

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0132

BRYCE EVERETT PETERSON,

2088780

Appellant Pro-se.

v.

STATE OF MONTANA,

Appellee,

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Twenty-First Judicial District Court,
Ravalli County, The Honorable Howard F. Recht, Presiding

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Comes now, Bryce Peterson, appellant herein appearing pro se, and submits this Reply Brief to the Appellee's Response Brief.

ARGUMENT

1. AN ALFORD PLEA DOES NOT PRECLUDE A SUBSEQUENT ACTUAL INNOCENCE CLAIM

The State asserts that Peterson waived the ability to assert an actual innocence claim by entering an *Alford* plea. (State's Br. at 15). The State cites to both Lawrence v. Guyer, 2019 MT 74, 395 Mont. 222, 440 P.3d 1, and State v. Watts, 2016 MT 331, 386 Mont. 8, 385 P.3d 960. Both cases generally stand for the proposition that a defendant who pleads guilty waives "all non-jurisdictional defects and defenses, including claims of constitutional rights violations which occurred prior to plea," Watts, ¶9. That proposition has not been strictly applied, however. If it were, no criminal defendant who ever plead guilty could raise a claim that his trial counsel was ineffective in violation of this *Sixth Amendment* rights.

Additionally, applying the State's argument would require this Court to overlook national statistics¹ that approximately 20% of exonerations have come in cases in which the defendant plead guilty, this includes 10% of those who have been exonerated through post-plea DNA testing.

¹ The National Registry of Exonerations – Cumulative data through 2020 (2755/569/54)

The State's argument is also contrary to the plain language of Title 46, chapter 21. Montana's post-conviction statutes do not distinguish between a "conviction" by a jury versus a "conviction" achieved through a plea of guilty. The post-conviction statutes simply and repeatedly refer to "a conviction." See e.g., *MCA §46-21-102* (establishing deadlines for the finality of a conviction). The law at issue here, *MCA §46-21-102(2)* plainly reads: "A claim that alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was *convicted* becomes final on. . . ." (emphasis added).

It would lead not only to a significant due process violation but also to a legal absurdity if a defendant were able to uncover new evidence that proved he did not "engage in the criminal conduct for which" he "was convicted" only to be deprived of an ability to present that evidence because his "conviction" was the result of a plea rather than a jury trial. This Court has long held that it "must also 'read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute.'" *State v. Triplett*, 2008 MT 360, ¶25, 346 Mont. 383, 105 P.3d 819 (*citing and quoting* *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶46, 302 Mont. 209, 14 P.3d 487).

In People v. Reed, 2020 IL. 124940, 2020 Ill. LEXIS 1045 (Dec. 3, 2020), the Supreme Court of Illinois address the questions of “whether a guilty plea prevents a defendant from asserting an actual innocence claim under” Illinois’s Post-Conviction Hearing Act. Reed, ¶20. While the Illinois Court denied Reed’s actual innocence claim on the merits, it emphasized that a defendant’s due process right to present evidence of his own innocence despite a guilty plea overcame any presumption or waiver that could be read into a guilty plea. “When met with a truly persuasive demonstration of innocence, a conviction based on a voluntary and knowing plea is reduced to a legal fiction.” Reed, ¶35. “Moreover, we emphasize this court’s long-established preference for life and liberty over holding defendant to his plea.” Reed, ¶36.

Most compelling is the Illinois’s Court’s observation that “[p]lea agreements, while vital to our criminal justice system, are not structured to weed out the innocent or guarantee the factual validity of the conviction.” Reed, ¶33 (internal citations and quotations omitted). Peterson’s case is a good example of this failing. During the first portion of the change of plea hearing, “Peterson interjected: ‘I can’t do this. I can’t do this. No, I’m not guilty of that. I’m not guilty of this.’” State v. Peterson, 2013 MT 329, ¶10, 372 Mont. 382, 314 P.3d 227. An *Alford* plea, especially does nothing to weed out innocence or factually establish guilt. *Alford* pleas represent, in the words of at least one noted jurist, “a

rational, if cynical, cost-benefit analysis of [the defendant's] situation.” Rakoff, J., “Why the Innocent Plead Guilty and the Guilty Go Free: And Other Paradoxes of Our Broken Legal System,” Farrar, Straus and Giroux,” at pg. 30 (2021).

Other courts follow Illinois’s example. In Schmidt v. State, 909 N.W.2d 778 (IA 2018), the Iowa Supreme Court concluded that guilty pleas do not bar a petitioner from seeking post-conviction relief based on an actual innocence claim when that claim is based on newly discovered evidence.

The New York Court of Appeals reached a similar conclusion in People v. Tiger, 110 N.E.3d 509 (NY 2018). In *Tiger*, the New York court ruled that a guilty plea waives any post-conviction claim *except* one based on actual innocence grounded in newly discovered DNA evidence.

For its part, this Court has never categorically barred such claims from post-conviction analysis. In fact, this Court has considered post-plea post-conviction claims that are based on ineffective assistance of counsel notwithstanding the fact that a defendant entered a guilty plea.

It is true that this Court has repeatedly held that “a valid guilty plea is a waiver of all non-jurisdictional defects and defenses, including claims of constitutional violations that occurred prior to plea.” State v. Lindsey, 2011 MT 46, ¶19, 359 Mont. 362, 249 P.3d 491. However, none of the many decisions in which this Court has made that holding, address a claim of actual innocence, let

alone one in which the guilty plea was made pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

Even under the more harsh rules of the Antiterrorism Effective Death Penalty Act (AEDPA), actual innocence can act as a bypass from those rules. Herrera v. Collins, 506 U.S. 390, 404 (1993) (Actual innocence is not a substantive basis for relief in noncapital habeas corpus proceedings, “but instead a gateway through which a habeas petition must pass to have his otherwise barred constitutional claim considered on its merits.”)

Finally, Peterson’s opening brief relies on both Schlup v. Delo, 513 U.S. 298 (1995) and McQuiggin v. Perkins, 569 U.S. 383 (2013) (Appellant’s Opening Brief at 5). Peterson, an untrained novice in the law with little to no access to legal texts, relies on these cases with an understanding of the procedural complexities that brought each case before the United States Supreme Court.

This Court should exercise great care in relying on the standards articulated in any case arising from state prisoners challenging their state convictions in a federal court. Laws and standards applicable to pre-AEDPA or post-AEDPA claims are strict and intentionally narrow in their scope. The logic behind setting high standards for state prisoners to challenge their convictions in the federal courts is premised on the assumption that state prisoners have already exhausted their available state remedies. With limited exceptions, only once those state

remedies are exhausted can a state prisoner burden the federal courts with his claims through a motion for a writ of habeas corpus.

To avoid an abuse of the writ and over-burdening the federal courts, Congress enacted AEDPA to allow federal courts to weed out most claims raised by state prisoners. Consequently, AEDPA has very high (often insurmountable) standards. It is illogical to apply those same high standards on a state level given the contemplated role of state post-conviction proceedings. Lee Kovarsky, “Structural Change in State Postconviction Review,” *Notre Dame Law Review*, Vol. 93:2 at 459-461 (2017) (discussing why state post-conviction proceedings are the appropriate forum for litigation of post-conviction actual innocence claims based on newly discovered evidence or scientific advances).

In light of the constitutional right at risk, i.e. Peterson’s due process rights to life, liberty, and due process, imposing a categorical waiver on actual innocence claims based on a plea of guilty -- especially an *Alford* plea -- is both inconsistent with prevailing trends from other courts but also to the plain language of Montana’s post-conviction statutes.

Peterson requests this Court disregard the State’s argument on this issue.

**2. BOTH THE DISTRICT COURT AND THE STATE ON APPEAL
WRONGFULLY OVER-EMPHASIZE THE “RELIABILITY” OF PETERSON’S
EVIDENCE**

MCA §46-21-102(2) requires a district court to examine whether a

petitioner's newly discovered evidence would "as a whole established that the petitioner did not engage in the criminal conduct for which the petitioner was convicted." In the case of an *Alford* plea, the "evidence as a whole" against which the newly discovered evidence is balanced is necessarily less than the evidence would be had Peterson gone to trial.

Part of the evidence to be considered must be Peterson's continued protestations that he was, in fact, innocent of the crimes but was pleading pursuant to *Alford* because he felt the cards were stacked against him by the prosecution.² Peterson, ¶10.

The principle announced in *Alford* is that a court may accept a guilty plea if satisfied that there was strong evidence of guilt, even though the defendant, while offering to plead, denies that he was in fact guilty. Therefore, while strong evidence of guilt is necessary to support acceptance of the plea, the evidence presented need not be the proof beyond a reasonable doubt standard that would be necessary for conviction at trial. Because the evidentiary standard is lower for acceptance of an *Alford* plea, it stands to reason that the evidentiary standard to show actual innocence in light of the "evidence as a whole," should also be lower.

² It should be noted that the U.S. District Court found: that the prosecution lied to the court and withheld evidence; that it was egregious; and that it affected the outcome of the evidentiary hearing. Peterson v. Salmonsens, et. al, Cause No. 9:17-cv-00019-DLC-JCL, Dkt. 35 at 18-19 (D. Mont. 2019) See Attachment A.

In *Reed*, the Illinois Supreme Court held that the standard for actual innocence claims for guilty-plea defendants . . . must be less than re-deciding the defendant’s guilt, as this is not the determination the court must make.” *Reed*, ¶48.

This standard is not inconsistent with the standard established in *Marble v. State*, 2015 MT 242, 380 Mont. 366, 355 P.3d 742 (rejecting the standard set forth in *State v. Beach (Beach II)*, 2013 MT 130, 370 Mont. 163, 302 P.3d 47 that new evidence of innocence affirmatively and unquestionable establish that the petitioner was innocent). It is also consistent with this Court’s acknowledgment that differing stages of a criminal proceeding warrant different levels of proof, e.g., the level of proof to succeed on a motion for a new trial versus the level needed to succeed on a post-conviction claim. *Marble*, ¶¶28-29.

In *Marble*, this Court rejected the test announced in a concurring opinion in *Beach II*. The *Beach II* test required a petitioner to “affirmatively and unquestionably establish his innocence based upon *reliable* new evidence.” *Beach II*, ¶131 (emphasis added). In *Marble*, this Court specifically repudiated that test on the grounds that it was “not suited to the quantum of proof required of a postconviction relief petitioner seeking relief under §46-21-102(2), MCA. . . .” *Marble*, ¶32.

In *Marble*, this Court acknowledged a variety of types of newly discovered evidence that potentially qualify as new evidence of innocence for MCA §46-21-

102(2). A sampling of types included: “perjured or new alibi evidence, a confession by a third-party, or -- as here -- recantation evidence. Powerful new evidence of this type could certainly establish that the defendant did not commit the crime of which he was convicted, but it would not, standing alone, ‘unquestionably establish his innocence.’” Marble, ¶32. None of these types of evidence are inherently reliable on their face. However, this does not mean a reviewing court should not consider them.

Rather, the rule announced in *Marble* is adopted from the plain language of *MCA §46-21-102(2)*. “[A] district court presented with a postconviction petitioner based upon newly discovered evidence shall utilize the very test set forth in §46-21-102(2), *MCA*.” Marble, ¶36. Absent from the plain language of *MCA §46-21-102(2)* is any reference to the reliability of the newly discovered evidence.

Absent from either the State’s brief or the district court’s order are any parameters for what makes certain evidence “reliable,” or “unreliable.” Although Peterson’s newly discovered evidence created evidentiary disputes, the district court deemed it unreliable without allowing any opportunity for Peterson to develop or demonstrate the evidence’s factual reliability.

This is contrary to *Marble* where the State argued the alleged victim’s multiple recantations were unreliable because they conflicted with his trial testimony and his testimony at a deposition and the post-conviction hearing. In

Marble, the district court denied Marble’s newly-discovered-evidence post-conviction claim using a legal analysis set forth in this Court’s concurring opinion in *State v. Beach*, 2013 MT 130, 370 Mont. 163, 302 P.3d 47 (*Beach II*). Marble, ¶18.

The concurring opinion in *Beach II* argued that *MCA §46-21-102(2)* was legislative adoption of the principles articulated in *Schlup*. Marble, ¶33. This argument was refuted in *Marble*. Marble, ¶33. The refutation was appropriate given the vastly different statutory schemes at play.³

While the *Marble* decision did not alter the threshold requirement that newly discovered evidence must be reliable to be considered under *MCA §46-21-102*, it also concluded that “a court entertaining a petition for postconviction relief has multiple arrows in its quiver.” Marble, ¶31. One of those arrows is to allow the parties to engage in discovery. A second arrow is to hold an evidentiary hearing. *MCA §46-21-201(5) & (6)*. Either arrow is a better method to test the reliability of evidence than simply dismissing the evidence as unreliable and dismissing the petition. Additionally, courts must be cautious not to equate disputed evidence and unreliable evidence.

The State argues that the district court “correctly rejected all of Peterson’s

³Compare *MCA §46-21-102(2)* with 28 U.S.C. §2244(b)(2)(B)(i) & (ii).

claims because Peterson failed to provide reliable new evidence to show he did not engage in the criminal conduct for which he was convicted” (State’s Br. at 17). The over-emphasis on the reliability of the evidence by both the district court and the State is inconsistent with both the plain statutory text of *MCA §46-21-102(2)* and the *Marble* decision – especially in regards to the repudiation of the concurring opinion in *Beach II*.

MCA §46-21-102(2) does not use the word “reliable.” In fact, by referencing “newly discovered evidence that, *if proved and viewed in light of the evidence as a whole,*” the statute presumes evidence can be presented that requires further exploration. This contingent language, “if proved,” necessarily contemplates an opportunity for a petitioner to prove that the evidence establishes that the petitioner did not engage in the criminal conduct that resulted in conviction. Therefore, summary dismissal based on a summary conclusion that the evidence is unreliable is inconsistent with the statute which clearly contemplates an opportunity for the petitioner to prove not just the existence of newly discovered evidence, but that the new evidence establishes that he did not engage in the actions that resulted in conviction.

A petitioner in custody has limited opportunities to prove what the newly discovered evidence purports to show. This is especially true with *pro se* petitioners.

The argument that dismissal based on a summary conclusion that the evidence is unreliable is also inconsistent with the overall text of *MCA §46-21-201*. Subsections (4) and (5) allow a district court to grant leave for either party to use discovery procedures, (4), or receive proof of affidavits, depositions, oral testimony, or other evidence, (5). In this, the post-conviction statutes are similar to Rule 56 of the Montana Rules of Civil Procedure. For example, Rule 56(e)(1) requires an affidavit “set out facts that would be admissible in evidence. . .” Reasonable parties can disagree on what facts are and are not admissible, but it is up to a court to render the ultimate decision. Just as summary judgment is disfavored in the law, so too should summary dismissal of a petition for post-conviction relief alleging newly discovered evidence based solely on a conclusion that the evidence, which is disputed, is unreliable.

One example of the district court’s error regarding reliability is its conclusion that the affidavit submitted by Farmer was unreliable because “Farmer’s credibility was questionable because he and his wife, Lisa Farmer, were convicted by a jury of drug offenses and sentenced by Judge Langton in October 2012.” (State’s Br. at 19). Contrast this finding with Rule 56's requirement that affidavits be based on facts that would be admissible in evidence. “For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is not admissible.” *Mont. R. Evid. 609*. Therefore, Farmer’s

conviction for drug offenses is not admissible. It was error to reject Farmer's affidavit based on a fact that is otherwise inadmissible. Rather, the district court should have required either a hearing or other evidentiary exploration to allow Peterson to prove that his newly discovered evidence did what he purported it to do.

Another example of over-reliance on the concept of reliability is the State's analysis of an analysis of the phone records compared to MapQuest travel estimates. Without citation to authority, the State asserts "[t]he analysis is inherently unreliable due to the district court's inability to attribute it to a person or date." While this inability may affect the foundation of the evidence, it does not automatically render the evidence "inherently unreliable." Rather, it creates a dispute of material facts that warrant further factual exploration rather than summary dismissal. As it is, the district court made a premature adjudication of the unreliability of the evidence.

This is especially true for Peterson's Amended Petition for Post-conviction Relief, which presented new affidavits. Rather than analyze and distinguish the difference between the affidavits submitted in the first successive petition for post-conviction relief, the court simply scrawled "Summarily Denied. Howard Recht, 27 Feb 2020" on the cover page. This failure to analyze the evidence satisfies neither *Beach II* nor *Marble* and is an abuse of discretion. "[I]n certain cases, a

district court's outright denial of a motion without sufficient rationale for its action is not an exercise of discretion, but it is an abuse of that discretion." In re City of Columbus Police Dep't, 265 Mont. 379, 383, 877 P.2d 470, 472 (1994).'

The State next argues that Peterson did not provide evidence that he did not engage in the criminal conduct for which he was convicted. This is somewhat of a paradox since a significant portion of the State's argument appears to be that Peterson offered evidence but that it was not reliable. The State's argument must also be evaluated in light of Peterson's continued protestations that he was, in fact, innocent but was entering an *Alford* plea because he felt the cards were stacked against him by the prosecution. Peterson, ¶10.

Consistent with *Marble* and the plain text of *MCA §46-21-102(2)*, the district court should also have evaluated Peterson's evidence in light of "the evidence as a whole. . . ." *Id.*

The new affidavits coupled with the evidence as a whole clearly demonstrate Peterson's claim of innocence. This is especially true given what the State withheld from the court during a pretrial motions hearing. *See*: "Findings and Recommendation of U.S. Magistrate Judge," Peterson v. Salmonsens, et. al, Cause No. 9:17-cv-00019-DLC-JCL, Dkt. 35 at 18-19 (D. Mont. 2019) (summarizing critical omissions by the State at the pretrial motions hearing) Attach. A.

The foundation of Peterson's claim is that he never would have entered his

Alford plea had the State provided all of the facts to the district court and had the evidence he presented in his amended petition for post-conviction relief been known to him. Simply as a matter of equity and fairness, and notwithstanding questions of finality, the State should not be able to benefit from *MCA §46-21-201(2)*'s higher standard of proof when its own wrongdoing, i.e., withholding facts from the district court, induced Peterson's *Alford* plea.

The prosecutor's material misrepresentations and omissions during the evidentiary hearing directly influenced the court's decision on the pretrial motions. That decision, in turn, resulted in Peterson throwing in his hand and reluctantly entering an *Alford* plea. Other than his personal knowledge of what did and did not happen during the incident that day, Peterson has nothing to support his defense. It was only later that other evidence arose that supported that defense. This newly discovered evidence, which was summarily dismissed by the district court without analysis or reason, supports what Peterson has long said: he is innocent of the offenses of conviction.

On this topic, neither the State nor the statute addresses situations in which newly discovered evidence may only affect some, but not all, convictions. It is impossible for this Court to evaluate any argument on this topic given summary dismissal of the newly discovered evidence claims raised in the Amended Petition. However, nothing in *MCA §46-21-102(2)* -- or in either *Beach II* or *Marble* --

suggests that a petitioner establish that his newly discovered evidence demonstrate that he did not engage in **all** of the criminal conduct for which he was convicted.

Here, it is reasonable to believe that the newly discovered evidence, especially the evidence from Dr. Keen, would demonstrate that the victim's injuries did not rise to the level that would constitute "aggravating factors" for the offense of "aggravated kidnapping," or "aggravated assault," etc.

Both the State and the district court dismissed the evidence of Dr. Keen because "Peterson's father testified during the sentencing hearing in 2009 that Peterson may not have caused all the victim's injuries, including the forehead injury, and the police photos were available for expert analysis." (State's Br. at 7). This Court should rebuff the State's attempt to suggest that newly discovered evidence of innocence can be undermined by lay testimony at a sentencing hearing after guilt has already been established.

Additionally, simply because police photos could be expertly analyzed does not mean that the science to analyze those photographs was available to Peterson. *See United States v. De Watson*, 792 F.3d 1174, 1181 (9th Cir. 2015) ("It would be anomalous to use the word 'discover,' as in 'newly discovered DNA evidence,' to apply to something possessed without the capability of knowing what it is.") Unfortunately for both Peterson and this Court, the district court's cursory analysis did not address the issue and Peterson was not allowed an evidentiary hearing to

explore the science behind Dr. Keen's scientific conclusions -- versus Peterson's father's lay and bias opinion.

Convicting an innocence person, especially one who has maintained his innocence throughout the entirety of his proceedings with an exception of entering an *Alford* plea, is contrary to the American system of justice. As noted in *Marble*, a district court has many arrows in its quiver when it comes to post-conviction petitions. Rather than pre-adjudicate evidence of innocence (or its absence) in a summary fashion without allowing a petitioner the opportunity to develop the reliability of that evidence, courts should err in favor of ensuring full development of possible innocence claims. This is especially true when a petitioner's ability to develop his claims is curtailed because he is incarcerated, and his conviction is the result of a very reluctant *Alford* plea, brought on by by the State's lies and omissions.

3. THE DISTRICT COURT DID ABUSE ITS DISCRETION BY FAILING TO EITHER CONSIDER THE NEW EVIDENCE OR TO HOLD A HEARING TO SETTLE FACTUAL DISPUTES SURROUNDING THE NEW EVIDENCE

This Court reviews denial of a petition for post-conviction relief to determine whether findings of fact were clearly erroneous and whether conclusions of law were correct. *Robinson v. State*, 2010 MT 108, ¶10, 356 Mont. 282, 232 P.3d 403. This, of course, presumes that the district court issued both findings of fact and conclusions of law in the first place. Neither are present in regards to the

court's summary denial of Peterson's amended petition.

The State argues that “neither Farmer’s affidavit nor Dr. Keen’s analysis is reliable.” (State’ Br. at 19). The State does not distinguish between the two distinct Farmer affidavits. Further, the State takes issue with Dr. Keen’s “analysis,” and posits that Dr. Keen’s conclusions are “speculations based on decade-old photographs.” (Id.) The district court rendered similar conclusions without the benefit of an evidentiary hearing or other factual development of Dr. Keen’s claims. Additionally, the district court made no attempt to distinguish between the two different Farmer affidavits that were submitted.

The district court abused its discretion when, without holding an evidentiary hearing or allowing Peterson to develop the factual basis for his claims through discovery. Instead, the district court simply deemed Peterson’s newly discovered evidence to be “speculative,” “untimely,” or “unreliable.” “To determine if the evidence is reliable, the reviewing court must analyze whether the new evidence is trustworthy by considering it both on its own merits and . . . in light of the pre-existing evidence in the record.” Beach II, ¶18 (overruled in part by *Marble*) (internal quotations omitted).

The district court discounted an affidavit by Bill Buzzell as unreliable because “they are hearsay statements of the victim’s parents, one of whom is deceased.” (State’s Br. at 20). Excluding consideration of newly discovered

evidence of innocence based on predeterminations of the admissibility of that evidence is an abuse of discretion and inconsistent with this Court's decision in *Marble*. This is especially true given that *MCA §46-21-102(2)* makes no qualification on the eventual admissibility of newly discovered evidence. The standard is hard enough for an incarcerated *pro se* petitioner to meet let alone adding a condition that the evidence's admissibility has to be pre-established before it can satisfy *MCA §46-21-102(2)*'s heightened requirements.

Finally, concluding evidence to be unreliable as hearsay based on the death of the declarant is wrong. Death renders a declarant unavailable under *Mont. R. Evid. 804(a)(4)* and the statement attributed to H.P.'s deceased father regarding her "alleged hearing defect," would arguably be "a statement of family history." *Mont. R. Evid. 804(b)(4)(A)*. Therefore, Buzzell's affidavit would be admissible because it satisfies an exception to the hearsay rule. Peterson, however, was unable to raise this argument and to show the district court that its interpretation of the law was incorrect because the district court erroneously denied him the opportunity to do so. The State makes the same argument in its brief, (State's Br. at 20), highlighting the evidentiary error which warrants reversal for an evidentiary hearing.

The State directs this Court's attention to *Guillen v. State*, 2018 MT 71, 12, 391 Mont. 131, 415 P.3d 1, for the proposition that "impeachment evidence does not show actual innocence and is not appropriate evidence to support

postconviction relief.” (State’s Br. at 24). That is not what paragraph 12 of *Guillen* stands for or states. Perhaps the State inadvertently cites *Guillen*. However, *Guillen* is relevant because, in affirming the denial of post-conviction relief, this Court found relevant that Guillen “never argued that he did not run over his brother with his van.” Guillen, ¶15. This is a stark contrast to Peterson who has also maintained his innocence. *Guillen* must serve to reemphasize Peterson’s own unique position of having entered an *Alford* plea. If it mattered in *Guillen* that the defendant never contested he committed the criminal act, it must matter in Peterson’s case that he never admitted that he committed the criminal act.

The State returns to the argument of “waiver by fact of entering an *Alford* plea”. (State’s Br. at 25). This argument was not raised before and was not relied upon by the district court, although the district court concluded Peterson waived his claims, the basis for that waiver was ostensibly because Peterson voluntarily sought dismissal of his appeal. Because the waiver-by-*Alford* argument does not form the basis for the district court’s denial, this Court should reject the State’s argument.

If the district court somehow concludes that by entering an *Alford* plea, Peterson waived his ability to assert an actual innocence claim, then the court abused its discretion, especially in denying Peterson the opportunity to rebut such an argument. This Court has never ruled that an *Alford* waives a defendant’s

ability to seek relief based on a claim of actual innocence. Any ruling by the district court to that effect was erroneous.

Given the disputed nature of Peterson's claims and the substance of his newly discovered evidence, the district court in summarily concluding that the evidence was inadmissible, unreliable, speculative, etc., without first allowing Peterson, a *pro se* incarcerated petitioner, the ability to more factually develop that evidence, erred. The post-conviction statutes clearly allow for discovery proceedings or an evidentiary hearing. The court's summary conclusions on the substance of that evidence without further factual or evidentiary exploration was an abuse of discretion.

CONCLUSION


The totality of the record before this Court demonstrates that Peterson was arm-twisted into entering his *Alford* plea. Part of that arm-twisting was the result adverse rulings from the district court which arose from the fact that the State intentionally withheld information that would have been material to the court's decision on the pretrial motions. Even then, Peterson was reluctant to enter his *Alford* plea. When reviewing his evidence of newly discovered evidence, it should matter that he never wavered in protesting his innocence. Had he entered a traditional guilty plea and admitted to the offenses only to later submit not-fully developed claims that he is innocent, the district court may have been reasonable in

denying his claims. However, more weight should be given to the evidence in this case in light of Peterson's *Alford* plea.

Even if the district court concluded the evidence was on the bubble, it had an obligation to evaluate it in light of the whole record. It certainly had an obligation to distinguish between two different affidavits, even if they were submitted by the same person.

In total, the district court erred in denying Peterson's petitions for post-conviction relief. At minimum, Peterson requests this Court reverse the district court's findings and remand the case for an evidentiary hearing.

Respectfully submitted this 14th day of April, 2021.



Bryce Peterson
Appellant

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be mailed to the following addresses:

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A handwritten signature in blue ink, reading "Gavin Peterson", is written over a horizontal line.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman font of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows 2013 is 4953 words, excluding front piece, tables, lists, footnotes, certificate of service, and certificate of compliance.



A handwritten signature in blue ink, reading "Gavin Peterson", is written over a horizontal line.