

No. 24-6522

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
FEB 04 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Samuel G. Neyhart — PETITIONER
(Your Name)

vs.

Warden Tyrell Davis — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States District Court For Idaho and The
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Samuel G. Neyhart
(Your Name)

P.O. Box 14
(Address)

Boise, ID 83
(City, State, Zip Code)

None - Prisoner
(Phone Number)

QUESTIONS PRESENTED

- 1) Did the Ninth Circuit Court of Appeals error, and/or so far depart from the Supreme Court of the United States processes and precedents, by failing to issue a Certificated Of Appealability for the significant and/or admitted Constitutional violations, as to call for a Grant of Certiorari, Reversal of the denial, and Remand to the Ninth Circuit Court of Appeals to hear an appeal?
- 2) Did the Idaho Federal District Court error by finding Habeas Claim 1(a)(b) and (c), were procedurally defaulted in State Court, for a lack of presentation, despite talismanic Federal legal language including cases, quotes, Amendments, and Federal Precedents being cited?
- 3) Did the Ninth Circuit Court of Appeals so far depart from the Supreme Court process and precedents, by failing to issue a COA, for the 5th, and 14th, Amendment claims when it is clear from the face of the record that the Federal District Court was unreasonably incorrect, as to call for a GVR?
- 4) Did the Federal District Court error by attempting to delineate protected silence into anything other than pre-Miranda, and post-Miranda silence?

5) Did the Federal District Court error by finding that when Neyhart stated: "silence during and after both interviews," and then cited Doyle error, in his opening State Appellate brief, that he really only intended to raise the State's use of his silence during the two interviews?

6) Did the District Court error by failing to find Neyhart was silent as to certain topics during and after the second interview, since nothing was asked, and nothing was stated about those topics Neyhart had previously invoked upon?

7) If Neyhart's counsel failed, somehow, to present so plain a Constitutional violation as using protected silence, despite his best efforts to do so, did the Idaho Federal District Court error by failing to find excuse by cause and prejudice under Martinez v. Ryan 566 U.S. 9, 10, 14, (2012), since such a failure would have clearly equated ineffective assistance of counsel?

8) Did the Idaho Federal District Court error by failing to grant relief on any part of habeas claim one?

9) Did the Idaho Federal District Court error by failing to find that by asking the Idaho Supreme Court to review all issues raised on appeal, all issues had been brought to the attention of the Idaho Supreme Court by Idaho Supreme Court rule 18?

10) Did the Idaho Federal District Court error by failing to find that the Prosecutor's declarations, vouching, and misstatement of fact, during cross-examination of the testifying defendant were testimony, since the document was worthless absent the Prosecutor's false declarations?

11) Did the Federal District Court error by applying an unreasonable standard of review to prosecutor misconduct, by misrepresenting facts, or lying, and failing to correct the false impression of the facts when she clearly came to know of the falsity, in order to falsely impeach the testifying defendant?

12) Did the Federal District Court err by unreasonably applying the harmless standard of review, because the Court ignored the effect of falsely impeaching a testifying defendant on all the testimony and evidence presented by defense, finding instead that there was "plenty of other evidence," presented by the State?

13) Can falsely impeaching a testifying defendant ever be harmless, since it is likely that

any jury would apply common sense to find falsus in Uno is falsus in Omnibus?

14) Did the Idaho Federal District Court error by finding the Neyhart's attempts to file a supplemental pro-se brief, to raise claims when counsel would not, did not preserve the claims for review?

15) Did the Idaho Federal District Court error by finding Neyhart's attempts to overcome ineffective assistance of counsel, by attempting to file a supplemental pro-se brief, was barred by Idaho Court rule, since there is no written rule, and Idaho Courts sometimes grant leave, or review supplemental pro-se briefs?

16) What is a convicted person to do when faced with counsel that will not file all claims as directed, if the State can then block those claims from Federal review?

17) Did the Idaho Federal District Court error by failing to find any default was excused by cause and prejudice under Martinez V. Ryan 566 U.S. 1, (2012), since Neyhart did everything he could possibly do to preserve the claims and counsel's errors, and confusion from the post-conviction Judge dying resulted in a procedural default to substantial claims of Constitutional violations?

18) Did the Idaho Federal District Court error by accepting the State Court's finding of default on a subsequent petition for post conviction relief, based on Brady and Napue violations, since the State Prosecutor's dishonesty prevented Neyhart discovering the dishonesty until after he had exhausted his remedies in State Court?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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

State

RELATED CASES

State v. ~~BB~~ Neyhart, 160 Idaho 746 (App 2016)

Neyhart v. State -Unpublished - 2020 Ida. Lexis 115
(March 31, 2020) Docket: 46446

Neyhart v. State -Unpublished - 2021, Ida. App. Lexis 200
(June 23, 2021) Docket 48197

Federal

Neyhart v. Davis, 2023 U.S. Dist. Lexis 186681
(October 17, 2023) Case: 1:20-cv-00432-CWD

Neyhart v. Davis, 2022 U.S. Dist Lexis 58376
(March 29, 2022) Case: 1:20-cv-00432-CWD

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TABLE OF AUTHORITIES CITED

CASES

Cases Attached as an E-mail Print

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STATUTES AND RULES

U.S.C.S. 28-2254

Constitution Amendments, 5th, 6th and 14th

Idaho Rules Appellate Rule 118(c)(2) and (1)

OTHER

CASES CITED

Baldwin v. Reese 541 U.S. 27 (2004) 20,

Barefoot v. Estelle 463 U.S. 880 (1983) 14, 17,

Brady v. Maryland 373 U.S. 83 (1983) 13, 31,

Clemons v. Delo 124 F.3d 944 (1997) 27,

Doyle v. Ohio 426 U.S. 610 (1976) 16, 17, 19, 20, 21, 22,

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Slack v McDaniel 529 U.S. 473 (2000) 14, 17,

Smith v Arizona 602 U.S. 779 (2024) 24, 25,

State v Guzman 122 ID 981 (1992) 22,

State v. Schossberger 117 ID 771 (1990) 21,

Cases Cited

Strickland v. Washington 466 U.S. 668 (1984) 28,

Strickler v Greene 527 U.S. 263 (1999) 31,

Wright v Brightenbach unpublished Ninth Circuit 22-16456 (Jan 6, 2025) 15,

Workman v. Blades 1:08-cv-00052-EJI -- Idaho Federal District Court. 27,

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished. - *Denial of COA, Denial of Rehearing*

The opinion of the United States district court appears at Appendix A to the petition and is

reported at 1:20-cv-00432-CWD; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

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

reported at ? 0000 State v. Neuhart ID; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 7, 2024, and a copy of the order denying rehearing appears at Appendix B.

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

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

[] For cases from state courts:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5

Amendment 6

Amendment 14 - Due process

HISTORY AND NATURE OF THE HABEAS CASE UPON
WHICH CERTIORARI IS SOUGHT

On November 2, 2010, Neyhart was interrogated by Idaho detectives Duche, and White. Neyhart contends he was in custody, since he was in a locked room, in a locked basement, of a locked building, and was only allowed to use the restroom under officer escort. Neyhart was not read a Miranda warning.

Neyhart repeatedly invoked the Fifth and Sixth Amendment right to counsel and silence, but his repeated invocations were met with violent berating in an attempt to force Neyhart to answer questions. Neyhart was finally allowed to leave, but only after promising to call Detective White with the name of a medication he was having a reaction to. A few days later, Neyhart called Detective White and provided the name of the medication Cymbalta. Neyhart reiterated he would come back to the interrogation, but only if counsel was provided.

About two and a half years later, Neyhart received a call from a new detective, and was ordered to come in and answer some questions about the family or the detective would drag him out of his college classes to do so. Neyhart went to the Detective Joslyn's office where he was provided a *Miranda v. Arizona* 384 U.S. 336 (1966), warning.

Detective Joslyn asked Neyhart some very general questions about the family's home, and the general physical abuse that Neyhart had witnessed. Detective Joslyn did not ask Neyhart about any of the topics he had earlier invoked upon, and Neyhart did not bring them up to re invoke. Neyhart simply relied upon the promise in *Miranda* that he need not speak an anything he did not wish to.

At trial the Prosecutor repeatedly asked Neyhart about his failure to provide information

about three topics to officers, during and after both interviews.

On appeal Neyhart asserted harmful misconduct when the Prosecutor, "repeatedly commented on [Neyhart's] in-custody and post-Miranda silence for the sole purpose of implying guilt.

In his opening Amended Appellant's Brief pages 12, 13, 14, and 15, (attached in appendix E). Neyhart quoted the misconduct. Neyhart also made clear on page 12, that he was complaining of his pre-Miranda and post-Miranda silence being used against him. Neyhart specified the misconduct violated his Fifth and Fourteenth Amendment rights, (page 11 and 18), and cited to the Federal precedent setting case, *Doyle v. Ohio* 426 U.S. 610 (1976), (on page 11). Neyhart closed his argument with, "the prosecutor commented on his in-custody and post-Miranda silence."

The State argued that Neyhart did not have a Fifth or Sixth Amendment right to counsel or silence, because Neyhart was not in custody, or was only in custody for a short time. Next, that Neyhart did not remain silent during the second interview. Finally, the State ignored the prosecutor's use of Neyhart's silence after both interviews. Neyhart's answering brief relied upon the first brief, and clarified that Neyhart was complaining of the use of Neyhart's silence after he was provided Miranda warnings, until trial. This distinction is very important, since it was only after receiving discovery that Neyhart discovered that the underwear belonged to his wife. The complained of misconduct included the Prosecutor asking why Neyhart did not provided that information to Detective Joslyn, or other officers, upon first learning the description, and instead waited until trial.

The Prosecutor went on to argue that Neyhart's sole defense was made up, since he wasn't

on Cymbalta. (The Prosecutor's misconduct about Cymbalta is addressed in other claims).

The Prosecutor argued that if Neyhart's defense was reasonable he would have contacted her office, or detectives to provide more information.

The Idaho Appellate Court ignored the post-interview silence, both pre-Miranda and post-Miranda silence, and applied in a unreasonable way *Salinas v. Texas* 570 U.S. 178 (2013), to find Neyhart had to bring up the issues and invoke on them if he still wanted to remain silent as to those issues.

The Idaho Federal District Court misread Neyhart's State brief and petition for review in State Court, and, as a result, found the misconduct claims defaulted for lack of presentation to State Court. The Federal Court refused a COA, as did the Ninth Circuit Court of Appeals, finding the issue did not effect a Constitutional right, or that reasonable jurist would not debate whether the claim was defaulted. Likely since Neyhart was pro-se.

During the November 2, 2010, interrogation, detectives stated that they had in their possession a pair of underwear belonging to K.S. that had Neyhart's semen on them, and asked Neyhart speculate how it could have gotten there if he had not abused K.S.. Neyhart did not know, but speculated that it was a result of cross-contamination from the bed, or toilet. Neyhart explained it could have gotten on either object, as he was experiencing a reaction to a new medication that caused his to spasm and discharge semen at random. Neyhart could not remember the name of the medication.

After Neyhart invoked his right to counsel and silence, Detective White asked him to call her with the name of the medication, so she could verify he was using it. A few days later, Neyhart called Detective White and told her the name of the medication was Cymbalta. Neyhart said he would come back in, but only if counsel was provided.

Neyhart did not hear anything more about the allegation until 2013. During discovery, in 2013, Neyhart first learned that the underwear in detective's possession on November 2, 2010, tested negative for semen. Neyhart also noted in discovery, that a few days after detectives documented the absence of semen, that K.S.'s father brought in a second pair of underwear. The second pair of underwear tested positive for semen, but was not tested for female DNA.

Neyhart also noted in discovery that the description of the second pair of underwear matched a pair of underwear he had bought for his wife when she was pregnant, since they were of a lower cut that rested below her distended belly, and had monkeys.

Neyhart's wife testified at trial that the second underwear, provided at the later date, belonged to her. She also testified that only Target sold that brand of underwear. K.S.'s mother had testified that they belonged to K.S. because she remembered buying them for her at Wal Mart.

During the State's cross-examination of Neyhart the State falsely impeached Neyhart about being prescribed Cymbalta, and his testimony that he had called Detective White to provided her with the name of the medication.

After Neyhart testified that he had called Detective White and provided the name Cymbalta to her, Prosecutor Sturgill produced a document claiming Neyhart needed to refresh his memory. She stated the document contained a complete and accurate list of all the medications Neyhart had been prescribed. She then made Neyhart read it aloud to the jury.

Neyhart repeatedly asserted that he had called Detective White, and that he had been prescribed Cymbalta. (Detective White's notes have never been disclosed.) Prosecutor

Sturgill argued with Neyhart during the next fifty plus questions, declaring he couldn't possibly have any side effects of a medication he had not been prescribed. The Prosecutor declared her document was an accurate and complete record of all the medication Neyhart had been taking, declaring it was accurate because she got it from the State.

Neyhart testified that the document was not a complete pharmacy record, but was a list of narcotic medications maintained as a tracking tool by the State, and did not contain any non-narcotic medications. Prosecutor Sturgill overcame this truthful testimony by "asking," "No. That's not true. You don't know that. You are not an expert are you?"

The false impeachment encompassed over 50 statements, and decimated Neyhart's credibility. The Prosecutor even attacked Neyhart's current defense as made up since he "couldn't use the leakage theory."

Yet, it gets even worse!

Immediately, upon leaving the stand, during recess, Neyhart retrieved a complete Wal-Mart pharmacy record, on Wal-Mart embossed, watermarked paper, from his lawyers file, and handed it to Prosecutor Sturgill. (Neyhart had to enter and exit the stand outside the jury's presence as he was fully disabled and had trouble walking by the time trial commenced.)

Upon reading the true pharmacy record, including the record of Cymbalta, Prosecutor Sturgill cackled and told Neyhart, "that's too bad for you, I didn't get it in discovery." No attempt was ever made to inform the jury, and the Prosecutor argued in her closing for the jury to consider all the witness testimony and evidence they had heard to decide who was credible, and then decide if Neyhart was guilty.

During appeal Neyhart alleged that the prosecutor's use of a document, she did not lay

foundation for, the falsity of the prosecutor's statements, and the false impeachment violated Neyhart's right to a fair trial.

The State now admits that the Prosecutor committed misconduct, and that Neyhart's testimony was a true and accurate statement of fact as to being prescribed Cymbalta, and that the document is not a complete pharmacy record of the medications Neyhart had been prescribed. The State was also forced to admit that the document presented by the State is only a State maintained list of narcotic medications Neyhart had been prescribed.

The Idaho Federal District Court recognised that the prosecutor committed misconduct, but found that her false statements do not qualify as testimony. Despite the Idaho Federal District Court recognising that Prosecutor Sturgill made false or misleading declarations about a document she used to portray Neyhart, a testifying defendant, as a liar, the Court concluded that the prosecutor's statements do not qualify as testimony to determine the standard of review required. The Idaho Federal District Court then found the dishonest use of the document, and false statements harmless, since there was plenty of evidence to find Neyhart guilty.

The Federal Court and the Ninth Circuit Court of Appeals refused to issue a Certificate of Appeal. Finding no substantial Constitutional right was violated, or that no reasonable jurist would debate ruling of harmlessness, in the corruption of the truth seeking process of a trial that included the prosecutor lying to falsely impeach a testifying defendant.

Neyhart retained counsel to file a petition for post-conviction relief. After several months, it became evident counsel had not even bothered to read Neyhart's case file. Neyhart called counsel and asked what the holdup was, and explained that he wanted every claim presented in the federal context since he intended to seek habeas relief. Neyhart finally

gave up on counsel and decided to file a pro-se brief before the time expired.

Neyhart filed a pro-se petition for post conviction relief raising 16 instances, of ineffective assistance of trial counsel, and 14 instances, of Fifth, Sixth, and Fourteenth Amendment violations.

Without Neyhart's approval counsel entered a notice of appearance and an amended petition that narrowed the allegations to eleven claims. Then he abandoned the case to become a prosecutor, and new counsel was appointed. Neyhart again explain he wanted to raise every claim he had filed to a federal standard.

The State filed an answer to Neyhart's pro-se petition, and a motion for summary dismissal. Neyhart's new counsel opposed the motion for summary dismissal and made a motion for an evidentiary hearing, but she only addressed five of the eleven claims.

A hearing was held to address the State's motion for dismissal and Neyhart's motion for an evidentiary hearing. At the hearing Neyhart's counsel argued ineffective assistance of counsel, but did not name each of the instances counsel had been ineffective but used "for example" and named instances that demonstrated the overall mistakes, or lack of being prepared, and the complete breakdown of the attorney client relationship due to letters from counsel seeking to extort more money to be prepared.

Although it was clear to Neyhart and counsel that Judge Stoker (Judge one), understood that all the instances raised by Neyhart's pro-se brief were included under the ineffective assistance of counsel claim, that understanding was left undocumented. Neyhart's counsel argued only claims that needed further fact development than facts contained in the records, to prevent summary judgment in the State's favor, and allow an evidentiary hearing if summary judgement was not granted in Neyhart's favor. Neyhart's strongest

claims that needed no further fact development were not argued, only the weakest of the raised issues needed to be heard.

Neyhart's strongest claims did not need any further fact development. For instance, the State made repeated reference to Neyhart's post-Miranda silence, trial counsel failed to object. No further facts were needed to determine that counsel was ineffective for failing to object to an obvious violation of Neyhart's Fourteenth Amendment rights.

The State in later briefing, and adopted by the Idaho Appellate Court names this hearing a hearing on summary dismissal, that is inaccurate. The hearing was on the summary dismissal and to determine which issues need an evidentiary hearing for further fact development.

This would not have been an issue had Judge Stoker not been ill. Judge Stoker stated from the bench that he would review all the claims and determine if a hearing was necessary. Judge Stoker was very ill, not only did this effect the hearing, Judge Stoker's intent was lost when he passed away from this illness.

Neyhart's counsel did not seek to start the case fresh, as she should have done. Prosecutor Sturgill visited with the next Judge (Judge two) ex-parte. Counsel did not seek to have the Judge removed, or even object. Prosecutor Sturgill misrepresented to the Court that Neyhart had limited his claims perhaps to just one. Judge 2 listened to an uncertified recording, without the many off the record conversations, (Judge Stoker would motion for the recording to be turned off when he started coughing) and determined that only five claims remained.

Neyhart's counsel failed to explain to Judge 2, that all the claims were to have been reviewed by Judge Stoker. Judge 2 issued an opinion limiting the hearing to five issues.

Then a third Judge was assigned.

At the beginning of the hearing Prosecutor Sturgill again admitted she had had ex parte contact with the Judge, to determine what claims would be heard, and understood maybe it was only one. Judge 3, stated he was not very familiar with the case but read Judge 2, opinion to limit the case. Neyhart's counsel presented the weakest claims in Neyhart's case, and based her argument on the breakdown of attorney client relationship as evidenced by the extortion letters. see appendix D.

Neyhart's strongest claims, and all claims based solely upon the record, with no need for further factual development were not heard. Neyhart's petition for post-conviction relief was denied.

Neyhart's counsel was elected a magistrate judge. Neyhart filed a pro-se petition for a new hearing. Neyhart's petition explained how his claims should not have been ignored, and how they were not abandoned. Neyhart's petition was returned by the clerk of the court citing Neyhart could not file pro-se since he was represented by counsel.

Neyhart was appointed counsel for an appeal. Neyhart again instructed counsel to file an appeal on each and every claim to the federal standard. Counsel stated he could file three, or four at the most, as he wasn't paid for more time to do any others. Counsel advised Neyhart to file a pro-se petition for leave to file a pro-se supplemental brief if he wished to preserve the claims

Neyhart filed a pro-se petition seeking leave to file a pro-se supplemental brief, while allowing counsel to file a brief on the issues counsel agreed to file. Leave was denied.

Neyhart's appeal of the post-conviction was denied, in an unpublished opinion, Neyhart v. Davis 2020 Ida. App. Unpub Lexis 115., and review was denied by the Idaho Supreme

Court.

The Idaho Federal District Court dismissed all but one of ineffective assistance of counsel claims, and the Fifth, Sixth, and Fourteenth Amendment Claims. The Federal District Court refused to issue a COA.

The Ninth Circuit Court of Appeals in a one paragraph "rubber stamp" opinion refused to issue a COA.

During discovery the State disclosed a list of evidence related to Neyhart's case. Counsel, Neyhart and Neyhart's wife went to the sheriff's office to view the items. The items could not be found. After looking for the items, the property officer stated the items might have been related to a case that Neyhart was not a party to, and the items had been linked to Neyhart as a result of a computer error.

The items included a comforter, a pair of pajamas, and a homemade knife, among other items. The comforter and the pajamas would have been important to Neyhart's defense since they would prove that the family had removed items from the Neyhart's home. This would have supported Neyhart's defense that the underwear were removed from the Neyhart home, and that they belonged to his wife.

During discovery the State disclosed photographs purported to be of K.S.. Neyhart and his counsel made repeated attempts to view the photographs, but the Prosecutor made repeated excuses claiming it was not a good time. After trial started Neyhart and counsel were finally allowed to view the photographs.

Neyhart brought it to the Prosecutor's attention that the printed version of the photographs were altered to make it appear that there was dark bruising to the vaginal and upper thigh area. Neyhart also complained that the digital photographs had been altered by at

minimum cropping. The original camera and all other photographs surrounding the photographs were unavailable.

The Prosecutor stated that the State would not use the printed photographs. At trial the printed photographs, and the digital images were admitted into evidence. In closing the Prosecutor invited the jury to review the photographs to determine who the jury believed.

Before trial the State disclosed an expert witness Dr. Reese, and disclosed she was expected to testify to "notch" a condition that is often found in the hymen of abuse victims. At a pretrial hearing, counsel asked for clarification on how "notch" applied to the Doctor's testimony.

The Prosecutor admitted that "notch" did not apply in this case, as the hymen was normal. The Prosecutor then said the expert would be testifying to abuse in general since the medical examination of K.S. resulted in "No Findings."

At trial the expert, Dr. Reese, testified that K.S. had vaginal redness, but that it was not indicative of any abuse, but was a symptom of lichen sclorsus (LS). She then testified that LS was a normal finding like a mole, a freckle, or a birthmark. However, in the State's closing the Prosecutor argued that the vaginal redness should be indicative of abuse by Neyhart.

After Neyhart had been denied post conviction relief but during his appeal, Neyhart's post conviction appellate counsel remembered, from experience, that LS was a severe medical condition the causes vaginal redness and the appearance of bruising to the upper inner thighs in young girls.

These two pieces of information were never disclosed by the State, but would have been key to Neyhart's defense. The pictures are likely of LS, in fact, they may not even be of

K.S.. They appear to be pictures of a computer screen illustrating LS.

Had Prosecutor Sturgill not lied to the Court by stating the Doctor's examination resulted in "no findings" Neyhart would have been on notice to impeach any testimony regarding any redness or bruising. Neyhart would have been able to argue that K.S. did not have bruising when her mother bathed her on Saturday, but had bruising on Sunday because LS is often activated by soap, or in the bath. Neyhart was able to provide testimony from K.S.'s mother that K.S. only bathed once a week (at best), so the response to bathwater soap could have caused LS to flare-up. (As explained in medical journals).

Neyhart also could have argued that climbing on piles of pumpkins, corn stocks, or bales of straw, at the pumpkin patch likely cause a flare-up of L.S.. In conjunction with the testimony that the underwear belonged to Neyhart's wife, it is likely that no jury would have found Neyhart guilty, especially when K.S. could not explain anything about the male anatomy, and testified that Neyhart did not have any cloths removed. It is likely that K.S. mother viewed the bruising and jumped to an explanation that made sense to her based on her own history of abuse.

Before trial Neyhart asked the Prosecutor for the contact information for Detective White and Detective Duche. The Prosecutor stated she did not know how to contact Detective Duche, as he had retired, but she provided two addresses for Detective White. One address was a used car lot, and the other was a hair salon.

At trial the Prosecutor played a redacted recording of Neyhart's November 2, 2010, interrogation. On the recording the detectives stated they believed K.S. and did not believe Neyhart. Although the interrogation was extremely hostile, the Prosecutor edited out the detective's misconduct, yelling, and calling Neyhart names, but the Prosecutor

represented to the jury that the interrogation was civil, calm, and friendly.

Several years after Neyhart was in prison he discovered, from a newspaper article that Detective White had been suing the sheriff's department in 2012, and the case was ongoing. The State was defending the wrongful termination lawsuit, by arguing that Detective White had been fired for lying on her time card. (No information has ever been disclosed or discovered about Detective Duche.)

This would have been important to Neyhart's defense since after investigating the allegation, Detective White found the allegation unfounded and closed the case. Neyhart still does not know what information was discovered by Detective White, or Detective Duche, because their notes have never been discovered to Neyhart.

Detective White also tested the first underwear, and found them negative for semen. It is unknown if the second pair was even in custody, or had been stored properly or anything else since the State concealed her termination, and all of her notes. It is possible that Detective White knew of the true nature of LS, and possibly that the family had removed the underwear from the Neyhart trailer. As a well respected investigator, there had to be a good reason for her to have closed the case, yet the State did not disclose it.

In Neyhart's petition for post conviction relief Neyhart raised the 14th Amendment violations for the *Brady v. Maryland* 373 U.S. space 83 (1963). Violations occurring when the State Prosecutor concealed favorable evidence from Neyhart.

Counsel through ineffectiveness, or the confusion of the Judge dying, allowed the claims, discovered before post conviction, to be defaulted. Neyhart filed a motion for rehearing, and a petition for leave to file a supplemental pro-se brief when counsel refused to present the claims to preserve them for Federal review, but both were denied.

After discovering that LS was a serious medical condition causing redness and bruising to the upper thigh and vaginal area, Neyhart filed a pro-se subsequent petition for post conviction relief. The petition was denied finding that the claim could have been discovered before the first post conviction was filed. The Court ignored that the State concealed the information by misrepresenting what LS was, and that Neyhart was entitled to rely upon the State expert's false testimony that the finding was normal, like a mole, or a freckle, or birthmark.

The Idaho Federal District Court found the claims in post conviction defaulted without cause, and the claims in the subsequent post conviction defaulted by State procedural rule. The Court then denied a COA. The Ninth Circuit also denied a COA.

REASONS FOR GRANTING CERTIORARI

REASONS TO GRANT CERTIORARI FOR QUESTION 1

The Supreme Court of the United States should grant certiorari because the Ninth Circuit Court of Appeals has so far departed from the Supreme Court's precedents as to call for the unusual action of the Court taking supervisory action. The Ninth Circuit has not followed precedent, by failing to issue a Certificate of Appeal (COA), as found in *Slack v. McDaniel* 529 U.S. 473 (2000), and *Barefoot v. Estelle* 463 U.S. 880 (1983). The Ninth Circuit Court of Appeals named the case, but in a "rubber stamp" denial, failed to apply it in a reasonable manner.

With a decision, that was released after the denial in Neyhart, the Ninth Circuit has highlighted the inability of pro-se petitioners with unsavory cases to obtain a COA. In

Wright v. Breitenbach -unpublished- 22-16456, (Jan 6, 2025), the Ninth Circuit considered facts similar to those presented by Neyhart and reversed and remanded because post conviction counsel was ineffective by failing to raise a claim of ineffective assistance of counsel that had been raised in a pro-se petition.

Neyhart raised 16 instances, of ineffective assistance of counsel in his petition for post conviction relief. Neyhart's post conviction counsel, through error or confusion from the first Judge dying, failed to raise claims with great merit, and Neyhart has been unable to present those claims in any Court for relief.

Neyhart's claims have stronger than usual merit. Neyhart's claims included trial counsel's failure to object to the State's repeated use of Neyhart's protected silence, among many others.

Neyhart even took the unusual step of asking, in a pro-se petition, for a rehearing, and then for leave to file a pro-se supplemental brief. Neyhart was denied leave to file a pro-se supplemental brief, and post conviction appellate counsel refused. Neyhart's State claims were dismissed as waived based solely on counsel's failure. Neyhart's ineffective assistance of counsel claims were then found defaulted solely on the State Court's ruling. As in Wright, Neyhart argued that the default should be waived, since his post conviction counsel was grossly ineffective, for the failure to present all meritorious claims under Martinez v Ryan 566 U.S. 1, 132 S. CT 1309, 182 L. Ed 2d, 272, (2012).

Although Wright, who had counsel, was reversed and remanded. Neyhart, with much that same issue but filing pro-se, was denied a COA, in the Federal District Court, and in the Ninth Circuit Court of Appeals. The Ninth Circuit did not apply the law with an even hand, and therefore, there is clear conflict among the Justices on the Ninth Circuit about

what is required to obtain a COA. The Supreme Court should remedy that ignoring of precedent and remand for a COA.

The Federal District Court refused to issue a COA finding no reasonable jurist would debate that the issues could be resolved in any other manner.

The State (Respondent), admitted that the Prosecutor's misconduct, based on her misuse, and misrepresentations, used to falsely impeach Neyhart, a testifying defendant, violated the 14th Amendment. The State also admitted that the Prosecutor's repeated use of Neyhart's post-Miranda silence violated the 14th Amendment under Doyle. Despite Neyhart citing Doyle, the State convinced the Federal District Court that Neyhart did not present the claim in his opening State appellate brief. The State also convinced the Federal District Court that Neyhart writing, "during and after both interviews," should be read as only during the interviews. That is clearly error and reasonable jurist could debate, or even find that Neyhart naming the 5th and 14th Amendments, Doyle, post-Miranda and quoting the misconduct was fair presentation to the State Court.

The Ninth Circuit ignored the State's admissions of Constitutional violations and found that no constitutional violations were raised, or that reasonable jurist would not debate the decision of the Federal District Court.

The Supreme Court of the United States should take the rare action of Granting the petition for certiorari, Vacating the denial of a COA, and Remand to the Ninth Circuit Court of Appeals to issue a COA, and hear a fair appeal. (GVR)

There is no doubt that this case raises constitutional issues, as the State admitted two violations of Neyhart's 14th Amendment rights. The decision on if the Prosecutor's lying effected the trial, or if the correct standard was used should be debated in a fair appeal, by

jurist of reason.

This issue asks several related questions: does it violate the constitution for a prosecutor to present a false impression of the facts, if the prosecutor is only lying to the Judge, or misrepresenting facts during a cross examination of the testifying defendant? What is the correct standard of review if a Prosecutor has lied, or failed to correct a false impression of the facts, and the falsity impeaches the testifying defendant? Is a prosecutors statements in support of State evidence, or made during cross examination, testimony when offered to prove a fact, and the only value of the evidence is the statement of the prosecutor?

Neyhart clearly raised all periods of his silence being used against him, as required 28-2254. Despite the State admitting Doyle error, and Neyhart citing Doyle, and then checking every possible requirement for fair presentation, the Federal District Court simply pretended the words were not included in the opening brief. Then the Federal District Court and the Ninth Circuit ignored case precedent to deny a COA.

The Ninth Circuit has so far departed from Slack v. McDaniel and Barefoot v. Estelle as to mock any sense of fairness, or justice, and this begs for a GVR with clear instruction. The nature of the case is unsavory, yet, the Constitution guarantees Neyhart a fair trial. Neyhart has always maintained he is innocent, even when he was told he could not have parole as long as he fought his case. Neyhart is poor; therefore, he is pro-se, that should not matter to justice. The issues were presented clearly, and within Court rules as much as possible. Justice is supposed to be fair, and equal, and evenly applied to all: In this case it was not.

The State admitted Constitutional violations, and surly jurist of reason would debate, or

find incorrect the outcome or decison.

A GVR is appropriate in this unusual case. The Ninth Circuit Court of Appeals should be made to follow the Supreme Court of the United States precedents, and express an opinion on these important issues as presented by Neyhart.

Neyhart prays this Court issue a GVR or in the alternate grant a writ of certiorari to hear this important issue.

REASONS TO GRANT CERTIORARI FOR QUESTIONS 2, 3, 4, 5, 6, 7, 8, 9.

The Supreme Court of the United States should consider granting certiorari, reversing the decision, and remanding to the Idaho Federal District Court to reach an opinion on the merits of Neyhart's complaint that the State violated his Fifth and Fourteenth Amendment rights when the prosecutor used his pre-Miranda and/or post-Miranda silence, during and after both interviews, against him.

The District Court is clearly in error. By misreading Neyhart's opening brief in State Court, the District Court reached and opinion that so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's supervisory power.

The Idaho District Court's opinion is factually and legally unreasonable. It is clear from the face of the Idaho State Court record, including the amended brief of appellant found in Appendix E that Neyhart raised the violations both during and after both interviews in a fair and complete manor in State court. The Supreme Court has Granted, Reversed, and Remanded in similar cases, as evidenced by, Dye v. Hofbauer 546 US 1 (2005).

The Federal District Court committed error by finding that Neyhart did not present all his silence claims after the interviews in his opening brief in State Court, or in his silence

during the interviews in his petition for review in the Idaho Supreme Court.

The error likely was based on the Court's adoption of the State's unreasonable delineation of topics as time frames. They are not interchangeable. The State relies upon a mistaken premise that silence should be broken up into during or after both interviews, instead of before or after Miranda warnings were given. That delineation is unreasonable since once the right attached during the interview for any reason, it did not end with the interview.

The State's argument defies any sort of logic, or precedent of the Supreme Court of the United States. For the State's argument to have merit, the Miranda warnings protections would cease if officers released the suspect.

Neyhart was not told he had the right to remain silent but only while he was in the interview. Neyhart was assured, by the State, that he need not make a statement, and that assurance included the promise that his silence would not be used against him.

The law does not provide for, nor would it be logical, nor did the detective say, when you leave, Miranda protections cease to apply. This would be clearly in error, since it would place a requirement upon a suspect to contact officers to provide information discovered while preparing to defend against the allegation.

Yet, were the Federal District Court to delineate periods of the complaint to during or after both interviews, the Federal District Court would still be in error, since Neyhart named during and after both interviews, the 5th and 14th Amendments, and Doyle v. Ohio 426 U.S. 610 (1976), the bedrock precedent setting federal case. It was error to find the violation was not fairly presented in State Court.

The District Court ignores what Neyhart was required to present to the State Court, or applied a standard in conflict with well established precedent. Neyhart was not required

to use any talismanic language of Federal law to have fairly presented the claim in State Court yet, Neyhart did so.

Neyhart quoted the offending statements calling attention to his protected silence, cited *Miranda v. Arizona* 384 U.S. 436 (1966), cited the Constitutional amendments violated as the 5th and 14th Amendments, cited *Doyle v. Ohio* 464 U.S. 610 (1976), named the time periods as during and after both interviews, and explained both the logic and law supporting why his silence was protected, and when that protection attached.

Neyhart clearly met or exceeded the requirements found in 28 USCS 2254 (b)(1), as defined by precedent defined by the Supreme Court in *Baldwin v. Reese* 541 U.S. 27, 29, 124, S Ct. 1347, 158 L. Ed 2d 64 (2004) citing: *Duncan v. Henry* 513 U.S. 364, 365-66, 115 S. Ct 887, 130, L. Ed 2d 865 (1995). The Federal District Court apparently just disregarded any precedent, in determining that the presentation was not done in a fair manner.

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The error likely was based on the Court's adoption of the State's unreasonable delineation of topics as time frames. They are not interchangeable. The State relies upon a mistaken premise that silence should be broken up into during or after both interviews, instead of before or after *Miranda* warnings were given. That delineation is unreasonable since once the right attached during the interview for any reason, it did not end with the interview.

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The Federal District Court also committed error by reaching an unreasonable opinion that Neyhart had failed to present the violation of his silence during the two interviews being used against him at trial.

Idaho has a strange and unusual process for seeking review by the Idaho Supreme Court. Idaho does not ask the Idaho Supreme Court to affirm or reverse the decision of the Idaho Court of Appeals, and review ordinarily considers all issues presented to the Court of Appeals. --State v. Schossberger 117 ID 771 (1990), (Headnote one). Neyhart only need to apply for review of his silence claim to present all aspects of his claim in for review.

Respondent unreasonably argued that Neyhart was required to do more. Likely, as a result

of Neyhart now being pro-se. Idaho takes great pride in having a different process then other State Courts or the Federal Courts. State V. Guzman 122 ID 981 (1992), (This process of review is dramatically different from the review by the United States Supreme Court of the decision of the circuit courts.)

Respondent is clearly aware that the petition for review encompasses all the briefs submitted in the Idaho Appellate Court. Respondent unreasonably deceived the Federal District Court as to the Idaho Supreme Court Processes.

Further, Neyhart Did more than was required, because he did not limit his petition for review to only after the two interviews. Neyhart, instead, asked for review of the impermissible use of his silence, and then relied upon his Appellate briefs to explain the facts, as is required by in Idaho State Court rule 118.

The State admits that the prosecutor committed misconduct by using Neyhart's post-Miranda silence, and that the use violated Doyle v. Ohio 426 US 610 (1976), but argued that the misconduct was harmless, or was defaulted.

The Federal District Court did not consider the misconduct, finding it defaulted without cause, and then refused a Certificate Of Appeal (COA).

The Ninth Circuit Court of Appeals in a one paragraph rubber stamp response refused to issue a COA, finding the question did not involve a Constitutional right, or that reasonable jurist would not debate that it was defaulted in State Court.

To reach the opinion of the Idaho District Court, finding all parts of claim one procedurally defaulted under 28-2254 (b)(1), for failure to present the claims to the highest Idaho Court in the opening brief, or in the petition for review, it would be necessary to ignore whole sections of Neyhart's Amended Appellant's Brief -located in

Appendix E), and then declare the relevant portions did not exist. This is not only unfair, dishonest, and misconduct, it is clear error. Yet, this is what the Idaho Federal District Court did.

The refusal to review the case and issue a certificate of appeal should trouble all jurist. Are pro-se litigants to be bared from the Court with such clear error? This Court could remand to the Ninth Circuit Court of Appeals to consider the facts found in the brief, but, since this Court likely already has reviewed the brief in appendix E it could simply remand to the Idaho District Court to rule upon the merits.

REASONS TO GRANT CERTIORARI FOR QUESTIONS 10, 11, 12, 13.

The Supreme Court of The United States should grant certiorari to address the unfair loophole discovered by Idaho Prosecutors, and/or to address the correct standard of review, and/or how a standard of review is applied when it is undisputed that the Prosecutor committed misconduct that involves dishonesty.

Prosecutors are aware that they cannot allow a witness to present a false impression of the facts without offending the 14th Amendment. The loophole exploited by the State in Neyhart is that the Prosecutor skipped putting on a witness to present a false impression of the facts. Prosecutor Sturgil provided the false statements in the guise of cross examining the testifying defendant. The Prosecutor skipped laying foundation for an impeaching document by claiming she was only refreshing Neyhart's memory, but, after making untrue declarations about the documents reliability, what it contained, and where she obtained it, she made Neyhart read it into evidence.

It is undisputed that none of Prosecutor Sturgil's declarations regarding State exhibit 23 are true. Without the Prosecutor's false statements the document is worthless. It would be

equated with a blank sheet of paper; however, the false declarations gave the document the ability to falsely impeach Neyhart. The false evidence had great value to the State only because of the Prosecutor's untrue declarations.

This Court has addressed in *Smith v. Arizona* 602 U.S. 779 (2024), the standard for when statements become testimony. "When an expert conveys an absent analyst statement in support expert's opinion, and the statements provide support only if true, then the statements come into evidence for their truth." This is very close to Neyhart, in that, the document was worthless without the Prosecutor's false statement. If the Prosecutor had not said anything, or even if she had told the truth and correctly stated what the document contained, the document was worthless, it did nothing for either side. It is only the false declarations that provided worth to the document.

The only value to the document was to prove Neyhart was a liar, and *falsus in uno, falsus in omnibus*. Since the false impression of Neyhart's willingness to lie effected every other piece of testimony presented by Neyhart

The Courts have allowed this corruption of the truth seeking process by determining that a prosecutor's statements or assurances while cross examining a witness are not testimony. Neyhart asserts it is worse than testimony, since he was not allowed to cross examine the maker of the document to impeach the impression that proved he was dishonest, or would lie to detectives and the Jury. The prosecutor lying by asking questions based on her own misleading declarations, and other attempts to pervert the Jury's ability to determine the truth is tolerated, since the falsehood did not come from the witness stand.

Neyhart testified truthfully. It is now undisputed that he was on Cymbalta. Neyhart's

testimony did not match what the Prosecutor wanted, so she falsely declared Neyhart needed his memory refreshed. Neyhart had not forgotten anything. The Prosecutor had to impeach Neyhart, she based her strategy on her ability to get the Jury to believe Neyhart had lied to detectives and now to them while under oath. The truth did not matter to her strategy, it is undisputable that she had other documents that listed Neyhart was on other medication, including Cymbalta. It is even undisputed that she knew before closing arguments that all of her statements were false. The Prosecutor considered her options, but decided, since she was not on the stand, that her false statements were not testimony. This Court should address this. It is not who on the prosecution provides the false impression of the facts. A lie is still a lie, even when it is presented as a series of questions by the prosecutor while the witness testifies honestly.

Recently the Supreme Court of the United States in *Smith v. Arizona* 602 U.S. 779 (2024), articulated that a witness may not testify about the truth of the facts contained in a report prepared by another.

Neyhart now prays this Court grant certiorari to answer a similar, but related question: Are a prosecutor's statements that identify, vouch for, and mislead the jury as to the content of a document, testimony. Does the State have a responsibility to correct the false impression of the facts? If the Prosecutor, as in Neyhart, receives information that proves her own declarations were false, does she have a responsibility to correct the false impression of the facts.

This Court should also consider that it is unreasonable for the District Court to conclude that the misconduct was harmless. Neyhart was a testifying defendant, any impeachment effected the Jury's ability to determine the truthfulness of Neyhart's defense, or ability to

weigh anything Neyhart said or presented in his defense.

The Idaho Federal District Court named a harmless error standard of review, but reverted to a plenty of evidence standard of review, while ignoring how the false impeachment effected the Jury's ability to consider Neyhart's defense to each piece of evidence.

Neyhart presented a defense to each piece of evidence. The District Court also considered evidence that has its own constitutional violations attached. The Prosecutor argued, against her own expert witness, that the "redness" seen in the photographs were from abuse. Redness was a symptom of a medical condition that K.S. suffered from.

Further, the printed photograph has issues in that the State altered the coloring to make it appear like there was bruising. Neyhart also has raised a claim that any bruising to the thigh was a result of the medical condition, and the condition was misrepresented by the expert as a mole a freckle or a birthmark. This question will be presented elsewhere in this petition, but effects the weight of the "plenty of evidence" relied upon.

Neyhart prays this Court grant certiorari to consider these important questions, how they effect the Courts truth seeking ability and the unreasonable finding of harmlessness by the District Court, or in the alternate Grant, Reverse and Remand to the Ninth Circuit Court of Appeals to issue a COA as it is unreasonable for them to have found that reasonable jurist could not even debate that the false impression of the facts, provided as misconduct by the Prosecutor, likely provided the Jury with a reason to disbelieve Neyhart, and disregard his defense solely on these grounds.

REASONS TO GRANT CERTIORARI FOR QUESTIONS 14, 15, 16, 17

The Supreme Court of the United States should grant certiorari to decide what a defendant or petitioner must do if counsel refuses to raise claims in an appeal or in a post

conviction petition, to avoid defaulting those claims.

Sometimes the Courts apply a standard that determines that an attempt to present a pro-se supplemental brief is enough to preserve the claim for habeas review, as in Clemons v. delo 124 F. 3d 944 (1997). The Idaho Federal District Court considered this in Workman v. Blades 1:08-cv-00052-Ejl, but questioned if Idaho has a clear, firmly established, and regularly followed rule, prohibiting this.

Idaho does not have a clear, firmly established, and regularly followed rule. Idaho Courts usually do not grant leave to file pro-se supplemental briefs, but, sometimes, they do. This inconsistent policy leaves defendants to a luck of the draw system of justice. Even if Idaho made this a rule, it would not be fair under the Sixth and Fourteenth Amendment. What options does a indigent defendant or petitioner have when faced with ineffective assistance of counsel, or counsel who refuses to file claims as directed, and those claims must be preserved for Federal review?

"Appellants in criminal and post-conviction cases in Idaho have two mutually exclusive choices - either they choose to be represented by counsel, or they choose to ask counsel to withdraw so they can proceed pro-se. A petitioner cannot have it both ways." Neyhart V. Davis 2022 U.S. Dist Lexis 58376, citing to Mckaskle v. Wiggins 465 U.S. 168 (1984).

Mckaskle however, is not point with Neyhart. Mckaskle wanted no counsel or stand-by counsel, but Neyhart wanted effective counsel to file all meritorious claims. It is not a valid choice to force Neyhart to disregard counsel or claims. It is not fair to tell Neyhart choose between the Fourteenth Amendment or the Sixth Amendment, because the State is allowed to violate one.

The Idaho Federal District Court reached an opinion that limits Idaho appellants in

criminal and post-conviction cases to two mutually exclusive choices -- either forgo meritorious claims and lose the ability to raise them Federal Court, or forgo the assistance of counsel on the claims counsel has agreed to raise. -- In other words the State is going to provide you with counsel who will only raise some claims, but if you want to raise others, we will not provide you with counsel.

Neyhart's case, and post conviction case is defined by errors, that competent effective counsel should have prevented, yet the Federal District Court found post-conviction counsel was not ineffective under *Strickland v. Washington* 466 U.S. 668 (1984), such that cause and prejudice would excuse any default under *Martinez v. Ryan* 566 U.S. 1, 132, S. Ct 1309, 182 L. Ed 2d 272 (2012).

Neyhart's State post conviction appeal opinion can only be read one way: Neyhart's counsel did not preserve the claims so the claims are abandoned.

In the petition for post conviction relief Neyhart raised, as pro-se, 16 instances, of ineffective assistance of counsel, and 14 instances of Fifth, Sixth, and Fourteenth Amendment violations.

Counsel, without asking Neyhart, filed an amended petition and narrowed the allegations to eleven claims. Then he abandoned the case to become a prosecutor. New counsel was appointed.

Neyhart's new counsel relied upon her understanding of Idaho Code 19-4906, and *Garza v. State* 139 ID 533 (2003), explaining to Neyhart that all the claims he presented would be ruled upon.

Second, counsel relied upon Neyhart's extensive -- 130 plus page, double spaced, typed, size 12, -- petition to explain all the issues clearly on the record. Judge Stoker stated he

had read the brief, and the State argued from it.

Third, counsel only argued claims that needed additional fact development. This was based on the belief that Neyhart's extensive opening brief presented every possible argument based on the facts on the record, and the mistaken belief that the hearing was to determine which claims needed to go to an evidentiary hearing.

All of these mistakes were ineffective, yet, based solely on Judge Stoker's off the record statements, were understood as fact by Judge Stoker.

Then Judge Stoker Died!

These mistakes compounded with the passing of Judge Stoker. The State capitalized on the mistakes by arguing that Neyhart's strongest claims had been abandoned.

A clear reading of Judge Stokers last words from the bench show he intended to review all the claims and not just the five that needed to proceed to an evidentiary hearing. It is important to remember that Judge Stoker was very ill, so ill, in fact, that he never returned to the bench. Judge Stoker said little; he couldn't, but he did say he would review all of Neyhart's claims to see which, if any, needed further factual development. (paraphrased) Neyhart had presented claims that the Supreme Court of the United States had found in similar cases to be ineffective assistance of counsel.

For instance, Neyhart claimed counsel was ineffective for failing to object to the State's repeated use of Neyhart's protected silence. There was no need for an evidentiary hearing: the State did it: counsel failed to object, so post conviction counsel did ^{not} argue that it needed further fact development, and, as such, Prosecutor Sturgill later represented that the claim had been abandoned.

This Court should grant certiorari to decide if Martinez applies when a petitioner has

done all he could do, but counsels errors, or the prosecutor's misrepresentation, has caused the claim to be defaulted.

Further this Court should grant certiorari and decide a represented person's attempt to file a pro-se supplemental brief, as long as it is timely and not barred for any other reason than being represented by counsel, is sufficient to preserve the claim for federal review, since the default is not the petitioners fault, but rest with counsel, appointed by the State, who has chosen to go against the petitioners wishes.

This Court should grant certiorari to decide it is an unfair violation of the Sixth or Fourteenth Amendment to bar the door to persons who cannot afford counsel who will preserve all claims as directed by the indigent convicted.

This issue is likely to persist in Idaho until resolved by the Supreme Court of the United States. Idaho has reduced the amount paid to public defenders and public defenders have quit as a result. Overworked and underpaid counsel will likely continue to present only the barest of effort to present claims, as lengthy cases take a considerable amount of time. Although it is unlikely that another petitioner will have a Judge die, the next Judge misinterpret the intent of the first Judge, and a third Judge misinterpret both of the previous Judge's intent, post conviction counsel undermine a case to get a prosecutor's position, and the next counsel get elected to a Judgeship before the completion of the case, it is likely that post conviction counsel will make mistakes and fail to raise claims as directed by the convicted, and it is highly likely that appellate counsel will not raise all the claims, or even the best claims, as requested by the convicted. It is highly likely that the door will be barred from the indigent convicted even when they have done every thing possible to ensure the claims are heard by seeking to file a supplemental pro-se brief.

The Federal District Court's opinion allows the State to provide counsel who will not respect the wishes of the convicted, and the convicted must lose the ability to seek relief in Federal Court or take the risk of not having counsel at all. These options do not protect the rights of indigent convicts and the Supreme Court should grant certiorari to resolve this issue.

REASONS TO GRANT CERTIORARI FOR QUESTION 18.

The Supreme Court of the United States should grant certiorari to consider remanding Neyhart's claims based upon fact concealed, or misrepresented by the State Prosecutor that Neyhart did not discover in time to present in his first petition for post-conviction relief. The State Court unreasonable applied *Brady v. Maryland* 373 U.S. 83 (1963), and *Napue v. Illinois* 360 U.S. 264 (1959).

The State Court allows a safety net if prosecutors can conceal their misconduct until after all post-conviction hearings are started. This safety net is foreclosed in *Strickler v. Greene* 527 U.S. 263 (1999). The Idaho Federal District Court did not look at the merits of Neyhart's claim that any procedural default should be excused since it was a direct result of the State's concealment of the information needed to discover the claim.

Neyhart had a reasonable expectation of relying on the prosecutor's statement that the medical examination resulted in no finding. Neyhart also had a reasonable expectation that the State expert would not present false testimony that lichen sclorsus was a normal finding like a mole, a freckle, or a birthmark. Because Neyhart had a reasonable expectation of relying on the State's assurances he had no reasonable duty to research what the symptoms of LS included, and, as such, Neyhart's failure to discover that LS causes vaginal redness, and bruising to the upper inner thigh was not attributable to

Neyhart.

The Supreme Court of the United States should grant certiorari to consider reversing the finding of default and remanding for the Idaho Federal District Court to reach the merits of the Brady, and Napue claim.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Samuel C. Neubart
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