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Case Number: DA 23-0589

THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0589

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TIMOTHY ERIC RITESMAN,

Defendant and Appellant.

APPELLANT'S AMENDED ANDERS BRIEF

On Appeal from the Montana Nineteenth Judicial District Court
Missoula County, Honorable Ed McLean

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I. Issue Presented

Did the lower court err, in denying Petitioner relief as to his Post Conviction Petitions, and finding there was no Ineffective Assistance of Counsel at trial, and that there was no Viable Actual Innocence Claim?

II. Preface

After carefully examining the record on appeal, and researching the relevant law, Counsel has filed to withdraw as counsel, finding that after a thorough examination of the record and research of applicable legal authorities, both State and Federal, she has been unable to identify any issues of merit to appeal.

The appellant must have an opportunity to respond to an Anders brief, and then the Court must conduct a full examination of the case and decide whether or not the case is wholly frivolous. *Anders v. California,* 386 U.S. 738, 744 (1967). Such request must include a brief referring to anything in the court record that arguable could support the appeal. Id, at 744.

This Court has applied the *Anders* process outside the procedural process for direct appeals of criminal convictions. In *Pinner v. State,* DA

22-0739, an *Anders* Motion to withdraw was granted, in the similar context as herein, that is, a PCR appeal. *See also In re R.S.*,DA 22-0147, Order (applying the Anders procedure in an appeal of Title 53, Chapter 21 mental illness involuntary commitment).

III. Combined Statement of Facts and Procedure

A. Statement of Facts.

This case originated out of a series of altercations in Missoula, Montana, between Petitioner and one Amy Windemuller. Both were homeless persons, basically living on the streets and betwixt and between shelters and trap houses.

On June 30, 2015, Mr. Ritesman parked his bike near the river in Missoula and then encountered the victim, Ms. Windemuller, whom was alone. Jury Trial Transcript (JT Tr. pp.462-67.) She threw his backpack down an embankment by the river, and he retaliated by tossing her bicycle down the embankment, and knocking her off her bike Id, pp. 462-69.

They had had a brief, three week relationship and she had separated from him, allegedly due to fear. J.T. TR 292-98. During this encounter, she claimed that he also began to choke her, and threw butane in her eyes. Id, p. 298. She reported all this to a Montana Highway patrolman, Id and Missoula police stepped in and investigated.

Amy posted on Facebook, both before and after the incident. App. A, DC#55, Petitioner's Memorandum in support of PC Relief, exhibit N-FB post. One of those posts showed facial injuries dating from June 15, 2015.

Petitioner denied assaulting her. Id. 351. Investigating officers observed her with facial injuries, redness on the neck, and a hoarse voice. Id, pp. 272-282. A detective and a domestic abuse expert testified about how domestic abuse victims provide conflicting accounts of an attack, due to the cycle of violence and other related factors. Id, 291. Ms. Windemuller could not provide a coherent account of the alleged attack. Id, p. 173-181.

B. Procedural Statement.

1. Underlying Criminal Case and Direct Appeal.

Mr. Ritesman was charged with felony aggravated assault, pursuant to Sec. 45- 5-502, M.C.A., and for misdemeanor violation of a no contact order, pursuant to Sec. 45- 5-209 (8), M.C.A. App. B, DC# 1 & 3. A two day jury trial was held, and Mr. Ritesman testified in his own defense. During the jury trial, on November 24, 2015, Petitioner voiced complaints about his counsel, and the court conducted an inquiry, and Mr. Ritesman stated he was satisfied with the representation and allowed the jury trial to proceed. App. C, DC# 108 (order denying relief) ; DC# 59, Exh 2- Jury Trial Transcript 11/24/15. The State called seven witnesses, including the victim, and a domestic violence and trauma expert, Catherine Olway. Five police officers and detectives testified. App. A, DC# 59- State's Response to 1st PC Petition, p. 2. Petitioner was convicted of both crimes, and sentenced on the felony count to a 15 year prison sentence, with 7 years suspended. App. B, DC# 85-Judgment.

Mr. Ritesman appealed his conviction to the Montana Supreme Court on July 15, 2016, and on March 20, 2018, the Court upheld the aggravated assault conviction, but reversed on the no contact violation,

finding the no contact order was insufficient to meet the statutory criteria. *State v. Ritesman,* 2018 MT 55,¶ 18.

2. Post Conviction Case.

Mr. Ritesman commenced a post conviction case, by filing a pro se petition, with supporting memorandum and affidavit, on June 13, 2018. App. A, DC### 1, 2 & 3. Thereafter a lengthy series of filings ensued, with Mr. Ritesman being appointed no less than four counsel to represent him. Id, DC# 4, 44,69,& 77. He also filed several pro se pleadings, after being assigned legal counsel. Id, DC#### 12,53,67, & 76.

The gravamen of Mr. Ritesman' s amended post conviction petition, filed by attorney Tobas Cook on January 12, 2022, consisted of two basic claims:

First, that his trial counsel was ineffective for failing to properly investigate claims that the victim had made prior false domestic violence assault complaints against other men, in the same time frame, that defense counsel misunderstood the evidentiary code regarding admission of those false complaints, thinking their admission would

open the door to attacks on Petitioner's character and his prior crimes, that he failed to obtain the victim's mental health records, that he failed to admit the victim's Face book posts to impeach her on the source/timing of her injuries, and that he failed to move to dismiss or refute the improper no contact charge, emanating from a pretrial release order. App. A, DC# 55.(unpaginated).

The second ground was a claim of newly discovered evidence, pursuant to Sec. 46-21-102 2), M.C.A., Id. Par. II. Mr. Ritesman pled this alternatively, stating that if the lower court found the witnesses previously identified could not have been located at the time of trial, the claim of actual innocence should be considered. A hand written witness list was attached to this Amended petition, consisting of 17 names and a schematic diagram, consisting of prior includes and perpetrators the victim had identified. Id, Exh. A. Also attached were interview and affidavits from Nicholas Hopfner (Exh B), Tim Lamewoman Affidavit and Transcript of interview (Exh C & D), Christenson Affidavit, (Exh E), John Skinner 2016 & 2022 interview transcripts (Exh. F & G), Robrt Erwin Transcript (Exh H), and two other documents.

Also attached as Exhibit L, was the affidavit of his former defense counsel, Mr. Biddulph, that was previously filed when Petitioner filed a motion for a new trial, and which responded to the "IAC" claims apparently made in that motion. App. B, DC# 43, 44.10. The lower court had entered a Gilham order in that case after a motion for new trial on the grounds of IAC of trial counsel was filed; Id, DC# 46, and defense counsel provided his affidavit, outlining his decisions when he represented petitioner at the trial level, and responding in detail to each allegation. Id, DC # 54- Affidavit in Response to motion for new trial.

In his Affidavit, Attorney Biddulph stated, that he used an investigator, they tried to locate the witnesses identified, but as they were transients, could not find them in time for the trial date, and Petitioner decided to proceed to trial, in lieu of waiting to locate those witnesses. Id. Petitioner thought that the victim would not show for his trial, as another misdemeanor charge against him in Missoula Municipal Court was dismissed, a week before his felony trial, as she failed to appear. Id.

Next, defense counsel stated he employed a strategy not to attack the victim's credibility, and mental health issues, and focus on her inconsistent statements, thinking a harsh attack would garner sympathy for her. Id. Defense counsel also stated if he attacked her character, that would open the door for Petitioner's character to be attacked and his prior convictions entered into evidence. Id.

The State filed its Response on April 4, 2022; Id, DC# 59; and attached as exhibits the jury trial transcripts, and court records showing prior assault conviction for both Mr.Ritesman and for Tim Lamewoman, for assaulting the victim. The State argued that as trial counsel chose a wise strategy with regard to how to handle the victim's testimony at trial, and that as Mr.Ritesman agreed not to continue the jury trial, in order for the investigator to attempt to locate and subpoena his witnesses, under the two aprt test of *Strickland,* no IAC could be proven. Id, pp. 9-12.

Finally, the State argued against the innocence claim, pursuant to the 4 essential elements of such a claim under *State v. Marble,* 2015 MT 242 and the fifth from *State v. Clark,* 2005 MT 330.Id, pp. 16-17. It contended that as Mr. Ritesman could not fulfill the essential four

factors, and the fifth- that a new trial has a reasonable possibility of a different outcome, that claim fails. Id. It also argued that the evidence- the various witnesses' testimonies and affidavits- were not newly discovered .Additionally, it pointed out that Mr. Ritesman declined the offer to continue his trial, in order to locate his witnesses and bring them to court for his jury trial. Id, pp. 20-21. Likewise, the Facebook posts existed before trial, so those were not newly discovered. Id.

On February 22, 2023, Petitioner was assigned his fourth legal counsel and that counsel, on March 27, 2023, filed a Supplemental Briefing in support of the PC Petition. App. A, DC# 80.Counsel added a possible *Brady* violation, alleging that a police video, showing investigating officers discussing that Petitioner, due to a hand injury, could not make a fist, and thus could not punch the victim, when he assaulted her. Id, p. 2. New counsel also reviewed the evidentiary issues of admission of the witnesses' testimony whom could show the victim was a "serial false reporter," contending trial counsel did not understand the applicable rule of evidence, but conflated it with the Federal rule of evidence, FRE 404 (b), which does allow the

prosecution to rebut character evidence of a victim, with the same type of evidence for a defendant. Id. pp. 4-7.

Finally, it was also alleged that the State knew the victim had been cited for the misdemeanor crime of making a false police report and convicted, and that such would be important *Brady* evidence the State was required to disclose, without a specific discovery request. Id.

The State filed its Response on April 14, 2023; Id. DC# 85, and argued that all the videos were provided to the first defense counsel, which included the officers discussing Mr. Ritesman' s hand issue. Id, pp. 2-5. Next as to the false reporting conviction for the victim, it noted that occurred after Mr.Ritesman' s trial, and thus, was not available for disclosure in his case. Id, pp. 6-10.

The gist of the witnesses interviews and affidavits was that the victim had lodged false accusations of assault against some of those persons, that Petitioner was with Nicholas Hopfer during one alleged assault of the victim, the victim injured herself, she falsely accused others, and she had well- known mental health issues, was known as crazy Amy, and, thus, was not credible. Id.

On April 25, 2023, the State filed a motion to quash the subpoena duces tecum, obtained by the Petitioner, for confidential criminal justice files from various Missoula law enforcement investigating agencies, for prior cases and calls for service, from 2011 to January 1, 2016, in which the victim was the complainant, arguing it invaded the victim's privacy rights, the information was available for public records, and some documents had already been provided. App. A, DC# 90. Petitioner filed his response on May 3, 2023, contending the request was necessary to ensure complete documentation regarding possible false reports the victim had made to law agencies was received. Id, DC# 94, and the State filed their reply on May 9, 2023. Id, DC# 95.

On May 3, 2023, during the scheduling conference, the lower court heard arguments from the parties on the issue of the motion to quash. Id, DC# 93.10, minute entry. On May 26, 2023, the lower court issued its order granting the motion to quash, finding that the request sought irrelevant information, would only cause further delay in the already lengthy case proceedings, and implicated the privacy rights of the victim. Id, DC# 98.

3. Post Conviction Evidentiary Hearing- August 2, 2023.

Mr.Ritesman testified at the hearing, as did his former legal counsel, Joseph Howard. Attorney Howard testified that the video of the officers discussing his inability to make a fist, was *Brady* evidence, and thus, exculpatory evidence which the State should have disclosed, but admitted on cross examination, that he didn't know if the victim had claimed she was punched by petitioner's fist. P.C. Hearing Transcript, pp. 8-17.

Nicolas Hopfner testified that he and Mr. Ritesman were at a casino in Missoula, and returned to the house they stayed at, and Amy, the victim said that Tim had hit her. Id, pp. 28-29. He also testified that on another occasion, he saw her at a bowling alley, and she claimed Tim gave her the black eyes she had then, but he knew Tim was in jail and thus, could not have caused her injuries. Id, p. 29. He testified on cross, the casino conversation was in the early spring of 2015.Id, p. 35.

Attorney Koan Mercer testified that he believed trial counsel was mistaken about the applicability of MRE 404 (b) as to victim's character trait, to open the door to admission of the defendant's same character trait, which was what FRE 404 (b), allowed. He opined that

victim with history of making false accusations, that such is persuasive evidence that should have been developed, and would be admissible under MRE 608. Id, pp. 52-53. He admitted under questioning by the lower court, that admission of the various witnesses testimonies about the victim, could be problematic as if they strayed into good character evidence about Mr. Ritesman, that would open the door to damaging evidence for the defense. Id.

Tom Sly, the former public defender investigator testified that he provide the Facebook posts made by the victim to trial counsel, before the jury trial. Id, p. 71. He also tried to locate witnesses listed by Petitioner, but could not find all of them, but was able to locate some and conduct interviews. Id, pp. 68-70.

Mr. Ritesman then gave extensive testimony, mirroring his affidavit testimony, and reiterating that the witnesses of false reporting he provided, would have caused a different outcome in his case, had they been allowed to testify. Id, pp. 88-140. He also testified that he only took a plea in the prior misdemeanor assault case, in which he was accused of assaulting the victim, as his lawyer told him to do so, to obtain necessary medical treatment. Id, pp. 97-101. He testified about

the victim's testimony that he started a fire, and how she actually was the person whom started the residential fire, as he had some personal knowledge of that. Id. pp. 90-95.On cross examination, Mr. Ritesman admitted he elected to not continue his jury trial. Id, p. 157.

On August 14, 2023, the lower court issued its decision and order, denying relief. App. C, DC# 108. The Court first noted that there existed record – based facts, to dispute the IAC claim, in that it was discussed during the jury trial and in the context of the affidavit trial counsel submitted in response to the motion for new trial. Id, p. 20.The lower court proceed to find that trial counsel was not ineffective, that he developed and deployed a sound strategy of focusing on inconsistencies of the victim's story, as opposed to launching an attack on her character. Id, pp. 21-27.It found that calling the potential defense witnesses whom could attack her character, was risky given that they could inadvertently introduce other crimes evidence against Petitioner. Id, pp. 25-26. It also noted that none of these proposed witnesses testified at the evidentiary hearing but for Mr. Hopfner, and the law imposes the burden of proving a PCR case on a PCR Petitioner. Id, p. 18.

The lower court additionally found the possible *Brady* evidence, consisting of the video in which officers were discussing the "make a fist" issue, was irrelevant as the victim didn't say she was punched with a fist, and Mr. Ritesman had the physical ability to ride his bike that day, which would require a dexterous hand. Id, p.30.

Finally, the lower court denied the innocence claim finding that Petitioner had failed to meet the requisite legal criteria, all the proffered evidence was impeachment evidence, and the salient evidence as only "newly obtained," not newly discovered, pp.32-33.

From this order, Mr. Ritesman now appeals.

IV. SUMMARY OF THE ARGUMENT

The lower court may have erred in denying the IAC claim of Mr. Ritesman's trial counsel, in that he did wrongfully rely on a misinterpretation of MRE 404 (b), which does allow evidence of a victim's pertinent character trait, here the alleged trait of making serial, false reports. However, a contrary argument can be made that Mr. Ritesman did not present sufficient evidence testimony from any of those witnesses at his PCR evidentiary hearing, and that the detailed

affidavit of his former trial counsel, as well as the prior record at the jury trial, inquiring into IAC claims then, may serve to refute the IAC claims in this case.

Argument can be proffered that the order quashing the subpoena duces tecum for investigative reports of complaints made by the victim over a five year period was improper and denied Petitioner his right to pursue discovery. To the contrary, it can also be contended that the lower court did not abuse its discretion in quashing the extensive subpoena duces tecum , issued by Petitioner in this case, as it would substantially delay an already lengthy case. Additionally, most of what was sought was irrelevant and would impinge on the victim's privacy rights.

The lower court may have erred in denying the innocence claim, for although the required legal criteria for such a claim, which are demanding, were not fulfilled in this case, the body of evidence, and multiple reports of the alleged victim's prior false reports pointed to a strong claim of Mr. Ritesman innocence. To the contrary, most of the proffered evidence was impeachment evidence, and the other evidence,

could be viewed as not meeting the criteria for newly discovered evidence.

V. Argument

A. Standard of review.

A district court's denial of postconviction relief to determine whether the court's findings of fact is reviewed pursuant to a clearly erroneous standard and whether the conclusions of law are correct. *State v. Turner,* 2000 MT 270, ¶ 47, 302 Mont. 69, ¶ 47, 12 P.3d 934.

Any claim of ineffective assistance of counsel concerns both issues of law and fact, reviewed under a *de novo* standard. *Turner,* supra at ¶ 47 (citing *Strickland v. Washington* (1984), 466 U.S. 668, 698, 104 S.Ct. 2052, 2070, 80 L.Ed.2d 674. 26.

Additionally, the two-prong test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), applies for ineffective assistance of counsel claims. *Dawson v. State,* 2000 MT 219, ¶ 20, 301 Mont. 135, 10 P.3d 49. This requires that the defendant show: (1)

counsel's performance was deficient; and (2) the deficient performance prejudiced the defendant. *Dawson,* ¶ 20.

B. The Lower Court Correctly Found Petitioner had Not Proven IAC, on the part of his trial counsel.

Here, the burden to prove up his case, rested on Mr. Ritesman and his legal counsel.

A petitioner in post-conviction relief proceedings has the burden to "show by a preponderance of evidence that the facts justify relief." *State v. Peck,* 263 Mont. 1, 3, 865 P.2d 304, 305 (1993); *State v. Godfrey*, 2009 MT 60, ¶ 13, 349 Mont. 335, 338, 203 P.3d 834, 836.

Mr. Ritesman did not call his former defense counsel as a witness at the PCR hearing. The lower court relied on the previous, detailed, affidavit, submitted by former defense counsel, and also an inquiry made on the record on November 24, 2015, during Petitioner's jury trial, regarding the investigation done by his counsel, to find that the strategy outlined in that affidavit, and unrefuted by petitioner, was sound. App. C, DC# 108. While an argument could have been made that the affidavit testimony was insufficient, counsel did not so argue, thus any claim of error is waived by the failure to simultaneously object.

Even given that issue is perhaps meritorious, the mid trial testimony by both former trial counsel and Mr.Ritesman- whom at that time reaffirmed the work done by his counsel as sufficient, in the context of his IAC complaint at that juncture of the case- may have been sufficient to negate the claim of IAC. Or, to the contrary was the appellant's testimony at his post conviction hearing, that he received substandard legal advice on entering a guilty plea from former legal counsel.

The key inquiry under the first prong of *Strickland* is "whether counsel acted within the range of competence demanded of attorneys in criminal cases." *State v. Niederklopfer,* 2000 MT 187, ¶ 19, 300 Mont. 397, ¶ 19, 6 P.3d 448, ¶ 19. Counsel's performance is strongly presumed to be within the wide range of reasonable professional assistance. *Morgan,* ¶ 10. Generally, defense counsel's "trial tactics and strategic decisions cannot be the basis upon which to find ineffective assistance of counsel." *Niederklopfer,* ¶ 19.The lower court did not err, in so ruling, in this case.

The second prong of the *Strickland* test requires the defendant "demonstrate the existence of a reasonable probability that, but for counsel's unprofessional conduct, the result of the proceedings would

have been different." *State v. Jefferson,* 2003 MT 90, ¶ 53, 315 Mont. 146, 69 P.3d 641. The prejudice inquiry focuses on whether counsel's deficient performance rendered the proceeding fundamentally unfair. *Jefferson,* ¶ 53.

Additionally, Petitioner attached affidavits of potential witnesses to the victim being a serial false accuser, and to having injured herself, and he thereby perfected those claims. However, he not formally move to admit their affidavit testimony as substantive evidence at his PCR hearing.PCR Hrg Tr.

The governing statute, does allow a court to admit affidavit testimony. See, Mont. Code Ann. § 46-21-201 (5):

> "(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing."

An important issue in this case, is whether or not the lower court was justified in its detailed ruling that the five witness accounts, were unconvincing to prove the allegations on failure to investigate and to call them as witnesses at the jury trial. App. C, DC# 108 p. 23. The lower court may well have abused its discretion in that aspect of the

case, as the witnesses' accounts of prior false reports tended to corroborate each other in certain key aspects, to wit, that A.W. suffered from long term mental health issues which affected her ability to recall key events.

The lower court may well have abused its discretion, in the discovery process for a PCR case, by ordering the extensive subpoena duces tecum to be quashed, sought by Petitioner's counsel for five years of the victim's complaints to various Missoula law enforcement agencies. Certainly, that type of targeted discovery, is no mere " fishing expedition ", and would be critical to fully investigate the victim's background and history of allegedly making false reports to law officers.

An abuse of discretion occurs when "abuses its discretion if it acts arbitrarily or unreasonably, and a substantial injustice results." *City of Kalispell v. Miller,* 2010 MT 62, ¶ 9, 355 Mont. 379, 230 P.3d 792; *State v. Sayler,* 2016 MT 226, ¶ 11, 384 Mont. 497, 500, 380 P.3d 743, 745. Arguably, when the lower court denied the subpoena duces tecum, it acted unreasonably, as additional delay in the case, only to accommodate processing the subpoena would not affect the state's interests, but, conversely, did work a substantial injustice on appellant.

However, the decision to allow discovery in a PCR case, does generally rests within the lower court's discretion. *Marble v. State,* 2015 MT 242, ¶ 37, 380 Mont. 366, 378, 355 P.3d 742, 749, overruled by *Henderson v. State,* 2024 MT 253, ¶ 37, 558 P.3d 749 (on other grounds).

C. The Actual Innocence /Newly discovered Evidence Claim.

The governing statute for actual innocence claims states :

"(2) 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, may be raised in a petition filed within 1 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later."

Mont. Code Ann. § 46-21-102 (2).

Very recently this Court decide the following case, which clarified the standard of proof required for both genres of claims:

"¶53 For comparative illustration, Henderson's freestanding newly discovered evidence of procedural innocence claim would still fail even if it could be liberally construed as a post-verdict motion for new trial in the interests of justice under § 46-16-702(1), MCA, and *State v.*

Morse, 2015 MT 51, ¶¶ 20-30, 378 Mont. 249, 343 P.3d 1196 (discretionary grant of new trial in interests of justice pursuant to § 46-16-702(1), MCA, based on post-verdict assertion of new evidence not precluded by 30-day filing deadline specified by § 46-16-702(2), MCA).[52] A district court may grant a new trial post-verdict in the interests of justice under § 46-16-702(1), MCA, based on new evidence only if the evidence:

(1) was discovered post-verdict or judgment of guilt;

(2) would not have been earlier discovered upon reasonable diligence;

(3) is "material to" the matters at issue at trial;

(4) is "neither cumulative or merely impeaching"; and

(5) is sufficient to establish a "reasonable probability" that a new trial would "result[ ] in a different outcome."

Morse, ¶ 31 (citing *Clark*, ¶ 34 (recognizing five-part *Berry* test for evaluation of new evidence based post-verdict motions for new trial under § 46-16-702(1), MCA)). ....

Henderson v. State, 2024 MT 253, ¶ 53, 558 P.3d 749, 782–83

And this Court further held , to clarify the body of prior case law :

"Based on the foregoing analysis, we hold that § 46-21-102(2), MCA (1997), narrowly applies, in conjunction with § 46-21-201(6), MCA, *only to* postconviction claims for exonerative release based on newly discovered evidence of actual substantive innocence of guilt, i.e., claims "allege[ing] ... 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" at issue. (Emphasis added.) *We conversely hold, in turn, that § 46-21-102(2), MCA (1997), does not apply as a threshold matter of law to freestanding non-exonerative MPCHA claims for new trial based on alleged newly discovered evidence of reasonable doubt based procedural innocence.*[44] We hold further that the

> evidentiary standard of proof for freestanding substantive innocence claims under § 46-21-102(2), MCA (1997), is reliable "newly discovered evidence that, if proved and viewed in the light of the evidence as whole[,] would" be sufficient to *affirmatively and unquestionably* "establish that the petitioner did not engage in the criminal conduct" at issue." (emphasis supplied).
>
> *Henderson* , supra at ¶ 50, 558 P.3d 749, 780.

The lower court ruled, under the applicable case law at the time of its decision, that the majority of the alleged newly discovered evidence was impeaching, and furthermore, that it was only "newly obtained," and was available to the defense before and during trial. That ruling may have been erroneous, for the multiple accounts of prior false reports by the victim, A.W., corroborated each other, and taken as an integral body of potential evidence, could be viewed as affirmatively establishing Mr. Ritesman's innocence.

VI. Conclusion.

For the reasons stated herein, this matter is submitted pursuant to the *Anders* doctrine, and suitable relief should be ordered.

DATED this 24th day of March, 2025.

By: /s/ Penelope S. Strong
Penelope S. Strong
Attorney for Petitioner and Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionally spaced font of Century Schoolbook, 14 point; is double spaced; Microsoft Word 2010, and consists of 4745 words, excluding the table of contents, table of authorities, certificates of service and of compliance.

DATED this 24th day of March, 2025.

By: /s/ Penelope S. Strong
Penelope S. Strong
Attorney for Petitioner and Appellant

CERTIFICATE OF SERVICE

I, hereby certify that I have filed a true and accurate copy of the foregoing with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing upon each attorney of record, and each party not represented by attorney in the above-referenced District Court action as follows:

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I, Penelope S. Strong, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 03-24-2025:

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