE SCOTT
 Account: CHK Status: ACTIVE

ICC/UNIT G PRES FACIL
 TIER-1 CELL-3

Transaction Dates: 11/07/2015-11/07/2016

Beginning Balance	Total Charges	Total Payments	Current Balance
34.22	862.93	1128.71	300.00

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
03/04/2016	IC0748321-003	070-PHOTO COPY	003630	1.00DB	160.80
03/04/2016	IC0748321-010	070-PHOTO COPY	028579	8.70DB	152.10
03/08/2016	IC0748692-384	099-COMM SPL		52.10DB	100.00
03/15/2016	IC0749676-361	099-COMM SPL		8.22DB	91.78
03/15/2016	IC0749676-362	099-COMM SPL		36.78DB	55.00
03/22/2016	IC0750812-340	099-COMM SPL		15.00DB	40.00
03/29/2016	IC0751386-310	099-COMM SPL		12.00DB	28.00
03/30/2016	HQ0751574-009	011-RCPT MO/CC	MAILROOM	20.00	48.00
04/05/2016	IC0752274-308	099-COMM SPL		28.00DB	20.00
04/07/2016	IC0752671-001	090-INST RESTI	PRTY REIMB	3.71	23.71
04/12/2016	IC0753365-353	099-COMM SPL		8.71DB	15.00
04/18/2016	HQ0754229-003	011-RCPT MO/CC	MAILROOM	50.00	65.00
04/19/2016	HQ0754393-012	011-RCPT MO/CC	MAILROOM	100.00	165.00
04/19/2016	IC0754409-352	099-COMM SPL		15.00DB	150.00
04/19/2016	IC0754451-009	071-MED CO-PAY	823426	3.00DB	147.00
04/20/2016	HQ0754476-017	011-RCPT MO/CC	MAILROOM	50.00	197.00
04/26/2016	IC0755680-320	099-COMM SPL		49.87DB	147.13
04/26/2016	IC0755680-321	099-COMM SPL		10.07DB	137.06
05/03/2016	IC0756483-292	099-COMM SPL		56.39DB	80.67
05/03/2016	IC0756483-293	099-COMM SPL		25.67DB	55.00
05/05/2016	HQ0757025-012	011-RCPT MO/CC	MAILROOM	100.00	155.00
05/10/2016	IC0757608-381	099-COMM SPL		20.41DB	134.59
05/10/2016	IC0757608-382	099-COMM SPL		39.59DB	95.00
05/17/2016	IC0758370-333	099-COMM SPL		25.00DB	70.00
05/18/2016	IC0758602-023	071-MED CO-PAY	838226	3.00DB	67.00
05/24/2016	IC0759186-293	099-COMM SPL		17.00DB	50.00
05/31/2016	HQ0759685-001	011-RCPT MO/CC	MAILROOM	10.00	60.00
05/31/2016	IC0759798-275	099-COMM SPL		10.00DB	50.00
06/01/2016	HQ0760021-013	011-RCPT MO/CC	MAILROOM	150.00	200.00
06/07/2016	HQ0761050-001	011-RCPT MO/CC	MAILROOM	100.00	300.00
06/07/2016	IC0761125-355	099-COMM SPL		14.58DB	285.42
06/07/2016	IC0761125-356	099-COMM SPL		35.42DB	250.00
06/14/2016	IC0761997-341	099-COMM SPL		10.00DB	240.00
06/17/2016	HQ0762426-009	011-RCPT MO/CC	MAILROOM	100.00	340.00
06/21/2016	IC0762626-326	099-COMM SPL		25.00DB	315.00
06/28/2016	IC0763656-287	099-COMM SPL		15.00DB	300.00

I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Date: 11/7/16
 Signature: [Signature]

Offender Account Activity (7/1/2016 - 11/7/2016)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
11/05/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$74.60	(\$1.96)	\$72.64
11/05/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$76.33	(\$1.73)	\$74.60
11/01/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$99.03	(\$22.70)	\$76.33
11/01/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$125.00	(\$25.97)	\$99.03
10/25/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$133.00	(\$8.00)	\$125.00
10/18/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$159.83	(\$26.83)	\$133.00
10/11/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$180.00	(\$20.17)	\$159.83
10/05/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$202.54	(\$22.54)	\$180.00
10/05/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Medical - IDOC	\$207.54	(\$5.00)	\$202.54
10/02/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$210.00	(\$2.46)	\$207.54
09/27/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$225.00	(\$15.00)	\$210.00
09/21/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$256.80	(\$31.80)	\$225.00
09/20/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$282.00	(\$25.20)	\$256.80
09/14/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$317.72	(\$35.72)	\$282.00
09/14/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Idaho Dept. of Correction	\$325.72	(\$8.00)	\$317.72
09/14/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Idaho Dept. of Correction	\$330.72	(\$5.00)	\$325.72
09/13/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$345.56	(\$14.84)	\$330.72
09/08/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$366.76	(\$21.20)	\$345.56
09/07/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$369.18	(\$2.42)	\$366.76
09/07/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$371.65	(\$2.47)	\$369.18
09/07/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$375.16	(\$3.51)	\$371.65
09/06/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$403.31	(\$28.15)	\$375.16

I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Date: 11/7/16
Signature: [Signature]

Offender Account Activity

(7/1/2016 - 11/7/2016)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
09/06/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$404.35	(\$1.04)	\$403.31
08/30/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$456.46	(\$52.11)	\$404.35
08/29/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$452.11	\$4.35	\$456.46
08/23/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$500.00	(\$47.89)	\$452.11
08/17/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$529.99	(\$29.99)	\$500.00
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$531.68	(\$1.69)	\$529.99
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$532.20	(\$0.52)	\$531.68
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$535.00	(\$2.80)	\$532.20
08/12/2016	Money Order	0113829	ANDRUS, LAWRENCE SCOTT	I	ILLEDGEABLE		\$335.00	\$200.00	\$535.00
08/09/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$355.64	(\$20.64)	\$335.00
08/02/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$385.65	(\$30.01)	\$355.64
07/26/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$405.65	(\$20.00)	\$385.65
07/20/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$418.37	(\$12.72)	\$405.65
07/19/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$439.00	(\$20.63)	\$418.37
07/14/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$489.00	(\$50.00)	\$439.00
07/12/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Idaho Dept. of Correction	\$497.00	(\$8.00)	\$489.00
07/12/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Idaho Dept. of Correction	\$500.00	(\$3.00)	\$497.00
07/07/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	I	TERRY KNISS		\$380.00	\$120.00	\$500.00
07/07/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	I	TERRY KNISS		\$300.00	\$80.00	\$380.00
07/01/2016	Conversion	0113829	ANDRUS, LAWRENCE SCOTT	I	Conversion		\$0.00	\$300.00	\$300.00

Offender Account Activity (7/1/2016 - 11/7/2016)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
09/06/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$404.35	(\$1.04)	\$403.31
08/30/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$456.46	(\$52.11)	\$404.35
08/29/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$452.11	\$4.35	\$456.46
08/23/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$500.00	(\$47.89)	\$452.11
08/17/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$529.99	(\$29.99)	\$500.00
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$531.68	(\$1.69)	\$529.99
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$532.20	(\$0.52)	\$531.68
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	I		CenturyLink	\$535.00	(\$2.80)	\$532.20
08/12/2016	Money Order	0113829	ANDRUS, LAWRENCE SCOTT	I	ILLEDGEABLE		\$335.00	\$200.00	\$535.00
08/09/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$355.64	(\$20.64)	\$335.00
08/02/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$385.65	(\$30.01)	\$355.64
07/26/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$405.65	(\$20.00)	\$385.65
07/20/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$418.37	(\$12.72)	\$405.65
07/19/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$439.00	(\$20.63)	\$418.37
07/14/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	I		Commissary Sales	\$489.00	(\$50.00)	\$439.00
07/12/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Idaho Dept. of Correction	\$497.00	(\$8.00)	\$489.00
07/12/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	I		Idaho Dept. of Correction	\$500.00	(\$3.00)	\$497.00
07/07/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	I	TERRY KNISS		\$380.00	\$120.00	\$500.00
07/07/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	I	TERRY KNISS		\$300.00	\$80.00	\$380.00
07/01/2016	Conversion	0113829	ANDRUS, LAWRENCE SCOTT	I	Conversion		\$0.00	\$300.00	\$300.00

I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Date: 11/7/16

Signature: 

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,	)	CASE NO. CV 42-16-720
)	
Petitioner/Appellant,)	
)	
vs.	)	NOTICE AND ORDER
	)	APPOINTING STATE
	)	APPELLATE PUBLIC
STATE OF IDAHO,	)	DEFENDER IN DIRECT
	)	APPEAL
Respondent.)	
_____)	

TO: The Office of the Idaho State Appellate Public Defender:

The above named Petitioner/Appellant has filed a notice of appeal on November 2, 2016, and has moved the Court for appointment of an appellate public defender in direct appeal of the Honorable John Butler, Fifth Judicial District Judge, Twin Falls County.

This Court being satisfied that said petitioner-appellant is a needy person entitled to the services of the State Appellate Public Defender per §19-863A, Idaho Code.

IT IS HEREBY ORDERED, that you are appointed to represent the petitioner-appellant in all matters as indicated herein, or until relieved by further order of the court.

IT IS HEREBY ORDERED, pursuant to I.A.R. Rule 1, the parties, the Clerk of the court and the Court Reporter, shall follow the established Idaho Appellate Rules in the preparation of this appeal record.

IT IS FURTHER ORDERED that the State Appellate Public Defender's Office is provided the following information by the Court:

- 1) The petitioner is in the custody of the Idaho State Board of Corrections.
- 2) Petitioner is currently being processed through Boise.
- 3) A copy of the Notice of Appeal or Application.
- 4) A copy of the Register of Actions in this matter.

IT IS SO ORDERED,

DATED

Signed: 12/5/2016 07:25 AM



John Butler, District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a true and correct copy of the Notice and Order Appointing State Appellate in Direct Appeal by email:

ERIC FREDERICKSEN
State Appellate Public Defender
322 East Front Street, Suite 570
Boise, ID 83702
esmith@sapd.state.id.us

Idaho Supreme Court
Attn: Appeals
451 W. State St.
Boise, ID 83720
supremecourtdocuments@idcourts.net

Office of the Attorney General
Statehouse Room 210
P.O. Box 83720
Boise, ID 83720
ecf@ag.idaho.gov

Grant Loeb
Twin Falls Prosecuting Attorney
P.O. Box 126
Twin Falls, ID 83303-0126
inbox.pros@co.twin-falls.id.us

Clayne Zollinger
Attorney at Law
P. O. Box 308
Burley, ID 83318
zollingerlaw@gmail.com

Signed: 12/5/2016 11:34 AM

A handwritten signature in black ink that reads "Shain Cooper". The signature is written in a cursive style and is positioned above a horizontal line.

Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner/Appellant,	)	CASE NO. CV 42-16-720
)	
vs	)	CLERK'S CERTIFICATE
	)	OF APPEAL
STATE OF IDAHO,)	
)	
Respondent.)	

APPEAL FROM: Fifth Judicial District, Twin Falls County.
Honorable John K. Butler, presiding

CASE NUMBER FROM COURT: CV 42-16-720

ORDER OR JUDGMENT APPEALED FROM: Judgment which was entered in the
above-entitled matter on September 26, 2016.

ATTORNEY FOR RESPONDENT: Lawrence Wasden

ATTORNEY FOR APPELLANT: Eric Fredericksen

APPEALED BY: Lawrence Scott Andrus

APPEALED AGAINST: State of Idaho

NOTICE OF APPEAL FILED: November 10, 2016

AMENDED APPEAL FILED:

NOTICE OF CROSS-APPEAL FILED:

AMENDED NOTICE OF CROSS-APPEAL FILED:

APPELLATE FEE PAID: Exempt

ESTIMATED CLERK'S RECORD FEE PAID: Exempt

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT FILED:

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED: NO

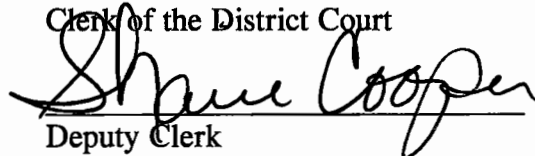
ESTIMATED NUMBER OF PAGES:

IF SO, NAME OF EACH REPORTER OF WHOM A TRANSCRIPT HAS BEEN REQUESTED AS NAMED BELOW AT THE ADDRESS SET OUT BELOW:

Name and address:

DATED: December 5, 2016

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

Sharie Cooper

From: supremecourtdocuments@idcourts.net
Sent: Wednesday, January 4, 2017 12:33 PM
To: scooper@co.twin-falls.id.us; screek@co.jerome.id.us; ecf@co.idaho.gov;
JBUTLER@CO.JEROME.ID.US; documents@sapd.state.id.us;
EFREDERICKSEN@SAPD.STATE.ID.US; mlara@sapd.state.id.us
Subject: 44686 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 44686 CC.pdf; 44686 NOA.pdf; 44686 OCD UNTIMELY.pdf; 44686 JUDGMENT.pdf

DISTRICT COURT
TWIN FALLS, CO, IDAHO
FILED

2017 JAN -6 PM 12:14

SC CLERK
DEPUTY

FILED NOTICE OF APPEAL - NO SPECIFIC TRANSCRIPTS REQUESTED - SEE ALL ATTACHMENTS.
Please review the CLERK'S CERTIFICATE OF APPEAL and notify the Court of any errors. ENTERED
ORDER CONDITIONALLY DISMISSING APPEAL FOR UNTIMELINESS. **SUSPENDED FOR
TWENTY-ONE (21) DAYS FOR FILING OF A RESPONSE WITH THIS COURT (with prison mail log
attached)** NOTE: the verbage in the Judgment shall be addressed subsequently.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,

Petitioner/Appellant,

vs

STATE OF IDAHO,

Respondent.

Supreme Court No. 44686

CASE NO. CV 42-16-720

CLERK'S CERTIFICATE
OF APPEAL

APPEAL FROM: Fifth Judicial District, Twin Falls County.
Honorable John K. Butler, presiding

CASE NUMBER FROM COURT: CV 42-16-720

ORDER OR JUDGMENT APPEALED FROM: Judgment which was entered in the
above-entitled matter on September 26, 2016.

ATTORNEY FOR RESPONDENT: Lawrence Wasden

ATTORNEY FOR APPELLANT: Eric Fredericksen

APPEALED BY: Lawrence Scott Andrus

APPEALED AGAINST: State of Idaho

NOTICE OF APPEAL FILED: November 10, 2016

AMENDED APPEAL FILED:

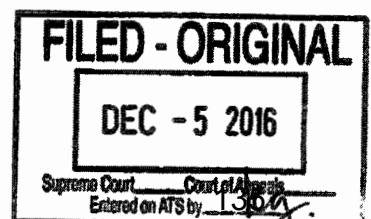
NOTICE OF CROSS-APPEAL FILED:

AMENDED NOTICE OF CROSS-APPEAL FILED:

APPELLATE FEE PAID: Exempt

ESTIMATED CLERK'S RECORD FEE PAID: Exempt

CLERK'S CERTIFICATE OF APPEAL - 1



**RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL
RECORD FILED:**

**RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL
REPORTER'S TRANSCRIPT FILED:**

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED: NO

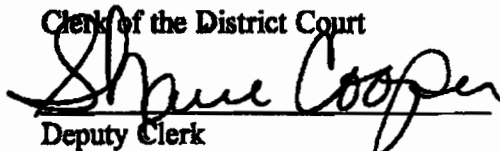
ESTIMATED NUMBER OF PAGES:

**IF SO, NAME OF EACH REPORTER OF WHOM A TRANSCRIPT HAS
BEEN REQUESTED AS NAMED BELOW AT THE ADDRESS SET OUT
BELOW:**

Name and address:

DATED: December 5, 2016

**KRISTINA GLASCOCK
Clerk of the District Court**


Deputy Clerk

In the Supreme Court of the State of Idaho

DISTRICT COURT
TWIN FALLS COUNTY IDAHO
FILED

2017 JAN -6 PM 12:14

se
CLERK
DEPUTY

LAWRENCE SCOTT ANDRUS,)
)
Petitioner-Appellant,)
)
v.)
)
STATE OF IDAHO,)
)
Respondent.)

ORDER CONDITIONALLY
DISMISSING APPEAL

Supreme Court Docket No. 44686-2016
Twin Falls County No. CV42-16-720

A NOTICE OF APPEAL was filed in the District Court on November 10, 2016, from the JUDGMENT entered by District Judge John K. Butler and file stamped on September 26, 2016. It appears the JUDGMENT does not comply with I.R.C.P. 54(a) in that it shall begin with the words, "JUDGMENT IS ENTERED AS FOLLOWS:...", and should not contain any other language between those words and the caption. This Judgment has the word "HEREBY" included in it. Further, it appears the NOTICE OF APPEAL was not filed within forty-two (42) days from the date of entry of the September 26, 2016 JUDGMENT, pursuant to Idaho Appellate Rule 14. Therefore,

IT HEREBY IS ORDERED that this appeal shall be CONDITIONALLY DISMISSED for the reason this appeal was not timely filed; however, Appellant shall be allowed to file a RESPONSE to this Order Conditionally Dismissing Appeal WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF THIS ORDER. If Appellant asserts the Notice of Appeal was timely placed in the prison mail system, then Appellant shall include a copy of the prison mail log showing the date of tender.

IT FURTHER IS ORDERED that any RESPONSE filed by Appellant shall first address the issue of untimeliness and the verbage of the Judgment shall be addressed thereafter.

DATED this 3rd day of January, 2017.

For the Supreme Court

Stephen Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge John K. Butler

Entered on JSI
By: *kg*



FILED By: _____ Deputy Clerk
Fifth Judicial District, Twin Falls County
Kristina Glascock, Clerk of the Court

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

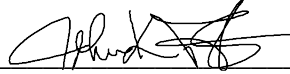
LAWRENCE SCOTT ANDRUS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF IDAHO,)
)
 Respondent.)
 _____)

Case No. CV42-16-720

AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. In favor of the Respondent and against the Petitioner; and
2. The Petition for Post-Conviction Relief is hereby DISMISSED WITH PREJUDICE.



John K. Butler, District Judge


CERTIFICATE OF MAILING/DELIVERY

Signed: 1/9/2017 08:52 AM

I, undersigned, hereby certify that on the _____ day of _____, 2017 a true and correct copy of the foregoing JUDGMENT was mailed, postage paid, and/or hand-delivered to the following persons:

Twin Falls County Conflict Public Defender
Clayne Zollinger
zollingerlaw@gmail.com

Twin Falls County Prosecutor
inbox.pros@co.twin-falls.id.us


Deputy Clerk

Sharie Cooper

From: supremecourtdocuments@idcourts.net
Sent: Friday, February 3, 2017 10:20 AM
To: EFREDERICKSEN@SAPD.STATE.ID.US; documents@sapd.state.id.us; scooper@co.twin-falls.id.us; screek@co.jerome.id.us; ecf@ag.idaho.gov
Subject: 44686 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 44686.pdf

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2017 FEB -6 PM 1:46

BY SB CLERK
DEPUTY

FILED RESPONSE TO CONDITIONAL DISMISSAL.

Sharie Cooper

From: supremecourtdocuments@idcourts.net
Sent: Thursday, February 9, 2017 03:24 PM
To: scooper@co.twin-falls.id.us; documents@sapd.state.id.us; screek@co.jerome.id.us; ecf@ag.idaho.gov; EFREDERICKSEN@SAPD.STATE.ID.US
Subject: 44686 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 44686.pdf

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED
2017 FEB 9 PM 5:18
BY *SB*
CLERK
DEPUTY

NOTE (CLERK'S RECORD ONLY) ENTERED ORDER WITHDRAWING CONDITIONAL DISMISSAL ORDER. CLERK'S RECORD DUE 4-12-2017.

In the Supreme Court of the State of Idaho

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2017 FEB -9 PM 5:18

CLERK

DEPUTY

LAWRENCE SCOTT ANDRUS,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent.

ORDER WITHDRAWING
CONDITIONAL DISMISSAL ORDER

Supreme Court Docket No. 44686-2016
Twin Falls County No. CV42-16-720

Ref. No. 17-52

An ORDER CONDITIONALLY DISMISSING APPEAL was entered by this Court on January 3, 2017. Thereafter, Appellant Counsel's RESPONSE TO CONDITIONAL DISMISSAL was filed on February 2, 2017. Therefore, good cause appearing,

IT HEREBY IS ORDERED that this Court has reviewed Appellant Counsel's RESPONSE TO CONDITIONAL DISMISSAL, and the Court's ORDER CONDITIONALLY DISMISSING APPEAL be, and hereby is, WITHDRAWN, and proceedings in this appeal are reinstated.

IT FURTHER IS ORDERED that Appellant Counsel shall file an Amended Notice of Appeal within fourteen (14) days from the date of this Order specifying by date and title the transcripts requested and shall show service to the appropriate Reporter.

IT FURTHER IS ORDERED that the Clerk's Record and Reporter's Transcript shall be filed with this Court on or before April 12, 2017.

DATED this 9th day of February, 2017.

By Order of the Supreme Court

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter
District Judge John K. Butler

ORDER – Docket No. 44686-2016

Sharie Cooper

From: supremecourtdocuments@idcourts.net
Sent: Thursday, February 9, 2017 03:22 PM
To: scooper@co.twin-falls.id.us; JBUTLER@CO.JEROME.ID.US; screek@co.jerome.id.us; EFREDERICKSEN@SAPD.STATE.ID.US; ecf@ag.idaho.gov; documents@sapd.state.id.us
Subject: 44686 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 44686.pdf

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED
2017 FEB -9 PM 5:18
BY [Signature]
CLERK
DEPUTY

ENTERED ORDER WITHDRAWING CONDITIONAL DISMISSAL ORDER. CLERK'S RECORD AND REPORTER'S TRANSCRIPT DUE 4-12-2017.

In the Supreme Court of the State of Idaho

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED
FEB -9 PM 5:18

LAWRENCE SCOTT ANDRUS,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent.

)
)
) ORDER WITHDRAWING
) CONDITIONAL DISMISSAL ORDER
)
) Supreme Court Docket No. 44686-2016
) Twin Falls County No. CV42-16-720
)
) Ref. No. 17-52
)

An ORDER CONDITIONALLY DISMISSING APPEAL was entered by this Court on January 3, 2017. Thereafter, Appellant Counsel's RESPONSE TO CONDITIONAL DISMISSAL was filed on February 2, 2017. Therefore, good cause appearing,

IT HEREBY IS ORDERED that this Court has reviewed Appellant Counsel's RESPONSE TO CONDITIONAL DISMISSAL, and the Court's ORDER CONDITIONALLY DISMISSING APPEAL be, and hereby is, WITHDRAWN, and proceedings in this appeal are reinstated.

IT FURTHER IS ORDERED that Appellant Counsel shall file an Amended Notice of Appeal within fourteen (14) days from the date of this Order specifying by date and title the transcripts requested and shall show service to the appropriate Reporter.

IT FURTHER IS ORDERED that the Clerk's Record and Reporter's Transcript shall be filed with this Court on or before April 12, 2017.

DATED this 9th day of February, 2017.

By Order of the Supreme Court

Stephen W. Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter
District Judge John K. Butler

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

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2017 MAR -3 PM 2: 23

BY _____ CLERK
AC DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY

LAWRENCE SCOTT ANDRUS,
Petitioner-Appellant,
v.
STATE OF IDAHO,
Respondent.

CASE NO. CV42-16-720
S.C. DOCKET NO. 44686
AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, GRANT LOEBS, TWIN FALLS COUNTY PROSECUTOR, P.O. BOX 126, TWIN FALLS, ID 83303-0126, 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 entered in the above-entitled action on the 26th day of September, 2016, the Honorable John K. Butler, presiding.
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(e a)(1-10), 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) Did the district court err in dismissing the appellant's Petition for Post-Conviction Relief?

4. ~~There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).~~

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(a c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) ~~Status Hearing held on DENIED; and~~

(b) ~~Evidentiary Hearing held on DENIED.~~

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2 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)(2 1):

(a) Affidavit in Support of Petition filed March 2, 2016;

(b) Motion & Affidavit in Support for Appointment of Counsel filed March 2, 2016;

(c) Motion to Extend Time to Amend Petition filed April 13, 2016;

(d) Transcript Filed Bond Reduction Hearing June 20, 2014 filed April 19, 2016;

- (e) Transcript Filed Hearing on Motion of Defendant June 6, 2014, Pretrial Conference June 30, 2014 filed April 19, 2016;
- (f) Transcript File Jury Trial Day 1 Nov. 6, 2014; Jury Trial Day 2 Nov. 7, 2014; Sentencing Dec. 5, 2014 filed April 19, 2016;
- (g) Ex Parte Motion to Appoint Special Conflict Public Defender filed April 20, 2016;
- (h) Order Appointing Special Conflict Public Defender filed April 21, 2016;
- (i) Notice of Intent to Dismiss filed July 11, 2016;
- (j) Motion for Extension of Time filed July 26, 2016;
- (k) Order Extending Time filed August 24, 2016;
- (l) Order Dismissing Petition for Post-Conviction Relief with Prejudice filed September 26, 2016;
- (m) Letter from Petitioner Re: Case Summary filed October 27, 2016;
- (n) Any items the district court took judicial notice; and
- (o) 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.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, none.
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (I.C. §§ 31-3220, 31-3220A, I.C. § 19-4904, I.A.R. 27(f));
- (c) 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 arrangements have been made with Twin Falls 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 3rd day of March, 2017.



SALLY J. COOLEY
Deputy State Appellate Public Defender

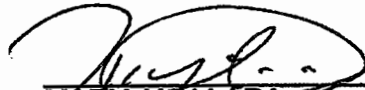
CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 3rd day of March, 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:

LAWRENCE SCOTT ANDRUS
INMATE #113829
ISCC
PO BOX 70010
BOISE ID 83707

GRANT LOEBS
TWIN FALLS COUNTY PROSECUTOR
PO BOX 126
TWIN FALLS ID 83303-0126

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



MARY ANN LARA
Administrative Assistant

SJC/mal

Sharie Cooper

From: supremecourtdocuments@idcourts.net
Sent: Monday, March 6, 2017 10:54 AM
To: JBUTLER@CO.JEROME.ID.US; scooper@co.twin-falls.id.us; ee@ag.idaho.gov; documents@sapd.state.id.us; screek@co.jerome.id.us; EFREDERICKSEN@SAPD.STATE.ID.US; mlara@sapd.state.id.us
Subject: 44686 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 44686 ANOA.pdf

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2017 MAR -6 PM 5:32

CLERK

DEPUTY

FILED AMENDED NOTICE OF APPEAL (additional documents identified; no transcripts requested) -
PLEASE SEE ATTACHMENT. **DUE DATE FOR CLERK'S RECORD REMAINS SET FOR 04-12-17**



ORIGINAL

STATE OF IDAHO
OFFICE OF THE STATE APPELLATE PUBLIC DEFENDER
Defending Zealously, Advancing Fairness, and Advocating with Integrity.

April 3, 2017

HAND DELIVERY

Mr. Stephen Kenyon
Clerk of the Court
P.O. Box 83720
Boise, ID 83720-0101

Re: Change of Assigned Attorney

Dear Mr. Kenyon:

Your records indicate that there are cases in which the State Appellate Public Defender (SAPD) is the attorney of record. However, the following case has been assigned to Nevin, Benjamin, and McKay, LLP, pursuant to a contract, such that, for the following case, the office is appointed as counsel. Please send any notices to: Nevin, Benjamin, and McKay, LLP, P.O. Box 2772, Boise, ID 83701. The case is:

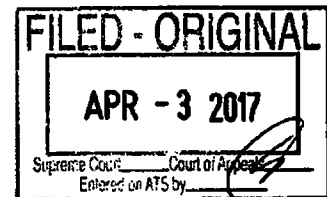
<u>Case Name</u>	<u>Docket Number</u>
<i>Andrus V. State</i>	44686

If you have any questions, please call me at 334-2712. We appreciate all the help you have given us.

Very truly yours,

ERIC D. FREDERICKSEN
State Appellate Public Defender

cc: Kenneth K. Jorgensen



Lawrence Scott Andrus
#113829 / ISCC / F-Block
P.O. Box 70010
Boise, ID 83707

PETITIONER, pro se

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED
2017 MAY 30 AM 11:23
BY _____ CLERK
_____ DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,	)	Case No. CV42-16-720
)	
v.)	
	)	MOTION FOR RELIEF FROM JUDGMENT
	)	(IRCP 60(b)(6))
STATE OF IDAHO,)	
)	
Respondent.)	

COMES NOW THE PETITIONER/MOVANT, (Andrus), pro se, and prays this Court relieve him of the final judgment in the above-styled action pursuant to the authority of Idaho Rule of Civil Procedure 60(b)(6). In support, Andrus would state:

1). He is incarcerated in the Idaho Department of Correction pursuant to a criminal conviction and sentence imposed by this Court in Case No. CR2014-2897.

2). On March 2, 2016, Andrus filed an Application for Post-Conviction Relief (I.C. §19-4901) in this court - Case No. CV-42-16-720. On April 21,

2016, this Court appointed attorney Clayne Zollinger, Jr. to represent Andrus in his post-conviction relief application.

3). During the pendency of the post-conviction action, counsel had absolutely no communication with Andrus, other than to notify him that he had filed a Motion for Extension of Time to respond to this Court's Notice of Intent to Dismiss the action. Other than this Motion for Extension, counsel filed no motions, amendments or other documents on behalf of Andrus - despite Andrus having written two (2) letters requesting communication with said counsel requesting investigation into facts of the case as would be cognizable on post-conviction relief proceedings, initiating Discovery and advancing constitutional challenges to his conviction.

4). Given the complete absence of meaningful representation by appointed counsel, the detrimental reliance upon counsel to amend the post-conviction relief application, as well as unsuccessful attempts by Andrus to have this Court intervene in his behalf with uncommunicative counsel, Andrus would submit that relief under subsection (b)(6) of IRCP 60 is warranted where, as here, Andrus has no option of filing a successive application for post-conviction relief under the Idaho Uniform Post-Conviction Procedures Act, and has no cognizable claim for ineffective assistance of (post-conviction) civil case counsel.

WHEREFORE, Andrus prays this Court set aside the final judgment in Case No. CV42-16-720, and allow an amendment to the post-conviction relief application in the interest of justice.

Respectfully submitted this 25 day of May, 2017.




Lawrence Scott Andrus
Petitioner/Movant, pro se

CERTIFICATE OF SERVICE

I hereby certify by my signature below that I have caused a true and correct copy of the foregoing to be served (mailed) upon the counsel for Respondent by placing same in the custody of the prison paralegal for mailing - postage prepaid, and addressed as follows:

Twin Falls County Prosecuting Attorney
P.O. Box 126
Twin Falls, ID 83303

On this *25* day of *May*, 2017.


Lawrence Scott Andrus
Petitioner, pro se

Grant P. Loeb
Prosecuting Attorney
for Twin Falls County
P.O. Box 126
Twin Falls, Idaho 83303
208-736-4020
inbox.pros@co.twin-falls.id.us

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

)	
	)	Case No. CV 42-16-720
LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,)	
)	
vs.	)	OBJECTION TO MOTION FOR
	)	RELIEF FROM JUDGMENT
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	


COMES NOW, the State of Idaho, by and through Jethelyn Harrington, Deputy Prosecuting Attorney for Twin Falls County, Idaho, and without addressing the merits of the Petitioner's motion hereby objects to said motion.

The Petitioner has already filed an appeal of this Court's Judgement in the above entitled case which is currently pending before the Idaho Supreme Court and this Court no longer has jurisdiction to grant the Petitioner's motion. In addition, the Petitioner in that case is represented by Clayne Zollinger. The State is unaware of the Petitioner representing himself in this case *pro se*.

Furthermore, this motion is late per I.R.C.P. 60(c)(1) and has not been filed within 6 months after the entry of the judgment in this case.

For these reasons the Petitioner's motion should be DENIED.

Dated this 6th day of June, 2017.


Jethelyn Harrington
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of June, 2017, I served a true and correct copy of the foregoing Objection to Motion for Relief from Judgment upon Clayne S. Zollinger, Attorney for Petitioner by e-filing.

Alyson Acheson

Alyson Acheson
Legal Assistant

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,)	
)	
vs.	)	Case No. CV42-16-720
)	
STATE OF IDAHO ,)	
)	
Respondent.)	
_____)	

ORDER DENYING MOTION FOR RELIEF FROM JUDGEMENT, I.R.C.P. 60(b)(6)

On May 30, 2017 the Petitioner filed a Motion for Relief From Judgement pursuant to I.R.C.P. 60(b)(6). In essence the petitioner argues that he has had a “complete absence of meaningful representation” by his appointed counsel which led to the dismissal of his petition for post-conviction relief.

On June 8, 2017 the State filed its Objection to Motion for Relief from Judgment. The State argues that the court has no jurisdiction to grant the requested relief because of a pending appeal; that the petitioner is not pro se; and that the motion is untimely since it was not filed within 6 months of the filing of the judgment.¹

¹ The State’s objection is without merit. An appeal does not cause the court to lose jurisdiction of a IRCP Rule 60(b) motion. I.A.R. 13(b)(6). The motion for relief pursuant to IRCP 60(b)(6) need only be filed within a reasonable time and that State has presented no argument that the time is unreasonable. The fact that the court has previously

There has been no request for oral argument and the court finding that oral argument is not necessary, the matter is hereby submitted without oral argument. I.R.C.P. 7(b)(3)(E).

I.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2016 the petitioner filed his Petition for Post-Conviction Relief (Petition) and counsel was appointed for the petitioner pursuant to his request. The Court on July 11, 2016 entered its Notice of Intent to Dismiss, wherein the Court detailed why the claims set forth in the Petition were without merit as a matter of law. Counsel for the petitioner did request and the court granted an extension of time to respond to the Notice of Intent to Dismiss. When no response was filed, the Court dismissed the Petition for the reasons stated in the Notice of Intent to Dismiss.

On September 26, 2016 a Judgment was entered, however since the Judgment did not comply with I.R.C.P. 54(a) and Amended Judgment was entered on January 9, 2017. The Petitioner has appealed the Amended Judgment.

II.

STANDARD

“Rule 60(b)(6) provides that the court may grant relief from a judgment for ‘any other reason justifying relief from the operation of the judgment.’ Relief can be granted under subsection six ‘only on a showing of ‘unique and compelling circumstances’ justifying relief.’” *Profits Plus Capital Management, LLC v. Podesta*, 156 Idaho 873, 886, 332 P.3d 785, 798 (2014) (citing *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)). The decision whether to grant relief pursuant to I.R.C.P. 60(b) is a matter of discretion for the trial court and

appointed counsel for the petitioner does not preclude the petitioner from filing such a motion under the circumstances as alleged.

as such this court must recognize its discretion and act within the outer legal bounds of that discretion through an exercise of reason. *Id.* Our courts have “infrequently granted relief” under rule 60(b)(6). *Id.*

III.

ANALYSIS

The petitioner argues in his motion for relief pursuant to Rule 60(b)(6) that his appointed counsel did not adequately communicate with the petitioner and that the petitioner’s failure to respond to the Notice of Intent to Dismiss or counsel’s failure to amend the petitioner for post-conviction relief resulted in a complete absence of counsel which should warrant the granting of relief pursuant to I.R.C.P. 60(b). The petitioner has not provided any information or affidavits in support of his motion demonstrating what amendments should have been made to the petition or what facts or authorities the petitioner had that should have been filed in response to the Notice of Intent to Dismiss.²

The Court dismissed the Petition on its merits or lack of merit as a matter of law. In *Eby v. State*, 148 Idaho 731, 228 P.3d 998 (2010), the Court held that the trial court had abused its discretion in failing to consider whether appointed counsel’s neglect resulting in dismissal for inactivity was a “unique and compelling circumstance” justifying relief. The facts in *Eby* show that the trial court on multiple occasions had sent out notices of intent to dismiss the petition for post-conviction relief based on inactivity pursuant to I.R.C.P. Rule 40(c). It is clear that the court never addressed the merits of the petition for post-conviction relief prior to dismissal of the petition. The Court went on to state:

We recognize and reiterate today that there is no right to effective assistance of

² Perhaps appointed counsel felt there was no meritorious response he could file in response to avoid dismissal. While appointed counsel does have a duty to communicate with his client, the failure to communicate would be harmless unless such better communication could have avoided dismissal of the petition on the merits.

counsel in post-conviction cases. We likewise recognize that “this Court has infrequently found reason to grant relief under I.R.C.P. 60(b)(6).” *Berg v. Kendall*, 147 Idaho 571, 576 n. 7, 212 P.3d 1001, 1006 n. 7 (2009). However, we are also cognizant that the Uniform Post-Conviction Procedure Act is “the exclusive means for challenging the validity of a conviction or sentence” other than by direct appeal. *Rhoades v. State*, 148 Idaho 215, 217, 220 P.3d 571, 573 (2009) (quoting *Hays v. State*, 132 Idaho 516, 519, 975 P.2d 1181, 1184 (Ct.App.1999)). Given the unique status of a post-conviction proceeding, and given the complete absence of meaningful representation in the only available proceeding for Eby to advance constitutional challenges to his conviction and sentence, we conclude that this case may present the “unique and compelling circumstances” in which I.R.C.P. 60(b)(6) relief may well be warranted.

Id., 148 Idaho at 737, 228 P.3d at 1004.

The Court then remanded the case back to the district court to determine whether the facts leading to dismissal of his petition were grounds for relief. The distinction between the Petitioner herein and Mr. Eby, is that the court never addressed the factual and legal merit of the petition for post-conviction relief. Similarly, in *Berg v. Kendall*, 147 Idaho 571, 212 P.3d 1001 (2009) the Court concluded that Rule 60(b)(6) should have been granted where a complaint filed on behalf of a minor child was dismissed with prejudice after counsel had been permitted to withdraw and there was no subsequent appearance pursuant to I.R.C.P. 11(b)(3). Clearly in *Berg* there was no dismissal on the merits of the complaint.

In both *Eby* and *Berg* there was no opportunity for appellate review of the merits of the petition or complaint, since dismissal was not based on the merits of the claims asserted. In the case of the petitioner herein, the petition for post-conviction relief with or without appointed counsel’s participation was dismissed on its merits or lack of merit and is presently the subject of a pending appeal.

The petitioner has not made any showing by way of affidavit or otherwise that there were any amendments to the petition that would have prevented summary dismissal or that there were any additional facts or legal authority that appointed counsel could have presented or argued that

would have prevented summary dismissal. The petitioner has made no cogent argument of a valid claim that could have withstood summary dismissal on the merits. Therefore, the petitioner has failed to make a proper showing for relief pursuant to I.R.C.P. 60(b)(6).

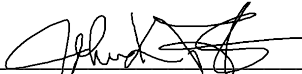
IV.

CONCLUSION AND ORDER

For the reasons set forth above, the motion for relief pursuant to I.R.C.P. 60(b)(6) is DENIED.

IT IS SO ORDERED.

Signed: 6/15/2017 09:36 AM



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 15th day of June, 2017 a true and correct copy of the foregoing ORDER DENYING MOTION FOR RELIEF FROM JUDGEMENT, I.R.C.P. 60(b)(6) was mailed, postage paid, electronically served and/or hand-delivered to the following persons:

Twin Falls County Conflict Public Defender
Clayne Zollinger
zollingerlaw@gmail.com

Twin Falls County Prosecutor
inbox.pros@co.twin-falls.id.us

Lawrence Scott Andrus
IDOC # 113829
ISCC – F-Block
P.O. Box 70010
Boise, Idaho 83707

Signed: 6/15/2017 10:14 AM


Deputy Clerk

June 13, 2017

Lawrence Scott Andrus
#113829 / ISCC / F Block
P.O. Box 70010
Boise, ID 83707

CLERK OF COURT
TWIN FALLS CO. IDAHO
FILED

2017 JUN 19 PM 3:33

BY _____ CLERK
Thy DEPUTY

Clerk of the Court
Twin Falls County Courthouse
P.O. Box 126
Twin Falls, ID 83303

RE: ANDRUS v. STATE, CV42-16-720 - IRCP 60(b)(6) Motion.

Dear Clerk:

On May 30, 2017, I filed with this Court a Motion for Relief from Judgment pursuant to IRCP 60(b)(6).

I was informed today that there was an objection filed regarding this motion on June 8, 2017, however, I have not been served (nor otherwise received) a copy of this objection. Please provide me with a copy of the filed objection at your earliest possible convenience. Additionally, please note that I have filed this (IRCP 60 (b)(6)) motion **pro se** and as such, should receive notice/service of all filings and/or Orders of the Court at the address above. By way of a copy of this letter, I am advising the county prosecutor of this matter as well.

Thank you for your assistance in this matter.

Best Regards,



Lawrence Scott Andrus

cc: Twin Falls County Prosecutor
file

Sharie Cooper

JUN 19 2017 AM 11:50

From: supremecourtdocuments@idcourts.net
Sent: Friday, June 16, 2017 04:26 PM
To: screek@co.jerome.id.us; ecf@ag.idaho.gov; scooper@co.twin-falls.id.us
Subject: 44686 - ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: ANDRUS.pdf; 44686.pdf

By _____

Clerk
Deputy Clerk

FILED PROOF OF SERVICE. -- SUSPENDED: TO 7-14-17 FOR NEW COUNSEL OR PROCEED PRO SE & RESET BRIEFING.

IDAHO SUPREME COURT

Clerk of the Courts
208-334-2210



IDAHO COURT OF APPEALS

PO Box 83720
Boise, Idaho 83720-0101

LAWRENCE SCOTT ANDRUS - # 113829
ISCC F-BLOCK
PO BOX 70010
BOISE ID 83707

COPY

PROOF OF SERVICE FILED – APPEAL SUSPENDED

Docket No. 44686-2016 LAWRENCE SCOTT ANDRUS v. STATE OF IDAHO
Twin Falls County District Court #CV42-16-720

A PROOF OF SERVICE RE: "Order Granting Motion To Withdraw as Counsel On Appeal" having been filed with this office on 6-14-17; therefore,

APPELLANT IS HEREBY NOTIFIED that the above-entitled matter is SUSPENDED to 7-14-17 for Notice of Appearance of new counsel or proceed pro se, at which time the briefing schedule will be reset.

✓ cc: All Counsel

Entered on JSI
By:  _____
168

2017 JUN 14 PM 4:20

Dennis Benjamin
ISB #4199
NEVIN, BENJAMIN, McKAY & BARTLETT LLP
303 West Bannock
P.O. Box 2772
Boise, Idaho 83701
Telephone: (208) 343-1000
Facsimile: (208) 345-8274

Attorney for Petitioner-Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

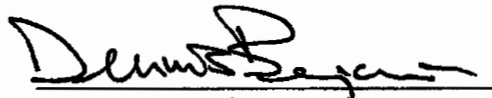
LAWRENCE SCOTT ANDRUS,)
)
Petitioner-Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

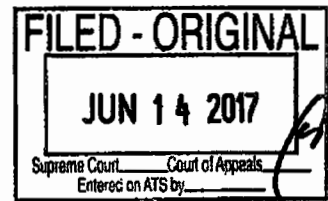
Supreme Court Docket No. 44686-2016
Twin Falls County No. CV42-16-720

PROOF OF SERVICE

I, Dennis Benjamin, hereby certify that, on the 14th day of June, 2017, I caused a true and correct copy of the Court's Order Granting Motion to Withdraw and to Stay Briefing Schedule to be mailed to: Lawrence Scott Andrus, #113829, ISCC F Block, P.O. Box 70010, Boise, ID 83707. I further certify that a copy of the transcripts on appeal and clerk's record was mailed to Mr. Andrus on April 28, 2017.

DATED this 14th day of June, 2017.


Dennis Benjamin



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 2017, I caused a true and correct copy of the foregoing document to be served on the following individuals by the method indicated below:

Idaho Attorney General Criminal Law Division P.O. Box 83720 Boise, ID 83720-0010	<input checked="" type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Faxed
Lawrence Scott Andrus 113829 ISCC F Block P.O. Box 70010 Boise, ID 83707	<input checked="" type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Faxed


Dennis Benjamin

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113029
Address IDAHO STATE CORRECTIONAL CENTER
P.O. Box 70010
BOISE, IDAHO 83707

2017 JUL 25 AM 11:14
BY _____ CLERK
PC DEPUTY

~~Defendant~~/Appellant
Petitioner

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)
)
Petitioner/Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV42-16-720
NOTICE OF APPEAL

TO: THE ABOVE RESPONDENTS, STATE OF IDAHO,
AND THE PARTY'S ATTORNEYS, GRANT LOEBS, TWIN FALLS COUNTY
PROSECUTOR AND THE CLERK OF THE ABOVE ENTITLED
COURT:

NOTICE IS HEREBY GIVEN THAT

1. The above named Appellant(s) LAWRENCE SCOTT ANDRUS
appeal(s) against the above named respondent(s) to the Idaho Supreme Court from (the final
judgment or order, (describe it) ORDER DENYING MOTION FOR RELIEF
FROM JUDGEMENT, I.R.C.P. 60(b)(6)

entered in the above-entitled action (proceeding) on the 15 day of July,
2017, Honorable Judge John K. Butler presiding.

NOTICE OF APPEAL - 1
Revised: 10/14/05

The entire reporter's transcript supplemented by the following:

Voir Dire examination of jury

Closing arguments of counsel

The following reporter's partial transcript: _____

The testimony of witness(es) _____

Conferences on requested instructions

Instructions verbally given by court

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

All requested and given jury instructions

The deposition of: _____

Plaintiff's motion for continuance of trial

6. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b)(1) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) That the appellant is exempt from paying the estimated transcript fee because the appellant is indigent

NOTICE OF APPEAL - 3

Revised 10/14/05

(c)(1) That the estimated fee for preparation of the clerk or agency's record has been paid.

(2) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent

(d)(1) That the appellate filing fee has been paid.

(2) That ~~appellate~~^{appellant} is exempt from paying the appellate filing fee because the appellant is indigent

(e) That service has been made upon all parties required to be served pursuant to Rule 20, and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED THIS 20th day of July, 2017.

Lawrence Scott Andrus
Appellant

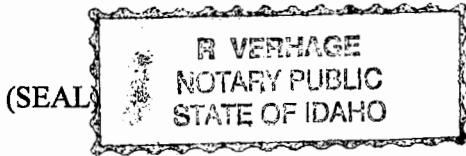
STATE OF IDAHO)
) ss
County of ADA)

Lawrence Scott Andrus, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of his ~~or her~~ knowledge and belief.

Lamone Scott And
Appellant

SUBSCRIBED AND SWORN to before me this 20th day of July,
2017.



[Signature]
Notary Public for Idaho
Commission expires: 5/13/19

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 20th day of July, 2017, I
mailed a true and correct copy of the NOTICE OF APPEAL via prison mail system for
processing to the U.S. mail system to:

**OFFICE OF THE ATTORNEY GENERAL
CRIMINAL DIVISION, APPELLATE UNIT
PO Box ~~87320~~ 83720
Boise, ID 83720-0010**

TWIN FALLS County Prosecuting Attorney

P.O. BOX 126

TWIN FALLS, ID 83303-0126

Lamone Scott And
Appellant

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

LAWRENCE SCOTT ANDRUS,)	
)	
Petitioner,)	
)	
vs.	)	Case No. CV42-16-720
)	
STATE OF IDAHO ,)	
)	
Respondent.)	
)	

ORDER DENYING MOTION FOR RELIEF FROM JUDGEMENT, I.R.C.P. 60(b)(6)

On May 30, 2017 the Petitioner filed a Motion for Relief From Judgement pursuant to I.R.C.P. 60(b)(6). In essence the petitioner argues that he has had a “complete absence of meaningful representation” by his appointed counsel which led to the dismissal of his petition for post-conviction relief.

On June 8, 2017 the State filed its Objection to Motion for Relief from Judgment. The State argues that the court has no jurisdiction to grant the requested relief because of a pending appeal; that the petitioner is not pro se; and that the motion is untimely since it was not filed within 6 months of the filing of the judgment.¹

¹ The State’s objection is without merit. An appeal does not cause the court to lose jurisdiction of a IRCP Rule 60(b) motion. I.A.R. 13(b)(6). The motion for relief pursuant to IRCP 60(b)(6) need only be filed within a reasonable time and that State has presented no argument that the time is unreasonable. The fact that the court has previously

There has been no request for oral argument and the court finding that oral argument is not necessary, the matter is hereby submitted without oral argument. I.R.C.P. 7(b)(3)(E).

I.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2016 the petitioner filed his Petition for Post-Conviction Relief (Petition) and counsel was appointed for the petitioner pursuant to his request. The Court on July 11, 2016 entered its Notice of Intent to Dismiss, wherein the Court detailed why the claims set forth in the Petition were without merit as a matter of law. Counsel for the petitioner did request and the court granted an extension of time to respond to the Notice of Intent to Dismiss. When no response was filed, the Court dismissed the Petition for the reasons stated in the Notice of Intent to Dismiss.

On September 26, 2016 a Judgment was entered, however since the Judgment did not comply with I.R.C.P. 54(a) and Amended Judgment was entered on January 9, 2017. The Petitioner has appealed the Amended Judgment.

II.

STANDARD

“Rule 60(b)(6) provides that the court may grant relief from a judgment for ‘any other reason justifying relief from the operation of the judgment.’ Relief can be granted under subsection six ‘only on a showing of ‘unique and compelling circumstances’ justifying relief.” *Profits Plus Capital Management, LLC v. Podesta*, 156 Idaho 873, 886, 332 P.3d 785, 798 (2014) (citing *Miller v. Haller*, 129 Idaho 345, 349, 924 P.2d 607, 611 (1996)). The decision whether to grant relief pursuant to I.R.C.P. 60(b) is a matter of discretion for the trial court and

appointed counsel for the petitioner does not preclude the petitioner from filing such a motion under the circumstances as alleged.

as such this court must recognize its discretion and act within the outer legal bounds of that discretion through an exercise of reason. *Id.* Our courts have “infrequently granted relief” under rule 60(b)(6). *Id.*

III.

ANALYSIS

The petitioner argues in his motion for relief pursuant to Rule 60(b)(6) that his appointed counsel did not adequately communicate with the petitioner and that the petitioner’s failure to respond to the Notice of Intent to Dismiss or counsel’s failure to amend the petition for post-conviction relief resulted in a complete absence of counsel which should warrant the granting of relief pursuant to I.R.C.P. 60(b). The petitioner has not provided any information or affidavits in support of his motion demonstrating what amendments should have been made to the petition or what facts or authorities the petitioner had that should have been filed in response to the Notice of Intent to Dismiss.²

The Court dismissed the Petition on its merits or lack of merit as a matter of law. In *Eby v. State*, 148 Idaho 731, 228 P.3d 998 (2010), the Court held that the trial court had abused its discretion in failing to consider whether appointed counsel’s neglect resulting in dismissal for inactivity was a “unique and compelling circumstance” justifying relief. The facts in *Eby* show that the trial court on multiple occasions had sent out notices of intent to dismiss the petition for post-conviction relief based on inactivity pursuant to I.R.C.P. Rule 40(c). It is clear that the court never addressed the merits of the petition for post-conviction relief prior to dismissal of the petition. The Court went on to state:

We recognize and reiterate today that there is no right to effective assistance of

² Perhaps appointed counsel felt there was no meritorious response he could file in response to avoid dismissal. While appointed counsel does have a duty to communicate with his client, the failure to communicate would be harmless unless such better communication could have avoided dismissal of the petition on the merits.

counsel in post-conviction cases. We likewise recognize that “this Court has infrequently found reason to grant relief under I.R.C.P. 60(b)(6).” *Berg v. Kendall*, 147 Idaho 571, 576 n. 7, 212 P.3d 1001, 1006 n. 7 (2009). However, we are also cognizant that the Uniform Post-Conviction Procedure Act is “the exclusive means for challenging the validity of a conviction or sentence” other than by direct appeal. *Rhoades v. State*, 148 Idaho 215, 217, 220 P.3d 571, 573 (2009) (quoting *Hays v. State*, 132 Idaho 516, 519, 975 P.2d 1181, 1184 (Ct.App.1999)). Given the unique status of a post-conviction proceeding, and given the complete absence of meaningful representation in the only available proceeding for Eby to advance constitutional challenges to his conviction and sentence, we conclude that this case may present the “unique and compelling circumstances” in which I.R.C.P. 60(b)(6) relief may well be warranted.

Id., 148 Idaho at 737, 228 P.3d at 1004.

The Court then remanded the case back to the district court to determine whether the facts leading to dismissal of his petition were grounds for relief. The distinction between the Petitioner herein and Mr. Eby, is that the court never addressed the factual and legal merit of the petition for post-conviction relief. Similarly, in *Berg v. Kendall*, 147 Idaho 571, 212 P.3d 1001 (2009) the Court concluded that Rule 60(b)(6) should have been granted where a complaint filed on behalf of a minor child was dismissed with prejudice after counsel had been permitted to withdraw and there was no subsequent appearance pursuant to I.R.C.P. 11(b)(3). Clearly in *Berg* there was no dismissal on the merits of the complaint.

In both *Eby* and *Berg* there was no opportunity for appellate review of the merits of the petition or complaint, since dismissal was not based on the merits of the claims asserted. In the case of the petitioner herein, the petition for post-conviction relief with or without appointed counsel’s participation was dismissed on its merits or lack of merit and is presently the subject of a pending appeal.

The petitioner has not made any showing by way of affidavit or otherwise that there were any amendments to the petition that would have prevented summary dismissal or that there were any additional facts or legal authority that appointed counsel could have presented or argued that

would have prevented summary dismissal. The petitioner has made no cogent argument of a valid claim that could have withstood summary dismissal on the merits. Therefore, the petitioner has failed to make a proper showing for relief pursuant to I.R.C.P. 60(b)(6).

IV.

CONCLUSION AND ORDER

For the reasons set forth above, the motion for relief pursuant to I.R.C.P. 60(b)(6) is DENIED.

IT IS SO ORDERED.

Signed: 6/15/2017 09:38 AM



John K. Butler, District Judge

Inmate Name LAWRENCE SCOTT ANDRUS
IDOC No. 113829
Address IDAHO STATE CORRECTIONAL CENTER
P.O. BOX 70010
BOISE, IDAHO 83707

2017 JUL 25 AM 11:14

BY _____
CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS)
)
Petitioner-Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)
_____)

Case No. CV42-16-720

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, LAWRENCE SCOTT ANDRUS, Petitioner-Appellant in the
above entitled matter and moves this Honorable Court to grant Petitioner-Appellant's Motion for
Appointment of Counsel for the reasons more fully set forth herein and in the Affidavit in
Support of Motion for Appointment of Counsel.

1. Petitioner-Appellant is currently incarcerated within the Idaho Department of
Corrections under the direct care, custody and control of Warden Randy Blades,
of the Idaho State Correctional Center.

2. The issues to be presented in this case may become too complex for the
Petitioner-Appellant to properly pursue. Petitioner-Appellant lacks the knowledge and skill
needed to represent him/herself.

3. Petitioner-Appellant required assistance completing these pleadings, as he/~~she~~ was unable to do it him/~~herself~~.

4. Other: Petitioner-Appellant lacks access to law library at I.S.CC.

DATED this 20th day of July, 2017.

Lawrence Scott Andrus
Petitioner-Appellant

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

Lawrence Scott Andrus, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho State Correctional Center, under the care, custody and control of Warden Randy Blades;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

WHEREFORE, Petitioner-Appellant respectfully prays that this Honorable Court issue it's Order granting Petitioner-Appellant's Motion for Appointment of Counsel to
MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 2

Revised: 5/17/17

represent his/~~her~~ interest, or in the alternative grant any such relief to which it may appear the Petitioner-Appellant is entitled to.

DATED This 20th day of July, 2017.

Lawrence Scott Andrus
Petitioner-Appellant

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date: 20 July 2017

LAWRENCE SCOTT ANDRUS
Typed/Printed

Lawrence Scott Andrus
Signature

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20th day of July, 2017, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Twin Falls County Prosecuting Attorney

P.O. Box 126

Twin Falls, Idaho 83303-0126


Petitioner-Appellant

2017 JUL 25 AM 11:15

BY _____

CLERK

DEPUTY

LAWRENCE SCOTT ANDRUS

Full Name of Party Filing Document

IDOC# 113829

Mailing Address (Street or Post Office Box)

IDAHO STATE CORRECTIONAL CENTER

City, State and Zip Code

P.O. BOX 70010

Telephone

BOISE, IDAHO 83707

Email Address (if any)

Petitioner/Appellant

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS

Plaintiff,

vs.

STATE OF IDAHO

Defendant.

Case No. CV42-16-720

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

Plaintiff Defendant asks to start or defend this case on partial payment of court fees, and certifies

1. This is an action for (type of case) _____ . I believe I am entitled to get what I am asking for.

2. I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the

activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

(Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.)

IDENTIFICATION AND RESIDENCE:

Name: LAWRENCE SCOTT ANDRUS Other name(s) I have used: N/A
N/A
Address: 14601 So. Pleasant Valley Rd., Kuna, Idaho 83634
How long at that address? 29 months Phone: N/A
Year and place of birth: 18 Sep 1961, Salt Lake City, Utah, USA

DEPENDENTS:

I am single married. If married, you must provide the following information:

Name of spouse: N/A
N/A
My other dependents including minor children (use only initials and age to identify children) are: N/A
N/A
N/A
N/A

INCOME:

Amount of my income: \$ 0 per week month

Other than my inmate account I have outside money from: Occasional gift of nominal funds via money order from persons.

My spouse's income: \$ N/A per week month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>N/A</u>					
<u>N/A</u>					

List all other property owned by you and state its value.

Description (provide description for each item)	Value
Cash	<u>0.00</u>
Notes and Receivables	<u>0.00</u>
Vehicles	<u>0.00</u>
Bank/Credit Union/Savings/Checking Accounts	<u>0.00</u>
Stocks/Bonds/Investments/Certificates of Deposit	<u>0.00</u>
Trust Funds	<u>0.00</u>
Retirement Accounts/IRAs/401(k)s	<u>0.00</u>
Cash Value Insurance	<u>0.00</u>
Motorcycles/Boats/RVs/Snowmobiles	<u>0.00</u>
Furniture/Appliances	<u>0.00</u>
Jewelry/Antiques/Collectibles	<u>0.00</u>
Description (provide description for each item)	
TVs/Stereos/Computers/Electronics	<u>0.00</u>
Tools/Equipment	<u>0.00</u>
Sporting Goods/Guns	<u>0.00</u>
Horses/Livestock/Tack	<u>0.00</u>

Other (describe) N/A 0.00
N/A 0.00
N/A 0.00

EXPENSES: (List all of your monthly expenses.)

Expense	Average Monthly Payment
Rent/House Payment _____	<u>0.00</u>
Vehicle Payment(s) _____	<u>0.00</u>
Credit Cards (List last four digits of each account number.)	
<u>N/A</u> _____	<u>0.00</u>
<u>N/A</u> _____	<u>0.00</u>
<u>N/A</u> _____	<u>0.00</u>
Loans (name of lender and reason for loan)	
<u>N/A</u> _____	<u>0.00</u>
<u>N/A</u> _____	<u>0.00</u>
Electricity/Natural Gas _____	<u>0.00</u>
Water/Sewer/Trash _____	<u>0.00</u>
Phone _____	<u>0.00</u>
Groceries _____	<u>0.00</u>
Clothing _____	<u>0.00</u>
Auto Fuel _____	<u>0.00</u>
Auto Maintenance _____	<u>0.00</u>
Cosmetics/Haircuts/Salons _____	<u>0.00</u>
Entertainment/Books/Magazines _____	<u>0.00</u>
Home Insurance _____	<u>0.00</u>

Expense	Average Monthly Payment
Auto Insurance _____	0.00
Life Insurance _____	0.00
Medical Insurance _____	0.00
Medical Expense _____	0.00
Other <u>N/A</u> _____	0.00
<u>N/A</u> _____	0.00

MISCELLANEOUS:

How much can you borrow? \$ 0.00 From whom? N/A
 When did you file your last income tax return? 2010 Amount of refund: \$ N/A

PERSONAL REFERENCES: (These persons must be able to verify information provided.)

Name	Address	Phone	Years Known
<u>MARK HOLMSTEAD, CPA,</u>	<u>401 GOODING ST. N.,</u>	<u>TWIN FALLS, ID,</u>	<u>208-734-2077, 30</u>
<u>SCOTT E. MALONE,</u>	<u>2179 BITTERROOT DR.,</u>	<u>TWIN FALLS, ID,</u>	<u>208-733-8883, 40</u>

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date: 20 July 2017
LAWRENCE SCOTT ANDRUS
 Typed/printed

Lawrence Scott Andrus
 Signature

Offender Account Activity (7/20/2016 - 7/20/2017)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
07/18/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$74.77	(\$2.77)	\$72.00
07/13/2017	Photocopies	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho Dept. of Correction	\$75.17	(\$0.40)	\$74.77
07/12/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$75.40	(\$0.23)	\$75.17
07/11/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$89.54	(\$14.14)	\$75.40
07/10/2017	Postage Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Purchase Power	\$90.00	(\$0.46)	\$89.54
07/05/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$98.70	(\$8.70)	\$90.00
06/29/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$100.00	(\$1.30)	\$98.70
06/27/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$122.46	(\$22.46)	\$100.00
06/23/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$124.65	(\$2.19)	\$122.46
06/23/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$125.00	(\$0.35)	\$124.65
06/20/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$140.87	(\$15.87)	\$125.00
06/20/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$145.00	(\$4.13)	\$140.87
06/14/2017	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	RICHARD TRAVIS		\$45.00	\$100.00	\$145.00
06/13/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$70.00	(\$25.00)	\$45.00
06/06/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$91.80	(\$21.80)	\$70.00
06/01/2017	Photocopies	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho Dept. of Correction	\$92.70	(\$0.90)	\$91.80
05/31/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$100.97	(\$8.27)	\$92.70
05/31/2017	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	JOHN DOHERTY		\$70.97	\$30.00	\$100.97
05/30/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$106.48	(\$35.51)	\$70.97
05/27/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$109.33	(\$2.85)	\$106.48
05/27/2017	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	RICHARD TRAVIS		\$9.33	\$100.00	\$109.33
05/26/2017	Postage Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Purchase Power	\$10.00	(\$0.67)	\$9.33

Offender Account Activity (7/20/2016 - 7/20/2017)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
05/23/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$20.00	(\$10.00)	\$10.00
05/16/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$23.00	(\$3.00)	\$20.00
05/10/2017	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Medical - IDOC	\$20.00	\$3.00	\$23.00
05/09/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$22.00	(\$2.00)	\$20.00
05/02/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$29.00	(\$7.00)	\$22.00
04/25/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$34.00	(\$5.00)	\$29.00
04/24/2017	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Medical - IDOC	\$37.00	(\$3.00)	\$34.00
04/24/2017	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Medical - IDOC	\$40.00	(\$3.00)	\$37.00
04/18/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$46.89	(\$6.89)	\$40.00
04/15/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$50.00	(\$3.11)	\$46.89
04/11/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$60.00	(\$10.00)	\$50.00
04/04/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$75.00	(\$15.00)	\$60.00
03/28/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$80.00	(\$5.00)	\$75.00
03/21/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$98.58	(\$18.58)	\$80.00
03/16/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$100.00	(\$1.42)	\$98.58
03/15/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$103.18	(\$3.18)	\$100.00
03/14/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$120.00	(\$16.82)	\$103.18
03/11/2017	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	RICHARD TRAVIS		\$20.00	\$100.00	\$120.00
02/07/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$30.00	(\$10.00)	\$20.00
01/31/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$50.00	(\$20.00)	\$30.00
01/24/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$60.00	(\$10.00)	\$50.00
01/17/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$82.55	(\$22.55)	\$60.00

Offender Account Activity (7/20/2016 - 7/20/2017)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
01/13/2017	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$85.00	(\$2.45)	\$82.55
01/10/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$105.00	(\$20.00)	\$85.00
01/04/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$106.59	(\$1.59)	\$105.00
01/03/2017	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$130.00	(\$23.41)	\$106.59
12/28/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	SONDRA SWANSON		\$80.00	\$50.00	\$130.00
12/27/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$94.09	(\$14.09)	\$80.00
12/27/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$108.93	(\$14.84)	\$94.09
12/21/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$111.91	(\$2.98)	\$108.93
12/20/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$149.06	(\$37.15)	\$111.91
12/16/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	TERRY KNISS		\$99.06	\$50.00	\$149.06
12/15/2016	Special Event - IM Donations	0113829	ANDRUS, LAWRENCE SCOTT	00		IDOC - Special Events	\$109.06	(\$10.00)	\$99.06
12/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$111.91	(\$2.85)	\$109.06
12/13/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$144.83	(\$32.92)	\$111.91
12/13/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Medical - IDOC	\$149.83	(\$5.00)	\$144.83
12/08/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	RICHARD TORRES		\$49.83	\$100.00	\$149.83
12/06/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$77.85	(\$28.02)	\$49.83
11/29/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$94.48	(\$16.63)	\$77.85
11/23/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$95.00	(\$0.52)	\$94.48
11/23/2016	Keefe	0113829	ANDRUS, LAWRENCE SCOTT	00	TERRY KNISS		\$20.00	\$75.00	\$95.00
11/21/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$25.00	(\$5.00)	\$20.00
11/15/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$35.29	(\$10.29)	\$25.00
11/14/2016	Sales Tax	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho State Tax Commission	\$35.65	(\$0.36)	\$35.29

Offender Account Activity (7/20/2016 - 7/20/2017)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
11/14/2016	Photocopies	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho Dept. of Correction	\$41.29	(\$5.64)	\$35.65
11/14/2016	Sales Tax	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho State Tax Commission	\$41.30	(\$0.01)	\$41.29
11/14/2016	Photocopies	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho Dept. of Correction	\$41.69	(\$0.39)	\$41.30
11/09/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$62.93	(\$21.24)	\$41.69
11/08/2016	Postage Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Purchase Power	\$67.64	(\$4.71)	\$62.93
11/07/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Medical - IDOC	\$72.64	(\$5.00)	\$67.64
11/05/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$74.60	(\$1.96)	\$72.64
11/05/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$76.33	(\$1.73)	\$74.60
11/01/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$99.03	(\$22.70)	\$76.33
11/01/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$125.00	(\$25.97)	\$99.03
10/25/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$133.00	(\$8.00)	\$125.00
10/18/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$159.83	(\$26.83)	\$133.00
10/11/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$180.00	(\$20.17)	\$159.83
10/05/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$202.54	(\$22.54)	\$180.00
10/05/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Medical - IDOC	\$207.54	(\$5.00)	\$202.54
10/02/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$210.00	(\$2.46)	\$207.54
09/27/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$225.00	(\$15.00)	\$210.00
09/21/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$256.80	(\$31.80)	\$225.00
09/20/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$282.00	(\$25.20)	\$256.80
09/14/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$317.72	(\$35.72)	\$282.00
09/14/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho Dept. of Correction	\$325.72	(\$8.00)	\$317.72
09/14/2016	Medical Payable	0113829	ANDRUS, LAWRENCE SCOTT	00		Idaho Dept. of Correction	\$330.72	(\$5.00)	\$325.72

Offender Account Activity (7/20/2016 - 7/20/2017)

Trans Date	Trans Type	Offender Number	Offender Name	Living Unit	Received From	Paid To	Starting Balance	Trans Amount	Ending Balance
09/13/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$345.56	(\$14.84)	\$330.72
09/08/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$366.76	(\$21.20)	\$345.56
09/07/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$369.18	(\$2.42)	\$366.76
09/07/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$371.65	(\$2.47)	\$369.18
09/07/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$375.16	(\$3.51)	\$371.65
09/06/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$403.31	(\$28.15)	\$375.16
09/06/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$404.35	(\$1.04)	\$403.31
08/30/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$456.46	(\$52.11)	\$404.35
08/29/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$452.11	\$4.35	\$456.46
08/23/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$500.00	(\$47.89)	\$452.11
08/17/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$529.99	(\$29.99)	\$500.00
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$531.68	(\$1.69)	\$529.99
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$532.20	(\$0.52)	\$531.68
08/14/2016	Phone Credits	0113829	ANDRUS, LAWRENCE SCOTT	00		CenturyLink	\$535.00	(\$2.80)	\$532.20
08/12/2016	Money Order	0113829	ANDRUS, LAWRENCE SCOTT	00	ILLEDGEABLE		\$335.00	\$200.00	\$535.00
08/09/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$355.64	(\$20.64)	\$335.00
08/02/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$385.65	(\$30.01)	\$355.64
07/26/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$405.65	(\$20.00)	\$385.65
07/20/2016	Commissary Sale	0113829	ANDRUS, LAWRENCE SCOTT	00		Commissary Sales	\$418.37	(\$12.72)	\$405.65

I hereby certify that these records are true and correct copies of official records or reports or entries therein of the Idaho Department of Correction.

Date: 7/20/17

Signature: 

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2017 JUL 27 PM 5: 01

BY _____
CLERK

PC
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,	)	CASE NO. CV 42-16-720
)	
Petitioner/Appellant,)	
)	
vs.	)	NOTICE AND ORDER
	)	APPOINTING STATE
	)	APPELLATE PUBLIC
STATE OF IDAHO,	)	DEFENDER IN DIRECT
	)	APPEAL
Respondent.)	
_____)	

TO: The Office of the Idaho State Appellate Public Defender:

The above named Petitioner/Appellant has filed a notice of appeal on July 25, 2017, and has moved the Court for appointment of an appellate public defender in direct appeal of the Honorable John Butler, Fifth Judicial District Judge, Twin Falls County.

This Court being satisfied that said petitioner-appellant is a needy person entitled to the services of the State Appellate Public Defender per §19-863A, Idaho Code.

IT IS HEREBY ORDERED, that you are appointed to represent the petitioner-appellant in all matters as indicated herein, or until relieved by further order of the court.

IT IS HEREBY ORDERED, pursuant to I.A.R. Rule 1, the parties, the Clerk of the court and the Court Reporter, shall follow the established Idaho Appellate Rules in the preparation of this appeal record.

IT IS FURTHER ORDERED that the State Appellate Public Defender's Office is provided the following information by the Court:

- 1) The petitioner is in the custody of the Idaho State Board of Corrections.
- 2) Petitioner is currently being processed through Boise.
- 3) A copy of the Notice of Appeal or Application.
- 4) A copy of the Register of Actions in this matter.

IT IS SO ORDERED,

DATED

A handwritten signature in black ink, appearing to read "John Butler", written over a horizontal line.

John Butler, District Judge

CERTIFICATE OF SERVICE

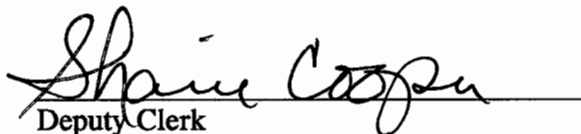
I HEREBY CERTIFY that I have served a true and correct copy of the Notice and Order Appointing State Appellate in Direct Appeal by email:

ERIC FREDERICKSEN
State Appellate Public Defender
322 East Front Street, Suite 570
Boise, ID 83702
documents@sapd.state.id.us

Idaho Supreme Court
Attn: Appeals
451 W. State St.
Boise, ID 83720
supremecourtdocuments@idcourts.net

Office of the Attorney General
Statehouse Room 210
P.O. Box 83720
Boise, ID 83720
ecf@ag.idaho.gov

Grant Loeb
Twin Falls Prosecuting Attorney
P.O. Box 126
Twin Falls, ID 83303-0126
inbox.pros@co.twin-falls.id.us


Deputy Clerk

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT FILED:

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED: Yes

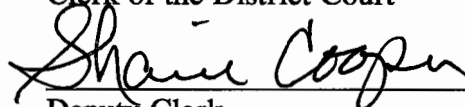
ESTIMATED NUMBER OF PAGES:

IF SO, NAME OF EACH REPORTER OF WHOM A TRANSCRIPT HAS BEEN REQUESTED AS NAMED BELOW AT THE ADDRESS SET OUT BELOW:

Name and address: Court Reporter not served

DATED: July 27, 2017

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

Sharie Cooper

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

From: supremecourtdocuments@idcourts.net
Sent: Thursday, August 10, 2017 08:24 AM
To: ecf@ag.idaho.gov; scooper@co.twin-falls.id.us; screek@co.jerome.id.us
Subject: 44686 - ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: ANDRUS.pdf

2017 AUG 17 AM 8:09

BY _____
CLERK
pc
DEPUTY

RESET DUE DATE - APPELLANT'S BRIEF DUE 9-14-17

IDAHO SUPREME COURT

Clerk of the Courts
(208-334-2210)



IDAHO COURT OF APPEALS

PO Box 83720
Boise, Idaho 83720-0101

LAWRENCE SCOTT ANDRUS - IDOC No. 113829
ISCC F-BLOCK
P. O. BOX 70010
BOISE, ID 83707

COPY

BRIEFING RESET - APPELLANT'S BRIEF(S) DUE

Docket No.
44686-2016

LAWRENCE SCOTT ANDRUS v.
STATE OF IDAHO

Twin Falls County District Court
#CV42-16-720

Be advised that BRIEFING in the above-named appeal has been reset.

The APPELLANT'S BRIEF must be filed by SEPTEMBER 14, 2017

A

08/10/2017 SV


For the Court:
Karel A. Lehrman
Clerk of the Courts

Sharie Cooper

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

From: supremecourtdocuments@idcourts.net
Sent: Monday, August 21, 2017 01:47 PM
To: EFREDERICKSEN@SAPD.STATE.ID.US; mlara@sapd.state.id.us;
JBUTLER@COJEROME.ID.US; scooper@co.twin-falls.id.us; documents@sapd.state.id.us;
screek@co.jerome.id.us; ecf@ag.idaho.gov
Subject: 45297 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 45297 ORDER.pdf; 45297 NOA.pdf; 45297 SAPD.pdf; 45297 CC.pdf

2017 AUG 23 AM 9:33

BY:  CLERK
DEPUTY

FILED NOTICE OF APPEAL - TRANSCRIPTS REQUESTED--Note: the hearings were not specified by dates/titles nor, does it appear that any hearings were held in this case. SEE ALL ATTACHMENTS. Please review the CLERK'S CERTIFICATE OF APPEAL and notify the Court of any errors. **DUE DATE SET - CLERK'S RECORD SHALL BE FILED WITH THIS COURT BY 10-23-17**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED
2017 JUL 27 PM 5:01

LAWRENCE SCOTT ANDRUS,

Petitioner/Appellant,

vs

STATE OF IDAHO,

Respondent.

BY _____ CLERK

PC _____ DEPUTY

CASE NO. CV 42-16-720

CLERK'S CERTIFICATE
OF APPEAL

Supreme Court No. 45297

APPEAL FROM: Fifth Judicial District, Twin Falls County.
Honorable John K. Butler, presiding

CASE NUMBER FROM COURT: CV 42-16-720

ORDER OR JUDGMENT APPEALED FROM: Order Denying Motion for Relief
from Judgment, I.R.C.P. 60(b)(6) which was entered in the above-entitled matter on
June 15, 2017.

ATTORNEY FOR RESPONDENT: Lawrence Wasden

ATTORNEY FOR APPELLANT: Eric Fredericksen

APPEALED BY: Lawrence Scott Andrus

APPEALED AGAINST: State of Idaho

NOTICE OF APPEAL FILED: July 25, 2017

AMENDED APPEAL FILED:

NOTICE OF CROSS-APPEAL FILED:

AMENDED NOTICE OF CROSS-APPEAL FILED:

APPELLATE FEE PAID: Exempt

ESTIMATED CLERK'S RECORD FEE PAID: Exempt

CLERK'S CERTIFICATE OF APPEAL - 1



RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED:

RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT FILED:

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED: Yes

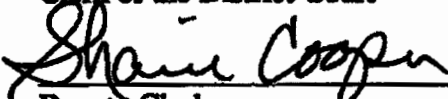
ESTIMATED NUMBER OF PAGES:

IF SO, NAME OF EACH REPORTER OF WHOM A TRANSCRIPT HAS BEEN REQUESTED AS NAMED BELOW AT THE ADDRESS SET OUT BELOW:

Name and address: Court Reporter not served

DATED: July 27, 2017

**KRISTINA GLASCOCK
Clerk of the District Court**


Deputy Clerk

Sharie Cooper

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

From: supremecourtdocuments@idcourts.net
Sent: Monday, August 21, 2017 01:47 PM
To: EFREDERICKSEN@SAPD.STATE.ID.US; mlara@sapd.state.id.us;
JBUTLER@CO.JEROME.ID.US; scooper@co.twin-falls.id.us; documents@sapd.state.id.us;
screek@co.jerome.id.us; ecf@ag.idaho.gov
Subject: 45297 - LAWRENCE ANDRUS v. STATE (Twin Falls CV42-16-720)
Attachments: 45297 ORDER.pdf; 45297 NOA.pdf; 45297 SAPD.pdf; 45297 CC.pdf

2017 SEP 11 PM 12:51

CLERK

SD DEPUTY

FILED NOTICE OF APPEAL - TRANSCRIPTS REQUESTED--Note: the hearings were not specified by dates/titles nor, does it appear that any hearings were held in this case. SEE ALL ATTACHMENTS. Please review the CLERK'S CERTIFICATE OF APPEAL and notify the Court of any errors. **DUE DATE SET - CLERK'S RECORD SHALL BE FILED WITH THIS COURT BY 10-23-17**

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

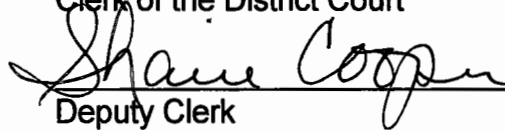
LAWRENCE SCOTT ANDRUS,)	
	)	SUPREME COURT NO. 45297
Petitioner/Appellant,	)	DISTRICT COURT NO. CV42-16-720
)	
vs.	)	CLERK'S CERTIFICATE
)	
STATE OF IDAHO,)	
)	
<u>Respondent.</u>)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 18th day of September, 2017.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)	
	)	SUPREME COURT NO. 45297
Petitioner/Appellant,	)	DISTRICT COURT NO. CV42-16-720
)	
vs.	)	CERTIFICATE OF EXHIBITS
)	
STATE OF IDAHO,)	
)	
<u>Respondent.</u>)	

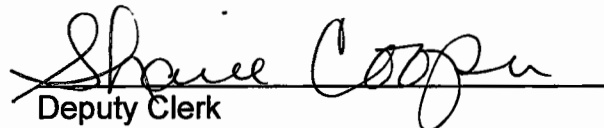
I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify:

That the following is a list of exhibits to the record that have been filed during the course of this case.

Transcript of Bond Hearing June 20, 2014, Filed April 19, 2016
Transcript of Motion of Defendant June 6, 2014, Filed April 19, 2016
Transcript of Jury Trial Day 1, November 6, 2014; Jury Trial Day 2, November 7, 2014; Sentencing December 5, 2014, Filed April 19, 2016

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 18th day of September, 2017.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

LAWRENCE SCOTT ANDRUS,)	
	)	SUPREME COURT NO. 45297
Petitioner/Appellant,	)	DISTRICT COURT NO. CV42-16-720
)	
vs.	)	CERTIFICATE OF SERVICE
)	
STATE OF IDAHO,)	
)	
<u>Respondent.</u>)	

I, KRISTINA GLASCOCK, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

ERIC FREDRICKSEN
State Appellate Public Defender
322 East Front Street, Suite 570
Boise, Idaho 83702

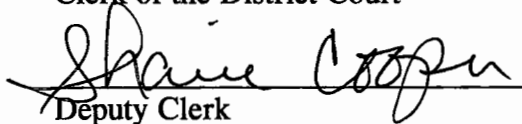
LAWRENCE WASDEN
Attorney General
Statehouse Mail Room 210
P.O. Box 83720
Boise, Idaho 83720-0010

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 18th day of September, 2017.

KRISTINA GLASCOCK
Clerk of the District Court


Deputy Clerk