

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GUY L. COULSTON,

Petitioner-Appellant,

v.

LAWRANCE G. WASDEN,

Respondent-Appellee.

No. 22-35330

D.C. No. 1:20-cv-00468-REP
District of Idaho,
Boise

ORDER

Before: SILVERMAN and FRIEDLAND, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

All pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GUY L. COULSTON JR.,

Petitioner,

vs.

LAWRENCE G. WASDEN,

Respondent.

Case No. 1:20-cv-00468-REP

**MEMORANDUM DECISION
AND ORDER**

Petitioner Guy L. Coulston Jr. filed an Amended Petition for Writ of Habeas Corpus challenging his state court conviction. Dkt. 12. Respondent seeks dismissal of the Petition on procedural grounds. Dkt. 19. That motion is now fully briefed. Dkts. 24, 27.

All named parties have consented to the jurisdiction of a United States Magistrate Judge to enter final orders in this case. Dkt. 5. *See* 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Upon review of the record, the Court concludes that Petitioner's claims are procedurally defaulted and, alternatively, under a de novo standard of relief, he is not entitled to relief on the merits of any claim.

BACKGROUND

Petitioner asserts actual innocence of his Kootenai County criminal conviction of lewd and lascivious conduct with his step-daughter, A.R.M., a minor under sixteen years

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of age. He faults his trial counsel for not doing more with the discrepancies in the minor victim's testimony, which allegedly demonstrate his innocence. He also faults his direct appeal counsel for not presenting particular trial errors to the state appellate courts.

Petitioner started out as kind of hero in A.R.M.'s life. Petitioner and A.R.M.'s mother, Millicent, had a relationship lasting several years, beginning when A.R.M. was three. Petitioner and Millicent had two daughters of their own during their relationship. Millicent temporarily left the family to take care of her aging parents for about a year until their deaths. At that point, Millicent decided she wanted a divorce, and she left all of her children, including 10-year-old A.R.M. (not Petitioner's natural child), with Petitioner. A.R.M.'s natural father was out of the picture.

Petitioner continued parenting alone, raising A.R.M. alongside his two much younger natural daughters. He relied on A.R.M. to do cooking, cleaning, and mothering tasks for her younger sisters, as she had done in the past. *See State's Lodgings A-1, A-2, A-6.*

A few weeks before A.R.M.'s eleventh birthday, Petitioner began to treat her as if she were his adult girlfriend. He told her this was okay because they were not related by blood. They began to have regular sexual encounters, including intercourse, which he called "love-ins." *See State's Lodging A-6.* In an interview with police investigator

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Darrell Oyler, Petitioner agreed that this was the term they used; at trial he said, "I've never heard that word." State's Lodging A-2, p. 211.¹

In his police interview, Petitioner asserted that A.R.M. initiated sex with him when she was 13 years old. He said he was "freaked out" when he awoke one night and found her on top of him." State's Lodging A-6. At trial, when asked whether he pushed her off, he replied, "No – well, yes." State's Lodging A-2, p. 210.

Petitioner told the investigator that after the first instance, no sexual contact occurred for some time, but eventually, A.R.M. wanted to have sex with him a couple of times a month, and so they had what he termed "consensual sex." *See id.*

The "love-ins" continued until A.R.M. was a high school sophomore. A.R.M. said that Petitioner told her they would run away together if she became pregnant. State's Lodging A-2, p. 102. When A.R.M. was 15, Petitioner put so many restrictions on what she could do in her free time, that she began to desire to end the entire relationship with Petitioner. *Id.* Also about that time, she realized that "parents don't have sex with their kids." State's Lodging A-1, p. 34. She said she let the sexual activity go on for four to five years because she was scared about what would happen to her younger sisters or where they would end up. State's Lodging A-2, p. 104.

¹ References to the trial transcript are to the Court's ECF docket pages, not the transcript pages, which are copied four to a page.

On a day when Petitioner required A.R.M. to come home right after school and miss her regular extracurricular activities, she was angry and confided in a close friend about the sexual conduct with Petitioner. *Id.*, p. 98. The friend encouraged her to go to the high school counselor and discuss the situation. A.R.M. said that she spoke to the school counselor because, in her words, "I got fed up with my home life and I didn't think I could handle it anymore. And I told them that particular day because I was scared to go home." *Id.*, p. 87. The counselor reported the situation to police. A.R.M reported to Detective Oyler that Petitioner had been verbally, physically, and sexually abusing her since the age of 10. State's Lodging A-1, pp. 23-25.

Detective Oyler decided to take the two younger girls into protective custody and had them picked up after school. The babysitter reported to Petitioner that the children did not arrive home. A.R.M. agreed to make a confrontation call to Petitioner. State's Lodging A-7. Petitioner did not deny the allegations of sexual activity A.R.M. made during the phone call, despite knowing that something was wrong, because he already knew the other two children had been intercepted by government officials. *See* State's Lodging A-1, pp. 32-34. Petitioner's conversation with A.R.M. was laced with profanity. *See* State's Lodging A-7.

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Oyler asked Petitioner to come to the police department to meet with him. Petitioner was read his *Miranda* rights² and initialed a card showing that he acknowledged them. See State's Lodgings A-5, A-9. The investigator began by questioning Petitioner about whether he was physically and verbally abusive to his daughters. *See* State's Lodging A-6.

At about 28 minutes into the interview, Petitioner told Oyler: "Guess from here on out, cause I know you guys got your things, better talk to an attorney. I have no idea." Oyler continued questioning him without a pause. At about 36 minutes into the interview, Petitioner admitted to having had sex with A.R.M. State's Lodging A-6.

Petitioner's defense attorney, Rick Baughman, filed a pretrial motion to suppress, arguing that all statements made after Petitioner invoked his right to counsel must be suppressed. *See* State's Lodgings A-1, pp. 83-84; A-5, A-6. The district court held that Petitioner's request for counsel was ambiguous and denied his motion to suppress. *Id.*, p. 99.

At trial, evidence was presented that corroborated A.R.M.'s story, such as specific sexual lubricants that A.R.M. had discussed with Oyler. Further, DNA evidence pointed to Petitioner as the perpetrator. *See* State's Lodgings A-2, A-10 through A-47.

² *See Miranda v. Arizona*, 384 U.S. 436 (1966).

The jury believed A.R.M.’s version of events. Petitioner was found guilty of lewd conduct with a minor under sixteen. State’s Lodging A-1, p. 286. In a later proceeding, Petitioner was sentenced to a 35-year unified term of incarceration, with the first 15 years fixed. *Id.*, pp. 298-302.

The district court’s denial of the motion to suppress was upheld on direct appeal. State’s Lodgings B-5 to B-9. Petitioner obtained no relief on state post-conviction review. State’s Lodgings D-1 to F-3.

PRELIMINARY MOTIONS

1. Petitioner’s Evidentiary Motions

Petitioner filed a “Motion for Inspecting the Entirety and Integrity of Sexual Assault Kit Inspection [sic].” Dkt. 11. The Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA) generally does not permit factual development on the merits of claims in federal habeas corpus actions. *See* 28 U.S.C. § 2254(e)(2)). However, that prohibition does not apply when bringing forward new evidence to show actual innocence to overcome procedural default, as here. *Dickens v. Ryan*, 740 F.3d 1302, 1320-21 (9th Cir. 2014) (en banc) (discussing *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011)).

A gateway actual innocence claim requires “new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *House v. Bell*, 547 U.S. 518, 537 (2006). All

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requests for habeas corpus discovery require a showing of “good cause.” Rule 6(a) of the Rules Governing § 2254 Cases. In the context of a request for discovery on the merits of a claim, the United States Supreme Court has defined “good cause” as circumstances “where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he [or she] is ... entitled to relief.” *Bracy v. Gramley*, 520 U.S. 899, 908 (1997) (internal citation omitted). Where the petitioner meets this standard, “it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” *Id.*

Petitioner raises reasons he should be permitted to develop the factual basis for his actual innocence claim: (1) that forensic scientist Rylene Nowlin testified at trial that some of the DNA swabs from the sexual assault kit and bloodstain sample of the victim were “missing”; (2) that the DNA evidence was manufactured; and (3) that there was a broken chain of custody. Petitioner provides little support in his motion.

Respondent has filed a response to the motion explaining in great detail how Petitioner has misunderstood the testimony at trial. Dkt. 20. That explanation is clear and tracks the trial transcript. *See* State’s Lodging A-2, pp. 105-114. Based upon its review of the record and the arguments of the parties, the Court concludes that Petitioner is not entitled to develop further factual grounds for his actual innocence claim.

Analysis of sexual assault kits at the Idaho State Police Forensic Laboratory is a two-step process, as Rylene Nowlin, a bachelor’s level forensic scientist with over ten

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years of experience, explained at trial. First, a forensic scientist tests all items in the sexual assault kit and creates samples of the victim's and, if available, the defendant's DNA (from either blood or saliva). Not all items in the sexual assault kit will contain DNA. The forensic scientist tests each item for DNA and removes those items that do contain DNA from the sexual assault kit, along with the DNA samples from the victim and defendant, and creates a DNA packet containing only the evidence containing DNA. The forensic scientist then deposits the DNA packet (the smaller subset of the sexual assault kit) at the "front of the laboratory" and turns custody of the packet over to the staff there. State's Lodging A-2, p. 107. The receiving staff member puts the DNA packet into a freezer in the lab's secure vault. *Id.* Later, a second forensic scientist will pick up the DNA packet, analyze it, and prepare a report. *See id.*, pp. 107-09.

Nowlin testified that, in this particular case, she tested each swab in the sexual assault kit and removed the ones that had semen present, which were "all swabs, vaginal, back and inner thighs" of the victim. *Id.*, p. 107-09. She also took the liquid blood sample from the victim and created a blood stain card. *Id.* at 107. She compiled a DNA packet (the smaller subset of the sexual assault kit) and deposited it at the front of the lab. *Id.* The sexual assault kit was not admitted at trial.

A second forensic scientist, Stacy Guess, a master's level forensic scientist with nine years of experience at the Idaho State Police Forensic Services Laboratory, analyzed the vaginal swab, the known sample bloodstain from the victim, and the known reference

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swab Detective Oyler obtained from Petitioner. State's Lodging A-2, p. 109. After testing the vaginal swab and finding that it was 87 billion times more likely that the mixture of DNA came from the victim and Petitioner rather than the victim and another contributor, Guess did not analyze the swabs from the victim's back or inner thighs, as is her regular policy. *Id.*, p. 111. Guess later received additional evidence, the victim's underwear, and found that sperm on the underwear matched Petitioner's DNA profile. Guess testified that the likelihood that another person in the general population would match Petitioner's sperm found on the victim's underwear was 1 in 14 quintillion (14 followed by 18 zeroes). *Id.* Guess created a report showing the outcome of the testing. State's A-2, pp. 105-106.

As to Petitioner's first argument, the Court agrees with Respondent that Petitioner has misunderstood trial testimony. That the sexual assault kit samples that contained DNA were separated from samples that did not and placed into a subset of the kit called a DNA packet does not mean that the samples no longer exist, despite Nowlin using the term "missing." This argument is based on a mistake of fact.

As to Petitioner's second argument, there is no evidence in the record that the DNA evidence was fabricated. This argument is without factual or legal grounds. Petitioner mentions only that "Idaho State Police Forensic Laboratory in 2015 was found with over 300 sexual assault kits untested with statistics to the kits." Dkt. 11, p. 1. This argument generally is based on public news from the Idaho State Police that a 2016 audit

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had revealed that there was a backlog of sexual assault kits that had never been tested. An Idaho State Police news release from December 29, 2021, reported that the “final test [from] all kits identified in the 2016 audit as needing to be submitted to the lab, or already in the lab at that point, have now been completed, with reports provided to investigators and prosecutors, and any hits in the National DNA Index System (CODIS) provided to local law enforcement for further follow-up.”³ Petitioner has not made any causal connection between the sexual assault kits that were not tested, and the victim’s kit, which was tested. Nor has Petitioner made any causal connection between the nontesting of other kits and the work or credibility of the forensic scientists who testified in his case.

As to Petitioner’s third argument—that Guess is not listed as a custodian on the chain of custody for this evidence—the Court concludes that the record provides sufficient evidence showing that Nowlin and Guess performed their analyses on the correct samples, and that there is insufficient evidence of tampering in the record.

Nowlin testified that it appeared the chain of custody had been maintained. *Id.*, p. 108. Nowlin identified Exhibit 3 and 4 as the turquoise-and-black striped panties and the green panties from the victim. Nowlin could see her own taped seal and the tape seal of a

³ The Court takes judicial notice of the existence of the news release. *See* https://www.kpvi.com/news/local_news/after-5-years-of-work-idaho-state-police-completes-final-untested-sexual-assault-kit/article_905fe868-6921-11ec-aebc-1b0b5d0f3817.html.

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coworker on one of the items. She testified that, on both, there was no indication that the proper chain of custody was not followed. Newlin found semen on both pairs of the panties. *Id.*, pp. 108-09.

Guess testified that her date of analysis and initials were on Exhibit No. 3. She said that the container appeared to be in substantially the same condition as when it came to her, only it now had a chain of custody placed over the tape seal. *Id.* at p. 112. And, she testified, nothing would indicate that the chain of custody had not been followed. *Id.*

The DNA evidence repackaging is confirmed by Guess's written report, attached to his Amended Habeas Petition. Dkt. 12-5, pp. 11-12. That report shows that “[a] tape-sealed DNA Packet envelope, created in the laboratory on March 8, 2012,” contained the allegedly “missing” items from the sexual assault kit at trial. Dkt. 12-5, p. 11. A break in the chain of custody is mere speculation on the part of Petitioner.

Alternatively, the Court agrees with Respondent that, even if the swabs and other items were missing from the kit or the packet at the time of trial, there is no other evidence suggesting that the experts' opinions were compromised—because the testing was completed long before trial.

In addition, even if a break in custody occurred, that would not have affected the admissibility of the experts' opinions. *See Dachlet v. State*, 40 P.3d 110, 114 (Idaho 2002) (“Generally, in laying a proper foundation for the admission of test results of a blood sample the practicalities of proof do not require the prosecution to negate all

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possibilities of substitution or tampering,” citing *State v. Gilpin*, 977 P.2d 905, 909 (Idaho Ct. App. 1999). Indeed, “the party offering the exhibit need not exclude all possibility of tampering. Where the court is satisfied that in all reasonable probability the article has not been changed in any material respect, the article is admissible into evidence.” *State v. Crook*, 565 P.2d 576, 577 (Idaho 1977).

The Court also agrees with Respondent that, even if this Court granted Petitioner an opportunity to have the kit inspected, and the inspector found something missing, that would not establish actual innocence, considering Petitioner’s incriminating statements during the staged confrontation call between the victim and Petitioner, his confession during the interview with Detective Oyler, and the evidence found in Petitioner’s residence supporting A.R.M.’s testimony. *See* State’s Lodging A-2, pp. 460-480.

Petitioner’s sparse allegations that items are now missing from the sexual assault kit (even if not currently contained in the DNA packet), that the DNA evidence was fabricated, and that the chain of custody of the DNA evidence was broken do not meet the standard for a showing of actual innocence—that “it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995). The Court does not have reason to believe that, if Petitioner is permitted to have an expert review the DNA packaging and swabs, he may be able to demonstrate that he is entitled to relief. This is not a situation where a stranger sexually assaulted a victim and the identity of the perpetrator might be called into question.

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Rather, both Petitioner and the victim admitted they had sexual intercourse on the Sunday before Petitioner's arrest, and the results of the DNA testing reflects their admissions. For all of these reasons, the motion to conduct discovery will be denied.

2. Extensions of Time

Respondent requested two extensions of time to file the Reply in support of the Motion to Dismiss. Good cause appearing, the motions will be granted, and the Reply is considered timely.

REVIEW OF MOTION TO DISMISS

Respondent contends that all of Petitioner's claims are procedurally defaulted because none were presented to the Idaho Supreme Court in a proper manner. Because it is now too late for Petitioner to go back to state court to engage in proper exhaustion, Respondent requests that all of the claims be dismissed with prejudice.

1. Standards of Law

A. *Exhaustion Requirement*

A petitioner must "properly exhaust" his state court remedies before pursuing a claim in a federal habeas petition. 28 U.S.C. § 2254(b). That means "fairly presenting the claim" based on a federal theory to the highest state court for review in the manner prescribed by state law. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Unless a petitioner has properly exhausted his state court remedies for a particular claim, a federal

district court cannot grant relief on that claim, although it does have the discretion to deny the claim. 28 U.S.C. § 2254(b)(2).

State remedies are considered technically exhausted, but not *properly* exhausted, if a petitioner failed to pursue a federal claim in state court and there are no remedies now available. *O'Sullivan*, 526 U.S. at 848. A claim may also be considered exhausted, though not properly exhausted, if a petitioner pursued a federal claim in state court, but the state court rejected the claim on an independent and adequate state law procedural ground. *Coleman v. Thompson*, 501 U.S. 722, 731-732 (1991). If a claim has not been properly exhausted in the state court system, the claim is considered “procedurally defaulted.” *Id.* at 731.

B. Exceptions to Procedural Default Bar

Even if a claim is procedurally defaulted, Petitioner may qualify for an exception that permits the Court to hear the merits of his claims: “cause and prejudice” or “actual innocence.” *Murray v. Carrier*, 477 U.S. 478, 488 (1986). The Court now explains those standards of law.

i. *Traditional Coleman Cause*

Ordinarily, to show “cause” for a procedural default, a petitioner must prove that some objective factor external to the defense impeded his or his counsel’s efforts to comply with the state procedural rule at issue. *Coleman*, 501 U.S. at 753. A defense attorney’s errors that rise to the level of a violation of the Sixth Amendment right to

effective assistance of counsel may, under certain circumstances, serve as a cause to excuse the procedural default of other claims. *Carrier*, 477 U.S. at 488. However, an allegation of ineffective assistance of counsel will serve as cause to excuse the default of other claims *only* if the ineffective assistance of counsel claim itself is not procedurally defaulted or, if defaulted, a petitioner can show cause and prejudice for the default. *Edwards v. Carpenter*, 529 U.S. 446, 454 (2000).

A petitioner does not have a federal constitutional right to effective assistance of counsel during state postconviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 554 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 430 (9th Cir. 1993). As a result, the general rule is that any errors of counsel during a postconviction action cannot serve as a basis for cause to excuse a procedural default. *Coleman*, 501 U.S. at 752.

ii. **Martinez Cause**

A limited exception to the *Coleman* rule was created in *Martinez v. Ryan*, 566 U.S. 1 (2012)—that inadequate assistance of post-conviction review (PCR) counsel (or a lack of counsel) “at initial-review collateral review proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.” *Id.* at 9. To show ineffective assistance of PCR counsel, Petitioner must show that the defaulted ineffective assistance of trial counsel claims are “substantial,” meaning that the claims have “some merit.” *Id.* at 14. To show that each claim is substantial, Petitioner must show that trial counsel performed deficiently, resulting in prejudice, defined as a reasonable

probability of a different outcome at trial. *Id.*; see *Strickland v. Washington*, 466 U.S. 668, 695-96 (1984).

The *Martinez v. Ryan* exception applies only to defaulted claims of ineffective assistance of trial counsel; it has not been extended to other types of claims. *See Davila v. Davis*, 137 S. Ct. 2058 (2017) (holding that *Martinez* is not applicable to claims of ineffective assistance of direct appeal counsel); *Hunton v. Sinclair*, 732 F.3d 1124 (9th Cir. 2013) (holding that *Martinez* is not applicable to a defaulted *Brady* claim).

iii. *Prejudice*

A petitioner must show both cause *and* prejudice to excuse a procedural default. To show “prejudice,” a petitioner must demonstrate “not merely that the errors [in his proceeding] constituted a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire [proceeding] with errors of constitutional dimension.” *United States v. Frady*, 456 U.S. 152, 170 (1982).

iv. *Actual Innocence*

If a petitioner cannot show cause and prejudice for a procedurally defaulted claim, the Court can hear the merits of the claim if he meets the “fundamental miscarriage of justice” exception. *McCleskey v. Zant*, 499 U.S. 467, 494 (1991). A miscarriage of justice means that a constitutional violation has probably resulted in the conviction of someone who is actually innocent. *Carrier*, 477 U.S. at 496.

Actual innocence must be premised on “factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 64, 623 (1998). Petitioner must support his allegations of constitutional error with new reliable evidence that was not presented at trial, *Schlup v. Delo*, 513 U.S. 298 (1995). For example, types of evidence “which may establish factual innocence include credible declarations of guilt by another, *see Sawyer v. Whitley*, 505 U.S. 333, 340 (1992), trustworthy eyewitness accounts, *see Schlup*, 513 U.S. at 331, and exculpatory scientific evidence, *see Pitts v. Norris*, 85 F.3d 348, 350-51 (8th Cir. 1996).

The petitioner bears the burden of demonstrating that “in light of all the evidence, including evidence not introduced at trial, it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt.” *Schlup*, 513 U.S. at 327; *see also House*, 547 U.S. at 539. The standard is demanding and permits review only in the “extraordinary” case. *Schlup*, 513 U.S. at 327.

2. History of Claims presented to State Appellate Courts and Claims Presented in Amended Habeas Petition

Petitioner’s direct appeal raised a single claim—that Detective Oyler violated Petitioner’s Fifth Amendment rights when he continued to interrogate Petitioner after Petitioner questioned aloud whether he should consult an attorney. That ruling was upheld on appeal. *See* State’s Lodgings B-1, B-5.

Petitioner pursued a first state post-conviction petition in 2016. After summary dismissal of his claims in the state district court, Petitioner pursued an appeal, raising two claims: (1) that the district court had a duty to inquire into an alleged conflict of interest between Petitioner and his privately-retained counsel, and (2) that his right to an open and public trial was violated when the trial court interviewed two members of the jury venire in the presence of counsel and Petitioner but not in the public courtroom. The Idaho Court of Appeals affirmed the district court's summary dismissal of both claims, holding that there is no such duty as to his first claim and that he should have raised his second claim on direct appeal. State's Lodging D-9.

Petitioner filed a second post-conviction action in state court in 2018. He raised five claims. He received no relief in the state district court. He filed a notice of appeal, but voluntarily dismissed his case in 2020, upon his belief that he had no access to the courts during the COVID-19 quarantine period. *See* State's Lodgings E-1 to F-3.⁴ Thus ended Petitioner's state court matters related to his conviction and sentence.

In the Amended Petition for Writ of Habeas Corpus, Petitioner brings the following ineffective assistance of trial counsel and direct appeal counsel claims:

⁴ There is nothing in the record to support an argument that Petitioner had no access to the Idaho appellate courts during COVID. Petitioner has not produced evidence that the prison refused to make filings or that the Idaho Court of Appeals refused to accept late filings or refused to grant motions for extension of time to make filings during the worst of the COVID pandemic. All courts continued to operate, albeit more slowly and under different conditions, during the COVID pandemic.

- 1.1 Trial counsel Rick Baughman failed to file a motion to suppress Petitioner's coerced statements made to Detective Oyler during a police interrogation.
- 1.2 Trial counsel did not object to the questioning of two potential jurors off record, Mrs. Leatham and Ms. Evans.
- 1.3 Trial counsel should not have stipulated to the admission of DNA evidence admitted at trial.
- 1.4 Trial counsel should have brought forward evidence that the victim said she contracted Chlamydia from Petitioner, but that Petitioner did not have Chlamydia.
- 1.5 Trial counsel failed to impeach the victim with perjured testimony from the preliminary hearing and from her direct examination at trial and failed to file a motion for mistrial or motion for a new trial based on the victim's perjured testimony.

- 2.1 Direct appeal counsel Eric Fredrickson and Sara Thomas failed to raise DNA evidence admissibility issues on appeal.
- 2.2 Direct appeal counsel failed to raise the Chlamydia issues on appeal.
- 2.3 Direct appeal counsel failed to raise the issue of the victim's perjured testimony on appeal.

Dkt. 12.

The Court earlier dismissed Claim 2.4, that the state district court committed judicial misconduct during post-conviction proceedings when it failed to accept Petitioner's "Affidavit of Conflict." Dkt. 15, pp. 4-5. A federal habeas corpus action is

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not the proper avenue to address errors in a state's post-conviction review process.

Franzen v. Brinkman, 877 F.2d 26 (9th Cir. 1989), *cert. denied*, 493 U.S. 1012 (1989).

3. Discussion of Failure to Present Claims to Idaho Supreme Court and Alternative Denial on the Merits

A. *Claim 1.1: Coerced Confession*

Claim 1.1 is that trial counsel Rick Baughman failed to file a motion to suppress Petitioner's "coerced statements" made to Detective Oyler during a police interrogation. Petitioner alleges that, during the interrogation, Oyler used Petitioner's children "as a weapon" to coerce inculpatory statements from him. Dkt. 12, p. 7. Based upon Oyler's vague implications that Petitioner would be better off cooperating if he wanted his children back, Petitioner alleges that he decided that Oyler would not arrest him if he falsely admitted to the sexual allegations. This was the defense theme used at trial.

Baughman signed an affidavit on September 6, 2017, stating his belief that he fell below the standard of care in his representation of Petitioner on the basis of this "coerced confession" claim. Baughman declared:

[A]t the Jury Trial I should have sought and presented expert testimony on the issue of false confession. I did not do so because [sic] I felt that the video of Coulston's interrogation clearly showed that his statements were coerced and under duress."

Dkt. 12-2, p. 62.

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Petitioner exhausted a related but different claim on direct appeal—the underlying claim that Detective Oyler violated his Fifth Amendment *right to counsel* when he continued to question Petitioner after he said, “I better talk to an attorney. I have no idea.” (See State’s Lodging B-1.) Presentation of that claim did not exhaust the present claim, which is based on coercion, a different legal theory, with an ineffective assistance of counsel overlay.

This particular claim should have been presented in the first post-conviction petition. It was not, and it was never presented to the Idaho Supreme Court in any collateral review action. As cause for the default, Petitioner asserts that his post-conviction counsel was ineffective for failing to present it, given his trial counsel’s admission of deficient performance, and that the *Martinez v. Ryan* exception should be applied to allow the Court to hear the merits of the claim de novo.

The Court reviews the claim to determine if it is “substantial” under *Martinez*. The *Martinez* court described “substantial” as having “some merit.” 566 U.S. at 14 (analogizing to *Miller-El v. Cockrell*, 537 U.S. 322 (2003) (describing standards for certificates of appealability to issue)). The Court alternatively reviews this claim de novo on the merits to determine whether there was prejudice to Petitioner’s defense. The merits review standard is a higher standard than the *Martinez* prejudice prong (“no” merit versus “some” merit).

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The clearly-established law governing a Sixth Amendment claim of ineffective assistance of counsel is found in *Strickland v. Washington*, 466 U.S. 668 (1984). To succeed on an ineffective assistance claim, a petitioner must show that (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness, and that (2) the petitioner was prejudiced by the deficient performance. *Id.* at 684.

In assessing trial counsel's performance under *Strickland*'s first prong, a court must view counsel's conduct at the time that the challenged act or omission occurred, making an effort to eliminate the distorting lens of hindsight. *Id.* at 689. The court must indulge in the strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *Id.*

In assessing prejudice under *Strickland*'s second prong, a court must find that, under the particular circumstances of the case, there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 684, 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* at 694.

To review whether counsel performed deficiently, the Court begins with the substantive law that underlies the alleged deficiency. For this claim, it is clearly established that the use of an involuntary confession violates a criminal defendant's right to due process under the Fourteenth Amendment. *Blackburn v. Alabama*, 361 U.S. 199, 205 (1960). The fact that Petitioner lost the right-to-counsel argument on direct appeal

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does not foreclose a coerced confession claim. *See Dickerson v. United States*, 530 U.S. 428, 444 (2000) (“The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry.”).

A confession is coerced or involuntary if “the defendant’s will was overborne at the time he confessed.” *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963). Coercion can be mental or physical, but to render a statement involuntary, coercion must exist to such a degree that the statement is not “the product of an essentially free and unconstrained choice by its maker.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973); *see also Blackburn*, 361 U.S. at 206.

In determining the voluntariness of a confession, the court must consider “the totality of all the surrounding circumstances - both the characteristics of the accused and the details of the interrogation.” *United States v. Preston*, 751 F.3d 1008, 1016 (9th Cir. 2014). The “surrounding circumstances” of the confession are all relevant, including “the duration and conditions of detention (if the confessor has been detained), the manifest attitude of the police toward him, his physical and mental state, [and] the diverse pressures which sap or sustain his powers of resistance and self-control.” *Id.* Other factors include the defendant’s maturity and education. *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993).

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court described how investigators are trained to use psychological ploys:

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To highlight the isolation and unfamiliar surroundings, the manuals instruct the police to display an air of confidence in the suspect's guilt and from outward appearance to maintain only an interest in confirming certain details. The guilt of the subject is to be posited as a fact. The interrogator should direct his comments toward the reasons why the subject committed the act, rather than court failure by asking the subject whether he did it. Like other men, perhaps the subject has had a bad family life, had an unhappy childhood, had too much to drink, had an unrequited desire for women. The officers are instructed to minimize the moral seriousness of the offense, to cast blame on the victim or on society. These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty. Explanations to the contrary are dismissed and discouraged.

Id. at 450.

Martin v. Wainwright, 770 F.2d 918 (11th Cir. 1985),⁵ addressed a situation like Petitioner's, where investigators informed the defendant that cooperating would be beneficial to him. *Id.* at 924–27. In pretrial proceedings, Martin challenged the voluntariness of his confession obtained during a five-hour interrogation in which the United States Attorney participated. Martin alleged several aspects of coercion: (1) the police denied his request to postpone the interrogation one day; (2) the three interrogators used a “good guy, bad guy” technique; (3) one detective falsely told Martin that his codefendant had confessed; (4) the United States Attorney promised to get Martin

⁵ *Martin* was modified on other grounds by 781 F.2d 185 (11th Cir.), *cert. denied*, 479 U.S. 909 (1986).

psychiatric help; and (5) the United States Attorney told Martin that while a confession would hurt him in the guilt phase of his bifurcated trial, it might help him in sentencing, and admonished that "only the truth can help you." *Id.* Under these circumstances, the Eleventh Circuit found that, although such tactics were distasteful, their cumulative effect was not sufficiently coercive to overbear Martin's will. *Id.* at 926.

In *Lynumn v. Illinois*, 372 U.S. 528 (1963), addressing a circumstance involving investigator threats to disrupt the defendant's relationship with her children, the Supreme Court found that the totality of circumstances amounted to coercion:

[T]he petitioner's oral confession was made only after the police had told her that state financial aid for her infant children would be cut off, and her children taken from her, if she did not "cooperate." These threats were made while she was encircled in her apartment by three police officers and a twice convicted felon who had purportedly "set her up." There was no friend or adviser to whom she might turn. She had had no previous experience with the criminal law, and had no reason not to believe that the police had ample power to carry out their threats.

We think it clear that a confession made under such circumstances must be deemed not voluntary, but coerced.

372 U.S. 528, 534 (1963).

Similarly, in *Brown v. Horell*, 644 F.3d 969 (9th Cir. 2011), the confession was deemed coerced where "the connection between Brown's truthfulness and Brown's ability to be with his girlfriend and child was a major, if not the dominant, theme running

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throughout [the investigator's] interrogation." *Id.* at 980. The court described the tactics of Ms. Overall, a polygrapher from the attorney general's office, as follows:

Overall suggested she could pack up and go home. She told [Brown], The "only reason I'm talkin' to you is cuz you got a baby on the way, and I'd like to see you get to be with that baby, and these [detectives] have got a case they have to work." [Brown] said, "I wish I could be there for my baby." Overall responded, "I want to see you be there for your baby.... I can't get your side of what happened out there if you don't tell me. Do you want me to go get them? Do you want to let it go down like this? Or do you want to do the right thing for yourself, for your girlfriend and for your baby?" [Brown] repeated that he wanted to "be able to see the baby born." Overall said, "Okay. I want—I want that, too.... [¶][W]e need to tell them that. I can't go out there and talk to them for you if you're not going to tell me what happened." [Brown] continued to deny he had a firearm or shot Cheryl.

Id. at 976.

In Petitioner's case, the video interview was about 54 minutes long. *See* State's Lodging A-6. Detective Oyler was respectful, quiet, kind, and slow in his questioning. Petitioner's demeanor was likewise quiet, respectful, and contemplative, with a few exclamatory outbursts. A written summary of the video interview is attached to this Order as Appendix A.

The record reflects that Petitioner was approximately 31 years old. Petitioner's counsel described him as "not an extremely highly educated man" (State's Lodging A-2, p. 15), but Petitioner expressed himself thoughtfully and intelligently in the interview.

State's Lodging p. 6. He generally drove trucks for a living and was attending trade school to learn diesel engine mechanics. *Id.*

At 39 minutes into the interview, the following colloquy occurred:

Petitioner: Well, I guess my next question is, you're not going to stop here, Detective, where do we go from here?"

Oyler: Right, we're at talking. Except we got a process and part of the process is collecting DNA evidence, and it's time consuming, because once you collect it and send it to the lab, it sits down there for months and months and months and months.

It depends on if you want to play ball or not. Do you want to work with us through this? I meant, is this something where you want your kids back? Do you want to, you know, go easy though this process or hard through this process. Do you want to sit in jail for three months while we are waiting from DNAs to come back?" Do you know what I mean?

Petitioner: Yeah, but either way no matter what goes on, I'm going to jail anyway.

Oyler: At this stage, yeah, I'm going to arrest you, I'm not going to lie to you. I'm going to arrest you. Unless you told me something that totally turned this thing around. Are you going to work with us or against us?

I am going to arrest you today. Everything was in my mind leaning that way. Unless there's something I don't know. We don't know 100% 'til you come in the door. Are you going to work with us or against us?

Petitioner: I'm going to work with you guys.

Appendix A, pp. 6-7; State's Lodging A-6.

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At trial Petitioner testified that he thought Detective Oyler was going to let him pick up his other two daughters and go free if he falsely confessed to having sexual relations with A.R.M. Petitioner testified at trial about his thought processes during the interview: "I'm thinking now I'm going to have to more or less confess to something that I didn't do so I can get my kids back and go back home." State's Lodging A-2, p. 214.

However, Petitioner's trial testimony clearly is contrary to what he said in the interview. *See Appendix A*; State's Lodging A-6. In the interview, he asked questions, reasoned through his options, and drew his own conclusions from Oyler's comments about potential benefits of confessing. Importantly, Petitioner pointed out that the possibility of getting his kids back was incompatible with his 100% chance of going to jail immediately. *See id.*

At trial, defense counsel asked Petitioner: "Why did you feel compelled to admit to something you didn't do if you were already going to go to jail and you knew it?" Petitioner responded: "Because he gave me the option. In my head he gave me the option If I did something that I didn't do, admit to something that I didn't do, I would get my kids back. And that's exactly what he said." State's Lodging A-2, p. 228.

However, the fact that Petitioner himself recognized that Oyler's suggestion that Petitioner might get his kids back did not make sense because Petitioner knew he was going to jail immediately shows Petitioner's will was not overborne. Oyler's suggested benefits for cooperating were all extremely vague. There was never any clear indication

of what benefits Petitioner might receive if he “worked with” the government. The comment about the children was made once, 39 minutes into a 54-minute interview. The statement does not amount to the type of pressure that would “sap [one’s] powers of resistance and self-control,” as the Supreme Court put it in *Columbe v. Connecticut*, 367 U.S. 568, 602 (1961). Oyler’s comment about getting the children back was insignificant and not psychologically oppressive as compared to the situations addressed in *Lynum*, and *Brown*, above. The facts here are far less psychologically coercive, if at all, than in *Martin*, where the court labeled the detectives’ false information and promises of benefits as “distasteful” but not enough to overcome the defendant’s will.

In addition, the Court reviews whether Oyler exhibited any overtly oppressive treatment in the interview process that could be considered additional pressure to falsely confess. None appears evident in the video interview. See State’s Lodging A-6. Petitioner testified several times that he did not feel threatened during the interview. At the suppression hearing, the following colloquy addressed potential coercion by Detective Oyler:

Q. He didn’t threaten you at any time?

A. No.

Q. He was cordial with you?

A. He asked me questions like a normal person.

Q. Polite?

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A. Yeah. State's Lodging A-2, p. 14. And, at trial, Petitioner similarly stated that Detective Oyler never raised his voice with Petitioner, kept his voice at the same level throughout the interview, and wasn't threatening in a physical way. *Id.*, p. 221.

Timeline for

The Court concludes that the video recording, the preliminary hearing testimony, and Petitioner's trial testimony, together show that Petitioner was not coerced into confessing under the standard set forth in precedent. Regardless of Baughman's "admission" in his affidavit that he performed deficiently for not raising this issue in a motion to suppress, the Court finds that the record shows that no coercion occurred. Neither trial counsel nor post-conviction counsel performed deficiently in not raising the issue, and no prejudice occurred to Petitioner. Therefore, the *Martinez* exception does not apply to excuse the procedural default of this claim. Alternatively, the Court denies the claim on de novo review.

B. *Claim 1.2*

Claim 1.2 is that Petitioner's trial counsel did not object to the questioning of two potential jurors off the record, Mrs. Leatham and Ms. Evans. Dkt. 12, pp. 8-9.

Petitioner brought the underlying substantive issue without the ineffective assistance of counsel overlay as a claim on post-conviction review, but the state district court determined that the claim was procedurally barred because he failed to object at trial and could have raised the claim on direct appeal. On appeal, the Idaho Court of

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Appeals affirmed the district court on the procedural basis. State's Lodging D-9 p. 3. For federal habeas corpus purposes, that claim—whether asserted as the underlying claim or with an ineffective assistance of counsel overlay—is procedurally defaulted.

Regardless of the procedural default, the facts in the record show that there is no factual basis for this claim. The Sixth Amendment provides that criminal defendants are entitled to “a speedy and public trial.” The right to “a public trial is for the benefit of the accused.” *Waller v. Georgia*, 467 U.S. 39, 46 (1984). Defendants may waive the right to a public trial. *See Levine v. United States*, 362 U.S. 610, 619 (1960). Defendants forfeit their right to a public trial by failing to timely object to the closure of the courtroom during voir dire. *See Peretz v. United States*, 501 U.S. 923, 936, (1991); *Levine v. United States*, 362 U.S. 610, 619 (1960).

During voir dire, the state district court asked if any of the potential jurors desired to have discussions about their ability to be impartial in a more private setting, because of the sensitive topic of the criminal charge. Several desired to be questioned privately. The court then asked counsel and Petitioner whether they were willing to waive the right to a public forum for this particular questioning. After the Court informed Petitioner of the “right to have this type of questioning take place in the courtroom in front of the press,” both counsel and Petitioner himself said they were willing to waive. State's Lodging A-2, p. 30. The transcript of the original proceeding shows that the court questioned the

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potential jurors on the record with the prosecutor, Petitioner, and Petitioner's counsel present. *See* State's Lodgings A-2, D-7. p. 87.

The Court concludes that there is no merit to this claim. A public record was created for appeal during the in camera interview. Beyond the First Amendment issues, counsel's decision had positive effects on the proceedings. The potential jurors were more likely to be open without the presence of the other jurors and the public, making it clearer for counsel to determine whether to dismiss them. In addition, it was less likely that these jurors could have said something that might have tainted the entire jury panel. For all of these reasons, Petitioner has not shown deficient performance or prejudice from defense counsel's decision to agree to the in-camera questioning of these potential jurors.

C. Remaining Claims: Procedural Default

The remaining claims in the Petition are procedurally defaulted because neither they, nor the underlying substantive claims, were presented to the Idaho Supreme Court. Because these claims are without merit, the Court will deny them under a de novo review standard.

1.3 Trial counsel should not have stipulated to the admission of DNA evidence admitted at trial, and 2.1 Direct appeal counsel Eric Fredrickson and Sara Thomas failed to raise DNA evidence admissibility issues on appeal.

Petitioner asserts that Baughman should not have stipulated to admission of the DNA evidence. He disagrees with Baughman's affidavit:

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“The decision to stipulate to admission of DNA evidence was strategic/tactical, as the evidence would likely have come in despite any challenge on behalf of Coulston and the opportunity to cross-examine remained. The decision also served to save Coulston a significant amount of money.”

Dkt. 12, p. 11.

The last alleged sexual incident between Petitioner and the victim occurred on Sunday, November 26, 2011, and the testing was performed on November 29, 2011. Petitioner asserts that his DNA could not have been found on A.R.M.’s body after three days and two showers. Petitioner has not provided any scientific evidence showing that this proposition is accurate.

Further, the accuracy of the contested evidence is bolstered by Petitioner’s admission to Detective Oyler that he last had sex with the victim on the previous Sunday and by the fact that the DNA from the victim’s vagina and her underwear pointed to Petitioner’s profile in a statistically-significant way. Baughman was not deficient in seeing the opportunity to decline a stipulation as an unhelpful avenue of defense. He appropriately made a tactical and strategic decision not to challenge the evidence. Nor was Petitioner prejudiced by the stipulation, because he has not shown any reason why the DNA evidence would have been excluded had Baughman objected to its admission. For the same reasons, direct appeal counsel was not ineffective.

Dkt.

1.4 Trial counsel should have brought forward evidence that the victim said she contracted chlamydia from Petitioner, but that Petitioner did not have chlamydia, and 2.2 Direct appeal counsel failed to raise the chlamydia issues on appeal

Medical records of the victim from the dates in question show that the victim had chlamydia, *see* State's Lodging E-2, but Petitioner did not. At the preliminary hearing, the victim testified that she contracted chlamydia from Petitioner and found out when she had the sexual assault examination done. State's Lodging A-49, pp. 23-24. Chlamydia is a reportable disease, and Petitioner says that A.R.M. did not list Petitioner as a sexual partner on the Idaho Department of Health reporting form.

Petitioner argues that Baughman performed deficiently because Petitioner should not have been prevented from presenting evidence that he did not have chlamydia in his rebuttal case. He argues that the absence of his name in the records proves that he never had sexual intercourse with the victim.

Baughman declared by affidavit:

Coulston and I disagreed regarding the value of the sexually transmitted disease (STD) evidence and testimony. Coulston stated that he wanted to present the evidence to attach the victim's credibility. I counseled him that the issue was not the STD, but rather, whether Mr. Couston actually penetrated the victim's vagina."

Dkt. 12-2, p. 10.

Petitioner argues that this was a decision that he, not counsel, should have made, because it was not a strategic or tactical decision. Petitioner argues that an STD proves

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that there was penetration into a vagina by a person who had chlamydia—and he does not fit that description.

Petitioner's reasoning behind his request is flawed. If, in fact, the records show that the minor victim did not list Petitioner as a sexual partner, it does not demonstrate anything more than the deductions that can be made from the current record: either that the minor victim lied several times about having sex with Petitioner, or that the minor victim had sex with Petitioner but tried to conceal that fact from other adults.

The omission of this evidence does not change the fact that Petitioner himself admitted to having sex with the minor victim and that Petitioner's DNA was found in her vagina and underwear. Counsel was not deficient for declining to make this evidence a part of the defense. Contrary to Petitioner's argument, this was a tactical decision. The jury was likely to see this issue as a red herring, because, as discussed directly above, the evidence does not preclude Petitioner as a person having sex with the victim; it merely suggests that another person (perhaps someone her own age) likely had sex with her. Because Idaho Rule of Evidence 412 precludes admission of evidence of a sexual assault victim's past sexual behavior, Baughman was not deficient in rejecting Petitioner's suggestion to attempt to bring this evidence forward at trial.

Petitioner was not prejudiced by it because of the strength of the evidence against him. Therefore, Baughman was not ineffective. For the same reasons, direct appeal counsel was not ineffective.

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1.5 Trial counsel failed to impeach the victim with perjured testimony from the preliminary hearing and from her direct examination at trial and failed to file a motion for mistrial or motion for a new trial based on the victim's perjured testimony, and 2.3 Direct appeal counsel failed to raise the issue of the victim's perjured testimony on appeal

Petitioner argues that A.R.M.'s whole testimony was called into question after her "admitted perjured testimony" regarding whether she had oral sex with him. The chronological facts underlying this claim are as follows.

During the police interview, A.R.M. denied having oral sex with Petitioner. *See* State's Lodging A-1, p. 24. During the preliminary hearing, A.R.M. testified that they did not engage in oral sex. State's Lodging A-49, p. 23.

However, at trial, A.R.M. testified:

Q. At no time was there oral sex?

A: No

Q. At no time...

A: Yes, there was. I lied.

Q. Excuse me?

A. He had given me oral sex.

Q. Well, do you recall testifying at the preliminary hearing that that absolutely did not happen?

A. Well, from what I remember, I didn't give him any oral sex.

State's Lodging A-2, p. 97.

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Under cross-examination, A.R.M. testified she did not recall what she told Detective Oyler about whether there had been any oral sex. She did not recall what she said at the preliminary hearing, stating: "I have blocked out a lot of stuff out of my memory, and I am just now remembering this." *Id.*, p. 98. Also at trial, A.R.M. clarified that, at the preliminary hearing, she had been referring to the fact that she had not given him oral sex, but he had given her oral sex. *Id.*, p. 97.

Petitioner asserts that the admission that A.R.M. lied means that she has no credibility, the State has no case, and Petitioner is innocent. Petitioner asserts that Baughman should have done more to highlight the discrepancies in A.R.M.'s versions of events at trial. He also asserts that defense counsel was ineffective for failing to either move for a mistrial or a new trial.

Even though this factual discrepancy seems like a very important matter to Petitioner, it is not when considered against the whole record. It was yet another credibility issue for the jury to decide when the jury weighed all of the other evidence in the record. There could be any number of explanations behind A.R.M.'s statement. It is very common modern vernacular for people to say, "I lied," when they circle back in conversation and correct something they said that was not accurate. It does not necessarily mean, "I intended to not be truthful," but may mean, "I need to correct something I said that was incorrect." Or, the jury could have inferred that A.R.M. was saying at trial that she was intentionally lying about having oral sex with Petitioner.

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As to the preliminary hearing testimony, A.R.M. explained the discrepancy away by saying that her interpretation of the question had been different (which is understandable, given her young age). She explained away the investigation discrepancy by saying that she tried to block the sexual experiences from her memory (which was understandable, given the constant overlay of worries of what might happen to her and her sisters if she reported the sexual abuse). It was up to the jury to assess these explanations and find A.R.M. or Petitioner more credible, based on the totality of the evidence presented at trial.

Petitioner does not show what more counsel could have or should have done. In fact, his counsel's questioning that *was* done raised the issue of A.R.M.'s credibility with the jury in a subtle, non-offensive way. For tactical and strategic reasons, many defense attorneys are very careful to avoid being overly aggressive with child witnesses, because aggression can backfire and cause jurors to begin to feel sympathy for them. There is no deficient performance and no prejudice, because the discrepancies in A.R.M.'s testimony *were* raised at trial for the jury to consider. Had Baughman filed a motion for a mistrial or new trial, it would have been denied on the grounds that this was simply a credibility issue to be determined by the jury. This claim will be denied on the merits under a de novo review standard.

Petitioner also has combed through the record for other discrepancies in A.R.M.'s testimony. He is simply amiss in thinking that a jury is going to fault a 15-year-old for

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not knowing the frequency she had sex with an adult over a four- to five-year period of time—beginning when she was ten years old. He also argues that he was a long-distance truck driver, and could not have had frequent sex with A.R.M.. However, testimony showed that during the last part of their “relationship,” Petitioner was going to diesel mechanic school locally, as he told Detective Oyler. *See* State’s Lodging A-6. A minor child is not going to be able to match up Petitioner’s dates of employment or being on the road with the frequency of sex with a father figure when testifying about incidents that occurred between the time she was ten and fifteen. Any discrepancies as to these issues were not going to make a significant difference to the jury given the other strong evidence pointing to him as the perpetrator of the crimes.

Petitioner also asserts that Baughman could have done a better job of asserting that A.R.M. fabricated the sexual relationship story because she was angry with Petitioner for not allowing her to go to scheduled extracurricular activities and for requiring her to check in with him while she was away. However, counsel cross-examined A.R.M. adequately on this subject. State’s Lodging A-2, p. 98.

Petitioner has not shown that trial counsel performed deficiently, nor has he shown prejudice to his case. The record reflects that Baughman adequately cross-examined A.R.M. and adequately raised her credibility issues in a manner that would not inflame the jury. He highlighted discrepancies in her various statements about the frequency of sex, whether he gave her a body massage, where Petitioner kept lubricating products, and

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whether or not she told Detective Stinebaugh at the school that she was afraid to go home. *See* State's Lodging A-2, pp. 96-98.

Petitioner's suggested motions based on A.R.M.'s credibility issues would have been denied because there was no legal basis for filing such motions. Petitioner was not prejudiced by his counsel's decisionmaking regarding credibility issues of the witnesses. For all of these reasons, the Court concludes, under a de novo standard of review, that direct appeal counsel was not ineffective.

SUMMARY

Petitioner's claims are procedurally defaulted for failure to properly present them to the Idaho Supreme Court. However, the Court has analyzed them on the merits as if they were not procedurally defaulted. None of the claims warrants granting a writ of habeas corpus. This case presents some of the strongest evidence the Court has seen in support of a lewd conduct conviction. Petitioner has not shown actual innocence. The Petition for Writ of Habeas Corpus will be denied and dismissed, and a Certificate of Appealability will not issue.

ORDER

IT IS ORDERED:

1. The parties' Motions for Extension of Time (Dkts. 25, 26) are GRANTED.
2. Petitioner's "Motion for Inspection of Sexual Assault Kit" (Dkt. 11) is DENIED.
3. Respondent's Motion for Summary Dismissal (Dkt. 19) is GRANTED.

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4. The Petition for Writ of Habeas Corpus (Dkt. 1) is DENIED and DISMISSED with prejudice.

5. The Court does not find its resolution of this habeas matter to be reasonably debatable, and a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c); Rule 11 of the Rules Governing Section 2254 Cases. If Petitioner files a timely notice of appeal, the Clerk of Court shall forward a copy of the notice of appeal, together with this Order, to the United States Court of Appeals for the Ninth Circuit. Petitioner may seek a certificate of appealability from the Ninth Circuit by filing a request in that court.

DATED: March 31, 2022



A handwritten signature in cursive ink that reads "Raymond Patricco".

Honorable Raymond E. Patricco
United States Magistrate Judge

Appendix A

Hereafter, the Court quotes and paraphrases the contents of the interview. (See State's Lodging A-6 for the complete video interview.)

Oyler: I appreciate you coming down in a timely manner. I know you have some questions for me.

Petitioner: My kids are important. What the heck is going on here?

Oyler: Well, I'm going to go into that. (Oyler verifies Petitioner's identification information.)

Before we go any further, I'm going to read you your rights. You're not under arrest at this time, I'm just going to read you your rights, and if there's anything you don't want to talk about, you don't have to talk about it. (Oyler reads Petitioner his rights. He asks if Petitioner understood.)

Petitioner Yes.

Oyler: If there's anything you don't want to talk about, you don't have to talk about it, all right. So you understand?

Petitioner Yes.

Oyler: Having these rights in mind, do you want to talk to us? (Petitioner signs and dates the Miranda card. Oyler gives Petitioner a form about state custody of his children.) We sheltered your kids. Within 48 hours there needs to be a hearing. You will get information from the court about when that will be held.

Sounds like you've got some things going on at home. Sounds like you're doing the single dad thing. It's not easy, it's hard every step of the way.

Petitioner: I used to drive truck, but my wife wanted a divorce. I kicked her out because she was on meth. I was trying to drive trucking with the girls. I have been raising [A.R.M.] since she was 3. I have been divorced six years.

Oyler: You work full time?

Petitioner: I did. I'm going to school right now. I did have a job interview for tomorrow. I don't know what's going to happen with that. (He says that he gets child support from A.R.M.'s natural dad, but the payments are sometimes missed. He uses a babysitter when he is in school.

I don't have time for a relationship. The babysitters often want to have a relationship with me.

Oyler: Why do you think you're down here today?

Petitioner: I have no idea. All I was told is [A.R.M.] told her counselor that I beat them.

Oyler: Is that true?

Petitioner: No. I don't abuse my kids, no. I do, I whip 'em, you know I discipline my kids very sternly, but I don't *whip* them, I mean, I don't throw them up against the wall, I play with them, you know, I'm a little abrupt with them, but when they start crying, I stop doing it.

(He admits he has a language problem. He took a parenting class to address that.) Sometimes it flies right out. I am used to being on the road and talking to male truck drivers." (He does apologize to [A.R.M.] when she complains about his language.)

Oyler: We're always going to err on the side of caution with the safety of children. Do you think this is a good thing or a bad thing?

Petitioner: I think it's a bad thing, because the little girls are probably freaking out. They want their daddy. They want to be told it's going to be OK. And that makes me freak out. I love my girls to the fullest extent. I would not change being a single dad. I get the privileges of fatherhood.

(He thinks the reason A.R.M. did what she did here is because A.R.M. disobeyed him and he took away her privileges to go to band and robotics, and come straight from school.)

Oyler: Did you ever have sex with A.R.M.?

Petitioner: No.

Oyler: Why do you think she would say you did?

Petitioner: Probably because she is not getting her way. Pause. Because that is a fucking lie.

Oyler: These are serious allegations.

Tell me about the kids.

If I brought her in, would you call her a liar?

Petitioner: (Long pause.) Probably so.

Oyler: Here's the question. I'm going to cut the BS on this. I'm not here to play games with you. Straight up, if you did not do this, then why did you not deny it when you talked to her on the phone? I did deny it. What was she talking about. She was very explicit. She asked you to stop with the sex and you said you would and that you never meant to hurt her.

Petitioner: No, I said I never meant to hurt the girls.

Oyler: You never denied it once during that whole phone call.

Petitioner: Well, you can say whatever. I know you have a recorder.

Oyler: This is what I believe happened. You got put under some tough circumstances. I believe that you ended up being the only responsible person in these kids' lives that was willing stand up for them when everyone else was flaking out. You've probably done your best to raise these girls. I'm guessing you probably leaned on A.R.M. pretty hard as far as needing her help.

(Oyler praises Petitioner for being the only person who stood up to raise the three girls and suggested that Petitioner leaned on A.R.M. for help with the younger two. Petitioner admitted that A.R.M. did most of the cooking and cleaning and did the laundry for herself and the two younger girls.

Oyler: I'm not saying that these are bad things.

She's almost playing the role of the wife and mother in the house.

Petitioner: Yes, she does a lot. I don't want her to play the role as the mother.

Oyler: It looks like from what you said, it looks like she plays the role of wife and mother. She acts older than her age, kind of like a pseudo-wife. You haven't been able to have a decent relationship because you've sacrificed for these kids, and you're a man and you need a release every now and then.

Petitioner: I got my person for release.

Oyler: Your person?

Petitioner: Yeah, I admit I do need something.

Oyler: So, you have a friend for that?

Petitioner: Yeah, when the kids aren't around. Otherwise my hand works just as well for that.

Oyler: It makes sense, whether you intend it or not, how wires can get crossed with A.R.M. And she's a cute little thing.

Petitioner: Oh yeah, I keep a [unintelligible] on her.

Oyler: I imagine she has some boys chasing after her.

Petitioner: Sad.

Oyler: So this is where we're at with it.

Petitioner: Well, I'm not.... No.... Guess from here on out, cause I know you guys got your things, and better talk to an attorney. I have no idea. (Interview time: 28:30.)

Oyler: (He ignores the last statement.) Let me ask you this, Guy. Like I say, you seem to be a straight shooter. What are we going to do? A.R.M. is getting a sexual assault exam, and we find your sperm inside her from Sunday night. That is what it is. It's embarrassing to talk about. Ya know. Things these come out. Ya know. We justify them; we cross some lines.

I know that's not the type of guy you want to be. I know you want to be a good dad to these kids. I know you want to raise them right. But if that is, it is what it

is, proof positive. And you know we're going to find it. (Oyler tells Petitioner that he believes sperm live up to 19 days.) They float around in there for a while.

So, you can either work with me or against me on this one.

Petitioner: Well, I don't know what to say, because, you know, it's

Oyler: Trust me, I know that a lot of people have a hard time understanding why this happens; this happens commonly; you are not a monster. I don't believe you did anything with your own kids, your own biological kids. You are not a pedophile. You have a physically mature pretty girl in your house that's you've been taking care of that's not blood, It's not incestuous. You don't have any of those taboos there, ok? Yeah, she's a little young, but other than that, is there anything wrong with it? You're not crossing any other lines, are you?

Petitioner: Yeah, that's all; [unintelligible] if you put it that way, but her age.

Oyler: Well, other than her age. We have guys in here who are having full blown sex with their biological kids.

Petitioner This has got me scared.

Oyler It's okay to be scared. It was probably going to come out, You knew that there was a fairly good chance this day would come. Once you cross the line one time, once you get into that territory you know that could always come back, and today's the day.

Oyler What are we going to do to work through this process?

Petitioner What do you mean by that?

Oyler I mean, here we are. This is not a cryptic disclosure case by a little kid, where I'm not sure if anything happened or not. A.R.M. is very bright, very articulate, she could sit down with anyone and explain anything, she's extremely believable; you did not deny having

sex with her on the confrontation call. For all practical purposes, you've admitted it. It's done, it happened. It's not a fishing expedition on my part, because the DNA evidence will be clear. It happened.

Petitioner (Very long pause.)

I don't know.

Oyler: It just is what it is.

Petitioner: I knew I was going to jail tonight anyway for something. (Long pause.)

Oyler: I'll tell you what [A.R.M.] described. I get quite a few cases where a lot of disturbing sexual stuff happened, sexual deviancies where they are doing pretty off the wall weird stuff, ok?

[A.R.M.]'s description was nothing like that. Typical encounter straight intercourse, no sodomy, no sex toys, no hard core pornography, here, straight up regular sexual intercourse. not every day, average couple of times a week, sounds like a married couple.

Petitioner: Really?

Oyler: Once you get in that territory, you kick yourself in the rear end, you feel grief, you don't want to let it happen again. "Moment of weakness, regret, cycle, then it becomes very regular. Again, I understand how it happens. She could have been very into it, really enjoy it, she wouldn't admit that to me." I don't know.

Petitioner: Well, I guess my next question is, you're not going to stop here, Detective, where do we go from here?"

Oyler: Right, we're at talking. Except we got a process and part of the process is collecting DNA evidence, and it's time consuming, because once you collect it and send it to the lab, it sits down there for months and months and months and months.

It depends on if you want to play ball or not. Do you want to work with us through this? I meant, is this

something where you want your kids back? Do you want to, you know, go easy though this process or hard through this process. Do you want to sit in jail for three months while we are waiting from DNAs to come back?" Do you know what I mean? (Video interview 39:40.)

Petitioner: Yeah, but either way no matter what goes on, I'm going to jail anyway.

Oyler: At this stage, yeah, I'm going to arrest you, I'm not going to lie to you. I'm going to arrest you. Unless you told me something that totally turned this thing around. Are you going to work with us or against us?

I am going to arrest you today. Everything was in my mind leaning that way. Unless there's something I don't know. We don't know 100% 'til you come in the door. Are you going to work with us or against us?

Petitioner: I'm going to work with you guys. But there is one little detail she left out.

Oyler: And what's that.

Petitioner: I don't know if I really want to go in that area, though.

Oyler: Well, if there's a key thing, I need to know about it. I mean, for all I know, she was coming on to you. She could be crawling into your bed at night for all I know. I heard her side of the story; I want to hear your side of the story.

Petitioner: All right, I will play ball. This is going to happen anyway.

She did it to me the first time when I was sleeping. After that I said, you need to sleep in your own room. She won't let me have a girlfriend. I have to sleep on the couch. After the first time, it happened a couple of times a month.

(Petitioner admitted to ejaculating inside A.R.M., that his last sexual encounter was the previous Sunday, that

they used the term “love-ins” to communicate when one of them wanted to have sex.”)

[A.R.M]. is using sex as a weapon,” even though I “tried to give [her]everything. Today I am here because I took away things she wanted.

Oyler and Petitioner discussed a custodian (Petitioner preferred his mother) for the two younger children. Petitioner then consented to an oral swab. When Oyler finished the swabbing, he arrested Petitioner for lewd conduct with a minor.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

L. LaMONT ANDERSON, ISB #3687
Deputy Attorney General
Chief, Capital Litigation Unit
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-4539
Facsimile: (208) 854-8074
E-mail: lamont.anderson@ag.idaho.gov

COPY

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

GUY L. COULSTON, JR.,)	CASE NO. 1:20-cv-00468-REP
)	
Petitioner,)	
)	
vs.)	NOTICE OF LODGING STATE
)	COURT RECORDS
LAWRENCE G. WASDEN,)	
)	
Respondent.)	
)	
)	

COMES NOW, Respondent, Lawrence G. Wasden ("state"), by and through his attorney, L. LaMont Anderson, Deputy Attorney General, Chief, Capital Litigation Unit, and does hereby lodge state court records with this Court pursuant to Rule 5 of the Rules Governing Section 2254 Cases as follows:

NOTICE OF LODGING STATE COURT RECORDS - 1

Appendix - A, 50

A. State District Court Trial Records, State v. Guy Lewis Coulston, Jr, Kootenai County Case No. CR-2011-20976:

1. Clerk's Record on Appeal, State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396 (340 pages).
2. Transcript on Appeal, State of Idaho v. Guy L. Coulston, Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396 (1016 pages).
3. Transcript on Appeal, State of Idaho v. Guy Coulston, Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396 (19 pages).
4. Transcript on Appeal, State of Idaho v. Guy L. Coulston, Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396 (15 pages).
5. Plaintiff's Suppression Exhibit #1 (Waiver), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.
6. Plaintiff's Suppression Exhibit #2 (CD – Petitioner's interview with law enforcement), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.
7. Plaintiff's Exhibit #5 (CD, Pretext call), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

8. Plaintiff's Exhibit #6 (CD – Petitioner's interview with law enforcement), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

9. Plaintiff's Exhibit #7 (Waiver), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

10. Plaintiff's Exhibit #8 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

11. Plaintiff's Exhibit #9 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

12. Plaintiff's Exhibit #10 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

13. Plaintiff's Exhibit #11 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

14. Plaintiff's Exhibit #12 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

15. Plaintiff's Exhibit #13 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

16. Plaintiff's Exhibit #14 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

17. Plaintiff's Exhibit #15 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

18. Plaintiff's Exhibit #16 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

19. Plaintiff's Exhibit #17 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

20. Plaintiff's Exhibit #20 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

21. Plaintiff's Exhibit #21(a) (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

22. Plaintiff's Exhibit #21(b) (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

23. Plaintiff's Exhibit #22 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

24. Plaintiff's Exhibit #23 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

25. Plaintiff's Exhibit #24 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

26. Plaintiff's Exhibit #25 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

27. Plaintiff's Exhibit #26 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

28. Plaintiff's Exhibit #28 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

29. Plaintiff's Exhibit #29 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

30. Plaintiff's Exhibit #30 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

31. Plaintiff's Exhibit #31 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

32. Plaintiff's Exhibit #32 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

33. Plaintiff's Exhibit #35 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

34. Plaintiff's Exhibit #36 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

35. Plaintiff's Exhibit #38 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

36. Plaintiff's Exhibit #39 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

37. Plaintiff's Exhibit #40 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

38. Plaintiff's Exhibit #41 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

39. Plaintiff's Exhibit #42 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

40. Plaintiff's Exhibit #43 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

41. Plaintiff's Exhibit #45 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

42. Plaintiff's Exhibit #47 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

43. Plaintiff's Exhibit #48 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

44. Plaintiff's Exhibit #49 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

45. Plaintiff's Exhibit #50 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

46. Plaintiff's Exhibit #51 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

47. Plaintiff's Exhibit #52 (Photo), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

48. Plaintiff's Exhibit #53 (Griffin's billing notes), State of Idaho v. Guy Lewis Coulston, Jr., Kootenai County District Court Case No. CR-2011-20976, Idaho Supreme Court Docket No. 41396.

49. Preliminary Hearing Transcript, State of Idaho v. Guy L. Coulston, Kootenai County District Court Case No. CR-2011-20976 (32 pages).

B. State Appellate Court Records (Direct Appeal), State v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396:

1. Appellant's Brief, State of Idaho v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396, dated December 19, 2014 (12 pages).

2. Respondent's Brief, State of Idaho v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396, dated March 16, 2015 (18 pages).

3. Appellant's Reply Brief, State of Idaho v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396, dated June 10, 2015 (11 pages).

4. Appellant's Pro-Se Amended Reply Brief, State of Idaho v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396, dated June 10, 2015 (26 pages, including attachments).

5. 2015 Unpublished Opinion No. 552, State of Idaho v. Guy Lewis Coulston, Jr., Idaho Court of Appeal Docket No. 41396, filed July 15, 2015 (3 pages).

6. Petition for Review, State of Idaho v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396, dated August 4, 2015 (2 pages).

7. Appellant's Brief in Support of Petition for Review, State of Idaho v. Guy L. Coulston, Idaho Supreme Court Docket No. 41396, dated September 1, 2015 (22 pages).

8. Order Denying Petition for Review, State of Idaho v. Guy Lewis Coulston, Jr., Idaho Supreme Court Docket No. 41396, dated November 3, 2015 (1 page).

9. Remittitur, State of Idaho v. Guy Lewis Coulston, Jr., Idaho Court of Appeals Docket No. 41396, dated November 3, 2015 (1 page).

C. State District Court Post-Conviction Records, Guy Lewis Coulston, Jr. v. State, Kootenai County Case No. CV-2016-3882:

1. Clerk's Record on Appeal, Guy Lewis Coulston, Jr. v. State of Idaho, Kootenai County District Court Case No. CV-2016-3882, Idaho Supreme Court Docket No. 46558 (58 pages).

2. Reporter's Transcript, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018 (18 pages).

3. Motion to Augment the Appellate Record and Statement in Support Thereof, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated January 3, 2020 (36 pages, including attachments).

D. State Appellate Court Records (Post-Conviction), Guy L. Coulston v. State, Idaho Supreme Court Docket No. 46558-2018:

1. Motion to Remove Post-Conviction Counsel & Supporting Affidavit, Guy Coulston v. State of Idaho, Idaho Supreme Court Docket No. 46558, dated December 20, 2018 (5 pages, including attachments).

2. Order Granting Motion to Withdraw as Counsel for Appellant, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated April 29, 2019 (1 page).

3. Proof of Service of Order Granting Motion to Withdraw as Counsel for Appellant, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated April 30, 2019 (3 pages).

4. Order Conditionally Granting Motion to Augment, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated September 25, 2019 (13 pages, including attachments).

5. Order Granting Motion to Augment, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated January 3, 2020 (1 page).

6. Appellant's Brief, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated October 7, 2019 (6 pages).

7. Respondent's Brief, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated January 3, 2020 (14 pages).

8. Petitioner's Reply Brief, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated March 2, 2020 (5 pages).

9. Unpublished Opinion, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Court of Appeals Docket No. 46558, filed April 7, 2020 (4 pages).

10. Petition for Review, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated April 27, 2020 (2 pages).

11. Brief in Support of Petition for Review, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated May 27, 2020 (7 pages).

12. Order Denying Petition for Review, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 46558-2018, dated June 10, 2020 (1 page).

13. Remittitur, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Court of Appeals Docket No. 46558-2018, dated June 10, 2020 (1 page).

E. State District Court Successive Post-Conviction Records, Guy Coulston, Jr. v. State, Kootenai County Case No. CV28-18-9706:

1. Clerk's Record on Appeal, Guy Couston, Jr. v. State of Idaho, Kootenai County District Court Case No. CV28-18-9706, Idaho Supreme Court Docket No. 47067 (25 pages).

2. Clerk's Confidential Record on Appeal (LODGED UNDER SEAL), Guy Couston, Jr. v. State of Idaho, Kootenai County District Court Case No. CV28-18-9706, Idaho Supreme Court Docket No. 47067 (10 pages).¹

¹ The state notes that the Clerk's Confidential Record on Appeal contains Petitioner's *pro se* Motion for in Camera Review asking that the post-conviction court review Health and Welfare records associated with the victim allegedly contracting a sexually transmitted disease and not listing Petitioner as one of her sexual partners. It does not appear the post-conviction court addressed Petitioner's motion. Consequently, those records are not part of the state court record and have not been lodged with the Court. (See Dkt. 15, p.7.)

3. Transcript on Appeal, Guy Couston, Jr. v. State of Idaho, Kootenai County District Court Case No. CV28-18-9706, Idaho Supreme Court Docket No. 47067-2019 (30 pages, including index).

F. State Appellate Court Records (Successive Post-Conviction), State v. Guy L. Coulston, Idaho Supreme Court Docket No. 46448-2018:

1. Motion for Voluntary Dismissal of Appeal, Guy Lewis Coulston v. State of Idaho, Idaho Supreme Court Docket No. 47067, dated August 4, 2020 (2 pages).

2. Affidavit in Support of Motion for Voluntary Dismissal of Appeal, Guy Lewis Coulston v. State of Idaho, Idaho Supreme Court Docket No. 47067, dated August 4, 2020 (3 pages).

3. Order Granting Appellant's Motion for Voluntary Dismissal of Appeal, Guy Lewis Coulston, Jr. v. State of Idaho, Idaho Supreme Court Docket No. 47067-2019, dated August 13, 2020 (1 page).

DATED this 18th day of August, 2021.

/s/ L. LaMont Anderson
L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on or about the 18th day of August, 2021, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

Guy L. Coulston, Jr. #107837
Saguaro Correctional Center - Unit L
1250 East Arica Rd.
Eloy, AZ 85131

U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile
 Electronic Court Filing

/s/ L. LaMont Anderson
L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

NOTICE OF LODGING STATE COURT RECORDS - 13

Appendix - A, pg. 62

Notices1:20-cv-00468-REP Coulston v. Wasden

CONMAG,IRDONE,LC6,PROSE

U.S. District Court**District of Idaho (LIVE) NextGen 1.6****Notice of Electronic Filing**

The following transaction was entered by Anderson, L on 8/18/2021 at 11:30 AM MDT and filed on 8/18/2021

Case Name: Coulston v. Wasden
Case Number: 1:20-cv-00468-REP
Filer: Lawrance G. Wasden
Document Number: 18

Docket Text:

NOTICE by Lawrance G. Wasden Notice of Lodging State Court Records (Anderson, L)

1:20-cv-00468-REP Notice has been electronically mailed to:

L LaMont Anderson lamont.anderson@ag.idaho.gov, marilyn.gerhard@ag.idaho.gov

1:20-cv-00468-REP Notice will be served by other means to:

Guy L. Coulston
107837
Core Civic/Saguaro Correction Center
1252 E Arica Rd
Eloy, AZ 85131

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1089316566 [Date=8/18/2021] [FileNumber=2239556-0] [a443faad9a587cf138e7df75a5692b1cfe530e32a4c1ae5d5d31ab671e81cb6187 3371c85bbfeb065defc2d23a33322d883783e051275cee5ac1732eb5705a4]]

Appendix-A, pg. 63