STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

ERIC VON DOYLE, JR., IDOC #143465 ***Petitioner,*** **vs.** **STATE OF IDAHO,** ***Respondent.***	Case No. **CV28-22-6758** **MEMORANDUM DECISION AND ORDER GRANTING MOTION FOR SUMMARY DISPOSITION**

This matter is before the Court on the Respondent State of Idaho's (State) Motion for Summary Disposition of Petitioner Eric Doyle, Jr.'s (Doyle) Petition for Post-Conviction Relief. For the foregoing reasons, the State's Motion for Summary Disposition is GRANTED.

I. RELEVANT FACTS AND PROCEDURAL HISTORY.

On November 4, 2022, Doyle filed his *pro se* Petition for Post-Conviction Relief and supporting affidavit, as well as a Motion and Affidavit in Support of Appointment of Counsel. On December 2, 2022, the State filed its Answer to Doyle's Petition.

On April 24, 2023, Doyle, through conflict attorney Michael Palmer, filed an Amended Petition for Post-Conviction Relief and Supporting affidavits of Doyle and Doyle's criminal defense attorney, Deputy Public Defender Tyler Naftz (Naftz). On May 11, 2023, the State filed its Answer to Amended Petition for Post-Conviction Relief. On

May 19, 2023, conflict attorney Tara Malek was appointed to represent Doyle in Doyle's Post-Conviction Relief case.

On June 26, 2023, the State filed a Motion for Summary Disposition, and supporting Affidavit of Shannon Lee. On July 11, 2023, Doyle filed a Memorandum in Opposition to Motion for Summary Disposition and supporting Declaration of Erik Ferris. On July 17, 2023, the State filed their Reply in Support of Respondent's Motion for Summary Disposition and supporting affidavits of Shannon Lee and David Kelly.

On July 25, 2023, the State's Motion for Summary Disposition came before this Court for a hearing. At the end of that hearing the Court took this matter under advisement. The Court notes the briefing and oral argument by both counsel in this post-conviction case was excellent.

On August 16, 2023, this Court gave notice to the parties that it was taking judicial notice pursuant to I.R.E. 201, of the following records in Kootenai County Case No. CR28-22-0327: the Information filed on February 1, 2022, the Court minutes of the arraignment hearing held March 1, 2022, and the presentence report filed on April 20, 2022. Notice of Intent to take Judicial Notice Pursuant to I.R.E. 201, 1-2. In that notice, the Court gave the parties until August 23, 2023, to object to the Court taking such notice. Later in the day on August 16, 2023, counsel for the State filed Respondent's Notice of No Objection to Court's Notice of Intent to take Judicial Notice. As of August 24, 2023, the Court has not received any objection from counsel for Doyle.

II. APPLICABLE LAW AND STANDARD OF REVIEW.

A petition for post-conviction relief initiates a proceeding that is civil in nature. Idaho Code § 19-4907; *Rhoades v. State*, 148 Idaho 247, 249, 220 P.3d 1066, 1068

(2009). Like a plaintiff in a civil action, the petitioner must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. *Id.*; *Goodwin v. State*, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App. 2002). A petition for post-conviction relief differs from a complaint in an ordinary civil action. *Dunlap v. State*, 141 Idaho 50, 56, 106 P.3d 376, 382 (2004). A petition must contain much more than a short and plain statement of the claim that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, a petition for post-conviction relief must be verified with respect to facts within the personal knowledge of the petitioner, and affidavits, records, or other evidence supporting its allegations must be attached or the petition must state why such supporting evidence is not included with the petition. I.C. § 19-4903. In other words, the petition must present or be accompanied by admissible evidence supporting its allegations, or the petition will be subject to dismissal. *Wolf v. State*, 152 Idaho 64, 67, 266 P.3d 1169, 1172 (Ct. App. 2011).

Idaho Code §19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to a motion by a party or upon the court's own initiative, if it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Baker v. State*, 169 Idaho 284, 293, 494 P.3d 1256, 1265 (Ct. App. 2021). When considering summary dismissal, the district court must construe disputed facts in the petitioner's favor, but the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. *Baker*, 169 Idaho at 293, 494 P.3d at 1256 (citing *Roman v. State*,

125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994)). Moreover, the district court, as the trier of fact, is not constrained to draw inferences in favor of the party opposing the motion for summary disposition; rather, the district court is free to arrive at the most probable inferences to be drawn from uncontroverted evidence. *Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). Such inferences will not be disturbed on appeal if the uncontroverted evidence is sufficient to justify them. *Id.*

Claims may be summarily dismissed if the petitioner's allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a *prima facie* case as to each essential element of the claims, or if the petitioner's allegations do not justify relief as a matter of law. *Baker*, 169 Idaho at 293, 494 P.3d at 1265 (Ct. App. 2021) (citing *Kelly v. State*, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010)). Thus, summary dismissal of a claim for post-conviction relief is appropriate when the Court can conclude, as a matter of law, that the petitioner is not entitled to relief even with all disputed facts construed in the petitioner's favor. *Id.* For this reason, summary dismissal of a post-conviction petition may be appropriate even when the State does not controvert the petitioner's evidence. See *Roman*, 125 Idaho at 647, 873 P.2d at 901.

Conversely, if the petition, affidavits, and other evidence supporting the petition allege facts that, if true, would entitle the petitioner to relief, the post-conviction claim may not be summarily dismissed. *Charboneau v. State*, 140 Idaho 789, 792, 102 P.3d 1108, 1111 (2004). If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues. *Goodwin*, 138 Idaho at 272, 61 P.3d at 629.

On appeal from an order of summary dismissal, the Idaho Supreme Court applies the same standards utilized by the trial courts and examine whether the petitioner's admissible evidence asserts facts which, if true, would entitle the petitioner to relief. *Ridgley v. State*, 148 Idaho 671, 675, 227 P.3d 925, 929 (2010). However, over questions of law, the Idaho Supreme Court exercises free review. *Rhoades*, 148 Idaho at 250, 220 P.3d at 1069.

III. ANALYSIS

Doyle filed his post-conviction relief based in part upon Idaho Code §19-4901(a)(7), which provides that:

> (a) Any person who has been convicted of, or sentenced for, a crime and who claims:
>
> . . . .
>
> (7) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy: may institute, without paying a filing fee, a proceeding under this act to secure relief.

I.C. § 19-4901(a)(7). The error claimed by Doyle is ineffective assistance of counsel. Am. Pet. for Post-Conviction Relief 3, ¶ 8a. More specifically, Doyle claims that:

> by failing to investigate, access, obtain and introduce Petitioner's phone, and more specifically the text and similar messages between Petitioner and the alleged victim, . . . , contained within the phones database, defense counsel failed to obtain exculpatory evidence, which would have demonstrated that the alleged stalking victim was not seriously alarmed by the communication from Petitioner as she had been contacting and communicating with him, and inciting and/or inviting communication between [t]he two of them. This evidence would have discredited her allegations which resulted in the Stalking charge and subsequent conviction.

Id. Doyle claims that due to this error, trial counsel's conduct, "in preparing for sentencing fell below the minimum standard for competent assistance as is required by the Sixth Amendment of the United States Constitution and Article 13 of the Constitution

of the State of Idaho." *Id.* Further, Doyle claims that due to the ineffective assistance of counsel, he "elected to plead guilty to the charge of STALKING IN THE FIRST DEGREE IC. 18-7905 because of the lack of evidence obtainable as defense. But for the failure to attain the evidence on the cell phone, Petitioner would have not pled guilty." *Id.* at 4, ¶ 8b. At Doyle's March 1, 2022, arraignment hearing, Doyle pled guilty to Stalking, First Degree in Kootenai County Case No. CR28-22-0327, for events that occurred from November 2021 to January 2022, and Grand Theft of a Financial Instrument in Kootenai County Case No. CR28-22-1481, for events that occurred on November 17, 2021. Petition for Post-Conviction Relief 1; CR28-22-1481, Information 2, Count I; CR28-22-0327, Information 1-2.

In addition, Doyle claims that, pursuant to Idaho Code § 19-4901(a)(1), and due to the ineffective assistance of counsel:

> [His] sentence was in excess of what was necessary to meet the goals of sentencing. This error was compounded by record containing insufficient information for the District Court to rely upon to reach the conclusion that more lenient sentence was appropriate and/or from which an appellate court could review the trial court's sentencing decision. Because of this Petitioner's sentence is in violation of the Eighth Amendment of the United States Constitution and Article of the Constitution of the State of Idaho.

Am. Pet. For Post-Conviction Relief 4, ¶ 9.

In its Motion for Summary Disposition, the State argues summary disposition of Doyle's Petition for Post-Conviction Relief is proper because Doyle has not meet his burden of showing ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The remaining reasons that the State moves for summary disposition are premised on the assertion that any claim criticizing Doyle's plea lacks merit, as the Court's colloquy at the March 1, 2022, arraignment hearing establishes a *prima facie* showing of the

knowing and voluntary nature of Doyle's guilty plea. *See* Mot. for Summ. Disposition. 7-8, ¶ c; Reply in Supp. of Mot. for Summ. Disposition. 4-5. The State discusses the details surrounding Doyle's plea extensively for the assertion that it was voluntarily, knowingly, and intelligently made; that is to state that his plea was not constitutionally defective.

However, Doyle is not arguing that his *plea* was constitutionally defective at sentencing, he is instead arguing that his *attorney's performance* leading up to and at sentencing was constitutionally defective. Thus, this Court finds Doyle's petition does not raise any Fifth Amendment due process[1] question, but instead a question of Sixth Amendment right to counsel that, under *Strickland*, requires a showing of both deficient performance and prejudice. *See Hayes v. State*, 146 Idaho 353, 356, 195 P.3d 712, 715 (Ct. App. 2008). The fact that this is a Sixth Amendment right to counsel claim (and not a Fifth Amendment due process claim, which would be refuted by this Court's plea colloquy at Doyle's March 1, 2022, arraignment hearing) is made by clear by Doyle in his Affidavit:

> 10. As the evidence on the cell phone should have been but was not obtained, I hereby assert that my sentence is subject to collateral attack due to ineffective assistance of defense counsel pursuant to I.C. § 19-4901(a)(7). By failing to retrieve the cell phone data and failing to obtain the communications from [victim] contained within it per my various requests, the outcome of the case would have differed as I would have pled Not Guilty to Stalking (first degree). With the evidence of the communication from [victim], I would have had an effectual defense to the stalking allegations. As such, I assert Mr. Naftz's conduct fell below the minimum standard for competent assistance as required by the Sixth

[1] It is due process that requires that a defendant's plea be entered voluntarily, knowingly and intelligently. *See Hayes v. State*, 146 Idaho 353, 355, 195 P.3d 712, 714 (Ct. App. 2008). The plea must be entered with "a full understanding of what the plea connotes and of its consequence." *Id.* (quoting *Brooks v. State*, 108 Idaho 855, 857, 702 P.2d 893, 895 (Ct.App.1985).

> Amendment of the United States Constitution and Article 1 § 13 of the Constitution of the State of Idaho.

Doyle Aff. 2-4, ¶ 10.

As such, this Court will not discuss whether Doyle's plea was knowing, voluntary, and intelligently made pursuant to the Fifth Amendment, (having said that, this Court has reviewed the March 1, 2022, plea colloquy between this Court and Doyle at his arraignment hearing, and finds that it was entered knowingly, voluntarily and intelligently) because such contention is not being disputed by Doyle in his Petition for Post-Conviction Relief. Instead, this Court's decision will focus on whether Doyle's trial counsel's performance amounted to ineffective assistance of counsel that would support Doyle's two allegations related to sentencing under Idaho Code §19-4901(a)(1) and Idaho Code § 19-4901(7). Again, those two allegations are that due to trial counsel's failure to obtain his phone, Doyle's "sentence was in excess of what was necessary to meet the goals of sentencing", and "this error was compounded by record containing insufficient information for the District Court to rely upon to reach the conclusion that more lenient sentence was appropriate." Am. Pet. For Post-Conviction Relief 4, ¶ 9.

A claim of ineffective assistance of counsel may properly be brought under the Uniform Post-Conviction Procedure Act. *Barcella v. State*, 148 Idaho 469, 477, 224 P.3d 536, 544 (Ct. App. 2009). To prevail on an ineffective assistance of counsel claim, the petitioner must show that the attorney's performance was deficient and that the petitioner was prejudiced by the deficiency. *Strickland*, 466 U.S. at 687-88; *Self v. State*, 145 Idaho 578, 580, 181 P.3d 504, 506 (Ct. App. 2007). To establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758,

760, 760 P.2d 1174, 1176 (1988); *Knutsen v. State*, 144 Idaho 433, 442, 163 P.3d 222, 231 (Ct. App. 2007). To prove prejudice, the defendant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Knutsen*, 144 Idaho at 442, 163 P.3d at 231. When the conviction is the result of a plea as compared to a trial; "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Dunlap v. State*, 141 Idaho 50, 59, 106 P.3d 376, 385 (2004); *Hill v. Lockhart,* 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985). This requires a petitioner convicted after a guilty plea to convince the court that rejecting the plea bargain "would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010).

Doyle's claims for ineffective assistance of counsel are based upon the assertion by Doyle that his trial counsel failed to investigate, access, obtain, and introduce his phone, and more specifically the text and Facebook messages between he and the victim in the matter, claiming that this would have amounted to exculpatory evidence. For the following reasons, this Court determines that Doyle cannot meet his burden to show ineffective assistance of counsel.

A. Doyle did not establish that his Trial Counsel's representation fell below an objective standard of reasonableness.

Doyle claims that trial counsel's defect of failing to investigate, access, obtain, and introduce alleged messages between Doyle and the victim was defective, as he claims that evidence, which would have amounted to exculpatory evidence, would have negated the victims claims by showing that she was not seriously alarmed by Doyle's communications as she had been initiating such communications. Am. Pet. For Post-

Conviction Relief 3, ¶ 8.a. However, this conclusory statement directly controverts the evidence Doyle himself, and the State, have presented in the matter.

Doyle provides an affidavit of his trial counsel, wherein the trial counsel claims in relevant part that:

> 5. . . . I did not recover Mr. Doyle Jr.'s phone from evidence because Coeur d'Alene Police Detective Kelley was granted a search warrant for Mr. Doyle Jr.'s phone and a cell phone extraction was performed. The results of the cell phone extraction were supplied to us by way of a supplemental discovery response from the State filed on February 1, 2022. I recall reviewing the material contained in the cell phone extraction provided in discovery.

Aff. of Attorney Tyler Naftz in Supp. of Am. Pet. for Post Conviction Relief 2, ¶ 5. (emphasis added). This statement by Doyle's trial counsel is consistent with the Affidavit provided by Detective Kelly, in which the detective claims that:

> 6. Per my seventh supplemental report, to Incident Report No. 22C00545, dated January 21, 2022, I reviewed the AXIOM cellular telephone extraction performed on Mr. Doyle's cellular telephone, noted that the times listed were GMT (Greenwich Mean Time), which are +8.0 hours from local Pacific Standard Time, and generated PDF reports including call logs, chats, and media;
>
> 7. The call log generated in January, 2022, confirmed the victim's allegations, as the dates and times of Mr. Doyle's calls corroborated his victim's claims of stalking per the Incident Report;
>
> 8. I do not recall Mr. Doyle's victim having initiated calls or messages to him during the time period I was performing my investigation.

Kelly Decl. 2, ¶ 8. (emphasis added).

In a criminal case, counsel has a duty to conduct an adequate investigation. *Dunlap v. State*, 141 Idaho 50, 59, 106 P.3d 376, 385 (2004); *State v. Mathews,* 133 Idaho 300, 307, 986 P.2d 323, 330 (1999). A refusal to review and present evidence which contradicts allegations of wrongdoing put forth by the State is a basis for a court to find that counsel failed to uphold his or her duty to investigate. *Eddington v. State*, 162 Idaho 812, 823, 405 P.3d 597, 608 (Ct. App. 2017).

In this matter, however, Doyle has presented evidence that Naftz reviewed the cell phone extraction, including the call logs, chats, and media contained therein, even if he did not review the actual cell phone. There are no allegations from Doyle that Naftz found favorable evidence in that review of Doyle's cell phone extraction and failed to disclose such to Doyle or the Court. Nor, does Doyle make any allegation that the cell phone extraction performed by the Coeur d'Alene Police department was defective. Further, Doyle does not provide what additional information would have been found on his cell phone that was not provided for in the Coeur d'Alene Police Department's extraction. Instead, Doyle makes the broad claim that Naftz failed "to investigate, access, obtain and introduce Petitioner's phone, and more specifically the text and similar messages between Petitioner and the alleged victim." Am. Pet. For Post-Conviction Relief 3, ¶ 8.a. However, Doyle's claim is refuted by the evidence Doyle presented through his own trial counsel's affidavit. Thus, this matter is different from *Eddington*, where trial counsel refused to watch the police videos despite pleas from his client to do so, because here, Naftz did review the material contained in the cell phone extraction.

To the extent that Doyle claims that the "exculpatory" messages with the alleged victim were located on Facebook, and not included in the cell phone extraction performed by the Coeur d'Alene Police Department, Doyle has not provided an explanation on why these alleged messages could not be obtained through other means. Facebook is a social media website where account holders can send messages to other users. *State v. Griffith*, 247 Ariz. 361, 363, 449 P.3d 353, 355 (Ariz. Ct. App. 2019); *United States v. Browne*, 834 F.3d 403, 405 (3d Cir. 2016). Facebook

Messenger is an instant messaging service which allows users to communicate with one another from within Facebook or via a stand-alone application. *State v. Jesenya O.*, 2022-NMSC-014, ¶ 3, 514 P.3d 445, 447.[2] Facebook users may access the application from a variety of devices, including desktop computers, mobile phones, and tablets. *Id.* If there were communications between Doyle and the victim on Facebook Messenger, Doyle would be able to obtain such message despite not having access to his cell phone. However, Doyle does not provide the messages themselves, nor does Doyle even provide this Court with a description of what these alleged messages stated. As someone who has seen both sides of the messages, Doyle would be competent to testify regarding the content of these alleged messages. Doyle has failed to do so.

Instead of providing specific evidence, Doyle provides only general claims. As mentioned above, Doyle claims the phone contains, "exculpatory evidence, would have negated the victims claims by showing that she was not seriously alarmed by Doyle's communications as she had been initiation such communications." Am. Pet. For Post-Conviction Relief 3, ¶ 8.a. At one time, Doyle saw all those messages, yet in this post-conviction act litigation, Doyle has neglected to favor the Court with even the vaguest summary of what his victim stated in those messages.

With such, Doyle has failed to prove by a preponderance of the evidence that his trial counsel provided ineffective assistance of counsel by failing to investigate the information provided for on his cell phone, prior to Doyle pleading guilty.

Further, Doyle claims that Naftz "did not inform me that if there were witnesses to these messages and communications, such witnesses could be called to testify to the

[2] Citing to *Messenger From Meta*, https://about.facebook.com/technologies/messenger/ (last visited June 1, 2022).

contents of my cell phone under certain circumstances." Doyle Aff. 2, ¶ 5. This Court assumes Doyle's "witness" is Eric Ferris (Ferris), who provided an Affidavit filed by Doyle in this Post-Conviction Relief case, wherein Ferris claims:

> 4. I was in contact with both Eric Von Doyle and [victim] during the time period of November 2021 to January 2022 when it was alleged that Eric had engaged in a course of conduct which constituted stalking behavior against [victim].
>
> 5. I have personal knowledge that on many occasions, [victim] would reach out to Mr. Von Doyle and initiate contact.
>
> 6. My impression based on Mr. Von Doyle's reaction was that [victim]'s contact was very upsetting to Mr. Von Doyle.
>
> 7. My impressession [sic] based on Mr. Von Doyle's reactions, which I observed via videos and in messages wherein he contacted my wife or myself, was that [victim] was purposely trying to upset Mr. Von Doyle by use of inflammatory statements and by sharing information about her personal romantic life with him.
>
> 8. I gave this information to Mr. Tyler Naftz, Mr. Von Doyle's trial counsel and expressed that I was ready and willing to provide this information to the Court in his criminal case.

Ferris Decl. 1-2, ¶¶ 4-8. The personal knowledge of the communications from Ferris seem to be from his observations of Doyle's reactions to these purported messages. Apparently, there are no messages that Ferris saw or heard. There is really no evidence to provide a basis to support Ferris' conclusory assertions. Thus, there is nothing to support Doyle's claim that there were "witnesses to these messages and communications." Ferris did not witness anything (other than Doyle's reaction to an unknown conversation). Being devoid of foundation and being wholly conclusory, the testimony Ferris gave in his affidavit would not have been allowed at trial.

Aside from the lack of foundation for Doyle's assertion that Ferris has personal knowledge of the victims contact with Doyle, the Idaho Supreme Court has made clear that the decision of what witnesses to call is a strategic and tactical decision which the court will not second-guess. *Marsalis v. State*, 166 Idaho 334, 346, 458 P.3d 203, 215

(2020); *State v. Abdullah*, 158 Idaho 386, 500, 348 P.3d 1, 115 (2015). Further, the Idaho Supreme Court has ruled that when evaluating an ineffective assistance of counsel claim, the Court does not second-guess strategic and tactical decisions, and such decisions cannot serve as a basis for post-conviction relief unless the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review. *State v. Payne*, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008); *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994). In addition, "[t]here is a strong presumption that counsel's performance falls within the 'wide range of professional assistance.'" *State v. Hairston*, 133 Idaho 496, 511, 988 P.2d 1170, 1185 (1999) (quoting *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988)).

Here, Doyle has failed to present evidence that Naftz' decision to not call Ferris as a witness was not tactical. As such, any such decision of trial counsel not to call Ferris is not found to have been defective for purposes of Doyle's Post-Conviction Relief claim.

Based on the foregoing, this Court finds that Doyle cannot support the first prong of *Strickland* for his ineffective assistance of counsel claim. As mentioned above, to establish a deficiency, the petitioner has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Knutsen v. State*, 144 Idaho 433, 442, 163 P.3d 222, 231 (Ct. App. 2007). Doyle has not met his burden. Doyle has not met his burden of showing that Tyler Naftz' representation fell below an objective standard of reasonableness. Doyle has not shown "deficient performance by counsel."

B. Because Doyle was unable to show "deficient performance by counsel", (the first prong of *Strickland*), this Court need not discuss "prejudice" (the second prong). This Court does so only as an alternative and additional ground for granting State's Motion for Summary Dismissal. This Court finds Doyle has not shown "prejudice".

A defendant alleging ineffective assistance of counsel must show both deficient performance by counsel and *prejudice* resulting from that deficiency; failing to prove either prong individually or both will defeat a claim of ineffective assistance of counsel. *Icanovic v. State*, 159 Idaho 524, 529, 363 P.3d 365, 370 (2015) (*See Strickland,* 466 U.S. at 687, 80 L.Ed.2d at 693.) In the preceding section above, this Court found Doyle failed to prove the first prong, "deficient performance by counsel." This Court now discusses whether Doyle was *prejudiced* (assuming for the moment that there was evidence of deficient performance). This Court does so as an alternative and additional ground for granting State's Motion for Summary Dismissal.

Counsel for Doyle argues prejudice to Doyle as follows:

> For the same reason, the circumstances also meet the standard for the second prong under *Strickland*. Petitioner would not have pled guilty, and certainly the outcome of the case would have been different, had evidence of consensual contact been provided, as the State would not have had the ability to prove an essential element of its case.

Mem. in Opp'n to Mot. for Summ. Disposition 7. This conclusory argument by counsel appears to be based on the equally conclusory argument made by Doyle in his Affidavit, where Doyle claims: "By failing to retrieve the cell phone data and failing to obtain the communications from [victim] contained within it per my various requests, the outcome of the case would have differed as I would have pled Not Guilty to Stalking (first degree)." Aff. of Eric V. Doyle, Jr. in Supp. of Am. Pet. for Post-Conviction Relief 3-4, ¶ 10. As discussed above, at this Motion for Summary Disposition juncture, it is Doyle's

burden to ***prove*** deficient performance of counsel, and resulting prejudice. Even if this Court could find failure to obtain Doyle's cell phone amounts to deficient performance by counsel (it does not so find), Doyle has provided no admissible *evidence* as to *prejudice*. Simply making the claim, or an argument, that he would not have pled guilty is not enough. That claim or argument must be based on some evidence. Doyle utterly fails to tell the Court even in general terms, what was on his "cell phone." Doyle fails to tell the Court even in general terms, what the difference is between his "cell phone" (which he did not get) and the cell phone extraction (which he did get). Doyle completely fails to tell this Court at least what the "substance" of the "exculpatory text messages and Facebook Messenger messages from the alleged victim... that demonstrated proof of her voluntarily communicating to and with me." Aff. of Eric V. Doyle, Jr. in Supp. of Am. Pet. for Post-Conviction Relief 2, ¶ 4. Doyle fails to explain why he cannot obtain text messages and Facebook Messenger messages from some other source. Doyle has presented no evidence of prejudice.

In addition to the fact that Doyle has no evidence of prejudice, there are five inescapable facts which consist in actual admissible evidence, which establish why Doyle cannot prove *prejudice* in his Post-Conviction Relief case. These inescapable facts establish there is no prejudice to Doyle due to his attorney's failure to obtain Doyle's cell phone. These inescapable facts are established by *evidence*, not just by argument.

First, **Doyle pled guilty to First Degree Stalking <u>knowing that his criminal defense attorney was not able to obtain his "cell phone"</u>** (while also knowing that his attorney had obtained a cell phone extraction). We know Doyle's attorney received

the results of the cell phone extraction through discovery on February 1, 2022. Aff. of Attorney Tyler Naftz in Supp. of Am. Pet. for Post-Conviction Relief 2, ¶ 5. Doyle pled guilty one month later, on March 1, 2023. The issue of the missing cell phone was never mentioned in Doyle's plea colloquy with this Court at his arraignment on March 1, 2022 (Second Aff. of Shannon Lee 2, ¶2, Exh. B), Doyle has not offered any proof that he brought the issue of the missing cell phone up at his sentencing hearing on April 27, 2022 (Am. Pet. for Post-Conviction Relief 2, ¶ 2), and Doyle has not offered any proof that he ever mentioned the issue of his missing cell phone in his presentence interview which made it into his presentence report. Every defendant in any felony case gives an extensive interview for the presentence report. The first time Doyle makes any issue of this missing cell phone is in his pro se Petition for Post-Conviction Relief filed on November 4, 2022, over a half year after he was sentenced. The only explanation as to why this missing phone surfaces for the first time in Doyle's Post-Conviction Relief case, is that Doyle has had time while serving his prison sentence to think about such.

Second, Doyle essentially told this Court at his March 1, 2022, arraignment hearing, that he was perfectly fine pleading guilty to stalking in the first degree and proceeding to sentencing without his "cell phone" being discovered It is uncontroverted that at the time Doyle pled guilty to stalking, Doyle knew for a fact that his cell phone had not been recovered, and Doyle knew for a fact that his criminal defense attorney, Tyler Naftz, had instead received a cell phone extraction. In spite of that knowledge, when Doyle pled guilty to stalking, Doyle told this Court:

> THE COURT: Are you satisfied with the services that Mr. Naftz has provided you in both cases?
> THE DEFENDANT: Yes.

THE COURT: Is there anything that he should've done in either case that he hasn't done?
THE DEFENDANT: No.
THE COURT: And Mr. Naftz, do you agree with your client's pleas in both cases?
MR. NAFTZ: Yes, your Honor.

Second Aff. of Shannon Lee 2, ¶2, Exh. B, 9:24-10:7. Doyle clearly knew his attorney was not able to obtain his cell phone, and either he didn't care (even though after the fact he now cares in making his post-conviction relief claims), or, he was lying to the Court when he pled guilty...there was in fact something Mr. Naftz had not done. If that were the case, that scenario is covered by *Campos v. State*, 165 Idaho 90, 93-94, 438 P.3d 787, 790-91 (Ct. App. 2019). *Campos* was cited by both counsel for the State and counsel for Doyle, but in the context of Doyle making a competent and voluntary plea. Mot. for Summ. Disposition 6, Mem. in Opp'n to Mot. for Summ. Disposition 10, Reply in Supp. of Mot. for Summ. Disposition, 4-5. The quote from *Campos* is apt in finding Doyle cannot prove he was prejudiced by any failure of Mr. Naftz to actually obtain Doyle's cell phone. Campos makes it clear that this Court, in a post-conviction relief case, need not conduct an evidentiary hearing to determine which of Doyle's "contrary statements is more credible." 165 Idaho at 94, 438 P.3d at 791.

The third inescapable fact was pointed out by counsel for the State, although in a different context. Counsel for the State notes: "Petitioner's victim's purported taunting of him does not clear him of guilt of stalking, nor does it clear him of guilt of felony grand theft of a financial instrument. Ultimately, Petitioner's allegation is that his trial counsel ineffectively failed to investigate impeaching evidence, not exculpatory evidence." Reply in Supp. of Mot. for Summ. Disposition 4. Counsel for Doyle in his Post-Conviction Relief case claims: "had evidence of consensual contact been provided

...the State would not have had the ability to prove an essential element of its case." Mem. in Opp'n to Mot. for Summ. Disposition 7. That is not true. As alleged in the Information filed on February 1, 2022, in CR28-22-0327, the Respondent State of Idaho (plaintiff therein) would have to prove:

> That the Defendant, ERIC VON DOYLE JR, on or about November of 2021 through January of 2022, in Kootenai County, Idaho did knowingly and maliciously engage in a course of conduct that seriously alarmed, annoyed or harassed Analucia Palacioz and was such as would cause a reasonable person substantial emotional distress, to-wit: by repeatedly calling and texting her and family members making threats and/or sending graphic photographs or videos, where the defendant has previously been convicted of a crime involving the same victim as the present offense within seven (7) years, to-wit: a misdemeanor battery conviction in case CR28-20-12040

Information 1-2, CR28-22-0327. By not obtaining his cell phone, all that Doyle lost, if anything, is impeachment evidence as to Analucia Palacioz, not exculpatory evidence. There is nothing in the charge of stalking in the Information, and thus nothing that the State would be required to prove at trial, which is negated by any record of any calls that may have been placed by Analucia Palacioz to Doyle. Even if it is proven that Analucia Palacioz may have placed calls to Doyle, such fact has no significance. This is made apparent from Doyle's own admissions in the presentence report, where he provided his presentence investigator with the following "Defendant's Version" (Presentence Report 5):

> From early Nov 2021 to Jan 2022 I was calling/texting the mother of my kids Ana Palacioz 50 to 100 times a day asking to talk/video time with the kids. She would instantly hand up on me. I would go from asking nicely to straight up verbally abusing her through text. I even reached out to her family members to relay texts when they wouldn't[.] I verbally abused them, even sent explicit pics—my thought process was that Im a good dad trying to check on the kids but I wasn't taking my meds and I was high on meth. I would get random texts from unknown 208 numbers saying derogatory stuff about my kids and myself also rude sexual texts about Ana. I couldn't handle it and I would lash out at Ana saying Im [sic]

going to fucker and her man up! Not being on my meds and on meth my brain was scrambled, so much so I even harassed Anas job and the kids daycare

Presentence Report 6. Doyle admits doing exactly what he has been charged with; stalking. The elements of first degree stalking also require an effect on the person being stalked. That effect is made apparent from Analucia Palacioz' victim's impact statement (attached to the Presentence Investigation), where she wrote:

> I met Eric Doyle in the summer of 2012, and at the beginning of our relationship, he was a complete gentleman. I heard rumors about how awful he could be from some of his family and friends, but I decided to find out for myself because he was very kind to me. When we first met, I was a very confident and happy college student who lived with my terminally ill father and our rescue dogs. I was on a very positive path trying to become a counselor an worked a part-time job at a burger joint (where I actually met him). Within 5 months of dating, Eric went from being a gentleman willing to help me and my household, to a manipulative and abusive being whom I no longer recognized. From 2013 to now, there were several domestic violence incidents and constant traumatic experiences, including stealing my identity and part of my inheritance. Eric frequently threatened to harm me, people I loved, my pets, and cause a scene at my workplaces (several incidents which resulted in me being terminated from my positions). I have lived in constant fear of Eric and his actions and am no longer the once self-assured and jovial girl I once was, but a very broken and solemn version of myself who I don't recognize.
>
> When Eric said he met someone and was getting serious in early November, I decided I was comfortable enough to let him know I had been dating someone for a while and that I also was getting serious with them. This prompted Eric's extreme episodes of abusive behavior towards myself and his mother in front of the kids. He began to threaten me, harassed me at work, called me and the kids racist names, would be abusive towards his mon=m when she tried to tell him to get it together. His mom finally kicked him out because of this in early November and he in turn sole her bank card and pulled out a thousand dollars. The next day he left me a message saying he would leave me and the kids alone and would disappear because he was too far gone. He ended up going to my old job where my friends, old coworkers, and the person I was dating saw him and felt intimidated. He stuck around the area for about 5 days untl he finally fled to Nevada and then to California. He began his phone harassment from out of state, calling my current job and making threats to my coworkers and my boss and even began harassing my relatives over social media. He would call and harass the children's daycare where their sitters also worked and scared them. He claimed that he was wanting to know about the kids but the topic constantly went back to me and the fact that I was dating someone. He became fixated and left messages at all locations daily, called my

> work and daycare daily, even resulting in asking weird random acquaintances to contact me. He began to send threats that he would kidnap the children and kill anyone who got in his way and that he would break my door down and kill me to get to the kids. He even left messages talking about raping my boyfriend.
>
> His outrageous and damaging behavior has traumatized me to the point where I am seeing two counselors and am now on two different prescriptions to deal with my anxiety and depression. I have constant nightmares about the threats and messages that were sent and the trauma that his behavior also caused my loved ones, like my cousins (who he sent sexually explicit message to) and my sweet babysitters who are extremely important to me and my kids. His children, especially, are traumatized and heartbroken because they don't understand why he constantly disappears and why he says things "to make mommy and grandma so sad". My daughter is four now and commented to her own teachers that he is scary and makes us scared and sad. My son becomes angry when he is brought up because it helps him cope and he is disappointed in his lack of consistency and actual ability to "be there". I am now seeking a counselor for the children to help them understand and cope with this transition also. I hope that Eric can stay away for a very long time, be it in jail, prison, or another institution of some sort. He has been a ward of the state most of his life and makes no effort to assimilate in society. His need to be on his own made him narcissistic, and his drug use since he was a teenager has reformatted his brain. He also suffered a traumatic brain injury in 2015 that resulted in intense rage episodes, personality shifts, hallucinations, and memory loss, that he is incapable of living a normal life without constant help and medical care. Eric will never be a regular person who can work a job, find housing, and live independently, without wreaking havoc on those around him and I hope the court can make a decision to protect the many victims he has affected, as well as the rest of society. Even though I tried my hardest to understand him for the sake of my kids, I've realized that it is futile and I'm going to instead focus on protecting them from him for the rest of their lives. To wish I had never met Eric Doyle is an understatement because he's like a curse to anyone who opens their hearts to him, but I am forever blessed to have my children and will do whatever I need to do to make sure they do not end up like him nor feel the repercussions of his behavior.

Presentence Report 38-39. Thus, even if the cell phone had been located, and even if it had shown consensual contacts from Doyle's victim to Doyle, and even if it had shown Doyle's victim were taunting Doyle, such is not a defense to Doyle, it is only impeachment evidence against Doyle's victim, it does not constitute any exculpatory evidence for Doyle.

Fourth, if Doyle truly believed the cell phone itself had valuable evidence, why did he fail to bring a claim for spoliation of evidence? This doctrine from civil litigation has been applied to criminal cases. In *Stuart v. State*, 127 Idaho 806, 907 P.2d 783, (1995), the Idaho Supreme Court held

> **IV. Because The Intentional Destruction Of The Evidence Is Attributable To The State, Stuart Is Entitled To An Inference That The Destroyed Evidence Would Have Been Favorable To His Petition**
>
> The district court in this case acknowledged that if the destruction of evidence was attributable to the state, the spoliation doctrine would apply in Stuart's favor. The spoliation doctrine is a general principle of civil litigation which provides that upon a showing of intentional destruction of evidence by an opposing party, an inference arises that the missing evidence was adverse to the party's position. See *McCormick on Evidence*, 4th Ed. § 265, pp. 189–94 (1992). **In a criminal case, application of a favorable inference under the spoliation doctrine is the appropriate remedy for a Youngblood due process violation.** *See State v. Dulaney*, 493 N.W.2d 787, 791–92 (Iowa 1992).
>
> Although we hold that Stuart is entitled to a favorable inference regarding the missing phone logs, we believe that the district court is in the best position to decide what the proper scope of that inference should be, based on the evidence presented. The district court may determine that an inference should be drawn that the logs contained evidence of either recording or monitoring of attorney-client phone calls. On the other hand, the district court may conclude that the proper inference is only that other cryptic entries such as those made by Berry would have been found. In either event, application of an inference necessarily involves the weighing of evidence, a task exclusively reserved to the trial court. Therefore, we remand to the district court for a reweighing of the evidence employing the above-described inference in Stuart's favor.

127 Idaho at 816-17, 907 P.2d at 793-94. (bold added). Doyle did not even attempt to take his case to trial. Doyle pled guilty at his arraignment hearing, his *first hearing* before this Court. Thus, Doyle foreclosed his opportunity to obtain such a jury instruction on spoliation of evidence at a jury trial. Further, nothing precluded Doyle from making a reference to the missing cell phone at his arraignment hearing where he pled guilty to first degree stalking. Neither Doyle nor his attorney made any such reference. Court Minutes, March 1, 2022. Finally, even after pleading guilty, Doyle

could have mentioned spoliation in his presentence investigation interview for his presentence report, or he could have made a spoliation argument to the Court at sentencing. Presentation of such at sentencing is made even easier for Doyle given the fact that the Idaho Rules of Evidence have no applicability at sentencing. I.R.E. 101(e)(3). There is not a word of spoliation of evidence, nor is there a mention of the missing cell phone, anywhere at any point in Doyle's two criminal cases.

The fifth and final inescapable fact is the two adverse effects Doyle claims in his Post-Conviction Relief case [a)that he would not have pled guilty, and b) the outcome of the case would have been different had evidence of consensual contact been provided via the phone as the State would not have had the ability to prove an essential element of its case], **do not follow** from the loss of his cell phone. The same can be said of Doyle's claims as a result of Naftz' failure to obtain his cell phone, Doyle's "sentence was in excess of what was necessary to meet the goals of sentencing", and "this error was compounded by record containing insufficient information for the District Court to rely upon to reach the conclusion that more lenient sentence was appropriate." Am. Pet. For Post-Conviction Relief 4, ¶ 9. Those results **do not follow** from the loss of his cell phone. In this post-conviction case, Doyle now claims: "Petitioner would not have pled guilty, and certainly the outcome of the case would have been different, had evidence of consensual contact been provided, as the State would not have had the ability to prove an essential element of its case." Mem. in Opp'n to Mot. for Summ. Disposition 7. This claim defies simple logic. Even if Doyle's cell phone had evidence of consensual phone contact emanating from his victim, of what significance is that when Doyle's own statements to law enforcement and to the

presentence investigator show at times ***nearly constant*** contact (as mentioned immediately above, Doyle states, "From early Nov 2021 to Jan 2022 I was calling/texting the mother of my kids Ana Palacioz 50 to 100 times a day asking to talk/video time with the kids." Presentence Report 5). Even if one of those 50 to 100 admitted calls per day were non-consensual, and all the others were consensual, that fact would not negate the one non-consensual contact Doyle had with is victim. Keep in mind that when Doyle pled guilty he admitted doing the following conduct contained in his information: Doyle "did knowingly and maliciously engage in a course of conduct that seriously alarmed, annoyed or harassed Analucia Palacioz and was such as would cause a reasonable person substantial emotional distress, to-wit: by repeatedly calling and texting her and family members making threats and/or sending graphic photographs or videos" Information 1-2, CR28-22-0327. Most importantly, Doyle himself, in his Presentence Report, admits that he did such, as he states: "I couldn't handle it and I would lash out at Ana saying Im [sic] going to fucker and her man up!" Presentence Report 6. No matter how you look at it, that is stalking. Doyle admitted to it at the time of his plea and again in his Presentence Report.

Doyle's claim he would have never pled guilty if there was evidence of consensual contact via his lost phone, is completely devoid of any basis in fact or in logic. Doyle's claim that such evidence of consensual phone contact would have cause the State to not be able to prove an essential element of its case, also defies the facts and logic.

Doyle cannot show through any admissible evidence, any prejudice due to any action or inaction taken by his attorney.

IV. CONCLUSION AND ORDER

Doyle has not met his burden in responding to the State's Motion for Summary Dismissal as Doyle has failed to meet his burden as to his claims of ineffective assistance of counsel. Because he cannot show ineffective assistance of counsel, he would not be able to prove his claims to attack sentencing based upon such allegation. As such, the State's Motion for Summary Disposition is granted, and Doyle's Petition for Post-Conviction Relief is dismissed. For the foregoing reasons;

IT IS HEREBY ORDERED the Respondent State of Idaho's Motion for Summary Disposition is **GRANTED,** Petitioner Eric Von Doyle Jr.'s Petition for Post-Conviction Relief is **DISMISSED**.

DATED this 24th day of August, 2023.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of August, 2023 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney – Tara Malek Service@smithmalek.com
Prosecuting Attorney – Jamila Holmes kcleg@kcgov.us

ERIC VON DOYLE, JR.,
IDOC #143465

Idaho Department of Correction
Records Division (certified copy)
Fax: (208) 327-7445 Centralrecords@idoc.idaho.gov

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____,
Deputy