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

<b>EZEQUIEL ADAN CAMPOS,</b>	)	
	)	<b>NO. 45591</b>
<b>Petitioner-Appellant,</b>	)	
	)	<b>ADA COUNTY NO. CV01-17-5435</b>
<b>v.</b>	)	
	)	
<b>STATE OF IDAHO,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Respondent.</b>	)	
<hr/>		

**BRIEF OF APPELLANT**

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

---

**HONORABLE RICHARD D. GREENWOOD**  
District Judge

---

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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	5
ARGUMENT .....	6
The District Court Erred In Summarily Dismissing Mr. Campos’ Claim That His Guilty Plea Was Coerced By His Attorney’s Misrepresentation Of The Plea Agreement And False Promises To Correct Errors In The Terms Of The Argument At A Later Date Because The Claim Presents A Genuine Issue Of Material Fact .....	6
A. Introduction .....	6
B. Standard Of Review .....	6
C. There Is A Genuine Issue Of Material Fact As To Whether Mr. Campos’ Guilty Plea Was Coerced By His Attorney’s Misrepresentation Of The Plea Agreement And False Promises To Correct Errors In The Terms Of The Argument At A Later Date .....	7
CONCLUSION .....	11
CERTIFICATE OF MAILING .....	12

## **TABLE OF AUTHORITIES**

### Cases

<i>Aragon v. State</i> , 114 Idaho 758 (1988).....	7
<i>Citibank (South Dakota), N.A. v. Carroll</i> , 148 Idaho 254 (2009) .....	6
<i>Hill v. Lockhard</i> , 474 U.S. 52 (1985).....	8
<i>Peltier v. State</i> , 119 Idaho 454 (1991) .....	7
<i>Rhoades v. State</i> , 148 Idaho 247 (2009).....	8
<i>Ridgley v. State</i> , 148 Idaho 671 (2010).....	8
<i>Small v. State</i> , 132 Idaho 327 (Ct. App. 1998).....	8
<i>State v. Yakovac</i> , 145 Idaho 437 (2008).....	6, 7, 8
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984) .....	7
<i>Thomas v. State</i> , 145 Idaho 765 (Ct. App. 2008).....	7
<i>Van v. Porteuf Med. Ctr.</i> , 147 Idaho 552 (2009).....	6
<i>Vavold v. State</i> , 148 Idaho 44 (2009).....	8

### Rules

Rule 35 .....	3, 9
---------------	------

### Statutes

I.C. § 19-4901 .....	7
I.C. § 19-4906 .....	6
I.C. § 19-4911 .....	7

### Additional Authorities

<i>Black's Law Dictionary</i> , 991 (7th Ed.1999) .....	8
---	---

## STATEMENT OF THE CASE

### Nature of the Case

Ezequiel Campos appeals from the district court's Judgment summarily dismissing his petition for post-conviction relief. Mr. Campos asserts that the district court erred in summarily dismissing his claim that his guilty plea was not knowing, intelligent, and voluntary because his attorney misrepresented the plea agreement. Mr. Campos understood that, as a term of the plea agreement, his sentence would be concurrent. However, the sentence was imposed consecutive to another case. Mr. Campos acknowledges that he was informed by the district court that his sentence could be imposed consecutively. However, he asserts that his attorney told him to "roll with it" and "lie" to the court about his understanding of the agreement because his attorney would correct the issue later. Mr. Campos asserts that he presented an issue of material fact as to whether the plea agreement was misrepresented to him by his attorney and whether the resulting guilty plea was knowing, intelligent, and voluntary. He asserts that an evidentiary hearing had to be held to conduct credibility determinations and, as a result, that the district court erred in summarily dismissing this claim.

### Statement of the Facts and Course of Proceedings

In June of 2016, Mr. Campos was sentenced to a unified sentence of five years, with four years fixed, to be served consecutive to a Canyon County case, for his unlawful possession of a weapon by a convicted felon conviction. (R., p.6.) Mr. Campos did not appeal his conviction. (R., p.6.)

On March 20, 2017, Mr. Campos filed a timely Petition for Post Conviction Relief. (R., pp.5-25.) He asserted numerous claims: ineffective assistance of counsel for filing a motion

to disqualify the district court judge without petitioner's permission; failure of counsel to refund petitioner's money after he was disbarred; ineffective assistance of counsel for recommending that petitioner agree with everything that occurred at his hearings, including the imposition of a consecutive sentence, because any issues would be fixed later; improper guilty plea because the plea was not knowing, intelligent, or voluntary; ineffective assistance of counsel for coercing a guilty plea that not knowing, intelligent, or voluntary; and violation of Mr. Campos' rights due to his exclusion from a law suit related to Idaho's public defense system. (R., pp.5-25.) Mr. Campos also filed a Motion and Affidavit in Support for Appointment of Counsel. (R., pp.55-57.) The motion was granted and counsel was appointed. (R., p.63.)

On July 21, 2017, the State filed an Answer to Petition admitting paragraphs one through four and denying all claims in the remaining paragraphs. (R., pp.73-74.) On the same day, the State also filed a Motion for Summary Disposition and Judicial Notice and Exhibits 1-3. (R., pp.87-115.) The State sought dismissal because all of the claims in the petition "fail to raise genuine issues of material fact, are bare and conclusory, are disproven by the record or were waived." (R., pp.87-88.)

In the State's Brief in Support of Motion for Summary Disposition the State asserted the following: Any issues with Mr. Campos' guilty plea, regarding a concurrent sentence instead of the imposed consecutive sentence, are deficient because it is contrary to the record as Mr. Campos testified that the entirety of the plea agreement was put on the record and that he understood his sentence could be consecutive. (R., pp.81-83.) Mr. Campos' claim that his guilty plea was involuntary because his attorney promised his sentence would run concurrently with a Canyon County case is contrary to the record as Mr. Campos stated there were no other promises upon which he was relying. (R., p.83.) The claim related to money owed to Mr. Campos by a

disbarred attorney fails to present an issue of material fact and did not prejudice Mr. Campos. (R., pp.83-84.) The failure to consult about a motion to disqualify claim was contrary to the record, as no such motion was filed. (R., p.84.) Claims related to the public defense system and related law suit must be dismissed as a bare and conclusory and/or was waived by the failure to address the claim in an appeal. (R., pp.84-85.)

Mr. Campos filed a Memorandum in Opposition to State's Motion for Summary Disposition. (R., pp.121-125.) He argued that Mr. Campos' counsel informed him that the plea agreement would include as a term that his time would be served concurrently. (R., p.124.) His attorney advised him to just "agree" at the change of plea hearing and assured him that the issue would be clarified at the sentencing and, later, pursuant to a Rule 35 motion. (R., p.124.) He asserted that he had established deficient performance because it was unreasonable to misstate the terms of the plea agreement. (R., p.125.) He also asserted he had established prejudice because he entered his guilty plea under the impression that there was an agreement for concurrent time and "had he known that that agreement did not actually exist, a reasonable probability exists that he would have rejected the actual agreement and proceeded to trial." (R., p.125.) He then noted that, regardless, the plea could not have been knowing, voluntary, and intelligent if it was based upon misinformation. (R., p.125.) Mr. Campos then submitted the remaining claims on the information contained in the petition. (R., p.125.)

The case proceeded to a hearing on the motion for summary dismissal. (R., pp.127-128.) At the hearing, the parties provided argument on the only claim addressed by Mr. Campos in his response to the motion for summary dismissal. (Tr., p.7, L.8 – p.15, Ls.8-18.) The district court then orally addressed each of the claims. (Tr., p.25, L.12 – p.29, L.15.) The district court dismissed the claim that Mr. Campos was owed money because he failed to support his claim

with evidence and there was no prejudice (Tr., p.25, Ls.12-22); the claim regarding the motion to disqualify because the motion was filed by the State and not Mr. Campos' counsel and, therefore, lacked evidentiary support (Tr., p.25, L.23 – p.26, L.7); claims related to representation by a public defender and a related lawsuit were dismissed as bare and conclusory (Tr., p.26, L.8 – p.27, L.8); and the claims related to the guilty plea because Mr. Campos was informed that his sentence could be consecutive and the underlying record did not support his assertions in his petition (Tr., p.27, L.22 – p.29, L.15).

As discussed at the hearing, the transcripts of the change of plea and sentencing hearings from Mr. Campos' underlying case were provided as an exhibit after the hearing. (R., pp.129-140.) Following the oral dismissal of Mr. Campos' claims, the district court entered a Judgment dismissing the petition for post-conviction relief. (R., p.143.) Mr. Campos filed a Notice of Appeal timely from the district court's Judgment. (R., pp.148-150.)



## ISSUE

Did the district court err in summarily dismissing Mr. Campos' claim that his guilty plea was coerced by his attorney's misrepresentation of the plea agreement and false promises to correct errors in the terms of the argument at a later date because the claim presents a genuine issue of material fact?

## ARGUMENT

### The District Court Erred In Summarily Dismissing Mr. Campos' Claim That His Guilty Plea Was Coerced By His Attorney's Misrepresentation Of The Plea Agreement And False Promises To Correct Errors In The Terms Of The Argument At A Later Date Because The Claim Presents A Genuine Issue Of Material Fact

#### A. Introduction

Mr. Campos asserts that his claim that his plea was not knowing, intelligent, and voluntary due to his attorney's misrepresentation of the plea agreement presented a genuine issue of material fact. As such, the district court erred in summarily dismissing the claim.

#### B. Standard Of Review

"Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, either pursuant to motion of a party or upon the trial court's own initiative." *State v. Yakovac*, 145 Idaho 437, 444 (2008). "When reviewing the grant of a motion for summary judgment, the appellate courts apply the same standard used by the district court in ruling on the motion." *Citibank (South Dakota), N.A. v. Carroll*, 148 Idaho 254, 257 (2009) (citing *Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 556 (2009)). Likewise, when reviewing a district court's order of summary dismissal in a post-conviction relief proceeding, the reviewing court applies the same standard as that applied by the district court. *Yakovac*, 145 Idaho at 444. Thus, when reviewing such a dismissal, the reviewing court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file. *Id.*

C. There Is A Genuine Issue Of Material Fact As To Whether Mr. Campos' Guilty Plea Was Coerced By His Attorney's Misrepresentation Of The Plea Agreement And False Promises To Correct Errors In The Terms Of The Argument At A Later Date

A Petition for Post-Conviction Relief is separate and distinct from the underlying criminal action which led to the petitioner's conviction. *Peltier v. State*, 119 Idaho 454, 456 (1991). It is a civil proceeding governed by the Uniform Post-Conviction Procedure Act (*hereinafter*, UPCPA) (I.C. §§ 19-4901 to 4911) and the Idaho Rules of Civil Procedure. *Peltier*, 119 Idaho at 456. A post-conviction petition initiates a proceeding that is civil in nature and, like a plaintiff in a civil action, the applicant must prove his or her allegations upon which the requests for relief are based by a preponderance of the evidence. *State v. Yakovac*, 145 Idaho 437, 443 (2008). However, unlike a plaintiff in other civil cases, the original post-conviction petition must allege more than merely "a short and plain statement of the claim." *Id.* at 443-44. The application must present or be accompanied by admissible evidence supporting the allegations contained therein, or else the post-conviction petition may be subject to dismissal. *Id.*

A claim of ineffective assistance of counsel may properly be brought through post-conviction proceedings. *Thomas v. State*, 145 Idaho 765, 769 (Ct. App. 2008). To prevail on a claim of ineffective assistance of counsel, a petitioner must first show that trial counsel's performance was constitutionally deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Aragon v. State*, 114 Idaho 758, 760 (1988). Where a defendant shows that his counsel was deficient, prejudice is shown if there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, at 694; *Aragon* at 760. When the case involves ineffective assistance that induced a guilty plea, prejudice is established when there exists a reasonable probability that the criminal defendant

would have insisted on going to trial but for counsel's deficient performance. *Ridgley v. State*, 148 Idaho 671, 676 (2010); *Hill v. Lockhard*, 474 U.S. 52, 59 (1985).

A district court may summarily dismiss a post-conviction petition only where the petition and supporting evidence fail to raise a genuine issue of material fact that, if resolved in the petitioner's favor, would entitle him or her to the relief requested. *Yakovac*, 145 Idaho at 444. "A material fact has 'some logical connection with the consequential facts[.]" *Black's Law Dictionary*, 991 (7th Ed.1999), and therefore is determined by its relationship to the legal theories presented by the parties." *Id.* The underlying facts alleged by the petitioner "must be regarded as true" for purposes of summary dismissal. *Rhoades v. State*, 148 Idaho 247, 250 (2009). Any disputed facts are construed in favor of the non-moving party, and "all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party." *Vavold v. State*, 148 Idaho 44, 45 (2009). If a question of material fact is presented, the district court must conduct an evidentiary hearing to resolve that question. *Small v. State*, 132 Idaho 327, 331 (Ct. App. 1998).

Mr. Campos asserts that he presented an issue of material of fact and the district court erred in summarily dismissing his petition without conducting an evidentiary hearing. Specifically, he asserts that his claim that his guilty plea was not entered knowingly, intelligently, or voluntarily because his attorney misrepresented the terms of the plea agreement, told him to agree with everything that the district court said at the change of plea hearing, and assured Mr. Campos that he would fix the issue later presents an issue of material fact.

In his Memorandum in Opposition to State's Motion for Summary Disposition, Mr. Campos more clearly articulated his claim. (R., pp.121-125.) Mr. Campos' counsel informed him that the plea agreement would include as a term that his time would be served

concurrently. (R., p.124.) When it came to his attention that there was an error in the plea agreement, his attorney advised him to just “agree” at the change of plea hearing and assured him that the issue would be clarified at the sentencing and, later, pursuant to a Rule 35 motion. (R., p.124.) Mr. Campos asserted he met his burden of establishing a genuine issue of material fact as he had established deficient performance (it was unreasonable to misstate the terms of the plea agreement) and prejudice (he entered his guilty plea under the impression that there was an agreement for concurrent time and “had he known that that agreement did not actually exist, a reasonable probability exists that he would have rejected the actual agreement and proceeded to trial”). (R., p.125.) He also noted that, regardless, the plea could not have been knowing, voluntary, and intelligent if it was based upon misinformation. (R., p.125.)

The issue was discussed in detail at the hearing on the motion for summary dismissal. At the hearing, the State asserted that Mr. Campos could not establish prejudice because even if his counsel mislead him, the district court corrected any potential error by informing Mr. Campos that his sentence could be consecutive. (Tr., p.8, Ls.2-17.) Mr. Campos acknowledged that he had been informed by the district court that his sentence could be consecutive at the change of plea hearing, but that he still believed his sentence would be concurrent and his attorney told him to just “roll with it” and “lie” to the court because it would be corrected later. (Tr., p.9, Ls.7-23, p.12, Ls.15-22; R., p.14.) Mr. Campos recognized that the sworn statements in his petition directly contradicted what he stated at the prior hearings and this disparity created an issue of material fact that had to be addressed at an evidentiary hearing. (Tr., p.14, L.7 – p.15, L.2.) The State argued that allowing the claim to go to an evidentiary hearing was improper because, to hold otherwise, would seriously call into question the finality of guilty pleas. (Tr., p.15, Ls.8-18.)

In ruling on the claim the district court noted:

And I think that disposes of everything except the central part which is the notion that he can stand before the judge, take an oath to swear and tell the truth, sign a document that he swears is true, not just – I mean, he affirms it at the time he signs it. But I ask him, “Did you sign this?” I think – I shouldn’t say that. But I am pretty sure it’s in the record. I’ve read too many records. But I ask him, “Did you sign this? Is this your signature? Can you affirm for me under oath the statements you gave me in here are true and complete?”

And his answer was, “Yes.”

So the question is, if we go to hearing and we have the evidence we have before us here, do I really have any credibility question to resolve? That’s really what it boils down to. And I don’t think so. I do not believe that merely being willing to put in a petition, that that, standing alone – which is what we have – is sufficient to raise a material question of fact for a hearing.

And I guess I will look forward with anticipation to see what the Court of Appeals or the Supreme Court thinks of that proposition. But just to make the record clear, even though this is on summary disposition, from my view of the record, the defendant was informed at least twice that his sentence could be consecutive. He was asked in writing whether any other promises had been made, and he answered no. He affirmed that written statement under oath in his colloquy with the Court at the time of his guilty plea. And he was specifically inquired whether or not there were any other promises made upon which he was relying – or statements. Statements or promises, I think it the way I phrased it. But the record will speak for itself in that regard. And, again, he denied that.

Simply, the, later saying, “Gee whiz, my lawyer told me to lie,” in and of itself is not sufficient. I think there would need to be something more by the corroboration, and we don’t have that.

(Tr., p.27, L.22 – p.29, L.15.)

Mr. Campos asserts that the district court’s ruling was erroneous. The district court failed to construe the contested facts in the favor of the non-moving party, Mr. Campos. At the summary dismissal stage, all that was required of Mr. Campos was that he establish an issue of material fact; a burden he met raising his guilty plea issue and supporting it with a sworn statement that he had followed his attorney’s advice and previously lied to the district court. Instead of conducting an evidentiary hearing to determine of whether Mr. Campos’ statements in

his petition, contradicting his earlier statements at the change of plea hearing, were credible, the district court pre-judged credibility and summarily dismissed the claim. The court determined that, regardless of the evidence that may be presented at an evidentiary hearing, the court would never find the petitioner credible and so no hearing was necessary. This ruling was in error. The district court was required to conduct an evidentiary hearing in order to make credibility determinations and ultimately determine whether Mr. Campos' guilty plea was knowing, intelligent, and voluntary.

Therefore, Mr. Campos asserts that he presented an issue of material fact and his case must be remanded for an evidentiary hearing to resolve the issue.

#### CONCLUSION

Mr. Campos respectfully requests that this Court vacate the district court's order and judgment summarily dismissing his post-conviction petition, and remand his case to the district court for further proceedings.

DATED this 6<sup>th</sup> day of August, 2018.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of August, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, electronically as follows:

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DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
Delivered via e-mail to: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

EAA/eas