



lack of factual basis for Alford plea, and 3) ineffective assistance of counsel.

Accordingly, the Court has before it, cross-motions for summary judgment.

## II. ANALYSIS.

### **A. Petitioner's claims that: 1) his plea was coerced and 2) there was an inadequate factual basis for the Alford plea, are the types of claims cognizable under I.C. § 19-4901(a) and (b).**

Respondent argues Petitioner's first two claims by, involuntary guilty plea and lack of factual basis for Alford plea, are not the type of claims cognizable under I.C. §19-4901(a). Respondent contends these claims could have been brought on direct appeal. Idaho Code §19-4901(b) provides that any issue which could have been raised on direct appeal, but was not, is forfeited and may not be considered in post-conviction proceedings. Idaho Code § 19-4901 reads:

#### **Remedy – To whom available – Conditions**

(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, or conditional release was unlawfully revoked by the court in which he was convicted, or that he is otherwise unlawfully held in custody or other restraint.

(6) Subject to the provisions of section 19-4902(b) through (f), Idaho Code, that the petitioner is innocent of the offense,

(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.

(b) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of an appeal from the sentence or conviction. Any issue which could have been raised on direct appeal but was not, is forfeited

an may not be considered in post-conviction proceedings, unless appears to the court, on the basis of a substantial factual showing by affidavit, deposition, or otherwise, that the asserted basis for relief raises a substantial doubt about the reliability of the finding of guilt and could not, in the exercise of due diligence, have been presented earlier. Except as otherwise provided in this act, it comprehends and takes the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

Idaho appellate courts have considered the merits of each type of claim in post-conviction proceedings. In *Ricca v. State*, 124 Idaho 894, 865 P.2d 985 (Ct App. 1993) the Court of Appeals determined that the Uniform Post-Conviction Procedure Act provides an appropriate mechanism for considering the claim that a plea of guilty was accepted in violation of the requirements set forth in I.C.R. 11. The Act is available “to cure fundamental errors occurring at the trial which affect either the jurisdiction of the court or the validity of the judgment, even though these errors could have been raised on appeal.” *Id.* at 896.

In petitioner Mendiola’s case, his application for post-conviction relief was his first challenge to the validity of his plea of guilty to the charge of second degree murder. However, the relief requested by Mendiola in his application for post-conviction relief was not withdrawal of his plea as was the case in *Ricca, Gomez v. State*, 120 Idaho 632, 818 P.2d 336 (Ct. App. 1992) and *Nellsch v. State*, 122 Idaho 426, 835 P.2d 661 (Ct. App. 1992). The relief sought by Mendiola was “reversal of his conviction and sentence imposed in this matter.” First Amended Petition for Post-Conviction Relief, p. 8. While this might not be the appropriate relief sought under a post-conviction relief application, other Idaho Cases have considered the merits of voluntariness of the plea, and the factual basis for the plea in post-conviction proceedings without mentioning the relief sought in the post-conviction application. *Odom v. State* 121 Idaho 625, 826 P.2d 1337 (Ct. App.

1992); *Amerson v. State*, 119 Idaho, 994, 812 P.2d 301 (Ct. App. 1991); *Simons v. State*, 116 Idaho 69, 773 P.2d 1156 (Ct. App. 1989); *Schmidt v. State*, 103 Idaho 340, 647 P.2d 796 (Ct. App. 1982); *Fowler v. State*, 109 Idaho 1002, 712 P.2d 703 (Ct. App. 1985).

If Idaho Code §19-4901 was to be interpreted the way respondent wants this Court to interpret it, nothing, other than that which is stated in 19-4901(a), could be brought on a post conviction relief application, including an ineffective assistance of counsel claim. Idaho Case law indicates that is not what our legislature intended. In *Sparks v. State*, 140 Idaho 292, 295-96, 92 P.3d 542, 545-46 (Ct. App. 2003) the Court stated,

In his application for post-conviction relief, Sparks argued that he was denied his Sixth Amendment right to effective assistance of counsel because his counsel labored under an actual conflict of interest and failed to "investigate, locate and interview" witnesses. With regard to Sparks' allegations, the district court found that, because Sparks failed to raise these issues on direct appeal, he waived them. We disagree. Ordinarily, we do not address claims of ineffective assistance of counsel on direct appeal because the record on direct appeal is rarely adequate for review of such claims. *State v. Hayes*, 138 Idaho 761, 766, 69 P.3d 181, 186 (Ct.App.2003). Such claims are more appropriately presented through post-conviction relief proceedings where an evidentiary record can be developed. *State v. Mitchell*, 124 Idaho 374, 376, 859 P.2d 972, 974 (Ct.App.1993).

Claims of plea coercion and inadequate factual basis for an Alford plea may also be brought on post conviction relief proceedings. Often, an evidentiary record can more fully be developed on these claims as well. Although the transcript from the plea and sentencing hearing was provided to the Court and was available for review, either Mendiola or the state can further develop the record with trial counsel's testimony or other evidence. While the relief sought by petitioner under the Amended Post Conviction application (reversal and conviction and sentence) may be inappropriate for a post conviction relief application, an evidentiary hearing on all issues raised in this application

would be appropriate to develop the record and for judicial economy. The other option for the Court would be to deny post-conviction relief based on the relief sought (reversal of conviction and sentence), and re-sentence Mendiola, which would allow him the opportunity to raise these issues and relief sought on appeal. This Court believes that at this time the more appropriate procedure is to hold an evidentiary hearing on all claims brought under Mendiola's post conviction relief application

**B. An evidentiary hearing is warranted on Petitioner's claims that his plea was coerced and that there was an inadequate factual basis for the *Alford* plea.**

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, the Court must determine whether a genuine issue of fact exists based on the pleadings, depositions, and admissions together with any affidavits on file which, if true, would entitle the application to relief. *Murphy v. State*, 06.8 ICAR 376. (Ct App. 2006). Moreover, the court liberally construes the facts and reasonable inferences in favor of the non-moving party. *Id.* at 377.

In order for a guilty plea to be in compliance with constitutional due process standards, it must be entered voluntarily, knowingly, and intelligently. *State v. Gardner*, 126 Idaho 428, 432, 885 P.2d 1144, 1148 (Ct.App.1994); *State v. Detweiler*, 115 Idaho 443, 446, 767 P.2d 286, 289 (Ct.App.1989); *Brooks v. State*, 108 Idaho 855, 857, 702 P.2d 893, 895 (Ct.App.1985). Compliance with these standards turns upon whether: (1) the plea was voluntary in the sense that the defendant understood the nature of the charges and was not coerced; (2) the defendant knowingly and intelligently waived his rights to a jury trial, to confront adverse witnesses, and to avoid self-incrimination; and

(3) the defendant understood the consequences of pleading guilty. *State v. Huffman*, 137 Idaho 866, 55 P.3d 879 (Ct. App. 2002).

In addition, the state need not show the factual basis of a plea beyond a reasonable doubt. Nor does a plea require a mini-trial of the case. Instead, the goal behind ascertaining a factual basis is to assure that the defendant's plea is made knowingly, intelligently and voluntarily. *Amerson v. State*, 119 Idaho 994, 812 P.2d 301 (Idaho App. 1991).

“The voluntariness of a plea can be determined only by considering all of the relevant circumstances surrounding it.” *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 1469 (1970). Because of the unusual circumstances of this case, in particular because the plea agreement was a “package deal,” this Court believes that defendant and the state should be given an opportunity to present evidence on both of these issues at a post conviction hearing.

### **C. Petitioner's claim of ineffective assistance of counsel warrants an evidentiary hearing.**

In *Alisha Ann Murphy v. State of Idaho*, the Idaho Court of Appeals clearly laid out the standard of review for a post conviction application. The Court stated:

An application for post-conviction relief initiates a proceeding that is civil in nature. Similar to a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post conviction relief is based. An application for post-conviction relief differs from a complaint in an ordinary civil action, however, for an application 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, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application

must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

Idaho Code Section 19-4906 authorizes summary disposition of an application for post conviction relief, either pursuant to motion of a party or upon the court's own initiative. Summary dismissal of an application pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under I.R.C.P. 56. Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact which, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. Allegations contained in the application are insufficient to prevent summary dismissal if they are clearly disproved by the record of the original proceedings, or do not justify relief as a matter of law. Summary dismissal of an application for post conviction relief may be appropriate when the state does not controvert the applicant's evidence because the court is not required to accept the applicant's mere conclusory allegations unsupported by admissible evidence.

*Murphy v. State*, 06.8 ICAR 376, 377.

In order to prevail on a claim of ineffective assistance of counsel, the United States Supreme Court has held that the petitioner must establish that: 1) the attorney's conduct fell below an objective standard of reasonableness or competence; and, 2) the deficient conduct so undermined the proper functioning of the adversarial process that the trial process cannot be relied upon as having produced a just result. *Strickland v. Washington*, 446 U.S. 668 (1984). Satisfaction of the prejudice element requires a showing that, but for counsel's errors, the defendant would not have plead guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

In this case, Mendiola raises a material issue of fact as to whether defense counsel had evidence or knew prior to the sentencing that Mendiola acted in self defense. Mendiola claims trial counsel argued that this was a manslaughter case yet failed to present evidence to support that claim, including the testimony of eyewitnesses to the killing. First Amended Petition for Post-Conviction Relief, p. 7. Also, Mendiola

contends the trial counsel was aware that Petitioner had been threatened with a gun by Butler when the struggle occurred. *Id.* at 7. In Mendiola's First Amended Petition for Post-conviction Relief, Mendiola supplied the court with transcripts of the change of plea and sentencing hearings, an affidavit of Alicia Mendiola, an affidavit of Marco Garcia, and an autopsy report of the victim Brendan Butler. However, testimony at the sentencing hearing seems to contradict the notion put forth by Mendiola in his post conviction application and the affidavit of Alicia Mendiola. In the sentencing hearing transcript, Mr. Adams states:

my advice to Giovanni was to not plead to this. I told him and I still believe I thought the worst he would do in a jury trial was manslaughter, but it's his life, it's not mine and he made the decision he felt would protect his family, not expose his sisters to the threat of indictment or prosecution that was being made...he entered the plea over the advice of his lawyer.

Sentencing Transcript Page 21 line 22-25, Page 22 lines 1-7.

Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact, which if resolved in applicant's favor, would entitle the applicant to the requested relief. *Murphy v. State of Idaho*, 06.8 ICAR 376, 377. The pleadings, admissions, and affidavits on file raise a genuine issue of material fact as the ineffective assistance of counsel and therefore warrant an evidentiary hearing.

### **III. ORDER.**

IT IS HEREBY ORDERED petitioner's motion for summary judgment is DENIED, respondent's motion for summary dismissal is DENIED, petitioner's motion for an evidentiary hearing is GRANTED, and said evidentiary hearing shall be held October 16, 2006 at 9:00 a.m.

DATED this \_\_\_\_\_ day of December, 2007.

\_\_\_\_\_  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of December, 2007 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Andrew Parnes Fax 208.726.1187  
Giovanni Mendiola IDOC # 71876

Kootenai County Prosecuting  
Attorney, Lansing Haynes, Chief  
Deputy

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

By: \_\_\_\_\_ Deputy