

No. 19-7585

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 22 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JERRY LEONARD, ELLIS — PETITIONER
(Your Name)

vs.

STEVEN LITTLE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JERRY LEONARD, ELLIS
(Your Name)

SICI UNIT 03-31A. P.O. BOX 70010.
(Address)

BOISE, Id 83707.
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (ERROR) BY DENIEING THE APPELLANT MR(ELLIS) A CERTIFICATE OF APPEALABILITY.
2. DID THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (ERROR) BY DENIEING THE APPELLANT MR(ELLIS) MOTION FOR RECONSIDERATION FOR A CERTIFICATE OF APPEALABILITY.
3. DID THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO (ERROR) BY DENIEING THE APPELLANT MR(ELLIS) A CERTIFICATE OF APPEALABILITY.
4. DID THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO (ERROR) BY DENIEING THE APPELLANT MR(ELLIS) MOTION FOR RELIEF FROM JUDGMENT F.R.C.P. 60(b) MOTION ON THE FOLLOWING GROUNDS:
 - A. RULE 60(b)(1).
MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE.
 - B. RULE 60(b)(2).
NEWLY DISCOVERED EVIDENCE.

QUESTION(S) PRESENTED

- C. RULE 60(b)(6).
- A. IT IS IN THE INTEREST OF JUSTICE TO RECONSIDER (CLAIM 2) DUE TO THE INEFFECTIVE ASSISTANCE OF FIRST INSTANCE TRIAL COUNSEL'S FAILURE TO CHALLENGE THE FORCED AND NON-CONSENTIAL WARRANTLESS BLOOD DRAW. SEE: STRICKLAND V. WASHINGTON 466 U.S. 668, 30 LER 20674, 104 S.Ct. 2052 (1984).
- B. AND INEFFECTIVE ASSISTANCE OF POST-CONVICTION COUNSEL'S FAILURE TO HAVE RAISED THE SUBSTANTIVE CLAIM OF INEFFECTIVE ASSISTANCE OF FIRST INSTANCE TRIAL COUNSEL IN THE APPELLANT MR(ELLIS) INITIAL COLLATORAL PROCEEDINGS. SEE: MARTINEZ V. RYAN 566 U.S. 132 S.Ct. 1309 (2012).
5. DID THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO (ERROR) BY RULING THAT THE APPELLANT MR (ELLIS) INEFFECTIVE ASSISTANCE OF FIRST INSTANCE TRIAL COUNSEL (CLAIM 2) HAD NOT BEEN A SUBSTANTIVE CLAIM. SEE: STRICKLAND V. WASHINGTON 466 U.S. 668 (1984).
6. DID THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO (ERROR) RULING THAT CLAIM 2 WAS UNTIMELY. SEE: HERBST V. COOK 260 F.3d 1039, 1043, (9TH Cir 2001).
- QUESTIONS PRESENTED, -pg. ii

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
-

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CASES

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1. MILLER-EL V. COCKRELL 537 U.S. 322, 154 L.Ed2d 931, 123 S.Ct. 1029 (2003). Pg 4.
2. SLACK V. MCDONALD 529 U.S. 473, 484 (2000). Pg 4.
3. MARTINEZ V. RYAN 132 S.Ct. 1309 (2012). Pg 5.
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9. MISSOURI V. MCJEELY 569 U.S. (2013). Pg 17.
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11. SOPHANTHAVONG V. PALMATEER, 378 F.3d 859, 870 Pg 21. (9TH CIR 2004).
12. STATE V. WOOLERY 775 P.2d 1210, 1212 (Idaho 1984). Pg 22.
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18. TELLEZ V. DAVIS 2018 WL 1096437.*6 (W.D. TEXAS 2018). Pg 29.
19. BERKLEY V. MILLER, 2014 WL 2042249.*13 N.Y. (C.D. -
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20. HERBST V. COOK 260 F.3d 1039, 1043 (9TH Cir 2001). Pg 38.
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2. 2244(d)(1) D. AEOPA STATUTE OF LIMITATIONS.
3. 2254(d) 1.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is ~~DENYING A CERTIFICATE OF APPEALABILITY.~~

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is ~~DENYING APPELLANTS MOTION FOR RELIEF FROM JUDGMENT F.R.C.P. 60(b) AND CERTIFICATE OF APPEALABILITY.~~

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NOVEMBER 18, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ **MOTION FOR RECONSIDERATION** denied by the United States Court of Appeals on the following date: DECEMBER 19, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. THE FOURTH AMENDMENT

UNREASONABLE SEARCHES AND SEIZURES. THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

2. THE FOURTEENTH AMENDMENT.

SECTION 1. CITIZENSHIP - DUE PROCESS; - EQUAL PROTECTION. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION EQUAL PROTECTION OF LAW.

3. THE SIXTH AMENDMENT.

TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

CONSTITUTIONAL AND -pg. 3.
STATUTORY PROVISIONS.

STATEMENT OF THE CASE

A. THE APPELLANT MR(ELLIS) RESPECTFULLY REQUESTS FOR THE SUPREME COURT OF THE UNITED STATES TO GRANT CERTIORARI OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT'S NOVEMBER 18 2019 (ORDER) DENIEING A CERTIFICATE OF APPEALABILITY, AND DECEMBER 19, 2019 (ORDER) DENIEING RECONSIDERATION REQUESTING A COA.

THE LEGAL GROUNDS ARE THAT THE COURT HAD CLEARLY ERRORED BY THE FOLLOWING UNDERLINED REASONINGS:

1.) THAT APPELLANT HAS NOT SHOWN THAT (1) JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE RULE 60 (b) MOTION.

THAT APPELLANT HAS NOT SHOWN THAT (2) JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE [2254 PETITION] STATES A VALID CLAIM OF THE DENIAL OF A CONST-

ITUTIONAL RIGHT. 28 U.S.C. § 2253 (C)(2); SEE miller v. EL V. COCKRELL 537 U.S. 322, 154 L.ed 2d 431, 132 S.Ct. 1029 (2003), ALSO: SLACK V. MCDANIEL 529 U.S. 473, 484 (2000).

STATEMENT OF THE CASE -pg. 4.

Revised 3/24/16

(i) The order from which you are appealing :

(ii) Case No: 1:15-CV-00515-BLW.

2.

The facts of my case are:

THE APPELLANT MR(ELLIS) APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO ORDER (DKT113.) FILED ON THE DATE OF AUGUST 26, 2019 IN WHICH THE DISTRICT COURT (ERRED) BY DISMISSING THE PETITIONERS MOTION FOR RELIEF FROM JUDGMENT RULE 60(b) (DKT105.) FILED ON THE DATE OF APRIL 17TH, 2019. RULING THAT THE PETITIONERS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM FOR FAILING TO CHALLENGE AN UNCONSTITUTION FORCED NON-CONSENTUAL BLOOD DRAW WAS NOT A SUBSTANTIAL CLAIM, (CLAIM 2- SUBCLAIMS 1 THRU 7), THAT THE CLAIM HAD BEEN UNTIMELY, AND THAT THE PETITIONER MR(ELLIS) HAD NOT MET THE REQUIREMENTS TO OVERCOME PROCEDURAL DEFAULT PURSUANT TO MARTINEZ V. RYAN 132 S. CT 1309 (2012.)

B. NATURE AND COURSE OF THE PROCEEDINGS.

1. ON THE DATE OF SEPTEMBER 9, 2009 I
THE APPELLANT HAD BEEN CHARGED WITH
FELONY DUI IN (CASE NOth CR-09-20330) AND
MY BLOOD HAD BEEN TAKEN BY A FORCED
AND NOW- CONSENTIAL "UNCONSTITUTIONAL"
WARRANTLESS BLOOD DRAW AND PURSUANT
TO IDAHO CODE § 18-8002 IN WHICH IS
AN UNCONSTITUTIONAL STATUE AND IN
VIOLATION OF MY FOURTH AMENOMENT
RIGHTS AGAINST UNLAWFUL SEARCH'S
AND SEIZURES. SEE: SCHMERBER V. CALIFORNIA, 394 U.S.
757 (1966.)

2. I HAD RETAINED PRIVATE COUNSEL TO
REPRESENT ME IN THESE PROCEEDINGS BY
CRIMINAL DEFENSE ATTORNEY MR (FRED LOATS)
WHOM HAD PROVIDED THE INEFFECTIVE
ASSISTANCE OF COUNSEL IN THE FOLLOWING
UNDERLINED MANNERS.

(CLAIM 2 - SUBCLAIMS 1 THRU 7).

PETITIONERS PRIVATELY RETAINED ATTORNEY
RENDERED INEFFECTIVE ASSISTANCE BY:

(1) FAILING TO INVESTIGATE THE LEGALITY
OF PETITIONERS ARREST, (2) PROVIDING

STATEMENT OF THE CASE, Pg 6.

FALSE INFORMATION AND ADVICE TO PETITIONER REGARDING THE LEGALITY OF THE BLOOD DRAW, (3) FALSELY INFORMING PETITIONER REGARDING THE NEED FOR A WARRANT FOR THE BLOOD DRAW, (4) FAILING TO HOLD A PRELIMINARY HEARING ON THE SUPPRESSION ISSUE, (5) FAILING TO FILE A MOTION TO SUPPRESS, (6) COERCING PETITIONER INTO AN INVOLUNTARY AND UNINTELLIGENTLY MADE PLEA, (7) FAILING TO FILE AN APPEAL. (ALL IN VIOLATION OF MY SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL). SEE: STRICTLAND V. WASHINGTON, 466 U.S. 668, 80 LEd 2d 674, 104 S.Ct. 2052 (1984.)

3. ON THE DATE OF OCTOBER 27, 2014 I HAD FILED A PETITION FOR POST CONVICTION RELIEF (STATES LOSING C-1, PP. 3-7). IN THE DISTRICT COURT, STATE OF IDAHO (CASE NO. CV-2014-7988,) I HAD BEEN APPOINTED A CONFLICT PUBLIC DEFENDER MR (DOUGLAS A. PIERCE) TO REPRESENT ME IN THE PROCEEDINGS AND WHOM HAD PROVIDED ME WITH

THE INEFFECTIVE ASSISTANCE OF COUNSEL BY: (1) PROVIDING ME WITH FALSE LEGAL ADVICE STATING THAT I HAD NO CONSTITUTIONAL CHALLENGE TO THE FORCED AND NON-CONSENTUAL BLOOD DRAW, (2). FAILING TO RAISE THE "SUBSTANTIVE" CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM AGAINST (FIRST) INSTANCE TRIAL COUNSEL (FRED WATS) FOR FAILING TO CHALLENGE THE ILLEGAL BLOOD DRAW, HOLD A PRELIMINARY ON THE SUPPRESSION ISSUE, AND FILE A MOTION TO SUPPRESS THE ILLEGAL BLOOD DRAW. SEE: MARTINEZ V. RYAN 132 S. CT. 1309 (2012).

C. THE U.S. DISTRICT COURT HAD "COMMITTED CLEAR ERROR" AND A "MANIFEST INJUSTICE" BY PROCEEDURALLY DEFAULTING THE PETITIONER MR(ELLIS) CLAIM 2 IN HIS AMENDED PETITION FOR HABEAS CORPUS (OKT 54.) AND DENIEING MR(ELLIS) MOTION FOR RELIEF FROM JUDGMENT (OKT 105.) SEE: CHRISTIANSON V. COLT INDUSTRIES OPERATING. 486 U.S. 800, 817 (1988.) (OKT 53.) (OKT 113.) STATEMENT OF THE CASE. Pg 8.

THE U.S. DISTRICT COURT DECISION OF

MR. (EUTS) MOTION FOR RELIEF FROM

JUDGMENT RULING THAT CLAIM 2 IS NOT

A (SUBSTANTIVE) INEFFECTIVE ASSISTANCE OF

TRIAL COUNSEL CLAIM, AND MARTINEZ V.

RYAN 132 S. CT 1309 (2012) PROVIDES NO

RELIEF IS A DECISION THAT IS;

& 2254 d (1).

ARGUMENT

MOTION FOR RELIEF FROM JUDGMENT F.R.C.P.

60 (b): (1)(2) AND (6).

RULE 60(b)(1) ALLOWS RELIEF FROM JUDGMENT

BASED ON "MISTAKE, INADVERTENCE, SURPRISE,

OR EXCUSABLE NEGLECT."

1. THE PETITIONER MR. (EUTS) ARGUES THAT THE

DISTRICT COURT HAD COMMITTED "CLEAR

ERROR," AND "MANIFEST INJUSTICE" WHEN

IT HAD RULED AS FOLLOWS:

PETITIONER HAS NOT ESTABLISHED THAT HIS FAILURE

TO PRESENT THE DECLARATION BEFORE FINAL

JUDGMENT - FOR WHICH HE BLAMES THE COURT'S

FILED RESTRICTION (SEE OKT 88) - RESULTED

BY RULE 60 (b) (1), INSTEAD, PETITIONERS INADVERTENCE

TO PRESENT THE EVIDENCE STEMMED FROM HIS

STATEMENT OF THE CASE. Pg. 9.

OWN ABUSIVE MOTION PRACTICE, IN WHICH HE PERSISTED DISPIE THE COURTS PREVIOUS WARNING. (SEE: OKT 88.) RULE 60(b)(1) OFFER'S NO RELIEF.

2.

THE DISTRICT COURT CLEARLY ERRORED IN ITS FITNESS DETERMINATION THAT MR (ELLIS) DEMONSTRATED ABUSIVE MOTION PRACTICE. THERE IS "OVERWHELMING EVIDENCE" IN THE TRIAL COURT RECORD AND TO THE CONTRARY THAT MR (ELLIS) HAD NOT DEMONSTRATED ABUSIVE MOTION PRACTICE, THAT MR (ELLIS) MOTIONS WERE LEGALLY ON POINT, AND THAT THE DISTRICT COURT "CLEARLY ERRORED" BY REFUSEING TO ADDRESS THEM.

I THE PETITIONER MR (ELLIS) THROUGHOUT MY ENTIRE CASE HAD RAISED THE CLAIM THAT POST-CONVICTION COUNSEL (DOUGLAS PIERCE) HAD PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO RAISE (CLAIM 2.) THAT MY FIRST INSTANCE TRIAL COUNSEL (FRED LOATS) HAD PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO

STATEMENT OF THE CASE. Pg 10.

CHALLENGE THE FORCED NON-CONSENTUAL BLOOD DRAW (CLAIM 2.1-7). I HAD NO WAY TO ENTER THE DECLARATION FOR THE DISTRICT COURT TO REVIEW DUE TO THE COURTS FILING RESTRICTION (DKT 98,) ON MARCH 8, 2019 I RETAINED PRIVATE COUNSEL (CRAIG DURHAM) TO FILE A MOTION FOR RELIEF FROM JUDGMENT RULE 60(b) (1), (2), (6) TO ENTER THE DECLARATION (DKT 105,) IN WHICH THE DISTRICT COURT HAD DENIED (DKT 113)

THE RECORD BEFORE THIS COURT IS THAT I THE PETITIONER MR (ELLIS) AND AS A PRO-SE LITIGANT HAD NOT DEMONSTRATED ABUSIVE MOTION PRACTICE, AND THAT THE REASONING THAT (PIERCE'S) DECLARATION HADNT BEEN PRESENTED EARLIER IS DUE TO "CLEAR ERROR" BY THE DISTRICT COURTS FAILURE TO REVIEW MR (ELLIS) MARTINEZ V RYAN 132 S.Ct. 1309 (2012.) PROCEDURAL DEFAULT ARGUMENT IN THE PETITIONERS MOTION

IN OPPOSITION TO RESPONDANT MOTION
FOR PARTIAL SUMMARY DISMISSAL, SEE!
(DKT 41-1 p. 33-34.)

THE DISTRICT COURT HAD "CLEARLY
ERRORED" IN THE COURTS MEMORANDUM
DECISION AND ORDER (DKT 53 at p 16
Paragraph 2.) AS MAKING REFERENCE TO (DKT
41-1 at 31-32.) AND SKIPPING (DKT 41-1
at p. 33-34.) AND DETERMINING THE COURTS
REASONING THAT POST-CONVICTION APPEAL
COUNSEL'S ACTIONS COULD NOT BE THE
LEGAL CAUSE. (DKT 53 pp 17-19.)

THE DISTRICT COURT HAD ALSO ERRORED
BY GRANTING THE RESPONDANTS MOTION
TO STRIKE (DKT 94.) THE PETITIONERS
MOTION WAS AN (OBJECTION) PURSUANT
TO F.R.C.P. 46 AND A LEGAL MOTION
FOR PRESERVATION OF APPEAL (DKT 90.)

THEREFORE: DUE TO ALL OF THE ABOVE
AND DENYING MR (ELLS) MOTIONS FOR
RECONSIDERATION, AND EVIDENTIARY
REQUESTS, THE DECLARATION OF POST-
CONVICTION COUNSEL MR (DOUGLAS PIERCE)

STATEMENT OF THE CASE, Pg 12.

SHOULD BE ENTERED DUE TO "MISTAKE, INADVERTANCE, SURPRISE, OR EXCUSABLE NEGLIGENCE." PURSUANT TO RULE 60(b)(1). SEE:

KINGVISION PAY-PER-VIEW LTD. V. LAKE ALICE BAR, 468 F.3d 347, 350, (9th Cir. 1999.)

E. RULE 60(b)(2).

RULE 60(b)(2) ALLOWS RELIEF FROM JUDGMENT BASED ON NEWLY DISCOVERED EVIDENCE.

1. THE PETITIONER MR(ELIS) ARGUES THAT THE DISTRICT COURT COMMITTED "CLEAR ERROR" WHEN IT HAD MADE THE FOLLOWING RULING:

PETITIONER HAS ALSO FAILED TO SHOW REASONABLE DILIGENCE WITH RESPECT TO THE NEWLY DISCOVERED EVIDENCE, AS REQUIRED BY RULE 60(b)(2).

2.

<u>THE DISTRICT COURT CLEARLY ERRORED IN ITS FITNESS DETERMINATION THAT MR(ELIS) FAILED TO SHOW DILIGENCE</u>

THE PETITIONER MR(ELIS) ARGUES THAT IT HAD BEEN AN ERROR FOR THE DISTRICT COURT TO STATE THAT THE PETITIONER HAD FAILED TO SHOW REASONABLE DILIGENCE

IN PRESENTING THE NEWLY DISCOVERED EVIDENCE BY DECLARATION OF POST-CONVICTION COUNSEL (DOUGLAS PIERCE) AT AN EARLIER STAGE OF THESE PROCEEDINGS AND FOR THE FOLLOWING UNDERLINED REASONINGS:

1. THE EVIDENCE SHOULD BE CONSIDERED "NEWLY DISCOVERED," F.R.C.P 60(b)(2), THOUGH (PIERCE'S) DECLARATION AND HIS ADMISSION THAT HE HAD FAILED TO RAISE THE (SUBSTANTIVE) CLAIM THAT FIRST INSTANCE TRIAL COUNSEL (FRED WATTS) HAD BEEN INEFFECTIVE FOR FAILING TO CHALLENGE THE FORCED NON-CONSENTIAL WARRANTLESS BLOOD DRAW (CLAIM 2-1-7), THE DECLARATION HAD BEEN OBTAINED A FEW WEEKS BEFORE FINAL JUDGMENT, I HAD NO MEANS TO GET IT IN FRONT OF THE COURT DUE TO THE COURT'S ERMILUS FILING RESTRICTION. (LOKT 98.)
2. THE RECORD BEFORE THIS COURT IS THAT I MR (ELLIS) HAVE "DILIGENTLY" PRESENTED (CLAIM 2.1-7.) AND MY MARTINEZ V. RYAN 132 S. CT. 1309 (2012.) PROCEDURAL DEFENSE TO THE RESPONDANT, AND THE DISTRICT COURT IN STATEMENT OF THE CASE Pg 14.

MY MOTION IN OPPOSITION TO THE RESPONDANT'S MOTION FOR PARTIAL SUMMARY DISMISSAL (DKT 41-1 at pp 33-34.)

THE RESPONDANT IN HIS REPLY TO MR(ELIZ) MOTION IN OPPOSITION TO THE RESPONDANT'S MOTION FOR PARTIAL SUMMARY DISMISSAL HAD "FAILED TO ADDRESS" THE PETITIONER'S MARTINEZ V. RYAN PROCEDURAL ARGUMENT IN (DKT 41-1 at pp 33-34.) AND INSTEAD ARGUED THAT POST-CONVICTION APPELLATE COUNSEL COULD NOT BE THE LEGAL CAUSE AND MARTINEZ DOES NOT APPLY. SEE (DKT-44 at pp 12-13.).

3. THE DISTRICT COURT HAD COMMITTED "CLEAR ERROR" IN ITS MEMORANDUM DECISION AND ORDER FAILING TO ADDRESS MR(ELIZ) MARTINEZ V. RYAN PROCEDURAL DEFENSE ON PAGE 16 PARAGRAPH 2. AND MAKING REFERENCE TO (DKT 41-1 at 31-32.)

THE DISTRICT COURT HAD "ENTIRELY" SKIPPED (DKT 41-1 at pp 33-34.) AND INSTEAD THE COURT RULED POST-CONVICTION APPELLATE COUNSEL COULD NOT BE THE LEGAL CAUSE. (DKT 53 pp 17-19.)

STATEMENT OF THE CASE. Pg 15.

4. THE DISTRICT COURT HAD COMMITTED "CLEAR ERROR" BY DENYING MR(ELLIS) MOTION FOR AN EVIDENTIARY HEARING IN ORDER TO PRESENT THE MARTINEZ V. RYAN 132, S.Ct 1309 (2012.) PROCEDURAL DEFENSE TO ADDRESS (CLAIM 2, 1-7.) (Dkt 50.)
5. THE DISTRICT COURT DENIED THE PETITIONER MR(ELLIS) MOTIONS FOR RECONSIDERATION OF AN INTERLOCUTORY ORDER (Dkt 56, 57, 65, 67.) (Dkt 73, 74, 75, 76.) (Dkt 86, 87.)
6. THE DISTRICT COURT COMMITTED "CLEAR ERROR" WHEN IT HAD GRANTED THE STATES MOTION TO STRIKE PETITIONER(S(OBJECTION) MOTION PURSUANT TO F.R.C.P 46. (Dkt 90.) AND PREVENTING ADDITIONAL FILING TO THE COURT. (Dkt 98.)
7. I THE PETITIONER WHEN I HAD DISCOVERED THE "FACTUAL PREDICATE" THAT MY BLOOD HAD BEEN DRAWN ILLEGALLY, AND THAT MY ATTORNEY(FRED WATTS) HAD PROVIDED THE INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO CHALLENGE THE FORCED NON-CONFIDENTIAL BLOOD DRAW IN THE STATEMENT OF THE CASE. Pg 16.

MONTH OF SEPTEMBER 2015, I HAD THEN
EMMEDIATELY CALLED POST-CONVICTION
COUNSEL (DOUGLAS PIERCE) AND INFORMED
HIM OF THE CASE MISSOURI V. MCNEELY
569 U.S. (2013.) ADDRESSING SCHMERBER V.
CALIFORNIA 384 U.S. 757 (1966)

HE STATED THAT HE HAD HEARD OF THAT
CASE, IT HAD BEEN A "BIG DEAL" AROUND
THE COURT HOUSE. BUT THE LAW IN IDAHO
ALLOWS FOR WARRANTLESS BLOOD DRAWS,
AND INSTEAD OF HIM TELLING ME
TO FILE A MOTION FOR RELIEF FROM
JUDGMENT RULE 60(b), OR A SUCCESSIVE
PETITION FOR POST-CONVICTION RELIEF
HE TOLD ME TO FILE A PETITION FOR
WRIT OF HABEAS CORPUS IN THE U.S.
DISTRICT COURT AND I DID AS I
HAD TRUSTED THAT FALSE ADVICE.
IT HADN'T BEEN UNTIL THE STATE
FILED THEIR ANSWER TO MY NEWLY
FILED SUCCESSIVE PETITION FOR POST-
CONVICTION RELIEF HAD I BEEN ABLE
TO BE REASSIGNED (DOUGLAS PIERCE) IN
STATEMENT OF THE CASE Pg 17.

OCTOBER OF 2018 HAD I BEEN ABLE TO QUESTION THE TIMING OF THE CASE'S MISSOURI V. MCNEELY 569 U.S. (2013.) AND STATE V. WULF 357 P.3d 575, 579, (Idaho 2014.) HAD MR (PIERCE) STATED THAT HE "SCREWED UP" BY FAILING TO RAISE THE (SUBSTANTIVE) CLAIM THAT FIRST INSTANCE TRIAL COUNSEL MR (FRED WATS) FAILED TO CHALLENGE THE BLOOD DRAW (CLAIM 2.1-7.) HAD I BEEN ABLE TO OBTAIN HIS DECLARATION ON THE DATE OF NOVEMBER 30TH 2018.

8. NEVERTHELESS; THE RESPONDANT IN THIER RESPONSE TO MY MOTION FOR RELIEF FROM JUDGMENT (DKT 109.) ON PAGE 9 PARAGRAPH LINE 8. STATED: SIMPLY STATED, HE DID NOT NEED PIERCE'S CONCESSION TO RAISE THIS ARGUMENT, INDEED IN HIS RESPONSE, ELLIS' CONTENTED PIERCE WAS INEFFECTIVE BY FAILING TO COMPLETELY INVESTIGATE THE PETITIONER'S FILE, CASE IN ORDER TO COLLATERALLY ATTACK THE INEFFECTIVE STATEMENT OF THE CASE. Pg 18.

ASSISTANCE OF TRIAL COUNSEL (OKT 41-1, p.34.) (SEE: ALSO ID., p.36), (PIERCE WAS INEFFECTIVE BY FAILING TO ATTACK ALL OF THE GROUNDS AND ERRORS BY TRIAL COUNSEL.) AND CITING (ELIZ) AFFIDAVIT REGARDING MCNEELY AND DUE-DILIGENCE (OKT 42-1, p.2.)

AND ON PAGE 10 PARAGRAPH 2 THRU Pg 11 THE RESPONDANT ADMITS THAT "THIS IS THE SAME ARGUMENT THAT ELIZ HAS MADE THROUGHOUT HIS HABEAS CASE," AND HE IS SIMPLY WRONG,

THEN THE RESPONDANT GOES ON AGAIN TO ARGUE THE REASONING OF THE PROCEDURAL DEFAULT ALLEGED BY THE STATE WAS THE VOLUNTARY DISMISSAL OF MY POST-CONVICTION APPEAL. SEE: (OKT 109 AT PP 10-11.)

9. THE PETITIONER MR(ELIZ) ARGUES THAT DUE TO ALL OF THE ABOVE THE DISTRICT COURT HAD COMMITTED "CLEAR ERROR" AND THAT THE DECLARATION OF POST-STATEMENT OF THE CASE Pg 19.

CONVICTION COUNSEL (DOUGLAS PIERCE), AND
PURSUANT TO F.R.C.P. 60(b)(2) SHOULD BE
ENTERED AS NEWLY "DISCOVERED EVIDENCE"
AS THE PETITIONER MR (ELLIS) HAD BEEN
DILIGENT IN OBTAINING THE NEWLY
DISCOVERED EVIDENCE DUE TO THE
DISTRICT COURTS CLEAR ERROR. SEE:
CHRISTIANSON V. COIT INDUSTRIES OPERATING,
486 U.S. 800, 817 (1988.) SEE ALSO ABADO V.
CHARLES SCHWAB & CO; 127 F.SUP. 2d 1101,
1102, (S.D. CAL 2000.)

F. CLAIM 2 IS INSUBSTANTIAL AND, THEREFORE,
PROVIDES NO RELIEF UNDER MARTINEZ
& 2254 d(1).

RESULTED IN A DECISION THAT WAS CONTRARY
TO OR INVOLVED AN UNREASONABLE APPLICATION
OF CLEARLY ESTABLISHED FEDERAL LAW, AS
DETERMINED BY THE SUPREME COURT OF THE
UNITED STATES.

1. THE PETITIONER MR (ELLIS) ARGUES THAT THE
DISTRICT COURTS DECISION AND RULEING
STATEMENT OF THE CASE, Pg 20.

AS FOLLOWS

IT WAS NOT INEFFECTIVE ASSISTANCE FOR PETITIONER'S TRIAL ATTORNEY NOT TO PREDICT THE SUPREME COURT'S DECISION IN MCNEELY, WHICH WAS ISSUED YEARS AFTER PETITIONER PLEADED GUILTY. SEE: *Sophonthanvong v. Palmer*, 378 F.3d 859, 870 (9th Cir. 2004.)

("STRICKLAND DOES NOT MANDATE PRESCIENCE, ONLY OBJECTIVELY REASONABLE ADVICE UNDER PREVAILING PROFESSIONAL NORMS. COUNSEL WAS NOT REQUIRED TO PREDICT ACCURATELY HOW THE OREGON COURTS WOULD RESOLVE THE QUESTION WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT A CONVICTION FOR AGGRAVATED MURDER IF THE MATTER HAD GONE TO TRIAL".) (INTERNAL QUOTATION CITATION OMITTED), BECAUSE CLAIM 2 IS NOT SUBSTANTIAL, THE LIMITED EXCEPTION IN MARTINEZ DOES NOT APPLY,

IS A DECISION THAT IS CONTRARY TO OR, INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT

OF THE UNITED STATES OF AMERICA.

THE SUPREME COURT OF THE UNITED STATES HELD IN SCHMERBERG V. CALIFORNIA 384 U.S. 757 (1966.) THAT IN DUI CASES THAT A WARRANT IS REQUIRED UNDER GENERAL FOURTH AMENDMENT PRINCIPLES, AND ALL CASES ARE TO BE BASED ON THE FACTS SPECIFIC TO EACH CASE AS TO EXINGENCY, AND TOTALITY OF THE CIRCUMSTANCES.

ON THE DATE OF SEPTEMBER 9, 2009 I HAD BEEN ARRESTED AND CHARGED WITH FELONY DUI AND MY BLOOD HAD BEEN DRAWN WITHOUT MY CONSENT BY A FORCED NON-CONSENTIAL BLOOD DRAW.

AT THIS TIME THE STATE OF IDAHO HELD IN STATE V. WOLFEY 775 P.2d 1210, 1212 (Idaho 1984.) THAT THE OBTAINATION OF ALCOHOL IS A PER-SE EXCEPTION TO THE WARRANT REQUIREMENT.

AT THIS TIME THE STATE OF IDAHO HAD ALSO HELD IN STATE V. OIAZ 144 Idaho 300, 302, 160 P.3d 739, 741 (2007.)

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THAT IDAHO'S IMPLIED CONSENT
STATUTE § 18-8002 WAS A PER-SE
EXCEPTION TO THE WARRANT REQUIREMENT.
ON THE DATE OF SEPTEMBER 25, 2009
I HAD RETAINED PRIVATE COUNSEL MR
(FRED WATS) TO CHALLENGE AND SUPPRESS
THE FORCED NON-CONSENSUAL WARRANTLESS
BLOOD DRAW AND HE FAILED TO DO SO.
BEFORE I HAD RETAINED HIM HE TOLD
ME THAT TAKING MY BLOOD WITHOUT
A WARRANT WAS A VIOLATION OF MY
FOURTH AMENDMENT RIGHTS AGAINST
ILLEGAL SEARCHES AND SEIZURES. I
HAD THEN RETAINED (FRED WATS) AND
AFTER PAYING HIM \$ 6,500.00 DOLLARS
HE TELLS ME THAT ITS PERFECTLY LEGAL
IN IDAHO AND IT DOESNT VIOLATE
IDAHO LAW OR THE IDAHO STATE
CONSTITUTION.

I HAD STATED TO (FRED WATS) THAT I
WANT TO KNOW IF THE STATUTE VIOLATES
FEDERAL LAW, OR MY FOURTH AMENDMENT
RIGHTS OF THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE Pg 23.

AND (FRED WATS) HAD ASSURED ME THAT IT WAS ALSO LEGAL UNDER FEDERAL LAW AND THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

TRIAL COUNSEL (FRED WATS) HAD LIED TO ME AND HAD FAILED TO PERFORM A PROPER AND ADEQUATE INVESTIGATION INTO THE "FEDERAL LEGALITY" OF THE FORCED AND NON-CONSENTUAL BLOOD DRAW UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION. SEE STRICKLAND V. WASHINGTON WASHINGTON, 466 U.S. 688, 80, LEd 2d 674, 104 S.Ct 2052 (1984.) p2060. [THE COURT OF APPEALS] AGREED THAT THE SIXTH AMENDMENT IMPOSES ON COUNSEL A DUTY TO INVESTIGATE, BECAUSE REASONABLE EFFECTIVE ASSISTANCE MUST BE BASED ON PROFESSIONAL DECISIONS AND INFORMED LEGAL CHOICES CAN BE MADE ONLY AFTER INVESTIGATION OF OPTIONS.

TRIAL COUNSEL HAD FAILED TO HAVE OBTAINED A PRELIMINARY HEARING ON SUPPRESSION ISSUES, AND HAD STATEMENT OF THE CASE Pg 24.

FAILED TO FILE A MOTION TO SUPPRESS
THE FORCED NON-CONSENTUAL WARRANTLESS
BLOOD DRAW.

BLOOD EVIDENCE IN A DRUG CASE IS
KEY ELEMENT OF PROOF AND COUNSEL'S
FAILURE TO MOVE TO SUPPRESS THE
ILLEGAL EVIDENCE IS INEFFECTIVE ASS-
ISTANCE OF COUNSEL. SEE: MARTIN V. MAXEY,
98, F.3d 844 (CA5 1996.) P 848. MARTIN'S IN-
EFFECTIVE ASSISTANCE OF COUNSEL CLAIM
ALLEGES THAT HIS COUNSEL FAILED TO
ADEQUATELY ARGUE A MOTION TO SUPPRESS
EVIDENCE THAT WAS OBTAINED IN VIOL-
ATION OF HIS FOURTH AMENDMENT RIGHTS
OR TO RAISE THAT ISSUE ON APPEAL, AND
THAT HIS COUNSEL FAILED TO OBTAIN A
PRELIMINARY HEARING ON SUPPRESSION ISSUES,
SEE: ALSO U.S. V. EASTER, 539 F.2d 633 (CA8
1976.) P 665. DEFENDANT'S SECOND CONTENTION
IS THAT HE WAS DENIED DUE-PROCESS
BECAUSE HE HAD INEFFECTIVE ASSISTANCE
OF COUNSEL. THE BASIC ARGUMENT IS THAT
DEFENDANT'S APPOINTED COUNSEL WAS A CIVIL
STATEMENT OF THE CASE, Pg 25.

ATTORNEY WITHOUT EXPERIENCE IN CRIMINAL CASES; THAT HE FAILED TO FILE A MOTION TO SUPPRESS THE SEARCH; AND THAT HE FAILED TO OBJECT TO THE INTRODUCTION OF IMPROPER EVIDENCE AT TRIAL.

COUNSEL'S FAILURE IN THE PRESENT CASE TO QUESTION THE SEARCH AND TO OBJECT TO THE EVIDENCE WAS SO DERELICT THAT THE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL MUST BE SUSTAINED.

THE STATE OF IDAHO'S PRECEDENT IN STATE V. WILKINSON 775 P.2D 1210, 1212 (Idaho 1984.) AND STATE V. DIAZ 144 Idaho 300, 302, 160 P.3D 739, 74 (2007.) ARE UNCONSTITUTIONAL RULINGS AND STATUTES AND VIOLATE THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND MY FOURTH AMENDMENT RIGHTS WERE VIOLATED.

CLAIM 2.1-7 IS A SUBSTANTIVE CLAIM AND THE DISTRICT COURT'S DECISION, CONTRADICTS THE FOURTH, AND SIXTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, AND MY SIXTH AMENDMENT

STATEMENT OF THE CASE, Pg. 26.

RIGHTS HAD BEEN VIOLATED BY THE
INEFFECTIVE ASSISTANCE OF COUNSEL
BY TRIAL COUNSEL (FRED WATS) REGARDS
TO (CLAIM 2. 1-7.)

THE RESPONDANTS ARGUMENT THAT TRIAL
COUNSEL (FRED WATS) WAS NOT DEFICIENT,
WHEN ELLIS' PLED GUILTY ON FEBRUARY 9,
2010 (STATE'S LODGING A-2, pp. 309-11), MCNEELY
WAS STILL SEVERAL YEARS AWAY FROM BEING
DECIDED ON APRIL 17, 2013. AT THAT TIME,
THE IDAHO SUPREME COURT HAD CONCLUDED
THAT LAW ENFORCEMENT OFFICERS DID NOT
NEED A WARRANT FOR A FORCED BLOOD DRAW
BASED UPON THE EXINGENCY AND CONSENT
EXCEPTIONS TO THE WARRANT REQUIREMENT.
STATE V. WOOLERY, 775 P.2d 1210, 1212 (Idaho 1989).
WOOLERY CONTINUED TO BE THE LAW IN IDAHO
UNTIL THE IDAHO SUPREME COURT CONCLUDED
IN STATE V. WULFF, 337 P.3d 575, 579 (Idaho
2014.) THAT IT WAS "ABROGATED" BY MCNEELY.
SIMILARLY, IN STATE V. DIAZ 160 P.3d 739,
741, 42 (Idaho 2007.) THE IDAHO SUPREME
COURT CONCLUDED THAT IDAHO'S IMPLIED
STATEMENT OF THE CASE, Pg 27.

CONSENT STATUTE UNDER I.C. § 18-8002(1) ALLOWED FOR WARRANTLESS BLOOD DRAWS UNDER THE CONSENT EXCEPTION. AS RECOGNIZED BY THE IDAHO SUPREME COURT, MCNEELY "DID NOT DIRECTLY ADDRESS WHETHER WARRANTLESS FORCED BLOOD DRAWS CAN BE JUSTIFIED BY IMPLIED CONSENT" WULF, 337 P.3d at 579. NEVERTHELESS RELYING ON MCNEELY'S "OVERALL" "DISCUSSION" DECISIONS FROM OTHER COURTS INCLUDING A REMAND BY THE SUPREME COURT IN AVILES V. TEXAS, 571 U.S. 119 (2014) "FOR FURTHER CONSIDERATION IN LIGHT OF MCNEELY", THAT THE IDAHO SUPREME COURT OPINED THAT MCNEELY PROHIBITS ALL PER-SE EXCEPTIONS TO THE WARRANT REQUIREMENT. WULF, 337 P.3d at 580-82. HOWEVER, DIAZ WAS THE LAW IN IDAHO UNTIL THE IDAHO SUPREME COURT DECIDED OTHERWISE IN WULF ON OCTOBER 29, 2014. THEREFORE, EVEN IF ELLIS' TRIAL ATTORNEY HAD FILED A MOTION TO SUPPRESS THE BLOOD DRAW, IT WOULD HAVE BEEN DENIED BY THE TRIAL COURT, AND THAT DENIAL

WOULD HAVE BEEN AFFIRMED BY IDAHO'S APPELLATE COURTS. UNDOUBTEDLY, TRIAL COUNSEL WAS AWARE OF IDAHO LAW AS IT EXISTED AT THE TIME, AND ELECTED NOT TO FILE A MOTION TO SUPPRESS, A TACTICAL DECISION THAT WAS OBJECTIVELY REASONABLE AT THAT TIME. RESPONDANT THEN CITES LEAVITT V. ARAVE, 646 F.3d 605, 611 (9TH CIR 2011.) ALSO, STYERS, 547 F.3d at 1031, NOT ONLY MUST ELIZ'S DEMONSTRATE THAT COUNSEL'S FAILURE TO SEEK SUPPRESSION OF THE BLOOD RESULTS WAS OUT OF THE RANGE OF PROFESSIONAL COMPETENT ASSISTANCE, BUT HAD COUNSEL SO MOVED "THERE IS A REASONABLE PROBABILITY THAT THE MOTION WOULD HAVE BEEN GRANTED. BASED ON IDAHO LAW AT THE TIME, THERE WAS NO PROBABILITY, LET ALONE A REASONABLE PROBABILITY THAT A SUPPRESSION MOTION WOULD HAVE SUCCEEDED,

RESPONDANT THEN CITES UNPUBLISHED CASES; GREER V. BEANSHAW 2017 WL 3165077, *3 (6TH CIR 2017.) TELLEZ V. DAVIS 2018 WL 10964

STATEMENT OF THE CASE, Pg 29.

37,*6 (W.D. Texas 2018) Berkley v. Miller, 2014 WL 2042249 *13 N.Y. (C.D. Cal 2014.)

THE PETITIONER MR ELLIS' ARGUES THAT ALL OF THE UNPUBLISHED CASES CITED SUPRA ARE "MERITLESS AND UNPERSUASIVE" AND HAVE "OBVIOUSLY" BEEN APPEALED THRU THE FEDERAL COURTS. "NEVERTHELESS" THEY ARE ALL IN VIOLATION OF FEDERAL LAW, AND SUPREME COURT PRECEDENT IN SCHMERBER V. CALIFORNIA 384 U.S. 757 (1966.) AND RESPONDANTS ARGUMENT HAS A FATAL FLAW. MCNEELY WAS NOT A CHANGE IN THE LAW, IT HAD BEEN A LOGICAL INTERPRETATION, AND REAFFIRMATION OF EXISTING LAW, AND TRIAL COUNSEL (FRED WATS) DID NOT NEED TO PREDICT THE FUTURE BECAUSE THE LAW HAD ALREADY EXISTED AT THIS TIME. SCHMERBER,

THE PETITIONER MR ELLIS' ARGUES THAT THE DISTRICT COURTS STATEMENT ON Pg 3 para 2 THAT IN ARGUING THAT HIS TRIAL ATTORNEY RENDERED INEFFECTIVE ASSISTANCE STATEMENT OF THE CASE. Pg 30.

PETITIONER RELIES ON MISSOURI V. MCNEELY, THIS STATEMENT IS FALSE, AND I HAD NEVER BASED MY CASE ON MCNEELY MY CASE IS BASED ON SCHEMERBE V. CALIFORNIA AS THIS HAD BEEN FEDERAL LAW, AND UNITED STATES SUPREME COURT PRECEDENT AT THIS TIME "STAR DECISIONS" AND STILL IS.

THE PETITIONER MR ELLIS' ARGUES THAT THE DISTRICT COURTS RULING THAT CLAIM 2 IS INSUBSTANTIAL. THAT IT WAS NOT INEFFECTIVE ASSISTANCE FOR PETITIONER TRIAL ATTORNEY NOT TO PREDICT THE SUPREME COURTS DECISION IN MCNEELY, WHICH WAS ISSUED YEARS AFTER PETITIONER PLEADED GUILTY. SEE! Sophanthavong V. PALM ATER, 378 F.3d 859, 870 (9TH CIR 2004.) HAS NO BEARING ON MR ELLIS' CASE AND IS MISPLACED.

THE PETITIONER MR ELLIS' CASE IS NOT BASED ON STATE STATUES THAT DO NOT VIOLATE THE CONSTITUTION OF THE UNITED STATES, OR IF A STATE HAS STATEMENT OF THE CASE -pg. 31.

A LEGAL INTENTION TO CHANGE ITS
LAW'S IN THE FUTURE, OR WHETHER
AN ATTORNEY WAS NOT REQUIRED TO
PREDICT ACCURATELY HOW THE STATE
COURT DECIDES WHETHER EVIDENCE
IS LEGALLY SUFFICIENT TO SUPPORT
A CONVICTION IN A MURDER CASE,
THE PETITIONER MR ELIZ' ARGUE THAT
THE SUPREME COURT OF THE UNITED STATES
HELD IN SCHRIBER V. CALIFORNIA 384 U.S.
757 (1966.) THAT A WARRANT IS REQUIRED
TO DRAW BLOOD IN A DUI CASE, AND ALL
CASES ARE BASED ON THE FACTS IN EACH
CASE AS TO EXIGENCY, AND TOTALITY
OF THE CIRCUMSTANCES

THE STATE OF IDAHO'S PRECEDENT AND
STATUTES IN STATE V. WOOLEY 775 P.2d 1210,
1212 (Idaho, 1989.) AND STATE V. DIAZ 160,
P.3d 739, 741-72 (Idaho 2007.) ARE UN-
CONSTITUTIONAL STATUTES AND VIOLATE
THE FOURTH AMENDMENT OF THE
UNITED STATES CONSTITUTION.

THE PETITIONER MR ELIZ' ARGUES THAT
STATEMENT OF THE CASE -pg. 32.

MY TRIAL COUNSEL (FRED WATTS) HAD PROVIDED THE INEFFECTIVE ASSISTANCE OF COUNSEL IN CLAIM 2 1-7.

THAT HE FAILED TO CHALLENGE THE FORCED NON-CONSENTAL WARRANTLESS BLOOD DRAW PURSUANT TO EXISTING LAW SCHMERBER V. CALIFORNIA, 384 U.S. 775, (1966.) IT WAS OBJECTIVELY UNREASONABLE NOT TO PURSUE THE LINE OF ATTACK. HAD HE DONE SO, THERE IS A REASONABLE PROBABILITY THAT THE CHALLENGE HAD IT BEEN ARGUED AS MCNEELY'S COUNSEL HAD IT WOULD HAVE BEEN SUCCESSFUL OR THAT HE WOULD HAVE PRESERVED THAT ISSUE TO BE REVERSED ON APPEAL.

IF MR ELIZ' HADNT BEEN SUCCESSFUL IN STATE COURT THE CLAIMS WOULD HAVE BEEN EXHAUSTED AND PETITIONER WOULD HAVE PREVAILED IN THE U.S. DISTRICT COURT, NINTH CIRCUIT COURT OF APPEALS, OR IN THE SUPREME COURT OF THE UNITED STATES AS MCNEELY HAD. THE DISTRICT COURTS DECISION STATEMENT OF THE CASE. Pg 33.

AND RULING THAT MY ATTORNEY
(FRED WATTS) IS NOT TO CHALLENGE
CONSTITUTIONAL VIOLATIONS ON EXISTING
FEDERAL LAW, AND UNITED STATES SUPREME
COURT PRECEDENT IS UNPERSUASIVE AND
WITHOUT MERIT.

THAT TRIAL COUNSEL IS NOT TO PREDICT
PRESCIENCE FOR FUTURE RULINGS TO
TELL HIM TO DO THE SAME THING
AS SCHMERBER, AS MCWEELEY HAD IS
ERRONEOUS; CLAIM 2 IS SUBSTANTIVE
AND THE DISTRICT COURTS RULING
AND ORDER (DKT 113.) IS;
§ 2254 d(1),

RESULTED IN A DECISION THAT WAS CONTRARY
TO OR, INVOLVED AN UNREASONABLE APPLICATION
OF CLEARLY ESTABLISHED FEDERAL LAW, AS
DETERMINED BY THE SUPREME COURT OF
THE UNITED STATES, SEE! STRICKLAND
V. WASHINGTON 466 U.S. 688, 80, LEd 2d 674,

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Revised 3 24 16

104 S. CT 2052 (1984.) SEE: SCHMERBER V. CALIFORNIA 384 U.S. 757 (1966.) ALSO SEE: MISSOURI V. MCNEELY 569 U.S. (2013.)

THE APPELLANT MR(ELLIS) ARGUES THAT THE CIRCUIT JUDGES FARRIS, AND MCKEOWN ALONG WITH THE DISTRICT COURT DENIEING MR(ELLIS) A CERTIFICATE OF APPEALABILITY IS A DECISION THAT IS INFECTED WITH SUBSTANTIAL LEGAL ERROR AND IN CLEAR VIOLATION OF UNITED STATES SUPREAM COURT PRECEDENT IN SCHMERBER V. CALIFORNIA, 384 U.S. 757 (1966) AND STRICKLAND V. WASHINGTON 466 U.S. 688, 80. LEd 2d 674, 104 S. CT 2052 (1984.)

THE APPELLANT MR(ELLIS) ARGUES THAT THE PROOF OF THE FLAW IN THESE JUDGES LEGAL ANALYSIS CAN EASILY BE BROUGHT TO LIGHT DUE TO THE FACT THAT MCNEELY HAD OBTAINED THE DWI CHARGE AND HIS BLOOD HAD BEEN DRAWN WITHOUT A WARRANT AT THE TIME THAT MY BLOOD HAD

BEEN TAKEN WITHOUT A WARRANT AROUND THE YEAR OF 2009.

MCNEELY'S ATTORNEY HAD CHALLENGED THE FORCED NON-CONSENTUAL WARRANTLESS BLOOD DRAW AS UNCONSTITUTIONAL AND A VIOLATION OF THE 14TH AND 4TH AMENDMENT OF THE UNITED STATES CONSTITUTION. THE MISSOURI STATE SUPREME COURT AGREED AND THE UNITED STATES SUPREME COURT HAD AFFIRMED PURSUANT TO THE DECISION IN SCHMERBER V. CALIFORNIA 384 U.S. 757 (1966.) IN WHICH HAD BEEN EXISTING FEDERAL LAW AND UNITED STATES SUPREME COURT PRECEDENT, CASE SPECIFIC TO DUI CASES AND THE WARRANT REQUIREMENT.

I HAD RETAINED PRIVATE COUNSEL (FRED WATTS) TO CHALLENGE THE BLOOD DRAW AND HE HAD FAILED TO UTILIZE EXISTING FEDERAL LAW AND SCHMERBER V. CALIFORNIA 384 U.S. 757 (1966). IF HE HAD CHALLENGED AND MOVED TO SUPPRESS THERE'S A LIKELY CHANCE THE MOTION WOULD HAVE BEEN SUCCESSFUL OR THE CLAIMS WOULD HAVE BEEN PRESERVED FOR APPEAL.

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AND AS PREVIOUSLY ARGUED THAT IF MR(ELLIS) HAD NOT BEEN SUCCESSFUL IN STATE COURT THE FORCED NON-CONSENTUAL WARRANTLESS BLOOD DRAW CLAIM WOULD HAVE BEEN EXHAUSTED AND MR(ELLIS) WOULD HAVE BEEN SUCCESSFUL IN THE UNITED STATES DISTRICT COURT, THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, OR IN THE UNITED STATES SUPREME COURT AS MCNEELY HAD. THE APPELLANT MR(ELLIS) ARGUES THAT THESE CIRCUIT JUDGES FARRIS, AND MCKEOWN, AND THE DISTRICT COURT'S DECISIONS DENYING MR(ELLIS) A CERTIFICATE OF APPEALABILITY, AND THAT JURIST OF REASON WOULD NOT FIND IT DABITABLE THAT THE [2254 PETITION] STATES A VALID CLAIM THAT MR(ELLIS)' 14TH, 4TH, AND 6TH AMENDMENT RIGHTS WERE VIOLATED IS FATAALLY FLAWED, THAT WOULD MEAN THAT "MCNEELY" WOULD NOT HAVE PREVAILED, SCHMERBER V. CALIFORNIA 384 U.S. 757 (1966) WOULD BE A DEAD LETTER, AND THAT THE UNITED STATES SUPREME COURT RULING IN MISSOURI V. MCNEELY

WOULD NOT BE IN EXISTENCE. THE APPELLANT MR(ELLIS) ARGUES THAT HE HAS DEMONSTRATED A "SUBSTANTIAL SHOWING" OF THE DENIAL OF HIS 4TH, 14TH, AND 6TH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION 28 U.S.C. § 2253(C) 2. AND THAT THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, AND THE DISTRICT COURT HAD (ERRORED) BY DENIEING MR(ELLIS) MOTION FOR CERTIFICATE OF APPEALABILITY, AND RECONSIDERATION OF THE DENIAL OF CERTIFICATE OF APPEALABILITY. SEE: MILLER-EL V. COORELL 357 U.S. 322, 154 L.Ed.2d 931, 123 S.Ct. 1029 (2003). ALSO SLACK V. MCDONALD, 529 U.S. 473, 484 (2000).

G.

2244(d)(1) D AEDPA STATUE OF LIMITATIONS. THE APPELLANT MR(ELLIS) HAD ADDRESSED THE STATUE OF LIMITATIONS IN (DKT 41-1, 42, 49, 50). (DKT 56, 57, 65, 67). THE DISTRICT COURT DEFERED ADDRESSING THE ISSUE (DKT 53). THE RESPONDANT HAD ARGUED THE ISSUE AS MOOT. (DKT 69). SEE: HERBST V. COOK 260 F.3d 1039, 1043 (9TH Cir 2001). ALSO: HOLLAND V. FLORIDA 560 U.S. 631, 645 (2010).
F. RULE 60(b)(6).

THE APPELLANT MR(ELLIS) MEETS THE "EXTRAORDINARY CIRCUMSTANCE" AND THE "INTREST OF JUSTICE" REQUIREMENTS DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL. STATEMENT OF THE CASE. -pg. 38.

REASONS FOR GRANTING THE PETITION

- 1.) THE UNITED STATES SUPREME COURT HELD IN THE CASE SCHMERBER V. CALIFORNIA 384 U.S. 757 (1965) THAT A WARRANT IS REQUIRED TO DRAW BLOOD IN OUR CASE'S BASED ON THE FACTS OF EACH CASE AS TO EXINGENCY AND TOTALITY OF CIRCUMSTANCES.
- 2.) ON SEPTEMBER 6, 2009 I HAD BEEN ARRESTED FOR A DUI AND MY BLOOD HAD BEEN DRAWN BY A FORCED NON-CONSENTUAL WARRANTLESS BLOOD DRAW BY THE IDAHO STATE POLICE WITHOUT MY CONSENT.
- 3.) AT THIS TIME THE STATE OF IDAHO HELD IN STATE V. WOOLERY 775 P.2d 1210, 1212 (Idaho 1989). THAT ALCOHOL DISPARATION IN A PER-SE EXCEPTION TO THE WARRANT REQUIREMENT, AND ALSO STATE V. OJAZ 144 Idaho 300, 302, 160 P.3d 739, 741 (2007) THAT IDAHO CODE 18-8002 AN IMPLIED CONSENT STATUE IS A PER-SE EXCEPTION TO THE WARRANT REQUIREMENT IN WHICH VIOLATE THE FOURTH (4TH) AMENDMENT OF THE U.S. CONSTITUTION.
- 4.) I HAD RETAINED PRIVATE COUNSEL TO SUPPRESS THE BLOOD DRAW AND HE FAILED TO DO SO. I FILED POST-CONVICTION RELIEF AND POSTCONVICTION COUNSEL FAILED TO CHALLENGE FIRST-INSTANCE TRIAL COUNSEL'S INEFFECTIVE ASSISTANCE FOR

FAILING TO CHALLENGE THE UNCONSTITUTIONAL
FORCED NON-CONSENTAL WARRANTLESS BLOOD
DRAW SEE! STRICKLAND V. WASHINGTON 466 U.S.
668, 80 LEd 2d 674, 104 S. CT 2052 (1984) AND ALSO
MARTINEZ V. RYAN 132 S. CT 1309 (2012). ALSO
MISSOURI V. MCNEELY 569 U.S. (2013),

- 5.) THE U.S. DISTRICT COURT (ERRORED) RULING
THAT TRIAL COUNSEL HADNT PROVIDED THE
INEFFECTIVE ASSISTANCE OF COUNSEL FAILING
TO MOVE TO SUPPRESS THE BLOOD DRAW. SEE!
SOPHANTHAVONG V. PALMATEER 378 F.3d 859, 870
(9TH CIR 2004). (DKT 113).
- 6.) THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT (ERRORED) BY DENIENG
THE APPELLANT A CERTIFICATE OF APPEALABILITY,
AND RECONSIDERATION FOR (COA) LEAVEING
NO REMEDIE FOR THE APPELLANT MR (ELUIS)
OR OTHERS SITUATED TO CURE THE VIOLATION
OF OUR 4TH, 14TH, AND 6TH AMENDMENT RIGHTS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerry Leonard, Elles

CONCLUSION. -pg. 40.

Date: JANUARY 22, 2020.