Appendix A

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2024

RYAN LEWIS HILYARD,

Appellant
(Defendant),

v.

THE STATE OF WYOMING,

Appellee
(Plaintiff).

S-24-0193

IN THE SUPREME COURT
STATE OF WYOMING
FILED

AUG 06 2024

SHAWNA GOETZ, CLERK
by DEPUTY

ORDER DISMISSING APPEAL

This matter came before the Court upon its own motion after a review of recently matured appeals. Appellant filed a notice of appeal to challenge the district court's Order Denying Motion for Rule 60(b)(6) Relief from Order and an Order Denying Defendant's Request for Appointment of Counsel. In Appellant's Motion for Rule 60 (b)(6) Relief from Order, he sought relief from the district court's February 7, 2024, ...Order Dismissing Petition for Post-Conviction Relief. See Wyo. Stat. Ann. § 7-14-101(c)(ii). Thus, this appeal involves a challenge to an order denying post-conviction relief under Wyo. Stat. Ann. § 7-14-101 et seq. and a related order denying counsel. This Court has made clear that, "[f]inal judgments or orders of a district court entered upon petitions filed pursuant to W.S. 7-14-101, et seq., will be considered in this court only if in the form required by Rule 13, W.R.A.P." *Smizer v. State*, 763 P.2d 1254, 1254 (Wyo. 1988); Wyo. Stat. Ann. § 7-14-107; W.R.A.P. 13.01(a). Thus, Appellant was required to file a W.R.A.P. 13 petition for writ of review, not an appeal. It is, therefore,

ORDERED that the captioned appeal be, and the same hereby is, dismissed.

DATED this 6th day of August, 2024.

BY THE COURT:

Kate M. Fox

KATE M. FOX
Chief Justice

Appendix B

STATE OF WYOMING)
) ss.
COUNTY OF NATRONA)

IN THE DISTRICT COURT

SEVENTH JUDICIAL DISTRICT

Criminal Action No. 22282-C

STATE OF WYOMING,)
)
Respondent,)
)
vs.)
)
RYAN LEWIS HILYARD,)
)
Petitioner.)

CERTIFIED COPY

FILED
FEB 07 2024
Jill Kiester Clerk of District Court
By: Alexandra Coyle
Deputy

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF

THIS MATTER came before the Court upon the motion of Respondent, the State of Wyoming, to dismiss the petition for post-conviction relief filed by Petitioner Ryan Lewis Hilyard. The Court, having read the petition, the motion, and the file, and being fully advised in the premises therein, finds, concludes, and orders as follows:

I. Facts and Course of Proceedings

1. A jury found Hilyard guilty of one count of aggravated child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(i)(c), and one count of child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(ii). This Court sentenced Hilyard to eighteen to twenty years of imprisonment for aggravated child abuse and a consecutive sentence of five to ten years of imprisonment for child abuse.

2. Hilyard appealed his convictions and sentence to the Wyoming Supreme Court. *Hilyard v. State*, 2023 WY 13, 523 P.3d 936 (Wyo. 2023). Hilyard presented one issue on appeal, questioning whether this Court abused its discretion when it admitted an out of court statement made by LT as a prior consistent statement under Wyo. R. Evid. 801(d)(1)(B). *Id.* ¶ 2, 523 P.3d at 938. The Wyoming Supreme Court affirmed Hilyard's convictions and sentence after analyzing each argument and concluding that this Court properly admitted LT's prior statement under Rule 801(d)(1)(B).

3. On November 20, 2023, Hilyard filed a petition for post-conviction relief with this Court. He has raised four claims in his petition:

> I. Did the Wyoming Supreme Court apply and follow federal rules of evidence correctly?
>
> II. Was the Wyoming Supreme Court's decision arbitrary, capricious, or otherwise not in accordance with federal law?
>
> III. Was Mr. Hilyard denied his Fourteenth Amendment right to effective assistance of counsel on appeal . . . no state shall make or enforce any law which shall . . . deny to any person within [its] jurisdiction the equal protection of the laws?
>
> IV. Was appellate counsel ineffective in not raising the question of ineffective assistance of trial counsel, presenting the weakest issue of evidence because of conflict of interest violating Mr. Hilyard's Sixth Amendment right to counsel, and Fifth and Fourteenth [Amendment] rights to due process?

Within the fourth claim, Hilyard identifies eight different instances of ineffective assistance of trial counsel: 1) counsel did not challenge the search warrants or request a *Franks* hearing; 2) counsel engaged in unprofessional conduct; 3) counsel had a conflict of interest; 4) counsel failed to question witnesses about the State's timeline and evidence at the

preliminary hearing and at trial; 5) counsel did not share discovery with Hilyard, speak with medical experts regarding the victim's injuries, conducted a poor cross-examination of the State's expert, and law enforcement officers lied and failed to preserve evidence; 6) counsel failed to object to the children's testimony or challenge their competency to testify at trial; 7) counsel did not object to or attempt to intervene in KLH's foster care placement; and 8) counsel showed a video at trial that was detrimental to Hilyard's defense.

4. This Court ordered that Respondent respond to Hilyard's petition. Respondent filed a motion to dismiss the petition.

II. Discussion

5. Post-conviction relief is purely a creation of statute; neither the federal nor the state constitution require Wyoming to provide a post-conviction relief process. *Harlow v. State*, 2005 WY 12, ¶ 6, 105 P.3d 1049, 1056-57 (Wyo. 2005). Thus, the remedy available in post-conviction relief proceedings is "strictly limited to the statutory parameters set out by statute or case law." *Id.* ¶ 6, 105 P.3d at 1057; *see also Schreibvogel v. State*, 2012 WY 15, ¶ 10, 269 P.3d 1098, 1101 (Wyo. 2012). Further, post-conviction relief proceedings are not a substitute for a direct appeal. *Taylor v. State*, 2003 WY 97, ¶ 9, 74 P.3d 1236, 1239 (Wyo. 2003).

6. The Wyoming Legislature has limited post-conviction relief to "[a]ny person serving a felony sentence in a state penal institution who asserts that in the proceedings which resulted in his conviction or sentence there was a substantial denial of his rights under the constitution of the United States or of the state of Wyoming, or both[.]" Wyo.

Stat. Ann. § 7-14-101(b). The Legislature also has required that a petitioner file his petition within five years after his "judgment of conviction was entered." Wyo. Stat. Ann. § 7-14-103(d). The petition "shall be accompanied by affidavits, records or other evidence supporting the allegations or shall state why the same are not attached." Wyo. Stat. Ann. § 7-14-102(b).

7. In Wyo. Stat. Ann. § 7-14-103(a), the Legislature further limited the claims that can be brought in a post-conviction relief petition by barring a claim that:

> (i) Could have been raised but was not raised in a direct appeal from the proceeding which resulted in the petitioner's conviction;
>
> (ii) Was not raised in the original or an amendment to the original petition under this act; or
>
> (iii) Was decided on its merits or on procedural grounds in any previous proceeding which has become final.

Wyo. Stat. Ann. § 7-14-103(a)(i)-(iii). Despite the procedural bar of § 7-14-103(a)(i), under Wyo. Stat. Ann. § 7-14-103(b), a court may consider a claim that could have been raised on direct appeal under limited circumstances:

> (i) The petitioner sets forth facts supported by affidavits or other credible evidence which was not known or reasonably available to him at the time of a direct appeal;
>
> (ii) The court finds from a review of the trial and appellate records that the petitioner's appellate counsel provided constitutionally ineffective assistance by failing to assert a claim that was likely to result in a reversal of the petitioner's conviction or sentence on his direct appeal. This finding may be reviewed by the supreme court together with any further action of the district court taken on the petition; or
>
> (iii) The petitioner was represented by the same attorney in the trial and appellate courts.

Wyo. Stat. Ann. § 7-14-103(b)(i)-(iii).

8. Section 7-14-103(b)(ii) does not provide a stand-alone claim of ineffective assistance of appellate counsel. *Schreibvogel*, ¶ 17, 269 P.3d at 1104. Instead, ineffective assistance of appellate counsel can serve as the "portal" through which this Court can consider an otherwise barred claim. *Id.* ¶ 12, 269 P.3d at 1102.

9. Recognizing that the "portal" could be used to circumvent the general waiver rule and the reasoning behind the procedural bars, the Wyoming Supreme Court has established a strict test for reviewing ineffective assistance of appellate counsel claims. *Id.* ¶ 12, 269 P.3d at 1102. The Court developed a "concrete standard" to use in analyzing these claims so that courts "will not in every instance proceed contrary to the waiver rule and will not in every instance simply address the matter in an ad hoc way which inevitably finds counsel's professional decisions tested by the collective determination" of how others would have handled a similar situation. *Cutbirth v. State*, 751 P.2d 1257, 1265-66 (Wyo. 1988). Thus, the Court adopted a test that combined the plain error standard of review with the ineffective assistance of counsel standard from *Strickland v. Washington*, 466 U.S. 668 (1984):

> In submitting a claim of deficient representation by appellate counsel, the petitioner in the post-conviction proceeding must demonstrate to the district court, by reference to the record of the original trial without resort to speculation or equivocal inference, what occurred at that trial. The particular facts upon which the claim of inadequate representation by appellate counsel rests must be presented. The petitioner then must identify a clear and unequivocal rule of law which those facts demonstrate was transgressed in a clear and obvious, not merely arguable, way. Furthermore, the petitioner must show the adverse effect upon a substantial right in order to complete a

> claim that the performance of appellate counsel was constitutionally deficient because of a failure to raise the issue on appeal. The adverse effect upon a substantial right in the context of ineffective assistance of appellate counsel is shown by demonstrating a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Schreibvogel, ¶ 12, 269 P.3d at 1103 (quoting *Smizer v. State*, 835 P.2d 334, 337 (Wyo. 1992)); *see also Harlow v. State*, 2005 WY 12, ¶ 13, 105 P.3d 1049, 1060-61 (Wyo. 2005). The Court explained that "application of these objective criteria" will allow the trial courts to determine whether a petitioner has made a sufficient showing of ineffective assistance of appellate counsel without necessarily considering the substantive merit to the otherwise barred or waived claim. *Cutbirth*, 751 P.2d at 1267.

10. As discussed below, Hilyard's petition fails to comply with § 7-14-102(b), as he has not attached to his petition any "affidavits, records or other evidence" supporting his allegations. Further, his claims regarding the Wyoming Supreme Court's decision and appellate counsel's performance are not cognizable in a post-conviction relief proceeding. Hilyard did not raise an ineffective assistance of trial counsel claim in his direct appeal and, therefore, his ineffective assistance of trial counsel claims are procedurally barred under the post-conviction relief statute. Further, Hilyard has failed to demonstrate that he received ineffective assistance of appellate counsel, thus the exception to the procedural bar does not apply. Consequently, this Court will dismiss with prejudice Hilyard's petition for post-conviction relief.

A. Hilyard's petition fails to comply with Wyo. Stat. Ann. § 7-14-102(b).

11. Wyoming Statute § 7-14-102(b) states that a petition for post-conviction relief "shall be accompanied by affidavits, records or other evidence supporting the allegations or shall state why the same are not attached. Wyo. Stat. Ann. § 7-14-102(b). Hilyard's petition fails to comply with this statutory requirement. While he has a submitted a petition and a brief in support of that petition, his materials contain conclusory allegations that are not accompanied by evidentiary support. Hilyard claims he has new evidence, but he does not provide that evidence for the Court's review. He relies solely on his assertion that he was told this information by others. Further, he makes multiple allegations against various law enforcement officers, doctors, and his trial counsel. He questions counsel's advice, behavior, and strategies, he accuses law enforcement officers of engaging in unethical and criminal behavior, and he accuses doctors of lying; however, he does not provide any evidence, credible or otherwise, to support these assertions. Therefore, his petition fails to comply with § 7-14-102(b).

B. Hilyard's claims regarding the Wyoming Supreme Court's decision and his appellate counsel's performance are not cognizable in a post-conviction relief proceeding.

12. Hilyard's first three claims focus on the Wyoming Supreme Court's decision in his direct appeal and whether his right to effective assistance of appellate counsel was generally violated. Post-conviction relief proceedings are limited to constitutional violations that occurred during "the proceedings which resulted in his conviction or sentence." Wyo. Stat. Ann. § 7-14-101(b). The Wyoming Supreme Court's decision and appellate counsel's conduct occurred during Hilyard's appellate proceedings and,

therefore, are outside the scope of post-conviction relief. *Schreibvogel*, ¶ 17, 269 P.3d at 1104 (post-conviction relief is limited to errors occurring during the proceedings which resulted in conviction, thus there is no stand-alone claim of ineffective assistance of appellate counsel); *Harlow*, ¶ 6, 105 P.3d at 1057 ("Errors relating to the appellate process are not reachable *per se* under this system, as the appellate process occurs ***after*** the proceedings that result in conviction.")(emphasis in original). Therefore, these claims are dismissed.

C. Hilyard's remaining claim is procedurally barred under Wyo. Stat. Ann. § 7-14-103(a)(i).

13. Hilyard argues he received ineffective assistance of trial counsel in eight different ways: 1) counsel was ineffective because he did not challenge the search warrants or request a *Franks* hearing; 2) counsel acted unprofessionally; 3) counsel had a conflict of interest; 4) counsel did not ask the right questions at the preliminary hearing or move for a judgment of acquittal at trial; 5) counsel did not let Hilyard look at discovery, refused to talk to physicians, engaged in a poor cross-examination of the State's expert, and the police lied and intentionally failed to preserved evidence; 6) counsel did not challenge KLB's or TL's competency to testify at trial; 7) counsel did not object or intervene when KLB was placed in foster care; and 8) counsel played a prejudicial video during Detective Good's examination. (Brief at 29-49). Each of these claims could have been raised on direct appeal but were not. *See* Wyo. R. App. P. 21; *Schreibvogel*, ¶ 16, 269 P.3d at 1104; *Smizer*, 835 P.2d at 337. Therefore, they are procedurally barred under Wyo. Stat. Ann. 7-14-103(a)(i).

D. Hilyard has not demonstrated that he received ineffective assistance of appellate counsel; therefore the exception to the procedural bar found in Wyo. Stat. Ann. § 7-14-103(b)(ii) does not apply.

14. Hilyard attempts to circumvent the procedural bar by alleging that his appellate counsel was ineffective for not bringing each ineffective assistance of trial counsel claim in his direct appeal. However, he simply states that appellate counsel was ineffective for not raising these claims on appeal and does not attempt to engage in the required ineffective assistance of appellate counsel analysis.

15. In order to utilize the ineffective assistance of appellate counsel portal, Hilyard must first refer to the trial record to show each instance in which his trial counsel was deficient. *Schreibvogel*, ¶ 12, 269 P.3d at 1103. Many of Hilyard's claims are based on his personal perception and are not reflected in the record. For example, he asserts trial counsel was unprofessional during interviews, which is not reflected in the record. He also asserts that counsel did not allow him to look at discovery or consult with physicians—none of which is reflected in the record. He claims counsel should have objected to KLB's foster care placement. The events surrounding KLB's placement in foster care are not contained in the court record. He accuses law enforcement officers of lying and intentionally failing to preserve evidence, neither of which are reflected in the record.

16. While some of counsel's conduct is apparent from the record, such as not challenging the search warrants, not moving for a judgment of acquittal, not challenging LT's or KLB's competency, and playing a recording during Detective Good's testimony, counsel's basis for making these decisions is not. Regardless, with respect to these

assertions and those not reflected in the record at all, Hilyard has not identified a clear and unequivocal rule of law that counsel's conduct transgressed in a clear and obvious, not merely arguable, way. *Schreibvogel*, ¶ 12, 269 P.3d at 1103. Hilyard's arguments regarding counsel's conduct is his rendition of the facts with his own unsupported conclusions of how or why counsel could have done things differently or better. Hilyard does not cite to any rules or case law at all when discussing counsel's alleged unprofessional conduct, counsel's conflict of interest, and counsel's decision to play an interview. (Brief at 31-32, 49). In the remaining claims, Hilyard provides quotations and citations to cases; however, those cases stand for general propositions and do not create clear and unequivocal rules of law.

17. Finally, Hilyard has failed to demonstrate that if appellate counsel had raised these claims on appeal, the Wyoming Supreme Court would have reversed his conviction. *Schreibvogel*, ¶ 12, 269 P.3d at 1103. Hilyard's failure to carry his burden in this regard is similar to his deficiencies showing any rules of law that were violated at his trial. He expresses personal disagreement with his counsel's conduct but does not provide any legal analysis that could lead this Court to the conclusion that trial or appellate counsel should have approached the case differently.

18. Because Hilyard has failed to satisfy the appropriate standard, he is not entitled to utilize the portal of ineffective assistance of appellate counsel, and his ineffective assistance of trial counsel claims are procedurally barred.

III. Order

Hilyard's claims regarding the Wyoming Supreme Court's decision and his appellate counsel's performance (Claims I – III) are not cognizable in a post-conviction relief proceeding. Hilyard's ineffective assistance of trial counsel claims (Claim IV) could have been raised in his direct appeal but were not. He has failed to demonstrate that the claims were not raised due to ineffective assistance of appellate counsel. Therefore, they are procedurally barred from post-conviction relief under Wyo. Stat. Ann. § 7-14-103(a).

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss Petition for Post-Conviction Relief is **GRANTED**; and further

ORDERED that Ryan Lewis Hilyard's Petition is **DISMISSED WITH PREJUDICE**; and further

ORDERED that any matter not addressed in this **ORDER** is **DENIED AS MOOT.**

DATED this 7 day of February 2024.

BY THE COURT:

Catherine E. Wilking

Hon. Catherine E. Wilking
District Court Judge

cc: Ryan Lewis Hilyard #34067, *pro se*
Jenny L. Craig, Wyoming Attorney General's Office

STATE OF WYOMING, COUNTY OF NATRONA SS CERTIFICATE
I do hereby certify that the within and foregoing is a full true and correct copy of the original document which is on file or of record in my office.
Witness my hand and the SEAL of said court this 7 day of FEB 2024.
JILL KIESTER, Clerk of the District Court, 7th Judicial District in and for Natrona County, Wyoming
By: Yolanda Coyle
Deputy

Appendix C

IN THE SUPREME COURT, STATE OF WYOMING

2023 WY 13

OCTOBER TERM, A.D. 2022

February 6, 2023

RYAN LEWIS HILYARD, **Appellant** **(Defendant),** **v.** **THE STATE OF WYOMING,** **Appellee** **(Plaintiff).**	**S-22-0144**

Appeal from the District Court of Natrona County
The Honorable Catherine E. Wilking, Judge

Representing Appellant:

Diane Lozano, State Public Defender; Kirk A. Morgan, Chief Appellate Counsel; Elizabeth B. Lance, Appellate Counsel. Argument by Ms. Lance.

Representing Appellee:

Bridget L. Hill, Attorney General; Jenny L. Craig, Deputy Attorney General; Kristen R. Jones, Senior Assistant Attorney General; John J. Woykovsky, Senior Assistant Attorney General. Argument by Mr. Woykovsky.

Before FOX, C.J., KAUTZ, BOOMGAARDEN, GRAY, and FENN, JJ.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Third. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82002, of any typographical or other formal errors so that correction may be made before final publication in the permanent volume.

BOOMGAARDEN, Justice.

[¶1] Following a jury trial, Ryan Hilyard was convicted of committing aggravated child abuse against his son KH and child abuse against his step-son LT. On appeal, Mr. Hilyard argues the district court abused its discretion by admitting LT's recorded interview with investigators as a prior consistent statement under Wyoming Rule of Evidence (W.R.E.) 801(d)(1)(B). Finding no abuse of discretion, we affirm.

ISSUE

[¶2] We restate the issue:

> Did the district court abuse its discretion by admitting LT's out of court statement as a prior consistent statement under W.R.E. 801(d)(1)(B)?

FACTS

[¶3] Mr. Hilyard and his first wife had two sons—KH and KB—before divorcing. He then met Sarah in 2017. She had one son—LT—from a prior relationship. Mr. Hilyard and Sarah had a son together, married in 2018, and blended their two families, living in Mills, Wyoming.

[¶4] On Sunday, August 2, 2020, Mr. Hilyard, Sarah, and the children went to a family reunion at Mr. Hilyard's brother's home in Riverton, Wyoming. At the reunion, KH, who was 12 years old at the time, upset Sarah and Mr. Hilyard by eating cake. Accounts vary as to what happened when the family arrived home. By one account, KH fell on the stairs and hit his head but seemed fine until his health deteriorated several days later. By another account, both parents made KH run stairs as punishment and physically beat him in the process, resulting in a head injury; they then delayed seeking medical treatment.

[¶5] On August 6, Sarah brought KH to the Wyoming Medical Center emergency room. He was unresponsive and had numerous injuries, the most serious of which was a traumatic brain injury (swelling of the brain and bleeding around the brain). He also had approximately 40 bruises all over his body that were in different stages of healing. Medical staff contacted police because they suspected child abuse. KH had to be transported to Colorado for treatment due to the severity of his injuries. He suffered permanent brain damage.

[¶6] In separate interviews, Sarah, Mr. Hilyard, LT, and KB all claimed KH fell down the stairs. The children were taken into protective custody. LT and KB were placed in the same foster home.

[¶7] In late August, LT told his foster mother that an accident did not cause KH's injuries. Department of Family Services investigator Tazia Morgart and a detective conducted a recorded interview with LT later that month.

[¶8] In the recorded interview, LT stated Mr. Hilyard told him and KB to lie to the cops about what happened to KH because Mr. Hilyard did not want to go to jail. LT and KB lied because they did not want Mr. Hilyard to hurt them. Mr. Hilyard told them people were going to come over to ask questions and they were supposed to say KH just fell down the stairs and so that is what they said. LT was afraid Mr. Hilyard would hurt him if he did not lie because Mr. Hilyard picked the children up by their throats a lot and sometimes hit them with a leather belt.

[¶9] According to LT, KH got in trouble for stealing cake at a family picnic. Sarah and Mr. Hilyard yelled at KH on the drive home and then made KH exercise as punishment when they got home.

[¶10] LT recounted that Mr. Hilyard made KH run up and down the stairs and then punched him and dragged him up and down the stairs until KH fell down and hit his head. At one point, it looked like KH "had no bones[.]" LT knew what happened because he was standing there. When questioned about Sarah's location when this occurred, LT explained that she was helping Mr. Hilyard by pushing and dragging KH up and down the stairs. LT stated "they told [LT]" that if KH stopped running LT needed to push KH down the stairs. LT was afraid of what would happen if he did not push KH down the stairs, so he pushed KH down the stairs one time. When KH fell down, Mr. Hilyard and Sarah yelled, punched, and kicked KH. They told KH "stop faking it, get up." Mr. Hilyard and Sarah then took KH to his room and LT never saw KH after that.

[¶11] In November, the State charged Mr. Hilyard with aggravated child abuse under Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(i), (c), alleging, in part, he did "intentionally or recklessly inflict physical injury . . . upon the victim, to wit: physically beat, kicked and [dragged] [KH], or did aid and abet in the same offense[.]" It also charged him with child abuse under §§ 6-1-201 and 6-2-503(b)(ii), alleging he did "intentionally or recklessly inflict upon a child, under the age of eighteen (18) mental injury to wit: made [LT] beat his brother [KH] or did aid and abet in the same offense[.]"[1] Mr. Hilyard pleaded not guilty to the charges.

[¶12] At trial in November 2021, LT, who was 11 at the time, testified about the circumstances surrounding KH's abuse. He stated that LT and his family went to a family reunion in Riverton and KH took food out of the trash and ate it. On the drive home, Mr. Hilyard and Sarah yelled at KH for doing so. When they got home, LT and the other

[1] On the State's motion, the district court dismissed a charge of attempted second degree murder prior to trial.

allegations involving KH in August 2020. She further testified that she and a detective conducted a recorded interview with LT in his foster home later that month. The State then moved to admit the first 14 minutes of LT's interview with Ms. Morgart and the detective. Defense counsel objected.

[¶16] The jury found Mr. Hilyard guilty of aggravated child abuse of KH and child abuse of LT. He was convicted of those offenses and sentenced to consecutive prison terms of 18 to 20 years for aggravated child abuse and 5 to 10 years for child abuse. This timely appeal followed.

STANDARD OF REVIEW

[¶17] Because Mr. Hilyard objected, we review the district court's admission of LT's prior statement for an abuse of discretion. *Blair v. State*, 2022 WY 121, ¶ 17, 517 P.3d 597, 601 (Wyo. 2022) (citing *Thompson v. State*, 2021 WY 84, ¶ 15, 491 P.3d 1033, 1039 (Wyo. 2021)). "The district court abused its discretion if 'it could not have reasonably concluded as it did.'" *Id.* (citing *Thompson*, ¶ 15, 491 P.3d at 1039). If the district court abused its discretion by admitting LT's prior statement, we must determine whether this ruling prejudiced Mr. Hilyard. *Id.* (citing *Thompson*, ¶ 15, 491 P.3d at 1039). Mr. Hilyard has the burden to establish abuse of discretion and prejudice. *Id.* (citing *Kincaid v. State*, 2022 WY 4, ¶¶ 31, 32, 501 P.3d 1257, 1263 (Wyo. 2022)).

DISCUSSION

[¶18] "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." W.R.E. 801(c). "Hearsay statements are generally inadmissible because they are made outside of court and, therefore, presumed to be unreliable." *Blair*, ¶ 18, 517 P.3d at 601 (quoting *Bruce v. State*, 2015 WY 46, ¶ 40, 346 P.3d 909, 923 (Wyo. 2015)); W.R.E. 802. LT's prior recorded interview statement constituted inadmissible hearsay unless it qualified as a prior consistent statement under W.R.E. 801(d)(1)(B). The rule provides:

> (d) *Statements Which Are Not Hearsay.*—A statement is not hearsay if:
>
> (1) *Prior Statement by Witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive[.]

W.R.E. 801(d)(1)(B).

[¶19] We have enumerated four requirements for admission of a prior consistent statement under W.R.E. 801(d)(1)(B).

> (1) the declarant must testify at trial; (2) the declarant must be subject to cross-examination concerning the prior statement; (3) the prior statement must be consistent with the declarant's trial testimony; and (4) the prior statement must be offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

Thompson, ¶ 18, 491 P.3d at 1039 (citation omitted). Mr. Hilyard concedes the first requirement was satisfied because LT testified at trial. However, he argues the three remaining requirements were not satisfied. We address each in turn and, for the reasons set forth below, hold the district court reasonably concluded each requirement was met.

The declarant must be subject to cross-examination concerning the prior statement.

[¶20] Mr. Hilyard acknowledges "L.T. was subject to cross-examination[,]" but asserts LT "was not subject to cross-examination concerning the content of his prior out-of-court statement" because "he had testified much earlier that day and exited the courtroom[,]" and therefore "was not available" when the statement was admitted through Ms. Morgart.

[¶21] We have previously found the "subject to cross-examination" requirement was satisfied where a prior consistent statement was admitted through a witness other than the declarant. *See, e.g.*, *Griggs v. State*, 2016 WY 16, ¶¶ 96, 99, 367 P.3d 1108, 1136 (Wyo. 2016) (prior consistent statements by the child victims were admitted through a forensic interviewer); *Large v. State*, 2008 WY 22, ¶¶ 5, 35, 38, 177 P.3d 807, 810, 818–19 (Wyo. 2008) (prior consistent statements by the child victims were admitted through their foster mother and an investigator). But we have not squarely addressed the parameters of the "subject to cross-examination" requirement under circumstances where, as here, the declarant had testified previous to the witness through whom the prior statement was admitted.

[¶22] "Where our rules are sufficiently similar to federal rules, we consider federal decisions interpreting them persuasive." *Blair*, ¶ 18, 517 P.3d at 601 (quoting *Jontra Holdings Pty Ltd v. Gas Sensing Tech. Corp.*, 2021 WY 17, ¶ 76, 479 P.3d 1222, 1244 (Wyo. 2021)). Though we have distinguished our prior consistent statement rule from the federal rule in one important respect, *see infra* ¶ 34, it is sufficiently similar to its federal counterpart for federal decisions to be persuasive on the "subject to cross-examination" requirement. *Compare* W.R.E. 801(d)(1)(B), *and* F.R.E. 801(d)(1)(B).

[¶23] Federal courts applying Federal Rule of Evidence 801(d)(1)(B) "typically condone" admission of a prior consistent statement through a later-called witness "so long as there is no bar to recalling the witness-declarant should the opposing party desire to do so." Wright & Miller, 30B *Fed. Prac. & Proc. Evid.* § 6733 (2022 ed.), Westlaw (Apr. 2022 Update) (footnote omitted). *See also United States v. Montague*, 958 F.2d 1094, 1099 (D.C. Cir. 1992) (collecting cases). The Second Circuit Court of Appeals has held:

> [W]here the declarant has already testified and the prior consistent statement is proffered through the testimony of another witness, the Rule's "subject to cross-examination" requirement is satisfied if the opposing party is not denied the opportunity to recall the declarant to the stand for cross-examination concerning the statement.

United States v. Caracappa, 614 F.3d 30, 39 (2d Cir. 2010) (citations omitted).

[¶24] In overruling a case holding otherwise, the Seventh Circuit Court of Appeals explained:

> Cross-examination about the statement can be accomplished whether or not the statement is introduced by the declarant; if the statement is elicited from a third party, the declarant may be recalled for further examination. [*United States v. West*, 670 F.2d 675 (7th Cir. 1982)] thus goes beyond its justification and imposes a precondition for admissibility relating to the order and manner that evidence is presented, a precondition not contained in Rule 801(d)(1)(B). And although this limitation avoids having to recall the declarant and therefore may serve some benefit in terms of trial management, we think this consideration is better left to the discretion of the trial court.

United States v. Green, 258 F.3d 683, 691 (7th Cir. 2001). Courts have thus found the "subject to cross-examination" requirement satisfied where there was "no indication in the record [] that the defendant made any effort to recall [the witness]," *Montague*, 958 F.2d at 1099, or "was prevented from recalling [the witness] for cross-examination," *Green*, 258 F.3d at 692.

[¶25] The same reasoning applies here. W.R.E. 801(d)(1)(B) does not require a prior consistent statement be introduced through the declarant. Rather, the plain language of the rule simply requires the declarant be "subject to cross-examination concerning the statement[.]" W.R.E. 801(d)(1)(B). The record in this case indicates LT was available for re-cross-examination about the recording because, unlike most of the State's witnesses, he was not released from his subpoena after testifying. Instead, the district court simply

instructed LT he could "step off of the witness stand and exit the courtroom at this time." LT was therefore subject to recall but there is no indication in the record Mr. Hilyard made any effort to recall him. Nor could we find any evidence the court prevented Mr. Hilyard from doing so. The district court therefore reasonably concluded the second requirement was satisfied.

The prior statement must be consistent with the declarant's trial testimony.

[¶26] A prior consistent statement may not be used to prove "new points" the declarant's testimony did not cover. *Griggs*, ¶ 100, 367 P.3d at 1136 (citation omitted). That is so because "[m]aterial information presented for the first time to support a prior 'consistent statement' has no antecedent with which to be consistent or inconsistent[.]" *Id.* ¶ 100, 367 P.3d at 1136–37 (citations omitted). However, the declarant's prior statement and trial testimony do not have to be identical. *Id.* ¶ 100, 367 P.3d at 1137 (citations omitted). They need only be "generally consistent[.]" *Id.* (citation omitted).

[¶27] Mr. Hilyard argues LT's "prior statement was not entirely consistent with [his] trial testimony" because, at trial, LT testified his ***mother*** told him to push KH but, in his recorded interview, LT stated ***they*** told him to push KH. He reasons that LT's prior statement "seems to implicate Mr. Hilyard[,]" while LT's testimony "did not implicate Mr. Hilyard in telling him to push K.H."

[¶28] *Martin v. State*, 2007 WY 76, 157 P.3d 923 (Wyo. 2007) is instructive. When Mr. Martin tried to discredit the victim's testimony that he previously choked and threatened to kill her, the State responded by presenting testimony she previously reported to the police that Mr. Martin had (1) choked and hit her in the face, and (2) threatened to slit her throat. *Martin*, ¶¶ 27–28, 157 P.3d at 929–30. We affirmed admission of the first statement but not the second, explaining that "[a]lthough . . . the prior statements need not be identical word-for-word, W.R.E. 801(d)(1)(B) was not intended to allow testimony to move from the vague to the specific." *Id.* ¶ 29, 157 P.3d at 930. Further, "[t]he Rule does not allow for the use of hearsay evidence to fill in the gaps in the testimony elicited from the initial declarant." *Id.*

[¶29] Here, unlike in *Martin*, LT's prior statement that "they" told him to push KH was not more specific than his testimony that his mother told him to push KH down the stairs. Further, this is not a case like *Martin*, where a prior statement was used to fill gaps in testimony. Mr. Hilyard seems to argue otherwise when he asserts he "was not implicated during L.T.'s trial testimony of making him push K.H." because "[i]t was clear that was [done by] L.T.'s mom[.]" The flaw in this argument is that while LT's mother may have initiated his participation, Mr. Hilyard was standing at the bottom of the stairs when she did so and it was Mr. Hilyard who ensured that LT would have to push KH by forcing KH to continue running the stairs even after LT had taken his mother's place.

[¶30] Further, after having testified to seeing Mr. Hilyard force KH to run by beating him, LT explained that he pushed KH because he "was scared that if I didn't do it, then I was going to get beat myself." Given this testimony, it would be reasonable to interpret Mr. Hilyard's apparent silence when LT's mother told him to take her place and push KH as an implicit order to LT to do what his mother said. So understood, the statements are consistent. *See Sorensen v. State*, 895 P.2d 454, 459 (Wyo. 1995) ("If there is a question as to the consistency of the statements, the proper place to divine the witnesses' meaning is during cross-examination, not on appeal.").

[¶31] Mr. Hilyard also faults the district court for not "mak[ing] an independent determination as to whether the statement was consistent." When the State moved to introduce LT's recorded statement, the district court noted it had not been asked to review the recorded statement in advance, so it did not know what it contained. It therefore asked the prosecutor to address whether the prior statement and LT's testimony were consistent. The prosecutor represented to the court that they were consistent. Defense counsel did not disagree. The district court therefore relied on "[t]he uncontroverted . . . representations to the [c]ourt . . . that the prior statement is consistent with [LT's] trial testimony" in admitting LT's recorded statement. We cannot fault the district court for not independently reviewing the recorded statement under such circumstances. It reasonably concluded the third requirement was satisfied.

The prior statement must be offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

[¶32] Under the fourth requirement, a prior consistent statement is permitted to rehabilitate a witness's credibility after defense counsel has impeached his credibility in the manner described by the rule: "i.e., by an express or implied charge against the witness of recent fabrication or improper influence or motive." *Thompson*, ¶ 19, 491 P.3d at 1039–40 (citation omitted). The requirement is not satisfied merely because defense counsel takes the position that what the victim claims happened did not occur. *Id.* ¶ 19, 491 P.3d at 1040 (citation omitted). However, a fabrication or improper motive charge does not have to occur through a "specific allegation during cross-examination[.]" *Id.* (citation omitted). It may occur through "implication or innuendo, and it may be found in the thrust of the defenses and testimony presented." *Id.* (citation & quotations omitted).

[¶33] The district court could reasonably conclude the fourth requirement was satisfied. On cross-examination, LT confirmed he "talked to people about this several times" and "the story changed a little bit each time[.]" Defense counsel also suggested someone may have pressured LT to say something about the abuse. This prompted the prosecutor to seek clarification on redirect that LT felt pressure within himself to disclose the abuse. To his recollection, no one else pressured him to say anything. On cross-examination of LT's foster mother, defense counsel confirmed LT disclosed the abuse to her the same day he had been "acting out." Defense counsel then asked whether it was "possible" LT told her

about the abuse "to try and get back in your good graces[.]" *Cf. Jones v. State*, 2019 WY 45, ¶ 26, 439 P.3d 753, 762 (Wyo. 2019) ("Questions related to conversations they had with others about what Mr. Jones had done, the photograph shown to A.B., and whether anyone had helped them prepare to testify impliedly charged 'recent fabrication or improper influence or motive.'").

[¶34] Mr. Hilyard seems to argue that if the prior statement was made after the motive to fabricate arose, the court should have excluded the statement. He relies on *Tome v. United States*, 513 U.S. 150, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995), which he cites for the proposition that "prior consistent statements are not admissible under Federal Rule of Evidence 801(d)(1)(B) to rebut an express or implied charge of recent fabrication or improper influence when made *after* the alleged improper motive arose." That may be true, but the federal rule does not apply here, and *Tome* is not the law in Wyoming. As we have explained, "the decision in *Tome* was not based on a constitutional issue and is, therefore, not binding upon this court, which is the final authority on this state's court rules." *Cook v. State*, 7 P.3d 53, 58 (Wyo. 2000). *See also Jones*, ¶ 16, 439 P.3d at 758 ("Although similarly worded, we have consistently held that W.R.E. 801(d)(1)(B) does not require that prior consistent statements be made before the alleged improper motive arose." (citations omitted)). We set out the applicable rule in *Hicks*:

> In Wyoming, [a] prior consistent statement may be used as substantive evidence if the alleged improper influence arose after the statement was made. However, if the prior consistent statement was made after the improper influence arose, then the statement may only be used for rehabilitative purposes. When a prior consistent statement is admissible only for rehabilitative purposes, a limiting instruction must be given, but only if requested.

Hicks v. State, 2021 WY 2, ¶ 16, 478 P.3d 652, 658 (Wyo. 2021) (quoting *Griggs*, ¶ 104, 367 P.3d at 1137).

[¶35] Notably, Mr. Hilyard did not request a limiting instruction. The district court therefore did not abuse its discretion by not giving one. *See Hicks*, ¶ 16, 478 P.3d at 658 ("When no request is made to limit the purpose of a post-motive consistent statement, the district court does not err by failing to give such an instruction." (citations omitted)); *Griggs*, ¶ 107, 367 P.3d at 1138 ("Mr. Griggs did not request an instruction limiting the purpose of the evidence to rehabilitation of the victims; thus, the district court did not err by failing to give one." (citation omitted)); *Tombroek v. State*, 2009 WY 126, ¶ 13, 217 P.3d 806, 811 (Wyo. 2009) ("We cannot find an abuse of discretion by the district court, for failing to limit the prior consistent statements to rehabilitation of the victim, where the appellant failed at trial either to identify when an alleged motive to fabricate arose, or to request a limiting instruction."). Because the statement was admitted without a limiting

instruction, the jury could use it for any legitimate purpose, including as substantive evidence. *See Neidlinger v. State*, 2021 WY 39, ¶ 31, 482 P.3d 337, 346 (Wyo. 2021) ("If evidence comes in without . . . a request for a limiting instruction, the jury may use it for any legitimate purpose." (citation omitted)); *Tombroek*, ¶ 13, 217 P.3d at 811 (noting, with respect to a prior consistent statement that, "[b]ecause there was no request for a limiting instruction, we must assume that the jury used the evidence for whatever purpose it chose, including substantive evidence of guilt.").[2]

CONCLUSION

[¶36] The district court did not abuse its discretion by admitting LT's out of court statement as a prior consistent statement under W.R.E. 801(d)(1)(B). Affirmed.

[2] Mr. Hilyard summarily asserts admission of LT's prior consistent statement resulted in improper bolstering. Improper bolstering occurs when "the State us[es] W.R.E. 801(d)(1)(B) as a tool for impermissible trial tactics by having a victim repeat accusations to authority figures for the direct purpose of using those statements later at trial as prior consistent statements." *Griggs*, ¶ 111, 367 P.3d at 1139 (citation omitted). Mr. Hilyard has not shown the State used any such trial tactics in this case. His bolstering argument therefore fails.

Exhibit 1

Ryan Lewis Hilyard # 34067 Pro-Se
Wyoming Medium Correctional Institution
7076 Road 55F
Torrington, Wyoming 82240

IN THE DISTRICT COURT FOR NATRONA COUNTY, WYOMING
SEVENTH JUDICIAL DISTRICT

Ryan Lewis Hilyard,	)	
Petitioner,	)	
	)	**2021**
V.	)	Cause No. **22282-C**
	)	
State of Wyoming, et al,	)	
Seth Norris, Warden, (W.M.C.I)	)	
Respondents,	)	

MOTION TO GRANT POST-CONVICTION RELIEF

COMES NOW THE PETITIONER, Ryan Lewis Hilyard, *pro-se,* moves this Court to grant Post-Conviction Relief and vacate his Judgment and Sentence, pursuant to 7-14-101 et. Seq, Wyoming Statutes 1997 as amended.

I. Introduction

The Respondents, through the Wyoming Attorney General's office, were served by U.S. Mail with copies of both the Petition for Post-Conviction and the Brief filed *pro-se* by Mr. Hilyard on November 8, 2023. The Honorable Catherine E. Wilking issued two orders, both November 17, 2023. The first was an Order Granting Request for leave to Proceed *In Forma Pauperis* as Mr. Hilyard is currently an indigent prisoner at the Wyoming Medium Correctional Institution (WMCI). The second order was to the Wyoming Attorney General's office stipulating a (45 day deadline) to file their response.

As the order states, pursuant to 7-14-101 et. Seq. Wyoming Statutes 1997 as Amended, the Wyoming Attorney General's Office was granted 45 days from November 17, 2023 to respond. This made the deadline January 2, 2024. The Deputy Attorney General assigned to the case, Jenny Craig, failed to respond by the deadline, choosing instead to file a *MOTION FOR EXTENSION OF TIME TO FILE RESPONSE* along with a presumptive *ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSE* on January 9, 2024.

In her *MOTION FOR EXTENSION OF TIME TO FILE RESPONSE*, Ms. Craig claims she was "informed this Court had entered an order requiring response," on January 9, 2024. This is untrue. Counsel was informed on November 17, 2023 when the order was sent to her. Ms. Craig acknowledges receipt of the orders November 22, 2023 but seems to cite an inability to adequately check email on that day as *excusable neglect*. If counsel were reminded by this Court's staff, that creates an unfair prejudice as Mr. Hilyard was allowed the right to motion for **Default Judgment**. That motion was prepared but due to the actual *excusable neglect* standards, Mr. Hilyard was waiting for January 16, 2024 to file said motion.

Ms. Craig cites a lack of intent upon missing the deadline, stating that makes her actions *excusable neglect.* However, Excusable neglect is defined as "a strict standard to take care of genuine emergency conditions, such as death, sickness, undue delay in the mails and other situations where such behavior might be the act of a reasonably prudent person under the circumstances." *Crossan v. Irrigation Dev. Corp.,* 598 P.2d 812, 1979 Wyo. LEXIS 466 (Wyo. 1979); *Elliott v. State,* 626 P.2d 1044, 1981 Wyo. LEXIS 326 (Wyo. 1981).

Whereas, Ignorance of provisions of these rules **is not excusable neglect** as a matter of law. *Crossan v. Irrigation* Dev. Corp., 598 P.2d 812, 1979 Wyo. LEXIS 466 (Wyo. 1979). (emphasis added). Ms. Craig's *MOTION FOR EXTENSION OF TIME TO FILE RESPONSE* should have been dismissed and **Default Judgment** awarded to Mr. Hilyard.

Judge Wilking signed Ms. Craig's prepared *ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSE* on January 11, 2024. The order is incorrect and its signing created a Due Process Violation. The order states that a two week extension has been granted to the Attorney General to file its response but goes further to state the new deadline is January 23, 2024. As the deadline was January 2, 2024, a two week extension would have put the deadline at January 16, 2024. The two week extension seems to have been granted based on the arbitrary date January 9, 2024 when Ms. Craig claimed to have been notified and filed her *MOTION FOR EXTENSION OF TIME TO FILE RESPONSE.* Any extensions would have to be based on the deadlines as previously set, thereby setting the new deadline at January 16, 2024. Counsel failed to file her response until January 17, 2024 and thus missed the deadline twice.

Mr. Hilyard received notification of Ms. Craig's *MOTION FOR EXTENSION OF TIME TO FILE RESPONSE* on January 11, 2024. The same day, Judge Wilking signed Ms. Craig's *ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSE.* As Wyo.

Rules of Civil Procedure Rule 6(b)(3) states, "Unless the court by order permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within 15 days after service of the response, whichever is earlier." Mr. Hilyard was not granted any time to reply before the Order was signed, this creates a violation of Due Process. Ms. Craig's *MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF* is hereby invalid and should be disregarded.

II. Relevant Information

The jury found Mr. Hilyard of one count of aggravated child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503 (b)(i)(c), and one count of child abuse, in violation of Wyo. Stat. A. §§ 6-1-201 and 6-2-503(b)(ii). (R. at 193-94, 352-53). This Court sentenced Mr. Hilyard to eighteen to twenty years of imprisonment for aggravated child abuse and a consecutive sentence of five to ten years of imprisonment for child abuse. (*Id.* At 434-37). The Wyoming Supreme Court affirmed Mr. Hilyard's convictions and sentences on appeal. *Hilyard v. State*, 2023 WY 13, 523 P.3d 936 (Wyo. 2023).

Mr. Hilyard then filed his petition to the United States Supreme Court (See: *Hilyard v. Wyoming,* Case #23-5259 within the 90 day time limit for (*Writ of Certiorari*)), meting all requirements for preserving the next appeal process raising the same claims in the post-conviction petition.

Mr. Hilyard has filed all his appeals with the Courts in a timely manner, meeting any and all deadlines with promptness, the State's claim that the petitioner's post-conviction is barred, denies Mr. Hilyard the right to due process as was [said] in the Wyoming Supreme Court decision which has recognized, that to "access whether an individual was denied procedural due process, courts must engage in a two-step inquiry: **(1)** did the individual possess a protected interest such that the due process protections were applicable; and, if so, then **(2)** was the individual afforded an appropriate level of process." *Crofts v. State ex rel. Dep't of Game & Fish*, 2016 WY 4, ¶ 27, 367 P.3d 619, 626 (Wyo. 2016) (quoting *Montgomery v. City of Ardmore*, 365 F.3d 926, 935 (10th Cir. 2004)).

Mr. Hilyard clearly has a statutorily protected interest in a procedure for the post-conviction petition. Wyoming, like other states, has created a substantive right to post-conviction processes, and as the State has created this legal interest, *due process* must be afforded any recipient.

District Attorney's Office for Third Judicial District. v. Osborne, 557 U.S. 52, 129 S.Ct. 2308, 174 L.Ed.2d 38 (2009).

Mr. Hilyard has not been afforded any due process. He has been undermined at every step as has been illustrated from trial counsel, appellate counsel, continuing now with Ms. Craig's continued disrespect for the proceedings and Mr. Hilyard's time. The Honorable Catherine Wilking has taken due process away as well with allowing multiple violations to happen during trial and allowing Ms. Craig to steamroll Mr. Hilyard with disregard for the procedures of Post-Conviction and his claims below:

I. DID THE WYOMING SUPREME COURT APPLY AND FOLLOW FEDERAL RULES OF EVIDENCE CORRECTLY?

II. WAS THE WYOMING SUPREME COURT'S DECISION ARBITRARY, CAPRICIOUS, OR OTHERWISE NOT IN ACCORDANCE WITH FEDERAL LAW?

III. WAS MR. HILYARD DENIED HIS FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL . . . NO STATE SHALL MAKE OF ENFORCE ANY LAW WHICH SHALL . . . DENY TO ANY PERSON WITHIN [ITS] JURISDICTION THE EQUAL PROTECTION OF THE LAWS?

IV. WAS APPELLATE COUNSEL INEFFECTIVE IN NOT RAISING THE QUESTION OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, PRESENTING THE WEAKEST ISSUE OF EVIDENCE BECAUSE OF CONFLICT OF INTEREST VIOLATING MR. HILYARD'S SIXTH AMENDMENT RIGHT TO COUNSEL, AND FIFTH AND FOURTEENTH [AMENDMENT] RIGHT TO DUE PROCESS?

Under Mr. Hilyard's last claim of (IAC) in the (Brief at 18, 22, 26, 28). Mr. Hilyard identifies eight different instances of ineffective assistance of trial counsel: **(1)** counsel did not challenge the search warrant or request a *Franks* hearing; **(2)** counsel engaged in unprofessional conduct; **(3)** counsel had a conflict of interest; **(4)** counsel failed to question witnesses about the State's timeline and evidence at the preliminary hearing and at trial; **(5)** counsel did not share discovery with Mr. Hilyard, speak with medical experts regarding the victim's injuries, conducted a poor cross-examination of the State's expert, and law enforcement officers lied and failed to preserve evidence; **(6)** counsel failed to object to the children's testimony or challenge their competency to testify at trial; **(7)** counsel did not object to or attempt to intervene in

KLH's[1] foster care placement; and **(8)** counsel showed a video at trial that was detrimental to Mr. Hilyard's defense. (*See generally* Brief at 29-49).

Ms. Craig states on p. 4 of her *MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF,* that KH's brothers were LT and KLH. This is incorrect. LT was KH's stepbrother and admitted abuser. KLH, LH, and KH are siblings. The marriage that made LT and KH stepbrothers has now ended, they share no ties whatsoever.

Mr. Hilyard also established "cause" by demonstrating that the constitutional violations he complains of in support of his habeas motion resulted in a "fundamental miscarriage of justice;" i.e., that resulted in the conviction of a person who was actually innocent of the charged crime. *United States v. Cervini*, 379 F.3d 987, 990-91 (10th Cir. 2004).

III. Procedural History and Relevant Facts

The Factual and procedural background of Mr. Hilyard's prosecution, conviction, state court appeal, U.S.S.C. (*Writ of Certiorari*), proceedings are set forth in detail in the order of denials; now the Post-Conviction and all relevant facts and background have been discussed in better detail. (See *generally Mr. Hilyard's* Post-Conviction Brief P. 10, 11, and 12) and the District Attorney's reply (See *generally Attorney General's* Brief P. 3, 4, and 5) and we do not repeat that background information here for the purpose of length as the reply limit, set at 15 pages.

Ms. Craig claims on p. 4 of her *MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF* that "the jury heard from several doctors who treated KH in Casper and in Denver, and an expert medical witness." It is unclear who she is indicating in this. The jury heard from **one** treating physician in Casper. They as well heard from a radiologist who read a scan. They went on to hear from Doctors Pena and Chiesa. Dr. Pena claimed to have worked simultaneously in Florida and Wyoming which has no logic. Dr. Chiesa claimed to work in Denver, at the hospital KH was taken to. No treating physician knows who she is and she could not accurately describe the injuries KH had. There were no treating physicians from Denver called. It is unclear if Dr. Pena or Dr. Chiesa is who was intended to be called as an expert witness. Dr. Pena was hired by the state and paid for testimony[2] and seemed to be a professional

[1] KLH was incorrectly identified in court documents as KLB. The child's initials are KLPH, simplified to KLH. KLB is the child's first name with vowels redacted. This is inappropriate and makes the child too easily identifiable.

[2] Evidence of judge's corruption in other cases was admissible to help explain to jury how illegal relationship between the judge and middle man, who was government witness, developed. *United States v. Brennan,* 798 F.2d 581, 21Fed. R. Evid. Serv. (CBC) 358 (2d Cir. 1986), habeas corpus proceeding, 685 F. Supp. 883 (E.D.N.Y. 1988).

witness, however Dr. Chiesa clearly did not have any input with KH, was she an expert and is the claim that Dr. Pena was a treating physician in Casper?

Counsel is incorrect in her assessment of trial on p. 5 of her *MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF*. Mr. Hilyard's boss was in Canada, he was not in attendance. Mr. Hilyard had testimony from one of his employees and from a colleague. They were unable to state Mr. Hilyard's actual hours worked because his supervisor was in Canada. Mr. Hilyard was an exempt salaried employee, and infrequently shared the hours worked with employees. He was unable to ask any others to work the hours he was due to budget restrictions.

Mr. Hilyard did appeal his convictions and sentences to the Wyoming Supreme Court. Appellate Counsel Elizabeth Lance (hereafter Ms. Lance) told Mr. Hilyard she would not bring ineffective assistance of counsel (IAC) claims to the Wyoming Supreme Court, the court would refuse to hear them. Regardless of Ms. Lance's opinion of the court, she had the obligation to present Mr. Hilyard's claims and failed to do so. Ms. Lance provided ineffective assistance of appellate counsel.

IV. Discussion

The State claimed Mr. Hilyard's IAC claims were procedurally barred by Wyo. Stat. Ann. § 7-14-103(a)(i), and asked the Court to dismiss the petition for review. This poses a ***de novo***[3] issue to arise that this Court should address as a matter of law. Because Mr. Hilyard claims that he has filed this petition under the Wyo. Stat. Ann. § 7-14-103 (b)(ii)[4].

Mr. Hilyard realizes that post-conviction is not a replacement for direct appeal,[5] however, he is aware that according to Wyoming Law, the claim of ineffective assistance of appellate counsel

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[3] "Statutory interpretation is a question of law, which the court of Appeals reviews de novo ... We review questions of statutory interpretation de novo." *Spreeman v. State*, ¶ 6, 278 P.3d 1159, 1161 (Wyo. 2012).

[4] "Wyo. Stat. Ann. § 7-14-103, Claims Barred; applicability of act."

(a) A claim under this act is procedurally barred and no court has jurisdiction to decide the claim if the claim:
- **(i)** Could have been raised but was not raised in a direct appeal from the proceeding which resulted in the petitioner's conviction;
- **(ii)** Was not raised in the original or an amendment to the original petition under this act; or
- **(iii)** Was decided on its merits or on procedural grounds in any previous proceeding which has become final.

(b) Notwithstanding paragraph (a) (i) of this section, a court may hear a petition if:
- (i) The petitioner sets forth facts supported by affidavits or other credible evidence which was not known or reasonably available to him at the time of a direct appeal; or
- (ii) The court makes a finding that the petitioner was denied constitutionally effective assistance of counsel on his direct appeal. This finding may be reviewed by the petition."

[5] "Post-conviction is not a substitute for an appeal and the petition will not lie where the matters alleged as error could or should have been raised in an appeal or in some other alternative matter. Relief may be granted only in

opens the door to admit arguments not included in his direct appeal due to the ineffective assistance of appellate counsel. See Wyo. Stat. Ann. § 7-14-103 (b)(ii).

Ms. Craig cites Wyoming statues §§ 7-14-101 through -108 governing Post-Conviction relief only upon constitutional violations. She goes on to reference *Schreibvogel v. State* several times in her Motion, but *Schreibvogel* is a Wyoming decision, and *Strickland v. Washington* is the constitutional standard for deciding *Brady* violations. It seems she is attempting to use *Schreibvogel* to circumvent the constitution.

Ms. Craig states that section 7-14-102 dictates that the petition "shall be accompanied by affidavits, records or other evidence supporting the allegations." This is incorrect since *Brady* violations occurred in Mr. Hilyard's case. See United States court of appeals for the tenth circuit, *Fontenot v. Crow,* 4 F.4th 982; 2021.[6]

In *Cutbirth v. State*, 751 P.2d 1257, 1263 (Wyo. 1988), the Court made it clear that a "claim of ineffective assistance of appellate counsel is not an issue which can be foreclosed as a matter of waiver . . . under Wyoming law because it is not an issue that could have been raised in the initial appeal." *Id.* Thus, this Court has recognized, as the legislature did in enacting § 7-14-103, that claims for ineffective assistance of appellate counsel are appropriate matters for consideration in post-conviction proceedings because they cannot be raised on direct appeal. They necessarily arise only after appeal.

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extraordinary circumstances which strongly suggest a miscarriage of justice." *Harlow v. State*, 105 P.3d 1049 (Wyo. 2005).

[6] The Supreme Court has framed the prosecution's duty to disclose as "broad," *Strickler*, 527 U.S. at 281, and "has never required a defendant to exercise due diligence to obtain *Brady* material," *Lewis v. Conn. Comm'r of Corr.*, 790 F.3d 109, 121 (2d Cir. 2015). To the contrary, in *Banks v. Dretke*, while analyzing *Brady* as cause for excusing procedural default, the Court rejected a rule "declaring 'prosecutor may hide, defendant must seek'" as "not tenable in a system constitutionally bound to accord defendants due process."{2021 U.S. App. LEXIS 185} 540 U.S. 668, 696, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004). Following *Banks v. Dretke*, several circuits have held that a defendant's diligence in discovering evidence plays no role in a substantive *Brady* claim. See *Dennis v. Sec'y, Penn. Dep't of Corr.*, 834 F.3d 263, 291 (3d Cir. 2016) (en banc) (clarifying that "the concept of 'due diligence' plays no role in the *Brady* analysis"); *Amado v. Gonzalez*, 758 F.3d 1119, 1135 (9th Cir. 2014) ("The prosecutor's obligation under *Brady* is not excused by a defense counsel's failure to exercise diligence with respect to suppressed evidence."); *United States v. Tavera*, 719 F.3d 705, 712 (6th Cir. 2013) (stating that *Banks v. Dretke* "should have ended th[e] practice" of imposing "a broad defendant-due-diligence rule" in *Brady* cases). In sum, "[t]he Brady rule imposes an independent duty to act on the government," *Tavera*, 719 F.3d at 712-an obligation to disclose favorable evidence when it reaches the point of materiality, regardless of the defense's subjective or objective knowledge of such evidence. "Any other rule presents too slippery a slope." *Dennis*, 834 F.3d at 292.

Ms. Craig further states that the court developed a "concrete standard" to review ineffective assistance of appellate counsel as established by *Shreibvogel.* This, however, ignores that *Strickland* is the constitutional measure. *Strickland*, 466 U.S. at 684. The Court(s) recognize that 'the right to counsel is the right to effective assistance of counsel,'" *Id.* At 686 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14, 25 L.ED.2d 763, 90 S.Ct. 1441 (Wyo. 1970)), See also *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993); *Duffy v. State*, 837 P.2d 1047, (Wyo.1992); *Engberg v. Meyer*, 820 P.2d 70 (Wyo. 1991); *Laing v. State*, 746 P.2d 1247, (Wyo. 1987). "Would be devoid of meaning were counsel like **[Mr. Oldham]** deemed effective." *Rickman v. Bell.* Mr. Hilyard requested his appellant counsel Ms. Lance file ineffective assistance of counsel (IAC) on Robert E. Oldham (hereafter Mr. Oldham), Defense Counsel for trial.

Ms. Craig restates her standing that Mr. Hilyard's petition should be dismissed based on Mr. Hilyard not having affidavits, records, or other evidence supporting his allegations. This is incorrect. As illustrated in *Fontenot v. Crow,* 4 F.4th 982; 2021. The Supreme Court has framed the prosecution's duty to disclose as "broad," *Strickler*, 527 U.S. at 281, and "has never required a defendant to exercise due diligence to obtain *Brady* material," *Lewis v. Conn. Comm'r of Corr.*, 790 F.3d 109, 121 (2d Cir. 2015).

Mr. Hilyard is not relying solely on information told to him from others. Mr. Oldham was sent a picture through text message from Paul Hilyard clearly showing the claw marks the prosecution refused to disclose. Mr. Hilyard saw the photo on numerous occasions, including on Mr. Oldham's phone. Information from the diagnosing physicians can be ascertained with a subpoena, Mr. Hilyard does not hold the ability to subpoena anyone nor is he able to call hospitals. Ms. Craig is asking for something that must be proven in Court. Mr. Hilyard concedes that KH's adoptive parents, who Mr. Oldham refused to call, have shed light on the truth of what happened. This only strenghtens the case against Mr. Oldham.

Ms. Craig's claim that Mr. Hilyard makes baseless accusations is incorrect. Mills Police Lieutenant Jerry Rodgers perjured himself repeatedly. Lieutenant Rodgers told falsehoods under oath to protect his chief. He stated he had left the residence in which he'd encountered Mr. Hilyard twice to respond to other calls and had not come back after the second call, "I came back after responding to an assault call. My chief was there. I had to leave again to go to another call, and that was the last time I had any dealings with that residence." (Trial Tr. p. 381). He as well, made statements in cross-examination that he had no idea what it meant to "put a subject on ice"

as he had intentionally done to Mr. Hilyard on August 6, 2020, by leaving Mr. Hilyard in an interrogation room alone for hours (Trial Tr. Pp. 383-384). This is perjury excluding any other factors. Lieutenant Rodgers claimed to have had no further dealings with the residence then later admits to being the one to escort Mr. Hilyard to the police department.

Dr. Emmanuel Pena was caught telling falsehoods on the stand. He could not accurately state his employment. Dr. Pena listed four places of employment across three states in seven years, listing several different roles inside umbrella employment. This included claiming employment in Wyoming and Florida simultaneously for a three year period. Dr. Pena claimed to have been employed with the University of Florida and with Tallahassee (FL) Child Protection team from 2014 to "this last week" which would have been November 2021. He also claimed to work for Wyoming Medical Center in Casper, WY from July, 2017 to August, 2020 with a role at the University of Wyoming Family Practice Center in Casper from July, 2018 to August, 2020 (Trial Tr. Pp. 592-593). This is simply not possible.

Dr. Antonia Chiesa (Dr. Chiesa) claimed to be employed in part with Denver Children's Hospital, where KH had spent a significant amount of time in recovery. Dr. Chiesa had an inaccurate picture of KH as a patient. She stated the incorrect side of the body affected several times even while having a computer in front of her admittedly with medical records. (Trial Tr. Pp. 390, 401, 416-17). Dr. Chiesa testified about K.H, urinating on himself and other **[hearsay speculation]** of day(s) prior to KH's admission to the hospital being used as diagnosing tools. (Trial Tr. Pp. 398-99, 404-05, 409-13, 417-20). This is a violation of W.R.E. Rule 803(4)[7], KH did not make any statements to this, had he been allowed to testify, he would have been able to state that for himself. Mr. Hilyard's claim is rooted in the facts of the trial easily identifiable.

Mr. Hilyard's claims regarding the Wyoming Supreme Court's decision and his claims of trial and appellate ineffective assistance of counsel (IAC) issues are cognizable for the post-conviction petition for relief action. (see Mr. Hilyard's [new evidence] this was not available to counsel during direct appeal, shows "cause" by demonstrating that his claim was so novel that its legal basis was not reasonably available to his counsel." *Reed v. Ross*, 468 U.S. 1, 16 (1984)).

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[7] W.R.E. Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.
(4) Statements for purposes of medical diagnosis or treatment. — Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

Mr. Hilyard's claims are based on Mr. Oldham's performance for the duration of his representation. Most of which are not reflected in trial records. Mr. Oldham's phone calls with Ms. Monroe and Mr. Hilyard would not be, that does not exclude him from responsibility for refusing to conduct himself professionally. Mr. Oldham stated in sentencing that Mr. Hilyard did not want to see discovery. This statement was false and is on the record. KLH's foster placement was through the corresponding case, Natrona County District Court Juvenile Action 12422-B. Mr. Oldham refused to use DFS falsehoods against them. Law enforcement perjury has been detailed. Pertaining to the standards set by *Youngblood,* Sergeant Matt Vincent held himself as an expert in evidence collection. There is no record of testing any items seized, indicating the deceptive measures taken not to test anything. "Wyoming Law places upon the appellate counsel, the primary responsibility for investigating and raising constitutional issues. That responsibility is not limited to raising issues that are based on the trial record, but includes issues that are traditionally within the scope of post-conviction review, such as claims of ineffective assistance of counsel or other issues that require investigation beyond the four corners of the total record." *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993).

V. Argument

i. Do the Natrona County District Court and/or the Attorney General for the State of Wyoming have the authority to overturn the United States Supreme Court precedent in *Buck v. Davis*, 137 S.Ct. 759 (2017); *Trevino v. Thaler*, 133 S.Ct. 1911 (2013); and *Martinez v. Ryan*, 566 U.S. 1 (2012); where the Supreme Court decided that a procedural default would not bar a claim of ineffective assistance of trial counsel; when collateral proceeding was the first place to challenge a conviction on the ground of ineffective assistance?

a. The Natrona County District Court and/or the Attorney General have invoked the privilege set out set out in the "procedurally barred clause," because Mr. Hilyard could have raised the claims in his direct appeal but did not do so. See Wyo. Stat. Ann. § 7-14-103(a)(i). Therefore procedurally barring Mr. Hilyard's post-conviction petition from review.

b. However, Mr. Hilyard should be allowed to present his petition in this Court under the same post-conviction act See Wyo. Stat. Ann. § 7-14-103 (b)(ii).

c. The United States Supreme Court held that a §2254 "collateral challenge may not do service for an appeal." *United States v. Frady*, 456 U.S., at 165.

d. This Court however, disregards what the Supreme Court said in *Buck, Martinez*, 566 U.S., at 9, 132 S.Ct. 1309, 182 L.Ed. 2d 272. "We held that when a state formally limits the

adjudication of claims of ineffective assistance of trial counsel to collateral review, a prisoner may establish cause for procedural default if **(1)** 'the State Courts did not appoint counsel in the initial-review collateral proceeding,' or 'appointed counsel in [that] proceeding . . . was ineffective under the standards of *Strickland v. Washington*,' 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 272.

e. The Merit in Mr. Hilyard's post-conviction appeal is self-evident.[8] Allowing this Court to correct these Constitutional issues at hand, between Mr. Hilyard and his Counsels'[9] actions or non-actions and conflicts of interest between attorneys[10] and the "state's attorney."

f. The state cannot tolerate a blatant denial of constitutional rights guaranteed to all people alike charged with a crime, legally convicted, or pled out to a lesser charge.

g. The Supreme Court has addressed the issue of whether the lack of counsel after the initial review collateral to a post-conviction proceeding can qualify as cause for procedural default, in the case of a state prisoner; concerning the claim of ineffective assistance of counsel.[11]

h. Under the "procedural default doctrine,"[12] if a state prisoner "defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claim is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal . . ." *Coleman v. Thompson*, 501 U.S. 722, 750, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). In general, lack of attorney and attorney error in state post-conviction proceedings do not establish cause to excuse a procedural default. *Id.* at 757, 111 S.Ct. at 2568.

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[8] "Person, which confirmed that the rule of presumed prejudice in cases of actual or constructive denial of counsel applies to appellate counsel, compels the related conclusion that if a defendant tells his attorney to appeal and the lawyer fails to do so, a per se violation of the right to counsel occurs." See *Fern*, 99 F.3d at 257-58 (recognizing same). *Walker v. McCaughtry*, 72 F.Supp.2d 1025, (U.S. Dist. 1999).

[9] "The effective assistance of counsel in a state prosecution for a crime is a requirement of due process which no member of the Union may disregard." *Reece v, Georgia,* 350 U.S. 85, 76 S.Ct. 167.

[10] "Denial of the effective assistance of counsel to one charged with a crime violates due process." *Hawk v. Olsen,* 326 U.S. 271, 66 S.Ct. 116.

[11] "Wyoming Law places upon the appellate counsel, the primary responsibility for investigating and raising constitutional issues. That responsibility is not limited to raising issues that are based on the trial record, but includes issues that are traditionally within the scope of post-conviction review, such as claims of ineffective assistance of counsel or other issues that require investigation beyond the four corners of the total record." *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993). "Appellate counsel was ineffective in failing to raise arguable issues on appeal created presumption of prejudice in that defendant was essentially left without representation on appeal." *Delgado v. Lewis*, 181 F.3d 1087 (9th Cir. 1999).

[12] "Procedural default in an appeal can constitute ineffective assistance of post-trial counsel." *Calene v. State*, 846 P.2d 679, 694 (Wyo. 1993); *Harvey v. State*, 835 P.2d 1074 (Wyo. 1992); *Coleman v. Thompson*, 501 U.S. 722 (Wyo. 1991); *Star v. Lockhart*, 23 F.3d 1280 (8th Cir. 1994).

i. In *Martinez*, the Supreme Court announced a narrow, equitable, and non-Constitutional exception to *Coleman's* holding (that ineffective assistance of collateral counsel cannot serve as cause to excuse a procedural default) in the limited circumstances where **(1)** a state requires a prisoner to raise ineffective-trial-counsel claims at an initial–review collateral proceeding;[13] **(2)** the prisoner failed properly to raise ineffective-trial-counsel claims in his state initial-review collateral proceedings; **(3)** the prisoner did not have collateral counsel or his counsel was ineffective;[14] and **(4)** failing to excuse the prisoner's procedural default would cause the prisoner to lose a "substantial" ineffective-trial-counsel claim. In such a case, The Supreme Court explained that there may be "cause" to excuse the procedural default of the ineffective-trial-counsel claim. *Martinez*, 132 S.Ct., at 1319. Subsequently, The Supreme Court extended *Martinez's* rule to cases where state law technically permits ineffective trial counsel claims on direct appeal but state procedures make it "virtually impossible" to actually raise ineffective trial counsel claims on direct appeal, See *Trevino*, 133 S.Ct., at 1915, 1918 21.

j. There can be no question whether the State criminal court system requires that (IAC) claims be brought in collateral proceedings, and not on direct appeal. Such claims brought on direct appeal are presumptively dismissible and virtually all will be dismissed. The reasons for this rule are self-evident. A factual record must be developed in, and addressed by, the district court in the first instance of effective review. Even if evidence is not necessary, at the very least counsel accused of deficient performance can explain their reasoning and actions,[15] and the district court can render its opinion on the merits of the claim. An opinion by a district court is a valuable aid to appellate review for many reasons, not the least of which is that in most cases the district court is familiar with the proceeding and had observed counsel's performance, in context, first hand. Thus, even if the record appears to need no further development; the claim will still be presented first to the district court in collateral proceedings, which should be instituted without delay so the reviewing court can have the benefit of the district court's views. Therefore, the

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[13] "Petitioner was denied his right to constitutionally effective assistance of counsel on his first appeal of right (direct appeal from conviction)." *Douglas v. California*, 372 U.S. 353 (1963), *Strickland v. Washington*, 466, U.S. 668 (1984), *Evitts v. Lucey*, 469 U.S. 387 (1985), *Cutbirth v. State*, 751 P.2d 1257 (1988).

[14] ("Right to effective assistance of counsel . . . may in a particular case be violated by even an isolated error if that error . . . is sufficiently egregious and prejudicial.") *Smith v. Murray*, 477 U.S. at 535; *Kimmelman v. Morrison*, 477 U.S. 365, 383-84 & n.8 (1986); *United States v. Cronic*, 466 U.S. 648, 657 n.20 (1984).

[15] "Defense counsel's performance was not only ineffective, but counsel abandoned the required duty of loyalty to his client, *counsel did not simply make poor strategic or tactical choices; he acted with reckless disregard for his client's best interest, and apparently with the intention to weaken his client's case.*" *Osborn v. Shillinger*, 861 F.2d 612 (10th Cir. 1988); *Harlow v. Murphy*, Case #05-CV-039-B (D. Wyo. February 15, 2008).

statutory right to appeal that is a part of current due process in the state's system, has been reduced to a right that no longer includes a right to appeal from sixth amendment violations, (IAC) claims.

k. Indigent defendants pursuing first tier review in a Post-Conviction and/or § 2254 proceedings are generally ill equipped to represent themselves for **(a)** first tier review application, forced to act in *Pro Se,* would face a record un-reviewed by appellate counsel; and **(b)** without guides keyed to a court of review. A *Pro Se* movant's entitlement to seek relief from ineffective assistance of trial counsel might be more a formality than a right, because navigating the criminal appeal, and collateral process without a lawyer's assistance is a perilous endeavor for a layperson, and well beyond the competence of individuals afforded only 12 months to learn the federal process involved. Moreover, due process requires the appointment of counsel for state and federal defendants alike on direct appeal. In the average case, however, the most common claim of constitutional error is Ineffective-Assistance-of-Counsel. In Mr. Hilyard's case it is Natrona County District Court, and not the United States Congress, that elected to change the reach of the United States law that granted a defendant the right to appeal his sentence when the sentence is in violation of the law, See U.S.C. § 3006A.

ii. Does the Supreme Court decision in *Buck v. Davis* violate the equal protection of law, where it allows a different standard of review for state prisoners as compared to federal prisoners who are similarly situated?

a. The District Court for Natrona County, failed to consider the construction of the federal review process as it is compared to the state process identified in *Martinez*, *Trevino*, and *Buck.*

b. Mr. Hilyard asserts the issues of this Post-Conviction were caused by his lack of counsel, conflicts of interest between Mr. Hilyard and his trial counsel, and his Appellate Attorney defaulted his claims that he brought to her attention for direct appeal.

c. The Supreme Court in *Martinez* held that the procedural default occurred when *Martinez's* post-conviction counsel did not raise a claim of IAC in his state collateral proceeding would not bar his petition under 28 U.S.C. § 2254, where "the state collateral proceeding was the first place to challenge his conviction on grounds of ineffective assistance." 132 S.Ct., at 1313. The Supreme Court explained that "if in the [State's] initial review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective," procedural default would not "bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial." *Id.,* at

1320. In *Martinez*, state law required the petitioner to wait until the initial review collateral proceeding before raising such a claim. One year later, in *Trevino*, The Supreme Court extended *Martinez's* holding to cases in which the state did not require defendants to wait until the post-conviction stage, but "[t]he structure and design of the [state] system in actual operation. . . [made] it virtually impossible for an ineffective assistance claim to be presented on direct review." 133 S.Ct. at 1915.

d. The question is whether these holdings apply to some or all state prisoners who bring motions for post-conviction relief under Wyo. Stat. Ann 17-14-101 et seq. and/or the 28 U.S.C. § 2254. The Seventh Circuit has already answered this question in the affirmative. In *Choice Hotels Intern., Inc. v. Grover*, 792 F.3d. 753 (7th Cir. 2015), where the panel wrote that "[a]lthough *Maples and Holland* [*v. Florida*, 560 U.S. 631.] Were capital cases, we do not doubt that their holdings apply to all collateral litigations under 28 U.S.C. §2254, and § 2255." *Id.*, at 755 (citations omitted). A closer look at the issue should convince us that the Seventh Circuit's position is correct.

e. In *Massaro v. United States*, 538 U.S. 500, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003), the Supreme Court considered the case of a man who did not raise any claim relating to ineffectiveness of trial counsel on his direct appeal and was trying to raise such an argument in a motion under 28 U.S.C. § 2255. The United States argued that the ineffectiveness claim was procedurally defaulted, because *Massaro* could have raised it on direct appeal. The Supreme Court however, rejected that position and held instead that there is no procedural default for failure to raise an ineffective assistance claim on direct appeal, even if new counsel handles the direct appeal and even if the basis for the claim is apparent from the trial record. *Id.*, at 503-04. Indeed, the court criticized the practice of bringing claims on direct appeal because "the issue would be raised for the first time in a forum not best suited to assess those facts." *Id.*, at 504. All appeallate courts have been critical of the practice of trying to raise claims of Ineffective Assistance Claims on direct appeal where the appointment of counsel is a statutory guarantee.

f. Because State courts have established procedures to develop ineffective assistance claims upon direct appeal, the situation of a State Petitioner is the same as the one this court described in *Martinez's.* As a practical matter, the first opportunity to present a claim of ineffective assistance of trial or direct appellate counsel is almost always on collateral review, in a motion under the Post-Conviction Petition pursuant to 7-14-101 et seq., Wyoming Statutes 1997 as

amended; and Federal Habeas § 2254, although there may be rare exceptions, as *Massaro* acknowledged. For a case in which trial counsel's ineffectiveness "is so apparent from the record" that it can be raised on direct appeal; Mr. Hilyard's case is one of those.

g. Neither *Martinez* nor *Trevino* suggested that, for these purposes, the differences between § 2254 and § 2255 was material. What does matter is the way in which IAC claims must be presented in the particular procedural system. This varies among states and between state and federal courts, but Mr. Hilyard has already explained why in the great majority of state and federal cases, ineffectiveness claims must await the first round of collateral review. Moreover, if review were to be more restricted on either the state or the federal side, federalism concerns suggest that it would be the state side. Most of the rules that govern petitions under § 2254 are mirrored in § 2255, most importantly, the procedure for handling second or successive petitions.

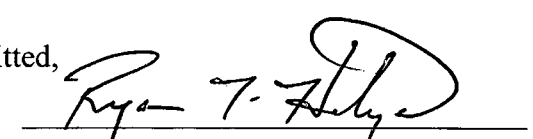
h. There is no practical reason *Martinez, Trevino*, and *Buck* should be read in a way that would provide different results between federal and state proceedings. This Court should intervene and not allow the Attorney General to trample over guaranteed rights and correct this egregious misapplication of settled law in an area of great public concern.

VI. Conclusion

Ms. Craig failed to follow the procedures for Post-Conviction. She showed wanton disregard for the court and the fact that her delays caused an innocent person to sit in prison longer. Her arguments are based on a Wyoming decision not recognized as the Constitutional standard. Ms. Craig's attacks of Mr. Hilyard's claims are baseless; nothing Mr. Hilyard has claimed is without merit.

WHEREFORE, Mr. Hilyard respectfully requests that the Wyoming Attorney General's Office arguments be disregarded as they were not filed in a timely manner, *excusable neglect* was not the cause. Mr. Hilyard requests that his sentence and judgment be immediately vacated for the cause of reversible errors committed by the Mills Police Department, Prosecutorial directed witnesses, and trial and appellate counsels.

Respectfully Submitted,



Ryan L. Hilyard #34067 Pro-Se

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the appellant in the above pleading and that the information contained in the foregoing document, is true and correct to the best of his knowledge and believes he is entitled to relief as a matter of law on this 31st day of January, 2024 W.S § 6-5-301; 28 U.S.C.S. § 1746; 18 U.S.C.S. § 1621.

Pro-Se Ryan Lewis Hilyard #34067

Re-printed copy Ryan Hilyard 10/30/24

CERTIFICATE OF SERVICE

I, Ryan Lewis Hilyard, hereby certify that I mailed true and correct copies of the foregoing Notice of Appeal and attendant document to counsel for the plaintiff, the Wyoming Seventh Judicial District Court, the Attorney General for the State of Wyoming, this 31st day of January, 2024.

Clerk of the Court for
THE SEVENTH JUDICIAL DISTRICT
DISTRICT COURT FOR NATRONA COUNTY, WYOMING
115 North Center St, Suite 100
Casper, Wyoming 82601

Attorney General
State of Wyoming
109 State Capitol
Cheyenne, Wyoming 82002-001
307-777-7841

Ryan Lewis Hilyard, Pro-Se
W.M.C.I - #34067
7076 Road 55 F
Torrington, Wyoming 82240

The undersigned also certifies that all required privacy redactions have been made and, with the exception of any required redactions, this document is an exact copy of the written document filed with the Clerk.

Ryan L. Hilyard #34067 Pro-Se,

Re-Printed copy Ryan Hilyard 10/30/24

Prisoners are reminded that to invoke the prison mailbox rule they must file with each pleading a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit with prison officials and must also state that first-class postage has been paid. See Fed. R. App. P. 4(c) and the *United States v. Ceballos-Martinez*, 358 F3.d 732, *revised and superseded*, 371 F.3d 713 (10th Cir.), *reh'g denied en banc*, 387 F.3d 1140 (10th Cir.) cert. denied, 125 S.Ct. 624 (2004). Prisoners should also review carefully Federal Rule of Appellate Procedure 4 (c)(1), which was amended December 1st 2021.

Exhibit 2

JENNY L. CRAIG
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WY Natrona County
District Court 7th JD
Jan 17 2024 02:40PM
2021-CR-0022282
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FILED

STATE OF WYOMING	)	IN THE DISTRICT COURT
	)	
COUNTY OF NATRONA	)	SEVENTH JUDICIAL DISTRICT
STATE OF WYOMING,	)	
	)	
Respondent,	)	
	)	
vs.	)	Case No. 22282-C
	)	
RYAN LEWIS HILYARD,	)	
	)	
Petitioner.	)	
	)	

MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF

The State of Wyoming, by and through the Office of the Attorney General for the State of Wyoming, respectfully moves this Court to dismiss Petitioner Ryan Hilyard's *Petition for Post-Conviction Pursuant to 7-14-101 et. seq. Wyoming Statutes 1997 as Amended.*

I. Introduction

A jury found Hilyard guilty of one count of aggravated child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(i)(c), and one count of child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(ii). (R. at 193-94, 352-53). This Court sentenced Hilyard to

eighteen to twenty years of imprisonment for aggravated child abuse and a consecutive sentence of five to ten years of imprisonment for child abuse. (*Id.* at 434-37). The Wyoming Supreme Court affirmed Hilyard's convictions and sentence on appeal. *Hilyard v. State*, 2023 WY 13, 523 P.3d 936 (Wyo. 2023).

Hilyard has now filed a petition for post-conviction relief under Wyo. Stat. Ann. § 7-14-101 *et seq.* and a brief in support of the petition with this Court. Hilyard raises the following claims:

> I. Did the Wyoming Supreme Court apply and follow federal rules of evidence correctly?
>
> II. Was the Wyoming Supreme Court's decision arbitrary, capricious, or otherwise not in accordance with federal law?
>
> III. Was Mr. Hilyard denied his Fourteenth Amendment right to effective assistance of counsel on appeal . . . no state shall make or enforce any law which shall . . . deny to any person within [its] jurisdiction the equal protection of the laws?
>
> IV. Was appellate counsel ineffective in not raising the question of ineffective assistance of trial counsel, presenting the weakest issue of evidence because of conflict of interest violating Mr. Hilyard's Sixth Amendment right to counsel, and Fifth and Fourteenth [Amendment] rights to due process?

(Brief at 18, 22, 26, 28). Within the fourth claim, Hilyard identifies eight different instances of ineffective assistance of trial counsel: 1) counsel did not challenge the search warrants or request a *Franks* hearing; 2) counsel engaged in unprofessional conduct; 3) counsel had a conflict of interest; 4) counsel failed to question witnesses about the State's timeline and evidence at the preliminary hearing and at trial; 5) counsel did not share discovery with Hilyard, speak with medical experts regarding the victim's injuries, conducted a poor cross-examination of the State's expert, and law enforcement officers lied and failed to preserve evidence; 6) counsel failed to object to the children's testimony or challenge their competency to testify at trial; 7) counsel did

not object to or attempt to intervene in KLH's foster care placement; and 8) counsel showed a video at trial that was detrimental to Hilyard's defense. (*See generally* Brief at 29-49).[1]

Hilyard's claims regarding the Wyoming Supreme Court's decision and his stand alone claim of ineffective assistance of appellate counsel are not cognizable claims in a post-conviction relief action. Hilyard's claims regarding ineffective assistance of trial counsel are procedurally barred by Wyo. Stat. Ann. § 7-14-103(a), and he has failed to demonstrate that his appellate counsel was ineffective for not raising an ineffective assistance of trial counsel claim on appeal. Therefore, this Court should dismiss the petition.

II. Procedural History and Relevant Facts

On November 16, 2020, the State charged Hilyard with one count of attempted second-degree murder, in violation of Wyo. Stat. Ann. §§ 6-1-301(a)(i), 6-1-201, and 6-2-104; one count of aggravated child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(i)(c); and one count of child abuse, in violation of Wyo. Stat. Ann. §§ 6-1-201 and 6-2-503(b)(ii). (R. at 38-39). The State filed the charges after officers with the Mills Police Department conducted an investigation into injuries suffered by twelve-year-old KH. (*Id.* at 43-55). According to the affidavit of probable cause supporting the Information, on August 6, 2020, KH's step-mother, Sarah Hilyard, took KH to the Wyoming Medical Center emergency room after finding him unresponsive. (*Id.* at 43). The medical staff observed abrasions and bruising all over KH's body and had to perform an emergency craniotomy due to a subdural hematoma on his brain. (*Id.*). KH

[1] Hilyard identifies one of the children as KLH. (*See* Brief at 45-49). The State believes Hilyard is referring to the child referred to in the court's record as KLB and in the Wyoming Supreme Court's opinion as KB. Therefore, the State will call this child KLB to remain consistent with the court record.

was transferred to Children's Hospital in Colorado for further treatment. (*Id.*). Staff at the Children's Hospital listed KH's injuries as being the result of child abuse. (*Id.* at 44).

Officers interviewed Ms. Hilyard and she conveyed that KH had hit his head after falling down the stairs at the family home earlier in the week. (*Id.*). She also explained that he likely received some of the bruises on his body from fighting with his brothers. (*Id.*). Officers also spoke with Hilyard, who stated that KH's injuries were from hitting his head after falling down the stairs and fighting with his brothers. (*Id.* at 45). Hilyard also said he knew that KH had a black eye, but believed it was likely from KH rubbing his eyes due to his allergies. (*Id.*). Medical personnel at Children's Hospital stated that KH's injuries were not consistent with a fall down the stairs; instead, they were consistent with blunt force non-accidental trauma. (*Id.* at 44).

KH's brothers, LT and KLB, initially corroborated the story that KH hit his head when he fell down the stairs. (*Id.* at 48). However, both boys later explained that KH's injuries occurred when Hilyard and his wife pushed and punched KH while they made him run up and down the stairs at the family home. (*Id.* at 48-50). LT explained that his parents made him assist in the abuse, telling him to push his brother down the stairs if KH stopped running. (*Id.* at 48). LT stated this conduct continued until KH fell down "like he had no bones," hit his head, and "got knocked out." (*Id.* at 48-49). Hilyard and his wife continued punching and kicking KH and yelling at him to "stop faking it, get up." (*Id.* at 49). KLB relayed a similar account. (*Id.* at 49-50). Both boys explained that Hilyard had told them to tell the police that KH fell down the stairs. (*Id.* at 48, 51).

The State ultimately ended up dismissing the attempted second-degree murder charge, and a four day jury trial on the child abuse claims commenced on November 15, 2021. (R. at 192-97; *see generally* Trial Tr.). The jury heard testimony from several doctors who treated KH in Casper and in Denver, an expert medical witness, KH's brothers, law enforcement officers, counselors,

and school personnel. (*See generally* Trial Tr.). Hilyard testified in his defense and also presented testimony from his brother, his boss, a coworker, and the case detective. (Trial Tr. at 675-804). The jury found Hilyard guilty of both charged counts. (R. at 352-53). This Court sentenced Hilyard to eighteen to twenty years of imprisonment for aggravated child abuse and a consecutive sentence of five to ten years of imprisonment for child abuse. (*Id.* at 434-37).

Hilyard appealed his convictions and sentence to the Wyoming Supreme Court. *Hilyard v. State*, 2023 WY 13, 523 P.3d 936 (Wyo. 2023). Hilyard presented one issue on appeal, questioning whether this Court abused its discretion when it admitted an out of court statement made by LT as a prior consistent statement under Wyo. R. Evid. 801(d)(1)(B). *Id.* ¶ 2, 523 P.3d at 938. Hilyard specifically argued that the statement should not have been allowed because LT had already testified and left the courtroom when the prior statement was admitted, the prior statement was not "entirely consistent" with his trial testimony because his trial testimony was more specific, and LT's motive to fabricate arose before LT made the prior consistent statement. *Id.* ¶¶ 20, 27, 34, at 941, 942, 943. The Wyoming Supreme Court affirmed Hilyard's convictions and sentence after analyzing each argument and concluding that this Court properly admitted LT's prior statement under Rule 801(d)(1)(B). *See generally Hilyard.*

On November 16, 2023, the State received Hilyard's petition for post-conviction relief to this Court.

III. Discussion

A. Post-conviction relief in Wyoming is limited.

The Wyoming Supreme Court "has taken a disciplined approach to post-conviction relief, pointing out that it is not a substitute for the right of review upon appeal from a conviction, nor is it to be treated as an appeal." *Campbell v. State*, 772 P.2d 543, 544 (Wyo. 1989) (citation omitted).

Post-conviction relief is statutorily created, and neither the federal nor the state constitution requires Wyoming to provide a post-conviction relief process. *Harlow v. State*, 2005 WY 12, ¶ 6, 105 P.3d 1049, 1056-57 (Wyo. 2005). The remedy available in post-conviction relief proceedings is "strictly limited to the statutory parameters set out by statute or case law." *Id.*

Wyoming Statutes §§ 7-14-101 through -108 govern post-conviction relief and make it available to remedy only constitutional violations in the proceedings that resulted in a petitioner's conviction and sentence. Wyo. Stat. Ann. § 7-14-101(b). Thus, claims involving the appellate process are not cognizable in a petition for post-conviction relief. *See Schreibvogel v. State*, 2012 WY 15, ¶ 17, 269 P.3d 1098, 1104 (Wyo. 2012). Section 7-14-102 dictates that the petition "shall be accompanied by affidavits, records or other evidence supporting the allegations or shall state why the same are not attached." Wyo. Stat. Ann. § 7-14-102(b).

Wyoming Statute § 7-14-103(a) further narrows the category of claims for which post-conviction relief is available. Subsection (a) lists procedurally barred claims and provides that no court has jurisdiction to decide such claims. Wyo. Stat. Ann. § 7-14-103(a). The statute procedurally bars claims that were "decided on [their] merits or on procedural grounds in any previous proceeding which has become final." Wyo. Stat. Ann. § 7-14-103(a)(iii). It also procedurally bars any claim that "[c]ould have been raised but was not raised in a direct appeal from the proceeding which resulted in the petitioner's conviction." Wyo. Stat. Ann. § 7-14-103(a)(i).

However, Wyo. Stat. Ann. § 7-14-103(b) provides exceptions to claims that are procedurally barred because they were not raised on direct appeal. A court may hear an otherwise barred claim if "[t]he petitioner sets forth facts supported by affidavits or other credible evidence which was not known or reasonably available to him at the time of a direct appeal." Wyo. Stat.

Ann. § 7-14-103(b)(i). Further, courts can consider a waived and barred claim under § 7-14-103(a)(i) if it "finds from a review of the trial and appellate records that the petitioner's appellate counsel provided constitutionally ineffective assistance by failing to assert a claim that was likely to result in a reversal of the petitioner's conviction or sentence on his direct appeal." Wyo. Stat. Ann. § 7-14-103(b)(ii).[2] In these instances, the ineffective assistance of appellate counsel is the "portal" through which this Court can consider an otherwise waived and barred claim. *Schreibvogel*, ¶ 12, 269 P.3d at 1102.

Although ineffective assistance of appellate counsel can be used to reach otherwise waived and barred claims, the Wyoming Supreme Court has acknowledged the high burden for petitioners with respect to these claims. The Court has harkened to federal habeas corpus case law, which holds that "[g]enerally, '***the mere fact that counsel failed to recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it, does not constitute cause for a procedural default.'" *Cutbirth v. State*, 751 P.2d 1257, 1263 (Wyo. 1988) (quoting *Murray v. Carrier*, 477 U.S. 478, 486 (1986)). Relying on the United States Supreme Court, the Wyoming Supreme Court has concluded that effective appellate advocacy involves tactical choices that require "winnowing out weaker arguments on appeal":

> ***A brief that raises every colorable issue runs the risk of burying good arguments—those that, in the words of the great advocate John W. Davis, 'go for the jugular,' Davis, The Argument of an Appeal, 26 A.B.A.J. 895, 897 (1940)—in a verbal mound made up of strong and weak contentions.

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[2] Wyoming Statute § 7-14-103(b) provides an additional exception to the procedural bar. Subsection (b)(iii) excuses the procedural bar if the petitioner was represented by the same attorney at trial and on appeal. Wyo. Stat. Ann. § 7-14-103(b)(iii). This exception does not arguably apply in this case.

Cutbirth, 751 P.2d at 1263 (quoting *Jones v. Barnes*, 463 U.S. 745, 753 (1983)).

Recognizing this fact and that the "portal" could be used to circumvent the general waiver rule and the reasoning behind the procedural bars, the Wyoming Supreme Court has established a strict test for reviewing ineffective assistance of appellate counsel claims. *Schreibvogel*, ¶ 12, 269 P.3d at 1102. The Court developed a "concrete standard" to use in analyzing these claims so that courts "will not in every instance proceed contrary to the waiver rule and will not in every instance simply address the matter in an ad hoc way which inevitably finds counsel's professional decisions tested by the collective determination" of how others would have handled a similar situation. *Cutbirth*, 751 P.2d at 1265-66. Thus, the Court adopted a test that combined the plain error standard of review with the ineffective assistance of counsel standard from *Strickland v. Washington*, 466 U.S. 668 (1984):

> In submitting a claim of deficient representation by appellate counsel, the petitioner in the post-conviction proceeding must demonstrate to the district court, by reference to the record of the original trial without resort to speculation or equivocal inference, what occurred at that trial. The particular facts upon which the claim of inadequate representation by appellate counsel rests must be presented. The petitioner then must identify a clear and unequivocal rule of law which those facts demonstrate was transgressed in a clear and obvious, not merely arguable, way. Furthermore, the petitioner must show the adverse effect upon a substantial right in order to complete a claim that the performance of appellate counsel was constitutionally deficient because of a failure to raise the issue on appeal. The adverse effect upon a substantial right in the context of ineffective assistance of appellate counsel is shown by demonstrating a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Schreibvogel, ¶ 12, 269 P.3d at 1103 (quoting *Smizer v. State*, 835 P.2d 334, 337 (Wyo. 1992)); *see also Harlow*, ¶ 13, 105 P.3d at 1060-61.

B. Hilyard's petition fails to comply with Wyo. Stat. Ann. § 7-14-102(b) and should be dismissed.

Wyoming Statute § 7-14-102(b) states that a petition for post-conviction relief "shall be accompanied by affidavits, records or other evidence supporting the allegations or shall state why the same are not attached." Wyo. Stat. Ann. § 7-14-102(b). Hilyard's petition fails to comply with this statutory requirement. While he has a submitted a petition and a brief in support of that petition, his materials contain conclusory allegations that are not accompanied by evidentiary support. (*See generally* Pet. and Brief). Hilyard claims he has new evidence that shows KH's abuse was inflicted by Mrs. Hilyard, but he does not provide that evidence for this Court's review. He relies solely on his assertion that he was told this information by others. (Pet. at 2-3; Brief at 17-18). Further, he makes multiple allegations against various law enforcement officers, doctors, and his trial counsel. He questions counsel's advice, behavior, and strategies, he accuses law enforcement officers of engaging in unethical and criminal behavior, and he accuses doctors of lying; however, he does not provide any evidence, credible or otherwise, to support these assertions. (Pet. at 4-11). Because Hilyard's petition "lacks specific explanation and is framed in only bald conclusions without reference to any evidentiary support," this Court should decline to consider Hilyard's claims any further and dismiss his petition. *State ex rel. Hopkinson v. Dist. Ct., Teton Cnty.*, 696 P.2d 54, 61 (Wyo. 1985).

C. Hilyard's first three claims are not cognizable in a post-conviction relief petition and should be dismissed.

Hilyard's first three claims focus on the Wyoming Supreme Court's decision in his direct appeal and whether his right to effective assistance of appellate counsel was generally violated. (Brief at 18-28). Post-conviction relief proceedings are limited to constitutional violations that occurred during "the proceedings which resulted in his conviction or sentence." Wyo. Stat. Ann.

§ 7-14-101(b). The Wyoming Supreme Court's decision and appellate counsel's conduct occurred during Hilyard's appellate proceedings and, therefore, are outside the scope of post-conviction relief. *Schreibvogel*, ¶ 17, 269 P.3d at 1104 (post-conviction relief is limited to errors occurring during the proceedings which resulted in conviction, thus there is no stand-alone claim of ineffective assistance of appellate counsel); *Harlow*, ¶ 6, 105 P.3d at 1057 ("Errors relating to the appellate process are not reachable *per se* under this system, as the appellate process occurs ***after*** the proceedings that result in conviction.")(emphasis in original). Therefore, these claims are not cognizable in a post-conviction relief proceeding, and this Court should dismiss them.

D. Hilyard's remaining claim is procedurally barred under Wyo. Stat. Ann. § 7-14-103(a)(i) and should be dismissed.

Hilyard argues he received ineffective assistance of trial counsel in eight different ways: 1) counsel was ineffective because he did not challenge the search warrants or request a *Franks* hearing; 2) counsel acted unprofessionally; 3) counsel had a conflict of interest; 4) counsel did not ask the right questions at the preliminary hearing or move for a judgment of acquittal at trial; 5) counsel did not let Hilyard look at discovery, refused to talk to physicians, and engaged in a poor cross-examination of the State's expert, and the police lied and intentionally failed to preserved evidence; 6) counsel did not challenge KLB's or TL's competency to testify at trial; 7) counsel did not object or intervene when KLB was placed in foster care; and 8) counsel played a prejudicial video during Detective Good's examination. (Brief at 29-49). Each of these claims could have been raised on direct appeal but were not. *See* Wyo. R. App. P. 21; *Schreibvogel*, ¶ 16, 269 P.3d at 1104; *Smizer*, 835 P.2d at 337. Therefore, they are procedurally barred under Wyo. Stat. Ann. 7-14-103(a)(i).

Hilyard attempts to circumvent the procedural bar by alleging that his appellate counsel was ineffective for not bringing each ineffective assistance of trial counsel claim in his direct

appeal. However, he simply states that appellate counsel was ineffective for not raising these claims on appeal and does not attempt to engage in the required ineffective assistance of appellate counsel analysis.

In order to utilize the ineffective assistance of appellate counsel portal, Hilyard must first refer to the trial record to show each instance in which his trial counsel was deficient. *Schreibvogel*, ¶ 12, 269 P.3d at 1103. Many of Hilyard's claims are based on his personal perception and are not reflected in the record. For example, he asserts trial counsel was unprofessional during interviews, which is not reflected in the record. (Brief at 31-32). He also asserts that counsel did not allow him to look at discovery or consult with physicians—none of which is reflected in the record. (*Id.* at 35-44). He claims counsel should have objected to KLB's foster care placement. (*Id.* at 47-49). The events surrounding KLB's placement in foster care are not contained in the court record. He accuses law enforcement officers of lying and intentionally failing to preserve evidence, neither of which are reflected in the record. (*Id.* at 39-43).

While some of counsel's conduct is apparent from the record—such as not challenging the search warrants, not moving for a judgment of acquittal, not challenging LT's or KLB's competency, and playing a recording during Detective Good's testimony—counsel's basis for making these decisions is not. Regardless, with respect to these assertions and those not reflected in the record at all, Hilyard has not identified a clear and unequivocal rule of law that counsel's conduct transgressed in a clear and obvious, not merely arguable, way. *Schreibvogel*, ¶ 12, 269 P.3d at 1103. Hilyard's arguments regarding counsel's conduct is his rendition of the facts with his own unsupported conclusions of how or why counsel could have done things differently or better. (*See generally* Brief at 29-49). Hilyard does not cite to any rules or case law at all when discussing counsel's alleged unprofessional conduct, counsel's conflict of interest, and counsel's

decision to play an interview. (Brief at 31-32, 49). In the remaining claims, Hilyard provides quotations and citations to cases; however, those cases stand for general propositions and do not create clear and unequivocal rules of law. (*See id.* at 30-31, 33, 34, 35-36, 41-42, 45, 47).

In fact, one of the passages Hilyard quotes stands directly contrary to the conclusion he seeks: "The task of the court in reviewing the adequacy of defense counsel's representation will be to determine whether defense counsel reasonably analyzed the options and decided on an appropriate course of action." (Brief at 36 (quoting *Wall v. State*, 2019 WY 2, ¶ 53, 432 P.3d 516, 531 (Wyo. 2019))). This passage takes into account that counsel's assistance is reviewed within the context of whether counsel's decisions were "reasonable considering all the circumstances" and that no "set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 688-89. For this reason, "[j]udicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id.* at 689.

This standard is equally deferential when reviewing appellate counsel's performance. The Wyoming Supreme Court has recognized that appellate counsel's decisions are often tactical in nature, requiring counsel to "[winnow] out weaker arguments on appeal." *Cutbirth*, 751 P.2d at 1263. Simply not raising a claim on appeal is insufficient to demonstrate ineffective assistance of appellate counsel; instead, Hilyard must show counsel failed to challenge what would amount to a clear and unequivocal violation of a clear and unequivocal rule of law. *Schreibvogel*, ¶ 12, 269 P.3d at 1103. Hilyard has failed to do so.

Finally, Hilyard has failed to demonstrate that if appellate counsel had raised these claims on appeal, the Wyoming Supreme Court would have reversed his conviction. *Id.* Hilyard's failure to carry his burden in this regard is similar to his deficiencies showing any rules of law that were violated at his trial. He expresses personal disagreement with his counsel's conduct, but does not provide any legal analysis that could lead this Court to the conclusion that trial or appellate counsel should have approached the case differently. Therefore, Hilyard has failed to demonstrate he is entitled to utilize the portal of ineffective assistance of appellate counsel, and his ineffective assistance of trial counsel claims are procedurally barred.

Conclusion

Hilyard's claims regarding the Wyoming Supreme Court's decision in his appeal and the conduct of his appellate counsel are not cognizable in a post-conviction relief action. Hilyard's ineffective assistance of trial counsel claims could have been brought in his direct appeal but were not. Therefore, they are procedurally barred under Wyo. Stat. Ann. § 7-14-103(a)(i). Further, Hilyard has failed to demonstrate that he received ineffective assistance of appellate counsel when these claims were not raised in his direct appeal. Consequently, he cannot utilize the portal of ineffective assistance of appellate counsel found in Wyo. Stat. Ann. § 7-14-103(b)(ii) to overcome the procedural bar. Accordingly, this Court should dismiss Hilyard's petition with prejudice.

Submitted this 17th day of January 2024.

/s Jenny L. Craig
Jenny L. Craig #6-3944
Deputy Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
(307) 777-7977
jenny.craig1@wyo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January 2024, the foregoing **MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF** was served by placing a true and accurate copy thereof in the United States mail, first-class postage prepaid, addressed to the following individual:

Ryan Lewis Hilyard #34067
Wyoming Medium Correctional Institution
7076 Road 55 F
Torrington, WY 82240

/s/ Jenny L. Craig
Jenny L. Craig
Deputy Attorney General

Exhibit 3

THE STATE OF WYOMING

Matthew H. Mead
Governor

Department of Corrections
Wyoming Medium Correctional Institution

7076 Road 55F
Torrington, Wyoming 82240
Telephone: (307) 532-3198
FAX: (307) 532-3240

Dan Shannon
Director

Michael Pacheco
Warden

February 9, 2023

Ryan Hilyard/Inmate ID #34067
WMCI Unit D-1

Mr. Hilyard,

This letter is to notify you that the visiting status for K[redacted] Hilyard been denied at this time due to his/her ineligibility status. Additional information on this matter is available from Terry Hilyard. You have the right to address the denial of the visiting application through the inmate grievance system.

Sincerely,

Officer Jennifer Emigh

Officer Jennifer Emigh
Site Clearance Officer

LifeNet

ASSISTING CHILDREN ATTAIN PERMANENCY

To Whom it may concern:

I really would like to see my dad. Because he is my biological dad and I love him. And because he is an awesome dad. I love him too much to be in prison for such a long time.

I would like you to change your answer and allow me to see my dad.

My dad was a good dad because he before he married Sarah, he took care of me and my brother. He gave us a house to live in. He fed us and kept us clothed. He loved us very much. He did not hurt me or my brother.

When I see my dad, I will feel extremely happy.

I would like to talk to my dad about how his job is going and how are his friends that he has made. I would want to tell him about my school. I have lots of friends at my school I would like to tell him about. I would like to tell him that I got a new room added onto the house. There are a lot of teachers I would want to tell him about and how they look out for me.

K[redacted] Hilyard

K[redacted] Hilyard

This is word for word from K[redacted] as dictated to me (Aiyanna Curtis) when we talked about the possibility of having visits with his biological father, Ryan.

May 1, 2023

TO WHOM IT MAY CONCERN:

RE: K[redacted] Hilyard

I worked with K[redacted] Hilyard in counseling during the year 2021-22. Often K[redacted] would mention he would like to communicate with his biological dad who is incarcerated, and parental rights terminated. When he mentioned this, it was not solicited in question nor was it at the prompt of his caregivers. In processing he would just reply that he missed him.

Due to the nature of his dad being incarcerated and K[redacted] living with his now adoptive parents/caregivers, this letter is written in support of a visit via telephone or teleconference with K[redacted] and his biological father while incarcerated with the following recommendations in the best interest of K[redacted]:

- That the visit be supervised by a qualified individual – counselor, social worker, or a qualified individual employed by LifeNet in Douglas, WY whom the caregivers and K[redacted] work closely with. This will ensure processing and reflection as well as overall support for K[redacted].
- That the visit initially be limited to once a month for further assessment by qualified individual(s) regarding the impact on K[redacted].
- That his biological father utilizes counseling services provided while incarcerated to process his thoughts and feelings, reflection, and assessment to ensure his mental state is healthy.

If you have any questions, please do not hesitate to contact me.

Diana B. Lengkeek, MS LPC

Douglas, WY

307.359. 3754

Annette Hilyard
222 N. 9th Street
Douglas, WY 82633
(307) 351-6525

Warden
Wyoming Medium Correctional Institution
7076 RD 55F
Torrington, WY 82240

Reference: K[redacted] Hilyard's desire to see Ryan Hilyard

Dear Warden :

As K[redacted] Hilyard's adoptive mom, it would be hard to express why I believe K[redacted] should be allowed to see his biological father without telling the whole story; I'll try to be succinct.

K[redacted] has been in our home (mine and Ryan's father Terry's) a lot since he was a baby. When his mother left to start her career as an exotic dancer at a gentleman's club, Ryan was left as the sole caregiver for K[redacted] and his brother. Ryan brought them to our home at 4:00 a.m. and put them in bed while he headed off to work. He left them with bags of clothes labeled for each child daily that he had prepared on the weekend. While he juggled jobs and care of his children, he continually searched for companionship and help with raising them, moving women in and out frequently. When he met Sarah, she moved in and was pregnant immediately, making it more difficult to just move on if it didn't work. While everything seemed good and Ryan's children liked her in the beginning, her own son was very compliant and became the standard that K[redacted] and his brother could never live up to. The tensions grew, as the new baby, a son, grew, and it became more and more apparent that he was handicapped. He has since been diagnosed as extremely autistic. K[redacted] and his brother were diagnosed with Autism before Ryan met Sarah, but they were both "high functioning" and extremely intelligent. Sarah became harsher and harsher in the discipline and obvious hatred of both K[redacted] and his brother, and it was apparent to us, but Ryan appeared desperate to keep things together and downplay her abuse. K[redacted] is a strong-willed child as well and, from what he remembers and tells us now, he was in a constant battle with his stepmother and stepbrother because of her favoritism of him. We also know that the whole story of K[redacted]'s injuries has never been told and, because of what we know, we don't believe Ryan was involved in actually injuring his son.

The nightmare for us began on August 6, 2020, when Ryan called to tell us that K[redacted] had been life-flighted to Cololrado. He believed that it stemmed from an injury K[redacted] suffered when falling down the stairs on the Sunday three days before. When I heard he fell down the stairs, in my mind I immediately thought, "if he fell down the stairs, Sarah pushed him". So I asked, "who saw him fall"? Ryan said, "well, Sarah did", and Sarah, whom had been on speaker phone said "oh yes, yes, I saw him fall". None of what we heard made sense, as a brain injury wouldn't take three days to suddenly be "critical". When we were allowed to see K[redacted] almost a week later, we knew it didn't all happen on Sunday night and the doctors confirmed that. K[redacted] was completely blind and he had had the left side of his skull removed to allow his brain to swell. We were told he would have likely died had that not been done in Casper before the flight. The doctors specifically told us he had been shaken and had his head beaten until his optic nerves separated and his brain swelled. This they assured us had happened within hours, not days of being taken to the hospital by Sarah. Of course, he was blind instantly. As the gown fell down from his shoulders, we saw his shoulders were completely dark purple and there were fingernail gouges around the purple, and we knew who had done the shaking and

beating while Ryan was at work that morning. We were told however, of course, that he had injuries consistent with ongoing abuse. He had bruises on his body in various stages of healing, which were obvious, but they said he had an old brain bleed that had stopped as well. This didn't totally register until Ryan and Sarah were arrested and the information about Sunday night that was cultivated from the stepbrother who was involved was published. It was clear that K[redacted] was more seriously injured than Ryan had indicated. Ryan had to have seen and realized K[redacted] was injured and agreed with Sarah in putting him on bed rest to heal without medical attention. Ryan set himself up for what happened, as none of the other children were allowed near K[redacted] and didn't know how injured he was or that he was getting better. Only Ryan and Sarah knew. Approximately four weeks after our first visit to K[redacted], and we were with him every weekend after except one, we noticed the fingernail gouges had healed to red marks that looked perfectly like someone with long fingernails grabbed and pinched and left marks. It was then that Terry remarked, "you know she grabbed him from behind". Indeed, it was obvious, but we hadn't thought about it. He has a scar on his neck from one of the fingernail gouges, and it's still obvious he was grabbed from behind when he was shaken and beaten. While standing at K[redacted]'s bedside in the beginning we prayed that he would see, speak, eat and walk again. I'm writing a book, but to shorten the story, miracles happened and K[redacted] can see out of his right eye after surgery. He is basically blind in his left eye and has limited peripheral vision. He pivots on his right leg and cannot use his right arm and hand because of the brain injury, but he eats and talks and is very social.

Now, why would I want K[redacted] to be able to talk to his dad? We had not mentioned his dad or talked about what happened at all to K[redacted] before Ryan's trial. K[redacted] knew he had fallen down stairs as soon as we brought him home from the hospital and he began saying he thought his stepmother pushed him down the stairs on purpose shortly thereafter. He just knows that and doesn't remember any details. When it came time for his dad's trial, K[redacted] had a subpoena, so he had to talk to his counselor about it. We were shocked at what he said when he came home. As I sat down to read to him that evening, he said, "I don't hold my dad responsible", "my dad didn't beat me, but L[redacted] (stepbrother) beat me up so bad I couldn't go to school for a week". "My dad didn't know the half of it". I asked why he didn't let his dad know what was going on and he said, "my dad loved Sarah, he would believe Sarah". As I thought about it, I realized that Ryan was working ten and twelve hour days and came home to hear Sarah's side of the conflict only. Once K[redacted] starts remembering, he thinks things over and keeps talking about it. I would not lie to him, I told him his dad had betrayed him and had not gotten medical attention for him after his stepmom pushed him down the stairs, and he left him with her, giving her another chance to try to kill him, which she did. During the final MDT meeting we attended via zoom, Sarah admitted that she did exactly what the evidence and the doctors indicated , and that is why she pled guilty to attempted second degree murder. It seemed like the DFS and Casa worker are so used to the man being the violent offender and the woman the victim, they just couldn't believe Sarah had done it and continued to minimize K[redacted]'s injuries and absolve Sarah of responsibility for shaking and beating him and causing his permanent injuries. This made me angry and I related all of the evidence and information we had received once again, forgetting Sarah was on the call as well. I was surprised when she spoke up and told the truth. The more K[redacted] thought about his dad and talked about the things that were going on in the house before his injury, the more he insisted that his dad didn't know the half of what was going on and he still loved him and wanted to forgive him. He begged me in tears to still love his father and forgive him. I had to tell him that a good father doesn't abandon his child, and his grandpa had not abandoned his dad, even though we were very angry with him, so I have to love him and pray for him too. Note: K[redacted] didn't get to testify in court and we didn't either.

Finally, as K[redacted] has talked more about the things he was doing to get his dad's attention and push his stepmother's buttons, I remember several times when K[redacted] had to go with his dad because he was being punished for wrongdoing. It seemed more like a reward than a punishment, as his dad could be buddies with him again out of Sarah's sight. I remember once when he was with his dad and told me his stepmom was threatening to leave because of him, and the things he told me she was angry about were just being a child. Things got much worse after that time and I realize that, while K[redacted] wanted her to leave and was pushing hard, Ryan was desperate for her to not leave because he not only had two children now, but was fully responsible for a third as well. K[redacted] has continued to express his love for his dad and a desire to talk to him and see him. K[redacted] knows he doesn't have to live with his biological dad now, and wouldn't want to even if he wasn't in jail, however, he still wants to be buddies and he knows Sarah is out of the picture now. While this has all been a painful struggle for all of us, I don't want to punish K[redacted] after he worked so hard for Ryan's attention. And, I will never be able to lie and try to convince him that his dad hated him and turned his back on him in hatred. I don't believe that and I don't think that would do anything for K[redacted]'s emotional and mental health. I have potty trained K[redacted] twice now, taken him to his first day of kindergarten and to his first dance and gone through so much for this precious child, I am his mother. I would die for him and probably kill for him and I am dedicated to giving him the best life he can have from now on. Still, given all of the above, I would like to see K[redacted] allowed to talk to his biological father, Ryan Hilyard. This, with close monitoring by the counselor and my husband and I to assure it doesn't create any emotional turmoil. We believe it may bring healing and affirmation to K[redacted] because of his desperate quest for Ryan's attention. We would not want to have continued visits if that doesn't appear to be the case.

This letter, I believe, represents not only my perspective but my husband Terry's. This has been the most painful event in life for him. I have watched him diligently, painfully asking questions and investigating the evidence and details to try to determine what happened and what his son did and knew. He pledged to take care of K[redacted] first and assure his wellbeing and that he would have the best life we could give him, making it clear to Ryan that he had failed and K[redacted]'s wellbeing would come first. K[redacted] has begged his Papa Dad to let him see and talk to his biological dad as well.

Therefore, per both signatures below, Terry and I ask that you consider all of the above in considering allowing K[redacted] Hilyard to visit with Ryan Hilyard.

Sincerely,

Annette Hilyard

Terry Hilyard

Warden Seth Norris
WMCI
September 29, 2023

Warden Norris,

I am writing you today in hopes you will reconsider the decision made regarding visitation with K[redacted] Hilyard. I understand he is the victim in the crime I stand accused of but I hope you will understand that I love my son very much. Regardless of an unjust conviction, I did not hurt him. My biggest solace comes in the fact that he knows this as well. I know that this is not the appropriate platform to re-litigate my case; it is in the court system right now so I will say nothing further on the matter. I have attached letters from my son, K[redacted], his adoptive parents, and the counselor overseeing him.

Officer Emigh did the initial evaluation and turned down the application. I have attached a copy of her refusal as well. While I did read Officer Emigh's letter and understand that she said to use the Grievance process to address this further, I have elected not to unless you tell me it is mandatory. My rationale behind this decision is simple; a grievance, in my understanding, indicates a problem with a staff member. I do not feel that Officer Emigh has done anything wrong nor do I hold anything, this decision included, against her. I understand the policy she followed and can honestly state I would have done the same in her position.

The attached letters are not something Officer Emigh has seen. Even if she had seen them, I doubt she holds the authority to use her own judgment for a decision as large as this. My hope is that you will make a merciful decision. My son is the most important person in the world to me. While I admit it hurts me not to see him, it is much worse knowing that he is hurting too, that he wants to see me and I am powerless to help with that.

Please note, these letters were not solicited, I have followed up with my dad about when they would be sent but the initial idea of them was the counselor's. I did not ask for visitation, as you can see my stepmother still has her doubts, so I did not want to push anything. I currently have three people approved for visitation, my dad, stepmother, and my brother. I have not had any visits with them, video or in-person, nor have I asked for any. I understand that visiting someone in prison is not anyone's idea of a good time, especially when they do not know all of the facts of the case. The idea of visitation was K[redacted]'s that is why I think it is important to grant this.

While I understand the connotations of granting this request, I would like to assure you that I wholeheartedly agree that stipulated rules will be followed or the entirety of visits with my son discontinued. I understand that visits will start as video only, that if approved, they will start without K[redacted] being present so that his counselors and parents can go over starting rules. I know that ground

rules will need to be laid out and that as conversations develop, new rules or tightened rules may become necessary.

I know your staffing is sometimes thin, that you will not by any means have anyone that can supervise and listen to an entire conversation each time an inmate has a visit. However, I would suggest that on a one-time basis, without K[redacted] present, a CTL, UM, or higher person of your choosing participate in the call. Neither K[redacted]'s parents nor counselors are versed in facility rules. I feel that facility rules and protection would actuate a need for someone like them to hear and interject as to any rules for WDOC protection. My son is the first and only priority of his counselors and adoptive parents regarding visitation with me, my feelings are not being taken into account with them. All parties are well aware that visits are recorded and monitored as well as in-person visits being overseen by security staff.

The counselor overseeing my son feels that visits with me will be therapeutic for him. I would agree with that assessment. I would like to rebuild the bond I once had with my son as at this point, his capability of ever living independently is very much in doubt and as my parents are already in their 60's and 70's respectively, I very well could be tasked with his care in his adult life. It will be important for him to know and trust me again as well as for me to know what he will need from me. All I ask for is the opportunity to learn so that I can be what he needs upon release or soon thereafter.

I appreciate you taking the time to look this over and consider it. Again, security of my son and everyone else involved will be paramount to anything else. Please feel free to contact anyone involved with any questions or concerns you may have. No one has any desire other than the well-being of a boy who has been through more than most can imagine.

Sincerely,

Ryan Hilyard

Re-printed 10/30/24

Ryan Hilyard
WDOC #34067

THE STATE OF WYOMING

Mark Gordon
Governor

Department of Corrections
Wyoming Medium Correctional Institution
7076 Road 55F
Torrington, Wyoming 82240
Telephone: (307) 532-3198
FAX: (307) 532-3240

Daniel Shannon
Director

Seth Norris
Warden

October 3, 2023

To: Inmate Ryan Hilyard #34067

From: Warden Seth Norris

Re: Visitation for K[redacted] Hilyard

Dear Inmate Hilyard,

I have reviewed your and several others' request for visitation for your son, K[redacted] Hilyard. In accordance with Policy 5.400, a recommendation for visiting has been provided to Prison Division Administrator Abbott by me. Once I receive information on the Director's decision you will be made aware.

Respectfully,

Warden Seth Norris
WMCI Warden

Director Shannon
Administrator Abbott
WDOC
1934 Wyott Drive; Suite 100
Cheyenne, WY 82002

March 19, 2024

Director Shannon or Administrator Abbott,

I write to you today in hopes you might allow visitation with my son, K[redacted]Hilyard. I have corresponded with Warden Norris about this and he advised he had sent his recommendation to you on or around October 3, 2023 in accordance with policy 5.400. I assume he was referring to section (C), subsection (a) (iv.) of the policy.

iv. "Crime Victims. A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person is a registered victim of the inmate's crime(s) of conviction, past or present, when that registration has been verified by the office of the WDOC's Victim Services Coordinator, or when the victim is a minor victim of a sexual crime committed by the inmate. Non-registered victim(s) may also be determined ineligible by the facility warden when the circumstances of the crime indicate that permitting visitation would potentially endanger the victim(s) or would be detrimental to maintaining correctional facility safety, security and good order.

a. Exceptions. Exceptions may be granted with the recommendation of the facility warden and the authorization of the WDOC Prison Division Administrator or his/her designee.

(1) Any victim of an inmate who is deemed ineligible to visit may request reconsideration by writing to the facility warden.

(2) The warden will review the request and make a recommendation to the Prison Division Administrator or his/her designee. The Director or his/her designee will make the final decision. The Director's decision shall be final and shall not be subject to administrative review.

(3) If the exception is granted, it must be applied consistently to all department facilities, unless otherwise stated."

I would also like to ask this in accordance with Policy 5.400 section (B) subsection (3) (f). Though I am not a sexual offender, I do believe that the basis of the intent is still applicable.

f. "If the minor child requesting visitation is the victim of the current or previous offense, the warden may authorize such visits if the minor child meets the criteria under paragraph 2(i) of this section and such visits are requested by the minor's therapist or counselor as part of the victim's treatment and approved in writing by the victim's custodial parent or legal guardian."

I am unaware of what communication you have had with Warden Norris about this. I am therefore attaching the original letters sent to him. Included in this, you will find letters from K[redacted] Hilyard, his therapist, his adoptive parents, and from me. As I believe will be evident to you, the request for visitation has come at the request of K[redacted] primarily. His adoptive parents have given their authorizations and his counselors feel it is therapeutic for him.

I understand that if granted, visitations with my son are for his benefit and not necessarily mine. I am aware that if these visits were to cease therapeutic benefits for him, they would be terminated, be that by counselors, adoptive parents, or K[redacted] himself. I accept this fact and will only strive to add value to his life through these visits.

There is a particular line from Annette Hilyard that strikes me. She states she feels that visits with me may bring healing and affirmation to my son because of his desperate quest for my attention. I am particularly ashamed to admit this is true. While I did not and would not participate in any type of physical abuse, I did put financial goals ahead of quality time with my family. I put my trust in the wrong person to look after things while I worked and missed that my son needed my attention above anything else. This is the opportunity to show him the importance I failed to show previously.

I have taken advantage of opportunities that have presented themselves while incarcerated at WMCI. I have completed over half of the TPC courses offered. I am one of the inmates in the "UW College Cohort" that Ms. Speiser and Mr. Aldrige have created in cooperation with the University of Wyoming. I will continue to pursue anything possible to expand my horizons and open up possibilities for the future. What I ask in this request is no different. My son is permanently disabled and while I will never be able to thank Terry and Annette Hilyard enough for what they have done and continue to do for K[redacted], they cannot continue it endlessly. The only way that I can ever show my appreciation is to not allow all their efforts to have been in vain. My prison sentence, regardless of how the legal process plays out, is temporary; K[redacted]'s needs are not. All I ask for is the opportunity to learn so that I can be what he needs upon release or soon thereafter.

I sincerely appreciate the time taken into this matter. K[redacted]'s counselors and parents would welcome any questions or comments you might have. Both have included contact information in their letters.

Respectfully,

Ryan Hilyard

Re-printed 10/30/24

Ryan Hilyard
WDOC #34067
WMCI

THE STATE OF WYOMING

Department of Corrections

Mark Gordon
Governor

1934 Wyott Drive, Suite 100
Cheyenne, Wyoming 82002
Telephone: (307) 777-7208
FAX: (307) 777-7476

Daniel Shannon
Director

April 16, 2024

Ryan Hilyard #34067
Wyoming Medium Correctional Institution
7076 Road 55F
Torrington, WY 82240

Re: *Visitation Request*

Dear Mr. Hilyard,

Your letter was received in Central Office, March 25, 2024 and you are requesting authorization to visit with your son, K[redacted]n Hilyard who is the victim in your case. The Wyoming Medium Correctional Institution (WMCI) reviewed your request to visit with your son and the request was denied at the facility level.

The Inmate Visitation Policy provides guidance and direction regarding this matter and states the following;

iv. Crime Victims. A person is ineligible to visit an inmate confined in a Department of Corrections facility if the person is a registered victim of the inmate's crime(s) of conviction, past or present, when that registration has been verified by the office of the WDOC's Victim Notification Program Manager, or when the victim is a minor victim of a sexual crime committed by the inmate. Non-registered victim(s) may also be determined ineligible by the facility warden when the circumstances of the crime indicate that permitting visitation would potentially endanger the victim(s) or would be detrimental to maintaining correctional facility safety, security and good order.

a. Exceptions. Exceptions may be granted with the recommendation of the facility warden and the authorization of the WDOC Prison Division Administrator or his/her designee.

(1) Any victim of an inmate who is deemed ineligible to visit may request reconsideration by writing to the facility warden.
(2) The warden will review the request and make a recommendation to the Prison Division Administrator or his/her designee. The Director or his/her designee will make the final decision. The Director's decision shall be final and shall not be subject to administrative review.

(3) If the exception is granted, it must be applied consistently to all department facilities, unless otherwise stated.

I have consulted with Wyoming Department of Corrections (WDOC) staff regarding this issue and determined the following; In October of 2023 your request for visitation was denied by Warden Seth Norris at WMCI. In compliance with Policy #5.400, *Inmate Visiting*, the denial by Warden Norris was forwarded to the Prison Division Administrator Scott Abbott for his review. In October of 2023 the Prison Division Administrator reviewed the request sent by Warden Norris and also denied this approval.

Given the severity of the crime and length of your sentence it would not be prudent to authorize visitation for K[redacted] Hilyard. This matter has been reviewed by the facility, upheld by the Warden and Prison Administrator and my decision is to concur with the denial at this time.

Thank you for taking the time to write my office and for affording me the opportunity to respond to your concerns.

Sincerely,

Daniel Shannon
Director

DS/MP/jy

CC: Warden Seth Norris
Inmate File

Exhibit 4

WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS
P.O. Box 2645
Cheyenne, WY 82003
307-778-7792

COMPLAINT FORM

This form is designed to provide the Com mission with information required to m ake an initial evaluation of your complaint. **This form must be signed along with a notarized verification form and be sent via U.S. mail to the Commission's office. No electronic or fax submissions will be allowed.**

I claim that the Judge listed below engaged in the misconduct or unethical behavior I have specified below, and I request an investigation of that behavior. I swear under penalty of perjury that everything I list in this form is true.

Judge's Name: Catherine E. Wilking

Court Name: Seventh Judicial District, Natrona County

City: Casper County: Natrona

Your Contact Information

Full Name: Ryan Hilyard #34067

Address: c/o WMCI - 7076 Road 55F

City/State/Zip: Torrington, WY 82240

Daytime Phone: (307) 532-6631

Cellular Phone:

Email Address:

Statement of Facts

When and where did the misconduct and/or unethical behavior occur?

Date: Ongoing Time:

Location: Casper, WY

State below the specific details of what the judge did that you think constitutes misconduct or unethical behavior. (It may be helpful for you to refer to the Code but it is not necessary. Wyoming Code of Judicial Conduct) . *Please be as detailed as possible. Lack of specific, detailed information may result in a delay of the complaint process.*

Catherine E. Wilking has shown bias throughout my trial and subsequent appeals that should have caused any professional to recuse themselves from the case. Judge Wilking has not; she has presided throughout the proceedings though her sorority sister is the Honorable Kerri Johnson who presided over the connected case in juvenile court (12422-B). In 12422-B, I took a plea that guaranteed protection under rule nine (9) of the Wyoming Rules of Procedure for Juvenile Courts prohibiting information sharing from the juvenile case to the criminal case.

Judges Wilking and Johnson illegally shared information causing Judge Wilking to form bias against me for not completing certain actions of the DFS case plan at the advice of my attorney Robert Oldham. Mr. Oldham advised that regardless of the rules, my actions or words could be manipulated to be used against me in criminal court. Both judges stood idly by as well while Tazia Morgart of DFS openly shared any and all information gathered with Detective Good of Mills Police Department, including allowing participation by Detective Good in her interviews with any potential witnesses and even accompanying Detective Good to arrest me and sharing an inappropriate embrace with the Detective after I was placed in the police vehicle. Neither judge intervened when the ADA of the juvenile case, Jared Holbrook, transferred to criminal prosecution and prosecuted my cases in both juveinile and criminal court. This was against the plea bargin Mr. Holbrook offered as he was aware and involved in the case on both juvenile and criminal sides.

Judge Wilking showed her obvious bias in five substantial ways during and after my trial. First, on Thursday November 18, 2021, I was testifying when the court decided to recess for a lunch break. Prior to being called back to order, I attempted to ask the judge if I would need to be re-sworn in prior to resuming testimony. Judge Wilking scowled and blew me off, simply pointing at the witness stand and refusing to even speak. Secondly, after conviction, at the sentencing hearing, on March 10, 2022, Judge Wilking falsely claimed I had not shown remorse. She also took what KH, the victim, had to say with a grain of salt. While KH did suffer a brain injury that has left permanent impairments, Judge Wilking personally attacking a 13 year old in open court was uncalled for. She stated that KH clearly did not have the capacity he once had. An unprovoked and unnecessary attack made only to ease her consciense of sending me to prison. Third, Judge Wilking allowed a deputy clerk to work with and potentially advise my Judgment and Sentence. The deputy clerk has obvious bias against me. Her name is Michelle Mochen and she is my bitter ex-girlfriend. Fourth, I filed my Post-Conviction relief and Judge Wilking responded by ordering the state to respond within 45 days of the November 17, 2023 order, making the deadline January 2, 2024. The Attorney General's Office failed to meet this deadline. Jenny Craig, Deputy Attorney General, stated she was "notified January 9, 2024" of the missed deadline. Conversely, if I had missed any deadline, I would have had his case dismissed by procedural default. The notification, sent from Judge Wilking or her clerks, only served to stop me from obtaining the justice that procedural default would have granted. I should have had my Judgment and Sentence immediately vacated due to the inexcusable neglect by Ms. Craig. Fifth, Judge WIlking ignored the objection and response I filed in a timely manner. She instead chose to sign illegal orders prepared by the Attorney General's Office. She signed an order to extend time before I could answer and point out the motivation was illegal, then ignored my response to the AG's request and simply signed Ms. Craig's order based on an unconstitutional case. None of my timely documents were even considered.

Judge Wilking should have recused herself and allowed a judge who could carry themselves without bias to take over. Judge Wilking allowed Ms. Craig a two (2) week extension after missing the January 2, 2024 deadline. Ms. Craig's excuse seems to be an inability to use her own email. Ms. Craig claimed that her inability to check her email was covered with excuasble neglect. However, excusable neglect is defined as "a strict standard to take care of genuine emergency conditions, such as death, sickness, undue delay in the mails and other situations where such behavior might be the act of a reasonably prudent person under the circumstances." Crossan v. Irrigation Dev. Corp., 598 P.2d 812, 1979 Wyo. LEXIS 466 (Wyo. 1979); Elliott v. State, 626 P.2d 1044, 1981 Wyo. LEXIS 326 (Wyo. 1981).

What is the duty of a judge if not to guarantee fairness to all parties appearing before them? Judge Wilking has acted as an additional prosecutor from the moment I met her and has gone out of her way to ensure the system rigged against me. Allowing such a prejudicial person to maintain on the bench is a serious miscarriage of justice.

Did you have a case before this judge? Yes [✔] No [ ]

If yes, is the case still pending? Yes [ ] No [✔]

If the case is **not** pending, when was it completed? November 18, 2021

If case is **not** pending, what was the result? Attach a copy of the final order or judgment.

I was found guilty of aggrivated child abuse and of child abuse. I am currenty serviing sentences for these consecutively. I have appealed to the Wyoming Supreme Court, the U.S. Supreme Court, and Post-Conviction Relief. I will be continuing the appeal to the next step(s) with a return to the Wyoming Supreme Court.

Did you appeal the judge's decision? Yes [✔] No [ ]

If your complaint arose from a court case, please provide the following information:

Case Name: The people versus Ryan Lewis Hilyard

Case Number: 22282-C

Plaintiff's information:

Name:

Address:

City/State/Zip:

Phone:

Attorney's Information (Plaintiff):

Name: Jared Holbrook

Address: 200 N Center St

City/State/Zip: Casper, WY 82601

Phone: (307) 235-9223

Defendant's Information:

Name: Ryan Hilyard #34067

Address: c/o WMCI - 7076 Road 55F

City/State/Zip: Torrington, WY 82240

Phone: (307) 532-6631

Attorney's Information (Defendant):

Name: Robert Oldham

Address: 242 South Grant St

City/State/Zip: Casper, WY 82601

Phone: (307) 315-2217

Additional Attorney's Information

Attorney 1

Name: Kevin Taheri

Address: 200 N Center St

City/State/Zip: Casper, WY 82601

Phone: (307) 235-9223

Represented: Plantiff, second prosectuor

Attorney 2

Name:

Address:

City/State/Zip:

Phone:

Represented:

What type of case, if any, gives rise to this complaint? Please check one:

Criminal X
Small claims _____
Civil _____
Probate _____
Domestic (family) relations _____
Other (specify) _____

How are you interested in the case?

Plaintiff/petitioner _____
Defendant/respondent X
Unrelated to a case _____
Other (specify) _____
attorney for _____
witness for _____
family member of _____

List documents you can forward to the Commission to support this complaint about the judge engaged in misconduct or unethical behavior. **This information should be mailed to the Commission with the signed complaint.** (Please do not send originals.)

Request from Deputy AG Jenny Craig requesting time extension.
Order from Judge Wilking extending Attorney General's time dated January 11, 2024, (Same day I received the motion).
Letter and pre-prepared order of Deial of Post-Conviction Relief will show Ms. Craig, not Judge Wilking prepared the order
Order denying my Post-Conviction Relief with prejudice signed February 7, 2024. I received said order February 13, 2024. I sent out my response January 31, 2024. Assuming mail would arrive both ways roughly at the same time, Judge Wilking had my response for under one day, it was not reviewed prior to her signing the order Ms. Craig demanded.

List documents you cannot forward, but will support your complaint and which may help the Commission's investigation:

Transcripts from sentencing March 10, 2022. Will show Judge Wilking making claims that I did not have any remorse as well as her personal attack of my 13 year old son.

Identify, if possible, any other witnesses to the judge's conduct: (example: reporters, bailiffs, clerks, court reporters, law enforcement officers, or other attorneys, plaintiffs, defendants, or witnesses who were present at the time).

Witness 1

Name: Terry Hilyard

Address: 904 Washington St

City/State/Zip: Douglas, WY 82633

Phone: (307) 351-3078

Witness 2

Name: Kayla Lorenz

Address: 1600 S Beverly St Apt. 2

City/State/Zip: Casper, WY 82609

Phone: (307) 267-3222

Witness 3

Name:

Address:

City/State/Zip:

Phone:

COMMISSION ON JUDICIAL CONDUCT AND ETHICS
VERIFICATION OF COMPLAINT

I, Ryan Hilyard, the undersigned, do hereby swear or affirm, under penalty of perjury, that the information contained in the attached 7 pages is a true, accurate and complete statement of the facts supporting my complaint to the Commission on Judicial Conduct and Ethics.

Dated this 25 day of March, 2024.

Signature

Re-printed 10/30/24 Ryan Hilyard

INSTRUCTIONS TO NOTARY

This form must be the product of an oath, not m erely an acknowledgm ent. Before the verification is signed you must:

1. Place the affiant under oath:

2. Insure the affiant understands that all assertions are swor n to as accurate and the affiant is subject to the penalty of perjury for any false statement; and

3. Have the verification signed in your presence.

STATE OF _____
} ss
COUNTY OF _____

Subscribed and sworn to me this _____ day of _____, 20____.

by _____.

Notary Public

(SEAL)

My Commission Expires: _____