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CASE NO. A05-1707

State of Minnesota
In Supreme Court

RICHARD BRIAN BRUESTLE,

Petitioner/Appellant,

vs.

STATE OF MINNESOTA,

Respondent.

PETITIONER/APPELLANT'S BRIEF AND APPENDIX

MICHAEL A. HATCH, ESQ.
Minnesota Attorney General
Criminal Division
445 Minnesota Street
Suite 1400
Saint Paul, Minnesota 55101
(651) 296-7575

SUSAN GAERTNER, ESQ.
Ramsey County Attorney
Attorney Registration No. 123882
R.C.G.C. West, Suite 315
50 West Kellogg Boulevard
Saint Paul, Minnesota 55102
(651) 266-3222

Attorneys for Respondent

KYLE D. WHITE, ESQ.
Attorney Registration No. 22599X
386 North Wabasha Street
Suite 1450
Saint Paul, Minnesota 55102
(651) 227-8751

Attorney for Petitioner/Appellant

2005-EXECUTEAM / LAWYER SERVICES DIV , 2573 No. Hamline Ave , St Paul, MN 55113 · 651-633-1443 · 800-747-8793

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STATEMENT OF THE ISSUES

I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN SUMMARILY DENYING RELIEF WITHOUT AN EVIDENTIARY HEARING?

The District Court denied Petitioner's requested postconviction relief under Minn. Stat. §590.01, et seq. In opposite to this decision, appellant submits the following authority and cases:

Rompilla v. Beard, 125 S.Ct. 2456 (2005)

Burt v. State, 256 N.W.2d 633 (Minn. 1977)

STATEMENT OF THE CASE

On March 5, 2003, the appellant, Richard Brian Bruestle, pled guilty to charges of first degree murder. Bruestle was represented by an attorney from the Ramsey County Public Defender's office. The plea was accepted by the Honorable Steven D. Wheeler of the Ramsey County District Court, who imposed a life sentence at that time.

On January 22, 2004, Mr. Bruestle, represented by new counsel, petitioned the Ramsey County District Court, Judge Wheeler presiding, for postconviction relief pursuant to Minn. Stat. §590.01 (2004) et seq. The petition alleged that Bruestle's plea was involuntary because he had received ineffective assistance of counsel in 2003, that the public defender had ignored indications that Bruestle had serious mental health problems, and that the public defender had been instructed to minimize investigation in to these problems due to budget considerations; and further that Bruestle's documented mental health problems and mental retardation rendered his plea neither knowing nor intelligent. Bruestle sought to withdraw his plea, or to be re-sentenced.

Having raised issues related to mental health, disposition of the petition was stayed pending the outcome of Rule 20 mental status exams being pursued in Sherburne County following subsequent unrelated charges.

On June 29, 2005, Judge Wheeler summarily denied the petition for postconviction relief without having granted the evidentiary hearing contemplated by Minn. Stat. §590.04 (2004). (See App. pp. 1-8).

STATEMENT OF THE FACTS

Following his release from a psychiatric prison in Colorado in July, 2002, appellant Richard Brian Bruestle applied for Supplemental Security Income (SSI), alleging both physical and mental health disabilities. On October 29, 2002, Bruestle was evaluated by psychologist Robert C. Barron of Edina, Minnesota ("Barron" report). Dr. Barron concluded that Bruestle was mildly mentally retarded with a full-scale IQ of 69, mentally ill (bipolar disorder, personality disorder with antisocial and paranoid features), and incapable of competitive work (See App. pp. 9-13). Dr. Barron noted that although Bruestle had been prescribed medications while in prison, he had stopped taking those medications upon release (See App. p. 11). The Social Security Administration received Dr. Barron's report on November 7, 2002 and determined Bruestle "not capable" and eligible for disability benefits. (See App. p. 9).

On December 7, 2002, after a day of acrimony, Bruestle attacked and killed his aunt, L[redacted] M[redacted], eventually inflicting thirty-nine stab wounds and shooting her five times (Gd. Jury Tr. at 86). Bruestle had been living with his aunt, reportedly drank frequently with her (See App. p. 20), and had a sexual

relationship with her (See App. p. 18). A significant subject of dispute between them that day was supposedly the taste of chili she had prepared (Gd. Jury Tr. at 61).

When the police arrived, they found Bruestle in the street, raving and carrying a brown liquor bottle (Gd. Jury Tr. at 30, 42). Referring to having recently been released from prison, he begged the police to shoot him (Gd. Jury Tr. at 26, 28), and then took out a gun and held it to his own head before surrendering (Gd. Jury Tr. at 64). In the police car, he repeatedly referred to his aunt as a "demon" or "devil" (Gd. Jury Tr. at 51-52).

At the police station, St. Paul Police Sergeant Kempe reported that Bruestle "was pretending to be mentally ill" (Gd. Jury Tr. at 57-58). Among other things, Bruestle revealed that "he did not work, but contributed some of his welfare money" to his aunt. In an interview later that day, Bruestle's mother, Linda Funari, stated that she thought Bruestle had "told her he got counseling of some sort while in prison" and that "he told her about some sort of medication he had been getting while in prison and was now trying to get sent to him at L[redacted]'s". She had little additional information or insight into this situation.

Also on December 8, 2002, a search warrant was signed by the Honorable Kathleen Gearin of Ramsey County District Court, authorizing the seizure of, among other things, "Medical and/or mental health papers in the name Richard

Brian Bruestle". The home Bruestle shared with Ms. M[redacted] was searched at 4:00 a.m., and included in the materials police seized was "misc[ellaneous] paperwork" (See App. p. 23). In a February 12, 2004, affidavit, Pat Robinson, private investigator, detailed that he had reviewed the seized material and that included in the paperwork seized was "a report from a medical doctor providing relevant information to the social security disability specialist. (See App. p. 29). Further, this document describes the claimant, Richard Brian Bruestle's chief complaint as mental health problems and confirms in that report that the claimant has a 'history of mental health issues.'" (Id.).

After his arrival at the Ramsey County Adult Detention Center (ADC), among the messages Bruestle communicated to jail authorities via "Inmate Request Form" is one (undated) that reads as follows:

> Because of my unstable mental condition and bizarre violent offense which I believe is connected to my recent discontinued use of psychiatrist ordered medications, I would like to request a transfer to medical wing until more mentally & emotionally stable my unpredictability even scares me thank you confused. (See App. p. 30).

Bruestle was evaluated by medical and court personnel at the Ramsey County detention facility on December 10, three days after the killing. A legal-intake form notes that he had a fifth-grade education and "psych" problems. The form also states: "Bipolar, paranoia - meds now - trilofon - artane - mental heal[th] San Carlos Correctional Facility CCS." (See App. p. 31-32). A nursing staff

memo from that date, timed 00:21 a.m., states that Bruestle "mentioned that he is Bi-polar and Schizo. He also stated that the last time he took medication was about two months ago." (See App. p. 33).

A psychiatric evaluation note from the same date indicated that he "applied for SSI for [lower back pain] & Mental Disability 'Bipolar, Schizoaffective, Borderline P[ersonality] D[isorder], Paranoid features.' Last psych in Colorado prison Dr. Williams 4-5 mo[nths] ago. Given Trilafon, Seroquel, Artane & Lithium ... Took self off meds in prison ... ." (See App. p. 34). The report continues, indicating that Bruestle had received mental health treatment since childhood and had "several mental health unit admits in prison," and containing a surprising inventory of previously-prescribed medications (Id.). According to the report, Bruestle consumed "alcohol near[ly] daily [before] arrest" (Id.). He was prescribed both Trilafon and Artane. (See App. p. 35).

Within days, Bruestle had secured legal representation through the Ramsey County Public Defender's Office. On December 18, 2002, the assigned public defender moved the Court (the Honorable George Stephenson, presiding) for a Rule 20 order for a mental examination to determine Bruestle's competence to proceed and mental illness or deficiency at the time of the killing. (See App. p. 36). Granting the order, Judge Stephenson directed that the report to be obtained shall also contain "a diagnosis of the defendant's mental condition at the time of

the commission of the offense [and] an opinion as to whether, because of mental illness or deficiency, the defendant at the time of the commission of the offense charged was laboring under such a defect of reason as to not know the nature of the act constituting the offense with which defendant is charged or that it was wrong." (See App. pp. 36-38).

After the order had been granted, the public defender completed and submitted a "Request for Expenditure Approval" for an expert psychologist, Owen Nelson, L.P., at a requested cost of $2,000.00. The public defender stated that "we need an independent Rule 25 [sic] on this Murder 2 w/intent." (See App. p. 40). At 11:00 a.m. that day, The public defender received the following email message from the chief public defender, entitled "Bruestle psych":

> We will be having problems with our expert budget soon. This is the type of case that needs experts but we need your cooperation to keep expenses down. If Owen Nelson tells you (and you need to ask) at an early point that he cannot help you, cancel the remainder of his work. We do not need another report that echoes the courts [sic]. (See App. p. 41).

On December 20, 2002, just two days after Judge Stephenson ordered the Rule 20 evaluation, information on the San Carlos Correctional Facility, referred to in the medical records ten days previously, was printed from the Internet and provided to the public defender. (See App. p. 42). The printout, on which someone wrote, "According to your [defendant] this is where he was incarcerated," provided the following description of this facility:

> It is the mission of [San Carlos Correctional Facility] to manage both male and female serio [text interrupted] mentally ill and providing intervention and treatment in a professional, secure, safe and humane correctional environment [text interrupted] SCCF is a 250-bed close security facility on the grounds of the Mental Health Institute in Pueblo, opened in July, 1995, housing chronically mentally ill inmates. There are 223 line staff. (Id.).

In a February 12, 2004, affidavit, the undersigned attorney relayed the substance of a conversation he had had with the purported expert witness Owen Nelson (See App. pp. 43-44). According to the affidavit, Nelson indicated he had met with Bruestle *one* time in December, 2002, and had no knowledge of Bruestle's examination by Dr. Barron regarding his SSI claim (Id.). Presumably, Nelson's one visit with Bruestle would have had to occur between December 18 and December 31, 2002. Nelson never produced a report of his conclusions regarding Bruestle. (Id.).

On December 30, 2002, The public defender wrote Assistant County Attorney Charles Balck, indicating that Mr. Bruestle "is interested in reaching a plea bargain on his case. He would like to plead guilty as charged [second degree intentional murder] and work out some agreement on time, if possible. In the alternative, I believe he would be willing to plea as charged with no agreement." Further, the public defender wrote:

> Mr. Bruestle was referred for an evaluation under Minn. R. Cr. P 20.01 and 20.02. I am confident that he is competent at this time. The time he has spent in the ADC under the care of a nurse seems to have helped him stabilize. Mr. Bruestle would be willing to waive any further examination under Rule 20.02. (See App. p. 45).

Despite indicating his client's willingness to waive the Rule 20 examination, on January 10, 2003, the public defender wrote Judge Stephenson seeking language to clarify the December 18th order for that very examination, stating that "the folks in St. Peter believe that they will be able to obtain the information they require for their evaluation." (See App. p. 46).

On January 13, the public defender received a letter from Clayton Robinson, Assistant Director of the County's Prosecution Division, apologizing for the delay in responding to the public defender's letter regarding a possible plea bargain. Robinson told the public defender that he had communicated the plea proposal to County Attorney Susan Gaertner for her consideration, "and I will give you her answer (or any counter-offer) as soon as I receive it." (See App. p. 47).

On January 30, the parties were once again before Judge Stephenson. During this hearing, the public defender referred to the December 18th proceeding at which the Rule 20 examination was ordered. He went on to say:

> In the subsequent six or seven weeks nothing has happened, and Mr. Bruestle has since stabilized while he's been in the Ramsey County Adult Detention Center. I think he's seeing a psychologist there and getting some medications. So at this time I don't – I don't see any need to have a Rule 20.01 and 20.02 evaluation, and make a motion to withdraw those requests here this afternoon .... (Tr., January 30, Hrg. at 2).

There is no indication that there was further correspondence between the defense attorney and the County regarding the plea proposals offered on December 30th or about any other aspects of the case. However, on February 26, 2003, a

grand jury convened in the presence of, among others, Assistant County Attorney Charles Balck, to whom the public defender had originally communicated the plea proposals, issued a two-count indictment of premeditated first degree murder.

Precisely one week later, on March 5, 2003, Bruestle pled guilty to first degree (premeditated) murder. His plea petition indicates that he had "been a patient in a mental hospital" and had "talked with or been treated by a psychiatrist or other person for a nervous or mental condition." (See App. p. 48). During the hearing, the County moved to merge all pending charges into a single file containing the indictment, to which the defense attorney did not object (Tr., March 5, Hrg. at 3). The public defender told the Court, the Honorable Steven Wheeler presiding, that Bruestle waived his right to a jury trial and wished to plead guilty to first degree (premeditated) murder (Id. at 4).

During the plea colloquy, the defense attorney examined Bruestle, including the following:

> Q: Richard, you're – there are some defenses you'd be waiving by entering this plea here as well. You told me you were drinking that day, and you're waiving an intoxication defense; do you understand that?
>
> A: Right, yes.
>
> Q: And the other defense we talked about is a mental illness defense?
>
> A: I understand. (Id. at 9)

Bruestle was also questioned by Judge Wheeler, including the following:

Q: All right. Have you had enough time to talk with your lawyer? He said he talked with you yesterday, but I assume you talked with him before yesterday?

A: Sure, sure, a lot of times, yeah.

Q: So, you've been meeting with him and talking with him about this case for how long?

A: Right. Oh, almost three months. (Id. at 11)

After accepting his plea, Judge Wheeler invited additional comments from the attorneys. The defense attorney offered, among other comments, the following:

> He's been very adamant about taking responsibility for his actions, despite my prodding to suggest that there is nothing to lose by going to trial, but I know that he's hopefully going to get this behind him. (Tr., March 5, Hrg. at 20)

Bruestle was committed to the commissioner of corrections that day to be imprisoned for life. Approximately two weeks later, on March 20, 2003, Bruestle was notified that his SSI claim had been approved. Bruestle was then incarcerated at the Minnesota Correctional Facility in St. Cloud. Upon his arrival at St. Cloud, Bruestle was ordered placed on mental health monitoring status and was assessed psychiatrically. (See App. pp. 48-51).

On January 22, 2004, Bruestle, now represented by the undersigned attorney, petitioned the Ramsey County District Court for postconviction relief, in

particular that his conviction and sentence be vacated in their entirety, or that an evidentiary hearing on the petition be held, or that the sentence be modified. These postconviction proceedings were put on hold due to the fact that charges were filed subsequently in Sherburne County for second degree assault. Bruestle was finally going to be evaluated under Rule 20 - the very examination the public defender had waived in December, 2002 - pursuant to an order by the Honorable Karla Hancock dated June 24, 2004.

Bruestle was in fact examined twice, once by Gregory A. Hanson, a forensic psychologist, on August 18th ("Hanson" report); and by Maureen Hackett, M.D., a forensic psychiatrist, on June 10th ("Hackett" report). (See App. pp. 14-26). Because Dr. Hanson's report was available August 23rd, Dr. Hackett was able to review it in the preparation of her own report, dated November 23, 2004. Although Drs. Hanson and Hackett ultimately reached differing conclusions regarding Bruestle's mental capacities as they related to the October 2003, attack, each catalogued dozens of mental health records reviewed, some over thirty years old, going back to Bruestle's childhood (See e.g., App. p. 15). The state's psychologist diagnosed Bruestle with Bipolar II disorder, antisocial personality disorder with borderline features, and alcohol and cannabis abuse, but felt he was competent to stand trial at that time. It is worth noting that Dr. Hanson reported that "Mr. Bruestle entered a guilty plea the [sic] charge of second degree murder

and was sentenced to a term of 99 years." Mr. Bruestle, of course, did not plead guilty to second degree murder.

Dr. Hackett, noting that Bruestle had been observed in Colorado ingesting items such as a bed spring, an extension cord, a curtain hook, and a light bulb (See App. p. 16), concluded that Bruestle's diagnoses included substance-related disorder not otherwise specified with cognitive dysfunction secondary to severe inhalant abuse during early adolescence; schizoaffective disorder, bipolar type; polysubstance dependence including alcohol, cannabis, and inhalants; mild mental retardation versus borderline intellectual functioning; antisocial personality disorder; and likely pervasive development disorder not otherwise specified (See App. p. 23).

It was Dr. Hackett who explored the whole aspect of this case that got the most media attention: the alleged poor tasting chili. According to her report, Bruestle believed that his aunt was attempting to poison him (he also apparently believed her cats were spying on him; App. pp. 20-21) and that when she refused to eat any of the chili, and it seemed to taste funny to him, this confirmed his suspicion that the chili was poisoned (See App. p. 21).

Dr. Hackett's report indicates that According to Dr. Hackett, "it is quite clear from Mr. Bruestle's life history that he has never functioned in an adaptive manner" (See App. p. 24). Dr. Hackett's comments continued:

> In my opinion, Mr. Bruestle suffers from a congenitally based cognitive deficit that is even more debilitating due to what is likely brain damage from inhalant abuse and the deteriorating effects of chronic psychosis that all make his mental state severely and persistently impaired. Mr. Bruestle's cognitive impairments are likely quite extensive and can be elucidated with further testing such as neuropsychological tests. (Id.).
>
> It is my observation that Mr. Bruestle has extremely poor problem solving abilities and he cannot negotiate even the slightest human interaction without risking his being provoked into violence. This is because he experiences extreme paranoia and he manages his suspicions by acting out his concrete interpretations of paranoid thoughts and perceptions using his own sense of justice. (Id.).
>
> It is as though he never developed within the latency age (7-12 years) where a child learns about right and wrong in society and about rules and their meaning. ... I think it is more than likely that he suffers a [sic] from a pervasive developmental disorder that is congenital and would explain much of his symptoms such as his eating inanimate objects as an adult, chronic self injurious behaviors and extreme cognitive impairments that evidence in his concrete interpretation of events that affect him. (Id.).
>
> The problem with Mr. Bruestle's ability to know the wrongfulness of his actions is that he has no true sense of right versus wrong. (See App. p. 25).

On June 29, 2005, nine days after the U.S. Supreme Court's decision in Rompilla v. Beard, Judge Wheeler summarily denied Bruestle's petition for postconviction relief, without an evidentiary hearing, holding that Bruestle's plea was knowing, accurate, voluntary, and intelligent, unaffected by ineffective assistance of counsel. The court's finding of fact mention that Rule 20 examinations had occurred, but nothing further regarding their content. This appeal followed.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION IN SUMMARILY DENYING RELIEF WITHOUT AN EVIDENTIARY HEARING.

A. Standard of Review.

"The scope of review of a postconviction proceeding is limited to determining whether there is sufficient evidence to sustain the postconviction court's findings, and a postconviction court's decision will not be disturbed absent an abuse of discretion." Black v. State, 560 N.W.2d 83, 85 (Minn. 1997), citing Hodgson v. State, 540 N.W.2d 515, 517 (Minn. 1995) and Scruggs v. State, 484 N.W.2d 21, 25 (Minn. 1992). "An evidentiary hearing upon a petition for postconviction relief is not required unless the petitioner alleges such facts which, if proved by a fair preponderance of the evidence, would entitle him or her to the requested relief." Roby v. State, 547 N.W.2d 354, 356 (Minn. 1996), citing State v. Rainer, 502 N.W.2d 784, 787 (Minn. 1993). Minnesota courts apply the *Strickland* standard (see below) to allegations of ineffective assistance of counsel in postconviction proceedings. Id., see also Scruggs, 484 N.W2.d at 25.

B. Bruestle's Trial Counsel Was Conclusively Ineffective Under the *Strickland* Test, Establishing His Right Not Only to a Hearing, but to Withdraw His Plea.

Minnesota courts have long recognized that for a guilty plea to be validly accepted by a trial court, three prerequisites must exist: the plea "must be accurate,

voluntary, and intelligent (i.e., knowingly and understandingly made)." State v. Ecker, 524 N.W.2d 712, 716 (Minn. 1994), citing State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983). A guilty plea which lacks even one of these prerequisites represents a "manifest injustice," the correction of which requires withdrawal of that plea. See State v. Vieburg, 404 N.W.2d 312, 315 (Minn. App. 1987). The involuntariness of a guilty plea constitutes a manifest injustice, entitling a defendant to withdraw that plea. Hirt v. State, 298 Minn. 553, 214 N.W.2d 778 (1974). A defendant who demonstrates manifest injustice in circumstances surrounding a guilty plea will be allowed to withdraw the plea and proceed to trial. Shorter v. State, 511 N.W.2d 743, 746 (Minn. 1994); Minn. R. Crim. P. 15.05, subd. 1.

The ineffective assistance of Bruestle's trial counsel rendered his guilty plea, based on that counsel, involuntary. A criminal defendant is entitled to counsel at trial. U.S. Const. amend. VI. That counsel must also be effective for that constitutional right to be satisfied. See Washington v. Strickland, 466 U.S. 668, 687 (1984). *Strickland* sets out a two-prong test to determine whether counsel was ineffective: first, a defendant must show "that counsel's representation fell below an objective standard of reasonableness," Id., and second, that this performance "prejudiced the defense," Id. at 687. In other words, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the

result of the proceeding would have been different." Id. at 694. A *Strickland* analysis seeks "to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. at 689. *Strickland* also applies to guilty pleas. See Hill v. Lockhart, 474 U.S. 52, 58 (1985). In this context, "to satisfy the 'prejudice' requirement, 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." Id. at 59. Minnesota has adopted the same standard for evaluating effectiveness of counsel in both a trial context, See Gates v. State, 398 N.W.2d 558, 561 (Minn. 1987), and in the context of a guilty plea. See State v. Ecker, 524 N.W.2d 712 (Minn. 1994).

Barely one week before Judge Wheeler denied Bruestle's petition for postconviction relief on June 29, 2005, the United States Supreme Court issued a decision applying *Strickland* in a manner directly relevant to Bruestle's case. Rompilla v. Beard, 125 S.Ct. 2456, (2005), involved a Pennsylvania defendant charged with a grisly murder, represented by public defenders. Convicted of the crime, Rompilla's case moved to sentencing. Rompilla, 125 S.Ct. at 2460. Pennsylvania indicated to the defense that it would rely on a prior conviction to establish an aggravating factor justifying the imposition of a death sentence. Id. However, Rompilla's public defenders did not obtain and review the file in the prosecution's possession to determine what information the Commonwealth would

use against him, even though the file was located in the same building the public defenders worked in. Id. at 2463-64. Instead, the public defenders interviewed Rompilla and several members of his family, and had him examined by three mental health experts, in search of mitigating evidence to present to the jury. Id. at 2461. Ultimately, they found little they deemed relevant, and the mitigation evidence that was submitted essentially dwelt on residual doubt and pleas for mercy. Id. at 2460-61. Rompilla received the death sentence. Id.

Rompilla secured new counsel who petitioned for postconviction relief. Id. at 2461. The new attorneys reviewed his files more comprehensively, and discovered that there was in fact ample evidence of mental health, mental-retardation, and alcohol-abuse issues, as well as a highly dysfunctional childhood. Id. This, in turn, led them to review school and other records neglected by the public defenders, which bolstered these discoveries further. Id. at 2468-69. Pennsylvania courts, however, applying *Strickland*, rejected Rompilla's argument that the public defenders had provided ineffective assistance of counsel in failing to find and present this information. Id. at 2461. Habeas relief was granted by a federal judge in Pennsylvania, but was reversed by a divided Third Circuit. Id.

The U.S. Supreme Court, in an opinion by Justice Souter, reversed and held that the public defenders' performance failed to meet *Strickland's* requirement that it be "objectively reasonable" in light of prevailing practices of criminal-defense

attorneys. Id. at 2463-64. The Court acknowledged that Rompilla himself appeared uninterested in helping with his own defense, Id. at 2462; was at times "actively obstructive," Id.; that "the overwhelming response from the family was that they didn't really feel as though they knew him all that well since he had spent the majority of his adult years and some of his childhood years in custody," Id. at 2463; and that a "cadre of three mental health witnesses" had been "asked to look into Rompilla's mental state as of the time of the offense ... but their reports revealed 'nothing useful." Id. The Court also noted that although "counsel knew from police reports provided in pretrial discovery that Rompilla had been drinking heavily at the time of his offense ... counsel did not look for evidence of a history of dependence on alcohol that might have extenuating significance." Id. (internal citation omitted).

Holding that the public defenders' performance had been unconstitutionally inadequate under *Strickland,* the Court pointed to the American Bar Association Standards for Criminal Justice with a reminder that "we have long referred [to the ABA standards] as 'guides to determining what is reasonable.'" Id. at 2465-66, citing Wiggins v. Smith, 539 U.S. 510, 524 (2003) (quoting Strickland, 466 U.S. at 688). Those standards, as cited by the Court, indicate the following:

> It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case *and the penalty in the event of conviction.* The investigation should always include efforts to secure information in the

> possession of the prosecution and law enforcement authorities. *The duty to investigate exists regardless of the* accused's admissions or statements to the lawyer of facts constituting guilt or the *accused's stated desire to plead guilty*. 1 ABA Standards for Criminal Justice 4-4.1 (2d. ed. 1982 Supp.) Id. at 2466 (emphasis added).

The Court concluded that Rompilla's counsel had failed to satisfy the *Strickland* test's requirement that their performance be "objectively reasonable" when judged from the standpoint of those attorneys at the time of the trial. Id. at 2467.

Turning to the "prejudice" analysis, the Court pointed out that "[i]f the defense lawyers had looked in the file on Rompilla's prior conviction, it is uncontested they would have found a range of mitigation leads that no other source had opened up." Id. at 2468. According to the Court:

> The accumulated entries would have destroyed the benign conception of Rompilla's upbringing and mental capacity that defense counsel had formed from talking with Rompilla himself and some of his family members, and from the reports of the mental health experts. With this information, counsel would have become skeptical ... and would unquestionably have gone further to build a mitigation case. Further effort would presumably have unearthed much of the material postconviction counsel found ... The jury never heard any of this and neither did the mental health experts who examined Rompilla before trial. Id.

The Court concluded that "[i]t goes without saying that the undiscovered 'mitigating evidence, taken as a whole, "might well have influenced the jury's appraisal" of [Rompilla's] culpability,' and the likelihood of a different result if the evidence had gone in is 'sufficient to undermine confidence in the outcome'

actually reached at sentencing." Id. at 2469 (internal citations omitted). Pennsylvania was ordered to retry the case or reduce the sentence. Id.

The parallels between Rompilla and this case are so striking as to compel the same outcome. Where there are differences in factual background, these differences only highlight that Bruestle's trial counsel was even more inadequate than Rompilla's. Like Rompilla, Bruestle was charged with a violent murder and represented by a public defender. Whereas Rompilla was convicted of that murder, there has never been any question that Bruestle caused his aunt's death; in each case, the focus is in effect on the penalty. On March 5, 2003, when Bruestle's guilty plea was received, he faced both the second degree murder charge (potentially a 25-year sentence) as well as two indictments on first degree (premeditated) murder (requiring a life sentence). The fundamental distinction between these charges is whether the killing was premeditated, a question which turns on whether Bruestle had the capacity to premeditate murder.

What information did Bruestle's public defender know, or have reason to know, related to this question? The record establishes that when arrested, Bruestle was raving and waving a brown liquor bottle, implying that Bruestle had been drinking; Rompilla, too, was drunk at the time of his conviction. Ramsey County jail records indicated that Bruestle had been drinking every day for months. Those records also document a relatively lengthy list of psychotropic medications in

Bruestle's recent past, and that he had not been taking them for several months. The public defender knew that Bruestle was recently discharged from a psychiatric prison in Colorado and had a lengthy criminal history. On the basis of this information alone, the public defender had a very strong basis for suspecting that there was a reasonable question about Bruestle's mental state.

Moreover, the documents seized from Bruestle's home included paperwork related to his Social Security (SSI) application for benefits on the basis of a mental disability. Bruestle had been psychologically evaluated for Social Security less than two months earlier, and the report that came back indicated Bruestle was both mentally ill and mentally retarded. Although the public defender should have had access to this information, the public defender made no effort to obtain this report, or any other Social Security documentation. Critically, similar to Rompilla, medical personnel in the jail and law enforcement who seized documents were aware that these SSI records existed. While it may well be true that a Social Security determination would be based on different standards than a determination of either competence to stand trial or mental culpability under a M'Naghten analysis, a medical evaluation less than two months old pointing to both mental illness and mental retardation would presumably put a reasonably effective defense attorney on notice that there was a question to be raised.

Initially, defense counsel did indeed move the district court to order a Rule 20 examination.[1] However, barely ten days later, apparently after *one* visit to Bruestle by the public defender's purported expert witness, Owen Nelson, defense counsel offered to waive any further examination. During this same time period, the public defender had also received an e-mail from his superior in the public defender's office discouraging expenditures on expert witnesses in Bruestle's defense, even while acknowledging this was precisely the sort of case where expert witnesses would be appropriate. Indeed, despite seeking additional language for the Rule 20 order (mysteriously enough, after already having proposed to waive the examination), defense counsel noted without objection that no examination had ever been performed pursuant to the order he had sought, and then withdrew the request altogether. The public defender's statements to the court suggest that he had concluded Bruestle was competent to stand trial, but reflect no consideration as to whether he had been "laboring under a defect of reason" at the time of the offense itself.

Whereas Rompilla was examined by three mental health experts whose reports apparently revealed nothing useful, Owen Nelson never produced any report whatsoever. This odd outcome is consistent with the Public Defender's

[1] In its Findings of Fact (3), the court below mischaracterized this motion as requesting "a Rule 20 psychological evaluation for purposes of determining competency to stand trial." In fact, that order explicitly directed that Bruestle be evaluated not only as to competency to stand trial, but as to whether he understood the nature of his acts at the time of the killing. See also Finding of Fact 6 (". . . [the public defender] was confident that Petitioner was competent at that time [i.e., as of December 30, 2002].")

office's interest in keeping costs down rather than spending money on Nelson's fees. Neither expert nor defense attorney ever knew of Dr. Barron's October 29, 2002 Social Security psychological evaluation, which also corroborated Bruestle's statements to the jail psychiatrist that he had stopped taking his medications months before, and defense counsel never pursued any leads regarding Bruestle's remarkable, thirty-year mental health background. Just as Rompilla's family appeared to know little about him, Bruestle's mother indicated only the haziest understanding of his "counseling" and medications, and in fact contradicted decades' worth of medical records by suggesting he had never had mental health problems at all.

In light of the October, 2003 prison assault, when Rule 20 examinations were finally performed, both evaluators uncovered an extensive list of documents pertaining to Bruestle's treatment for mental problems spanning four decades, none of which, it seems, ever were identified, let alone obtained, by the public defender or his fleetingly-retained expert, Owen Nelson. One of those evaluations raised the possibility of organic brain damage from years of inhalant abuse, in addition to finding that Bruestle has no concept of right and wrong. Defense counsel knew none of this, because he never followed up on the leads that were evident in Bruestle's file, literally within hours of his arrest. It took another assault, and, as in Rompilla, new attorneys seeking postconviction relief, to uncover the actual extent

of Bruestle's mental illness, mental retardation, substance abuse, and possible brain damage. In both cases, trial counsel had access to numerous indications of such conditions and yet failed to follow them up to discover critical information about their clients. The U.S. Supreme Court has called that performance in Rompilla unconstitutionally inadequate, and the same conclusion is inescapable here.

The fact that Rompilla involved the presentation of mitigation information in a death-penalty case, and Bruestle's case focuses on a conviction in a non-death-penalty case is irrelevant. For example, the ABA standards the Supreme Court relied on in Rompilla as guides to analyzing whether a defense attorney's performance was reasonable would apply to any criminal defense matter, and do not distinguish between death-penalty and non-death-penalty cases. Inadequate representation is simply inadequate representation.

At the time that all of this information was becoming available, or when the red flags appeared that would have alerted a reasonably effective defense attorney that, at the time of the killing, Bruestle was a mentally retarded, mentally ill, drunk man who had been off his medications for months, Bruestle was facing second-degree murder charges; whether he had the capacity for premeditation was not necessarily relevant. Nonetheless, such information would have been useful in arguing for a sentence below the maximum possible. See Minn. Sent. Guideline II D. 201 (3) and (6) and Minn. Stat. §609.1055. When Bruestle stated at sentencing

that he had been speaking with his attorney for three months regarding the case, for virtually the entire time, Bruestle had been facing only second degree murder charges. It should be recalled that during this time, Bruestle reported that he had been speaking with his attorney and "feeling hopeless", if not suicidal.

But this all changed February 26, 2003, when Bruestle was indicted for first degree (premeditated) murder: now, his capacity to premeditate a murder was critical. Although the matter was before Judge Wheeler exactly one brief week later, the attorney had known, or had had reason to know, for nearly three months that serious questions existed as to his client's mental capacities, both on the night of the killing and in general. Not one word of this was mentioned in court. The public defender, without even pointing out to the judge that his client had been willing to plead guilty to second-degree murder charges – *and had waived Rule 20 examinations before being indicted on first degree murder charges* – simply pled his client guilty to first degree murder. Any reasonably effective defense attorney would have renewed the initial motion, now that Bruestle's capacity for premeditation was an issue, unless perhaps that attorney had placed a higher priority on frugality than on his own client's interests.

Characterizing his own efforts, the public defender indicated that he had told his client that "he had nothing to lose by going to trial." While this might possibly have been a reasonable assessment when Bruestle was facing second degree

murder charges, once he was charged with premeditated murder, such counsel became inexplicable and objectively unreasonable.

A reasonably adequate defense attorney would have realized that the repeated references in the record in his possession to Bruestle's mental problems, lack of medication, and alcohol abuse by themselves would have provided a strong argument against premeditation and, in fact, a strong incentive for Bruestle to plead not guilty and proceed to trial. Had defense counsel pursued any of these leads to discover the actual extent of the problems, the power of this information would have become even more evident. Far from having "nothing to lose," Bruestle in fact faced a difference between two-thirds of a 306 month guideline sentence, versus life in prison. In the language of Hill v. Lockhart, 474 U.S. 52, 58 (1985), "to satisfy the 'prejudice' requirement, 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." Id. at 59. Had Bruestle been adequately counseled that there was, indeed, a point to going to trial, there is a reasonable probability that he would have insisted on doing so; indeed, that is the crux of the relief he sought from Ramsey County in his postconviction petition.

Because Bruestle's trial counsel made objectively unreasonable errors virtually indistinguishable from those that rendered Rompilla's death sentence unconstitutional, and because he asserts that had he been provided adequate

counsel he would with reasonable probability insisted on going to trial, Bruestle has established that both prongs of the *Strickland* test have been satisfied. Bruestle's petition to Ramsey County District Court alleged these failings, and pointed to specific facts that could have established them. Minn. Stat. §590.04, subd. 1, directs that a postconviction court "shall promptly set an early hearing on the petition" unless the petition and record "conclusively show that the petitioner is entitled to no relief." It is evident in light of Rompilla that the record in no way "conclusively show[s]" that he is unentitled to relief; in fact, Rompilla establishes that Bruestle was conclusively *entitled* to relief. The district court abused its discretion in refusing to hold a hearing on his petition.

Minn. R. Crim. P. 29.03, subd. 4, indicates that the scope of relief in appeals to this Court in first degree murder cases is governed by Minn. R. Crim. P. 28.02, subd. 11. That Rule, in turn, authorizes this Court to:

> review any pretrial or trial order or ruling, whether or not a motion for a new trial has been made, and may review the denial of a motion for new trial or to vacate judgment or for judgment of acquittal, whether ruled upon before of after judgment. The court may review any other matter as the interests of justice may require.

Because Rompilla conclusively establishes that Bruestle was denied effective assistance of counsel at trial and that, consequently, a manifest injustice occurred that rendered his guilty plea involuntary, remanding the matter to Ramsey County District Court for an evidentiary hearing on the petition is not consistent with

judicial economy. See Scruggs, 484 N.W.2d at 24-25 (weighing remand versus reversal where district court failed to comply with Minn. Stat. §590.04, subd. 1). Accordingly, Mr. Bruestle respectfully urges this Court to reverse the summary dismissal of his petition for postconviction relief by the court below, and grant his request to withdraw his March 5, 2003 plea so that he may proceed to trial.

C. Bruestle's Plea Was Not Knowing or Intelligent Due to His Mental Limitations.

The court below all but ignored Bruestle's documented history of profound mental illness and significant cognitive limitations in summarily rejecting his petition to withdraw his plea, an abuse of discretion Bruestle respectfully urges this Court to reverse. The requirement that a guilty plea be intelligent – that is, knowingly and understandingly made – "insures that the defendant understands the charges, the rights being waived, and the consequences of the plea." State v. Brown, 606 N.W.2d 670, 675 citing Brown v. State, 449 N.W.2d 180, 183 (Minn. 1989). A guilty plea which lacks even one of these prerequisites represents a "manifest injustice," the correction of which requires withdrawal of that plea. See State v. Vieburg, 404 N.W.2d 312, 315 (Minn. App. 1987).

In a case whose context is different yet similar to the present case, this Court has held that questions about a defendant's significantly low IQ mandated that a hearing be held on a postconviction petition alleging an ineffective waiver of counsel. See Burt v. State, 256 N.W.2d 633 (Minn. 1977). In Burt, an

unrepresented defendant entered a guilty plea, after having been repeatedly advised of his right to counsel, but later sought to withdraw the plea. Id. at 635. The trial court denied relief, but the Supreme Court reversed. Of specific interest to the Court was the fact that:

> At the time petitioner's plea was accepted, *the court apparently was unaware of any facts which would cast doubt on petitioner's capacity to make an intelligent decision whether to waive counsel.* However, the presentence investigation report that the court received revealed that petitioner, who was 18 years old, had only a tenth grade education and that his scores on his I.Q. tests were consistently low (79 in 1963, 69 in 1966, and 65 in 1970), suggesting strongly that petitioner was of considerably lower than average intelligence. In retrospect, we believe that after reading this report the court should have reopened the matter for the purpose of making a more detailed inquiry into petitioner's capacity to intelligently waive counsel. Id. at 635-36 (emphasis added).

The court below, in summarily dismissing Bruestle's petition, did not address why Burt did not compel even an evidentiary hearing. In its June 29, 2005, Order denying relief, the court included in its conclusions of law the following statement: "The Court recalls the plea hearing held on March 5, 2003. During the hearing, the Court listened to and interacted with petitioner. The Court recalls that there was no inability of the petitioner to understand the hearing or its consequences." This appears to suggest that the court in essence simply looked at Bruestle and did not see a problem. However, as Dr. Hackett reported, "Mr. Bruestle is a difficult individual to diagnose and describe because his mental health problems are best understood within the context of his cognitive limitations and

lack of normal development; social, cognitive and emotional. (See App. pp. 24-26). The trial court did not have access to this perspective because Bruestle's attorney failed to recognize these problems and bring them to the court's attention. As a result, the trial court's perception that Bruestle seemed fine during the brief plea hearing on March 5, 2003, was necessarily based on surface appearances alone. If the court had had a more accurate understanding of Bruestle's mental state and deficiencies, it may well have required a far more searching inquiry before accepting a guilty plea to charges of premeditated murder, and may not have accepted that plea at all if the inquiry showed the plea to be unknowing and unintelligent.

The record that ultimately emerged in this matter reveals that Bruestle has waged a virtually lifelong battle with significant mental illnesses and deficiencies. Records available at the time of the plea and now, document multiple diagnoses and conditions for which has been prescribed some of the strongest psychotropic medications available. The Social Security disability report, completed barely six weeks prior to this senseless murder, indicates that Bruestle was no longer taking these medications or receiving mental health services whatsoever. Significantly in light of Burt, Dr. Barron's assessment of Bruestle's IQ revealed that he operates in roughly the second percentile of the population from an intelligence standpoint, and in fact is within the range of "mental retardation." Although the two

professionals who eventually completed Rule 20 examinations on Bruestle - the court below does not so much as discuss the contents of either - differ on the precise extent of Bruestle's cognitive limitations, there seems little dispute that they are significant; indeed, one of the reports raises the possibility of brain damage. As in Burt, the court below was not aware of any of this on March 5, 2003; had it been so informed by Bruestle's inadequate counsel, the court's initial inquiry may have been more probing as to Bruestle's understanding of the proceedings. As it happens, the state's psychologist, who evaluated Bruestle came away with an incorrect understanding from him of what had transpired in Ramsey County, raising the question of whether appellant did, either. In any event, at the time it was contemplating Bruestle's petition for postconviction relief, the court below *did* have the information and still denied, virtually without comment, any form of relief. As this Court held in Burt, "after reading this report the court should have reopened the matter for the purpose of making a more detailed inquiry into petitioner's capacity" to intelligently plead guilty. Burt, 256 N.W.2d at 635-36. The Order from the court below sheds no light on why it thought Burt did not affect its considerations.

It is worth noting that Bruestle was never determined competent to stand trial. This fact differentiates Bruestle's case from such cases as Gilles v. State, 216 N.W.2d 898 (Minn. 1974), in which a petition for postconviction relief was denied

where a defendant, who *had* been determined competent to stand trial, later sought to withdraw his plea on the basis that he had been very upset when he entered it. Id. at 899. The Court held that the central issue was "whether defendant introduced any evidence at the postconviction hearing which would necessitate the conclusion that he was not competent to plead ... ." Id.

Here, although a substantial question of Bruestle's competency to stand trial had been raised before Judge Stephenson, that question was never answered on the basis of any complete examination of Bruestle's mental state. Dr. Barron's report obviously does not address Bruestle's competency to stand trial, obviously, because the report preceded his aunt's murder by several weeks. However, this disturbing report, combined with the numerous indications of Bruestle's mental illness and lower than average intelligence, provides this Court with a firm basis for questioning whether Bruestle was competent to stand trial or to enter a guilty plea.

In its submission to the court below, the State argued vigorously that Bruestle's competency had been established by Dr. Nelson following his one-time visit of unknown duration with Bruestle in jail. At the same time, the State discounted Dr. Barron's report because it, too, was the product of a single visit. The significant difference between the two, of course, is that Dr. Barron produced a report which can be evaluated, a report that is largely consistent with two

subsequent evaluations and addresses the mental illness and cognitive functioning deficits. In contrast, the State conspicuously fails to produce a report from Dr. Nelson and is reduced to speculating as to his findings. The entry of a guilty plea by Bruestle, a man plagued with alarming mental illness and laboring under severe cognitive limitations, represents precisely the sort of "manifest injustice" that requires the withdrawal of that plea and a fair opportunity to determine the extent of Bruestle's competence. At a bare minimum, the documents that were provided to the court below, which were not available at the time of his initial plea - largely because his attorney did not take the time to investigate his constellation of mental health and retardation issues - should have entitled him to an evidentiary hearing, as in Burt, at which the court would examine the data in a meaningful manner. Simply recalling the original hearing does not suffice. The court below abused its discretion in summarily denying this petition, and Bruestle respectfully asks this Court to reverse that judgment.

CONCLUSION

Petitioner Richard Brian Bruestle filed a petition for postconviction relief on two not unrelated grounds: first, that his representation failed to meet the *Strickland* test for adequacy under the Sixth Amendment, rendering his guilty plea involuntary, and second, that his underlying lifelong mental health problems, which his trial attorney failed to investigate and bring to the trial court's attention,

rendered that plea unknowing and unintelligent. As regards the latter, Bruestle respectfully submits that the information the court below had entitled him, at a minimum, to an evidentiary hearing on his petition. As regards the former ground, the U.S. Supreme Court decision in Rompilla conclusively establishes that the performance of Bruestle's public defender fell below objective standards of reasonableness and consequently entitles him outright to withdraw that plea and proceed to trial, even without an evidentiary hearing on his petition.

Dated: Nov 9, 2005

Respectfully submitted,

Kyle D. White, Attorney ID# 22599X
Attorney for Petitioner/Appellant
386 North Wabasha Street, Suite 1450
St. Paul, Minnesota 55102-1358
Telephone: (651) 227-8751