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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NOS. 45639
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY NO.
v.	)	CR 2017-12655
	)	
OLAF JAMES HANSON,	)	<i>REVISED</i>
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____		

***REVISED BRIEF OF APPELLANT***

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI**

**HONORABLE JOHN T. MITCHELL  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Prior to trial, Mr. Hanson moved for his counsel to withdraw, to retain alternate counsel, and for a continuance. The district court did not conduct a sufficient inquiry into Mr. Hanson's concerns or consider the appropriate factors. The district court thus abused its discretion by denying Mr. Hanson's motions. Due to the district court's discretionary errors, in violation of Mr. Hanson's constitutional right to counsel, he respectfully requests this Court vacate his judgment of conviction and remand his case for further proceedings.

### Statement of Facts and Course of Proceedings

On August 7, 2017, the State charged Mr. Hanson with felony possession of a controlled substance. (R., pp.188–89.) This offense allegedly occurred in July 2017 and arose from a traffic stop. (R., p.188; *see* Presentence Investigation Report (“PSI”),<sup>1</sup> p.11.)

On August 16, 2017, the district court arraigned Mr. Hanson. (R., p.190.) He pled not guilty. (R., p.190.) The district court set the trial for September 18, 2017, with a pre-trial hearing set for September 6, 2017. (R., p.190.)

On September 6, the district court held a pretrial conference as scheduled. (R., p.193; *see generally* Tr. Vol. I.<sup>2</sup>) Mr. Hanson's counsel, Mr. Watson, informed the district court:

Your Honor, my client has asked that I withdraw as his attorney of record, and so it is our motion to grant a continuance. He advises me he has tribal resources to

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<sup>1</sup> Citations to the PSI refer to the sixty-seven-page electronic document with the confidential exhibits.

<sup>2</sup> There are five transcripts on appeal, but only four pertain to the instant appeal and will be cited herein. The first, cited as Volume I, contains a pretrial conference hearing (held on September 6, 2017). The second, cited as Volume II, contains a pretrial motion hearing (held on September 18, 2017). The third, cited as Volume III, contains the one-day trial (held on September 18, 2017) in No. 45639. The fourth, cited as Volume IV, contains the sentencing hearing (held on October 26, 2017).

provide alternate representation, but he needs a little time to put that into effect. He has agreed that he understands his right to a speedy trial has agreed to waive that.

(Tr. Vol. I, p.3, Ls.8–14.) Mr. Watson confirmed with the district court that he was moving to withdraw. (Tr. Vol. I, p.3, Ls.15–21.) The State had no objection. (Tr. Vol. I, p.3, L.24.) Without inquiring with Mr. Hanson, the district court immediately ruled:

Well, I'm denying the motion to withdraw. If you want to hire your own attorney and have them substitute for Mr. Watson, you are more than welcome to do that, Mr. Hanson, but the motion to withdraw is denied. This case has been scheduled for trial the week of September 18th. It will remain set for trial September 18th, so Mr. Watson, if you'll remain here in the courtroom, and I'll announce the order that we'll try those case in in [sic] just a little bit.

(Tr. Vol. I, p.3, L.25–p.4, L.9.) Mr. Hanson then informed the district court that he “was hoping” for a change of venue. (Tr. Vol. I, p.4, Ls.10–12.) Mr. Watson clarified that Mr. Hanson requested a change of venue to tribal court. (Tr., Vol. I, p.4, Ls.13–14.) Mr. Watson moved for a change of venue based on the fact that Mr. Hanson was a tribal member and believed he could get “alternate representation.” (Tr. Vol. I, p.4, Ls.15–23.) Mr. Watson also stated, “He feels that my representation has been negligent and inefficient [sic], so therefore I think it would be appropriate to change the venue.” (Tr. Vol. I, p.4, Ls.23–25.) Mr. Watson did not provide any jurisdictional or legal argument in support of his position. (Tr. Vol. I, p.5, Ls.1–5.) The district court denied the motion. (Tr. Vol. I, p.5, Ls.9–13.) Mr. Hanson responded, “I'll be working on getting my own counsel then if that's the case,” and asked for a continuance. (Tr. Vol. I, p.5, Ls.14–18.) The district court stated:

No. That's when whoever that attorney is will have to try the case, so right now Mr. Watson's your attorney. Right now we're headed to trial September 18th, all right? Thank you, Mr. Hanson. Just so the record's complete, the motion to withdraw is denied; the motion to continue's denied.

(Tr. Vol. I, p.5, Ls.19–24.) The district court had a brief recess and then went back on the record to discuss other pretrial matters. (R., p.193; Tr. Vol. I, p.6, L.1–p.8, L.14.)

The next day, on September 7, Mr. Hanson filed a letter requesting a change of venue due in part to his belief that he “was wrongly represented.” (R., p.194.) On September 11, Mr. Hanson filed a “motion for ineffective assistance of counsel,” stating that his “best interest” was to get a plea bargain and not go to trial, but his counsel would not answer his calls and would not visit him to talk about his case. (R., p.195.) He asked that the district court “remove” Mr. Watson from his case. (R., p.195.) The district court did not rule on these motions.

On September 18, just before the trial, the district court held another pretrial motion conference on an unrelated matter. (R., p.209; *see generally* Tr. Vol. II.) The district court proceeded with the trial. (*See generally* Tr. Vol. III.) The jury found Mr. Hanson guilty as charged. (R., p.238; Tr. Vol. III, p.95, Ls.3–18.)

On October 26, 2017, the district court held a sentencing hearing. (R., pp.246–27.) The district court sentenced Mr. Hanson to seven years, with five years fixed. (Tr. Vol. IV, p.19, L.21–p.20, L.1.) The district court also retained jurisdiction. (Tr. Vol. IV, p.20, Ls.6–9.)

Mr. Hanson timely appealed from the district court’s judgment of conviction. (R., pp.249–51, 256–58.) The district court subsequently relinquished jurisdiction. (Aug. R.,<sup>3</sup> pp.1–4.) Later, the district court suspended Mr. Hanson’s sentence and placed him on probation. (2nd Aug. R.,<sup>4</sup> pp.1–4.)

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<sup>3</sup> On October 4, 2018, Mr. Hanson moved to augment the record with the district court’s decisions relinquishing jurisdiction. That motion is currently pending before the Court.

<sup>4</sup> Contemporaneously with this brief, Mr. Hanson has filed a second motion to augment the record on appeal.

ISSUE

Did the district court abuse its discretion by denying Mr. Hanson's motion for a continuance and motion for counsel to withdraw?



## ARGUMENT

### The District Court Abused Its Discretion By Denying Mr. Hanson's Motion For A Continuance And Motion For Counsel To Withdraw

#### A. Introduction

Mr. Hanson maintains the district court abused its discretion by denying his motions for a continuance and for counsel to withdraw. The district court did not weigh any of the relevant factors in denying Mr. Hanson's request for a continuance to finalize alternate counsel. Similarly, the district court did not conduct an inquiry into Mr. Hanson's written request to "remove" Mr. Watson from the case. Despite Mr. Hanson's issues with appointed counsel, the district court failed to give proper consideration to his concerns. The district court's inquiry not only was constitutionally inadequate, but also resulted in the deprivation of Mr. Hanson's right to counsel of his choice. Therefore, Mr. Hanson respectfully requests this Court vacate his judgment of conviction and remand this case for further proceedings.

#### B. Standard Of Review

The district court's decision to appoint substitute counsel is reviewed for an abuse of discretion. *State v. Nath*, 137 Idaho 712, 715 (2002). The district court's denial of a motion for continuance is also reviewed for an abuse of discretion. *State v. Daly*, 161 Idaho 925, 929 (2017).

When a district court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason.

*State v. Hedger*, 115 Idaho 598, 600 (1989). “The adequacy of a trial court’s inquiry is a constitutional issue over which [the Court] exercise[s] free review.” *State v. Severson*, 147 Idaho 694, 704 (2009).

C. The District Court Did Not Apply The Correct Legal Standards Or Exercise Reason Because It Did Not Weigh The Relevant Factors And It Failed To Conduct An Adequate Inquiry With Mr. Hanson And Mr. Watson

Mr. Hanson challenges both the district court’s denial of the motion for a continuance and his pro se motion to remove Mr. Watson as his counsel. The relevant facts are as follows.

On September 6, twelve days before trial, Mr. Watson moved to withdraw and moved for a continuance in order for Mr. Hanson to finalize alternate counsel with tribal resources. (Tr. Vol. I, p.3, Ls.8–21.) Mr. Watson also stated Mr. Hanson agreed to waive his right to a speedy trial. (Tr. Vol. I, p.3, Ls.12–14.) Even though the State had no objection, the district court denied the motion. (Tr. Vol. I, p.3, L.22–p.4, L.9, p.5, Ls.23–24.) The district court informed Mr. Hanson that he could hire an attorney to substitute for Mr. Watson between September 6 and the trial date (September 18), but the trial date would not change. (Tr. Vol. I, p.4, Ls.1–6.) Mr. Hanson then asked for a continuance to get “my own counsel.” (Tr. Vol. I, p.5, Ls.14–18.) The district court denied this request as well and informed Mr. Hanson that “whoever” represented him on September 18 would try the case. (Tr. Vol. I, p.5, Ls.19–22.) On September 11, seven days before trial, Mr. Hanson filed a pro se motion for ineffective assistance of counsel, asking the district court to remove Mr. Watson from the case.<sup>5</sup> (R., p.195.) Mr. Hanson expressed a desire to enter a plea deal, but his counsel would not communicate with him. (R., p.195.) At the next hearing on the morning of trial, September 18, the district court did not

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<sup>5</sup> Although this motion was filed on September 11, Mr. Hanson had signed and dated it on September 5. (R., p.195.)

inquire with Mr. Hanson or Mr. Watson. (R., p.209; *see generally* Tr. Vol. II.) The district court never ruled on his motion.

In light of these facts, Mr. Hanson maintains the district court abused its discretion by first denying Mr. Watson's and Mr. Hanson's motion for a continuance and, second, by failing to inquire into Mr. Hanson's motion to remove Mr. Watson. Each will be addressed in turn.

1. Motion for a Continuance

The Sixth Amendment of the U.S. Constitution and Article I, Section 13 of the Idaho Constitution provide the legal foundation for the right to counsel of choice. *State v. Carman*, 114 Idaho 791, 794 (Ct. App. 1988).<sup>6</sup> If a defendant does not require appointed counsel, he can choose who will represent him. *State v. Rockstahl*, 159 Idaho 364, 368 (Ct. App. 2015); *see also Daly*, 161 Idaho at 929–930 (differentiating between retained and appointed counsel and holding that a defendant has no right to inquiry for a motion to substitute one retained attorney for another). The right to counsel, however, is not absolute. *See Rockstahl*, 159 Idaho at 368. “[A]n accused’s right to counsel does not wholly displace the judicial objective of effective court management.” *Carman*, 114 Idaho at 793. As such, the district court has broad discretion to balance the right to counsel with its scheduling demands and “needs of fairness.” *Rockstahl*, 159 Idaho at 368. There are several factors to consider when a defendant seeks a continuance for alternate counsel:

[1] the timing of the motion; [2] the requested length of delay, including whether the delay is an attempt to manipulate the proceedings; [3] the number, if any, of similar continuances sought by the defendant; [4] inconvenience to witnesses; [5] any prejudice to the prosecution; [6] whether an irreconcilable conflict exists between the accused and counsel; and [7] the qualifications possessed by present counsel.

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<sup>6</sup> On review, the Idaho Supreme Court adopted the Court of Appeals’ reasoning. *See State v. Carman*, 116 Idaho 190, 192 (1989).

*State v. Cagle*, 126 Idaho 794, 797 (Ct. App. 1995) (citing *Carman*, 114 Idaho at 794). “[O]nly an unreasoning and arbitrary insistence upon expeditiousness in the face of justifiable request for delay violates the right to assistance of counsel.” *Daly*, 161 Idaho at 929 (quoting *Morris v. Slappy*, 461 U.S. 1, 11–12 (1983)).

Here, the district court’s decision to deny Mr. Watson’s and Mr. Hanson’s requests for a continuance was an arbitrary and unreasonable decision focused purely on “expeditiousness.” The district court did not conduct any inquiry to gather more information about Mr. Hanson’s desire to obtain the counsel of his choosing. Rather, the district court denied the motion to keep the September 18 trial date. Application of the seven factors, however, leads to a different result.

First, the timing of the motion weighs in favor of the continuance. The *Rockstahl* Court indicated a motion filed fourteen days before trial was a reasonable. 159 Idaho at 369. On the other hand, a motion filed the day of trial weighs in favor of denial. *State v. DeWitt*, 153 Idaho 658, 663 (Ct. App. 2012); *Cagle*, 126 Idaho at 797. Here, Mr. Watson moved for a continuance twelve days before trial, which is much closer to the timing in *Rockstahl* than a last-minute motion. In addition, Mr. Watson stated Mr. Hanson would waive his speedy trial rights, and the State had filed the Information against Mr. Hanson only about one month prior. (*See R.*, pp.188–89.)

Although Mr. Watson did not request a specific length for delay, this second factor is in Mr. Hanson’s favor as well. The district court scheduled the trial to occur one and one-half months after the charges were filed, so presumably substitute counsel would not have needed too much time to prepare for the case. Along the same lines, Mr. Hanson was charged with a single count of possession of a controlled substance. (*See R.*, pp.188–89.) The trial was set for two days, but ended up lasting less than one full day (from about 9:30 a.m. until 2:00 p.m. on

September 18). (R., pp.212–14.) In sum, the delay would not have been long, and this was not a complex case. Further, there is no indication Mr. Watson, Mr. Hanson, or future counsel were attempting to manipulate the proceedings. To the contrary, the record indicates that Mr. Hanson was repeatedly trying to obtain effective, conflict-free counsel.

The third factor, which examines the number of past continuances, favors granting the motion. This was Mr. Hanson’s first continuance.

The fourth factor, inconvenience to the witnesses, is also in Mr. Hanson’s favor. The State intended to, and did, call only two witnesses: a law enforcement officer and an Idaho State Police forensic scientist. (R., p.191; Tr. Vol. III, p.57, Ls.5–22, p.70, L.13–p.71, L.12.) Both were located in Coeur d’Alene, the same location as the district court. (R., p.191.) Based on this information in the record, there was little to no inconvenience to the witnesses to delay the proceedings for Mr. Hanson to obtain counsel of his choice.

Fifth, the absence of prejudice to the prosecution strongly supports granting the continuance. When asked by the district court, the prosecution had no objection to the motion. (Tr. Vol. I, p.3, L.24.)

Next, the sixth factor examines whether there was an irreconcilable conflict between Mr. Hanson and Mr. Watson. This factor weighs in the continuance’s favor because Mr. Watson informed the district court at the hearing that Mr. Hanson believed he was “negligent and inefficient.” (Tr. Vol. I, p.4, Ls.23–24.) Moreover, the district court did not specifically inquire with Mr. Hanson regarding any conflict. (*See generally* Tr. Vol. I.)

Finally, the seventh factor is neutral because there was no information provided on substitute counsel’s qualifications.

Looking at the totality of the factors, most factors weigh strongly in favor of granting Mr. Hanson a continuance to secure alternate counsel. No factors weigh in the prosecution's favor or the interest of judicial economy. This was Mr. Hanson's first motion for a continuance, in a relatively simple case, with no objection from the prosecution, and clear dissatisfaction and concern on the part of Mr. Hanson with his appointed counsel. The district court's decision to deny the motion for a continuance did not consider any of these factors or provide a basis for its ruling, other than a desire to keep the trial date. Therefore, the district court failed to apply the correct legal standards or exercise reason by denying the motion for a continuance. The denial of the motion for a continuance was an abuse of discretion.

By denying Mr. Hanson's motion, the district court violated Mr. Hanson's constitutional right to the counsel of his choice.

A "[d]eprivation of the right is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006). Thus, the erroneous denial of the right to counsel of choice is a structural error, and a court need not assess whether counsel was ineffective or whether the defendant was prejudiced by the error. *Id.*

*Rockstahl*, 159 Idaho at 368. Accordingly, Mr. Hanson respectfully requests this Court vacate his judgment of conviction and remand this case for a new trial.

## 2. Motion to Remove Counsel

"The Sixth Amendment to the United States Constitution provides that '[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.' In Idaho, this right is also protected by Article I, section 13 of the Idaho Constitution." *Daly*, 161 Idaho at 928. "It is well settled that an indigent defendant has a right to court appointed counsel. The right to counsel includes the right to effective assistance of counsel. It

does not necessarily include the right to counsel of one's own choosing." *State v. Clayton*, 100 Idaho 896, 897 (1980) (citations omitted). "Upon showing of good cause, a trial court may appoint substitute counsel for an indigent defendant." *Nath*, 137 Idaho at 714–15.

"Both the Idaho Court of Appeals and the Idaho Supreme Court have held that a trial court is obligated to apply certain procedures when a person seeks substitute counsel." *State v. Bias*, 157 Idaho 895, 897 (Ct. App. 2014). Although the district court is not required to be an advocate for the defendant, the district court must "afford defendant a full and fair opportunity to present the facts and reasons in support of his motion for substitution of counsel after having been made aware by the court of the problems involved." *Clayton*, 100 Idaho at 898. The defendant's "right to an inquiry" stems from both the constitutional right to effective assistance of counsel and the constitutional right to refuse counsel and proceed pro se. *Bias*, 157 Idaho at 898. The district court's duty to inquire is not diminished by an ill-behaved and disruptive defendant, which can lead to "understandable exasperation and frustration of the district judge as well as suspicion of [the defendant]'s motives." *State v. Peck*, 130 Idaho 711, 714 (Ct. App. 1997). "[E]ven well-founded suspicions of intentional delay and manipulative tactics can provide no substitute for the inquiries necessary to protect a defendant's constitutional rights." *Id.* (quoting *United States v. Welty*, 674 F.2d 185, 189 (3d Cir. 1982)). "[P]erfunctory questioning is not sufficient." *State v. Lippert (Lippert II)*, 152 Idaho 884, 887 (Ct. App. 2012).

The scope of inquiry is "fact-dependent." *Bias*, 157 Idaho at 898. "Generally, it is not permissible to refuse to allow a defendant 'to speak on the subject.'" *Id.* at 898 (quoting *Nath*, 137 Idaho at 715). When the defendant clearly asserts dissatisfaction with counsel, the district court is "obligated to make some reasonable inquiry and assessment into the validity of [the defendant's] concerns." *State v. Lippert (Lippert I)*, 145 Idaho 586, 594 (Ct. App. 2007). "The

court ‘must make the kind of inquiry that might ease the defendant’s dissatisfaction, distrust, or concern.’” *Severson*, 147 Idaho at 704 (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir. 1991)). Conversely, a defendant’s hints, at best, of dissatisfaction with this attorney’s performance on one occasion without any request for substitute counsel imposes “a more limited duty to inquire.” *Bias*, 157 Idaho at 898 (citing *State v. Grant*, 154 Idaho 281, 285 (2013)). “Under those facts, it is sufficient to ask a defendant if he has any questions, and move on if he fails to raise any complaints about counsel.” *Id.* (citation omitted).

In *Clayton*, for example, this Court held that the district court’s inquiry was adequate because the district court allowed the defendant a full and fair opportunity to express his concerns. 100 Idaho at 898. The *Clayton* defendant had moved for substitution of counsel, and the district court held a hearing on the motion. *Id.* at 897. This Court reasoned, “The defendant was accorded ample opportunity to recite any underlying facts giving rise to his subjective beliefs concerning appointed counsel’s alleged temporary incompetency.” *Id.*

In contrast, in *Nath*, this Court held that the district court’s inquiry was inadequate for two reasons: the district court’s assessment of the defendant’s request was “incomplete” and the defendant “was not given the opportunity to explain his problems.” 137 Idaho at 715. The defendant had filed a pro se motion for substitute counsel with specific deficiencies of counsel, and the district court held a hearing in which the defendant was not allowed to speak. *Id.* at 714–15. This Court reasoned that the defendant was not given a full and fair opportunity because the district court’s “review of his motion did not encompass the totality of his claims” and defendant was not able to speak on his behalf. *Id.* at 715.

Three cases from the Court of Appeals are also instructive on inadequate inquiries. First, in *Peck*, the Court of Appeals held the district court failed to provide the defendant with a “full



and fair opportunity' to explain his reasons for wishing to discharge" his public defender. 130 Idaho at 713. At the sentencing hearing,

when Peck asked to address the court and indicated that he was unhappy with counsel, the district court threatened to have Peck removed from the courtroom if he spoke again and informed Peck that his dissatisfaction with the public defender's office was "irrelevant." When Peck indicated that he wanted to "fire counsel," the district court stated that he did not have that right.

*Id.* The Court of Appeals acknowledged the district court's concern that the defendant may have been attempting "to manipulate the system rather than a bona fide request to discharge counsel."

*Id.* at 714. Nevertheless, the Court of Appeals held the district court should have given the defendant "a meaningful opportunity to justify his request for substitute counsel or to exercise his right to represent himself." *Id.* Accordingly, the Court of Appeals remanded the case for a hearing and findings by the district court. *Id.*

Second, in *Lippert I*, the Court of Appeals held that it was unable to review whether the defendant had good cause for the appointment of substitute counsel because the district court did not conduct a meaningful inquiry. 145 Idaho at 594. The defendant "protested" on the morning of trial "that counsel had spent only thirty minutes with him preparing for trial and did not even inform him that the date for trial had been rescheduled." *Id.* The district court did not inquire further and did not question appointed counsel. *Id.* "Instead, . . . the district court merely asked counsel if he had anything to add and then proceeded to trial when counsel declined to say anything." *Id.* The defendant had also asserted his counsel was not his counsel, he had no counsel, and he wanted time to look at the law to "respond." *Id.* "The district court did not inquire further into these repeated assertions of dissatisfaction with the public defender." *Id.* The Court of Appeals analogized these facts to *Peck* and held the district court's failure to question counsel, "or make any meaningful determination," necessitated a remand for a proper inquiry. *Id.*

Third, in a more recent case, the Court of Appeals again held that the district court's inquiry was inadequate. In *Bias*, the defendant filed a motion for the appointment of substitute counsel after sentencing, and the district court denied the motion as unnecessary due to the late stage of the proceedings. 157 Idaho at 896–97. The Court of Appeals remanded the case for the district court “to gather the facts required to adjudicate the motion.” *Id.* at 898. The Court of Appeals recognized that the defendant “made general averments” and the district court’s “failure to develop an adequate factual basis to adjudicate the motion” limited the appellate court’s review. *Id.* at 898. The Court of Appeals held the district court erred by ruling on the motion without a full and fair opportunity for the defendant to express his concerns. *Id.* at 898–99.

Here, the district court did not apply the correct legal standards or exercise reason upon Mr. Hanson’s motion for ineffective assistance of counsel and to remove Mr. Watson. The district court had the duty to conduct an adequate inquiry on his motion, *see Lippert I*, 145 Idaho at 594, and it did not conduct that inquiry. The district court’s failure to inquire is most similar to *Nath* in that Mr. Hanson “was not given the opportunity to explain his problems.” 137 Idaho at 860. Rather, the district court proceeded as if Mr. Hanson had not filed the motion. Moreover, because the district court did not conduct an inquiry, there is not an adequate factual basis for this Court to review the district court’s decision. *Bias*, 157 Idaho at 898–99. Similar to the error identified in *Nath*, as well as *Peck*, *Lippert*, and *Bias*, the district court did not give Mr. Hanson “a full and fair opportunity to present the facts and reasons in support of his motion for substitution of counsel after having been made aware by the court of the problems involved.” *Clayton*, 100 Idaho at 898. Mr. Hanson maintains that this was an abuse of discretion.

In summary, the district court failed to apply the correct legal standards because it did not conduct a sufficient inquiry in Mr. Hanson’s motion, and the district court did not exercise

reason because it did not have sufficient facts to rule on Mr. Hanson's motion. These discretionary errors violated Mr. Hanson's right to an inquiry and thus his state and federal constitutional rights to effective assistance of counsel. Due to these errors, Mr. Hanson respectfully requests this Court vacate his judgment of conviction and remand his case for further proceedings. *See Nath*, 137 Idaho at 718. Alternatively, he respectfully requests this Court remand this case for a proper inquiry. *Bias*, 157 Idaho at 898–99, 900; *Lippert I*, 145 Idaho at 594; *Peck*, 130 Idaho at 714.

#### CONCLUSION

Mr. Hanson respectfully requests this Court vacate his judgment of conviction and remand his case for a new trial. In the alternative, he respectfully requests this Court remand his case for an adequate inquiry to determine good cause for substitute counsel.

DATED this 4<sup>th</sup> day of January, 2019.

/s/ Jenny C. Swinford  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of January, 2019, I caused a true and correct copy of the foregoing *REVISED* APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCS/eas