

**IN THE SUPREME COURT**

CAROL THOMPSON, CLERK

**STATE OF WYOMING**

|                      |   |               |
|----------------------|---|---------------|
| SAMUEL LOGAN RENNER, | ) |               |
| Appellant,           | ) |               |
|                      | ) |               |
| v.                   | ) | No. S-14-0208 |
|                      | ) |               |
| STATE OF WYOMING     | ) |               |
| Appellee.            | ) |               |

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**APPELLANT'S MOTION FOR REMAND UNDER RULE 21 W.R.A.P.**

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COMES NOW the Appellant, Samuel Logan Renner, by and through his undersigned counsel, and moves the Court for an order of partial remand for the purpose of developing the record on issues of potential ineffective assistance of counsel as authorized under Rule 21 W.R.A.P. Filed herewith as supporting affidavits are the affidavits of Vikki Renner, Samuel Logan Renner and Donald Fuller as Exhibits A, B and C. In support of this motion Appellant, hereinafter Mr. Renner, shows the Court as follows:

1. Mr. Renner was charged with first degree murder, attempted first degree murder, seven counts of aggravated assault and two counts of possession of a deadly weapon arising out of a series of incidents occurring in the late hours of July 24, 2014.

2. In the incident giving rise to the charges Mr. Renner was involved in a fight immediately prior to the charged events and during that fight he was severely beaten about the head.

3. In the afternoon of July 25, 2014, Mr. Renner's mother contacted and retained a lawyer to represent him. During the course of meeting with that lawyer he identified the need to have Mr. Renner immediately evaluated for neurological injuries arising out of his beating to determine the possibility that his injuries created a defense of automatism or impacted his ability to pre-meditate or otherwise develop the mens rea necessary to constitute a crime.

4. The lawyer asked the mother to advance funds for the purpose of investigating the case further and the mother advanced the funds requested, \$5,000, to be used for that purpose.

5. The lawyer failed to arrange any neurological evaluation of Mr. Renner for several months. By the time the evaluation was performed the neurological status of Mr. Renner at the time of the incident could not be determined. Mr. Renner asserts that the failure to timely investigate his mental state constituted ineffective assistance of counsel and deprived him of the ability to defend himself effectively.

6. The lawyer's law partners met with the lawyer periodically and asked the lawyer about the status of the neurological exam and the progress of the investigation and the lawyer informed them that he was taking care of these things. The law partners later learned that the neurological exam had not been arranged and the investigator had not been given any instructions and had not begun an investigation.

7. The case was scheduled for trial commencing February 24, 2014. Sometime in January 2014, the law partners met with the lawyer to talk about Mr. Renner's case. It appeared to the partners that the lawyer had no theory of defense and

had made no progress in investigating the case. The partners made hasty efforts to develop an investigation of the case and entered into discussions with the prosecution regarding a plea agreement. Because of the failure to secure a timely neurological evaluation the lawyers were unable to develop a strong case on diminished capacity resulting in a significant risk of conviction on the charges.

8. The investigation revealed several defenses available to Mr. Renner on some of the various charges. These included the head injury's impact on his mental state and a self-defense argument based on the fact that the deceased victim had chased Mr. Renner down and tackled him while Mr. Renner was running away prior to the actual shooting while they were wrestling on the ground. Additionally, several of the aggravated assault victims stated to the investigator that Mr. Renner had never pointed a gun at them as charged.

9. One of the law partners entered into negotiation with the prosecution resulting in a proposed plea agreement which was signed by Mr. Renner and filed with the district court on January 21, 2014. That agreement provided that the State would amend the murder and attempted murder charges to second degree in exchange for Mr. Renner changing his plea to guilty on all charges and agreeing to a range of sentencing arguments by each side.

10. But for the failure to develop the evidence to support the mental status defenses the attorneys for Mr. Renner would have been in a significantly stronger position to negotiate a plea agreement on more favorable terms.

11. Mr. Renner was told that he should sign the agreement because the possibility of conviction on a first degree murder charge would result in a mandatory life sentence. Mr. Renner was one day over the age of twenty one on the date of the incident giving rise to the charges. Mr. Renner was informed that the plea agreement would provide him with the opportunity of release before reaching old age while going to trial would result in either a life sentence if convicted of either of the first degree charges or an effective life sentence even if the jury chose a lesser included offense conviction. Based upon those facts Mr. Renner agreed to the plea agreement.

12. Despite the fact that Mr. Renner had no memory of the events giving rise to the assault charges, the prosecutor insisted that Mr. Renner could not enter a no contest plea as part of the plea agreement.

13. At the time of the plea, the attorneys for Mr. Renner did not have him enter an “Alford” plea despite the fact that Mr. Renner still maintained his innocence and was only agreeing to the plea to avoid the possibility of the mandatory life sentence under first degree murder. This was because the prosecutor insisted that no such plea was acceptable to him in return for the plea agreement.

14. At sentencing, the lawyers presented evidence of the existence of Mr. Renner’s possible defenses despite the guilty pleas in the form of a sentencing memorandum which is attached hereto as Exhibit D. While this was done to support an argument in mitigation of the sentence, the failure of the lawyers to inform the court at the time of the plea that this was an “Alford” plea caused the mitigation evidence to appear to be excuse-making or failure to take responsibility.

15. The district judge sentenced Mr. Renner to the maximum sentence under the plea agreement of sixty years to life with concurrent sentences for the other various charges.

16. Mr. Renner asserts that the failure to properly inform the trial court that the pleas were actually entered as “Alford” pleas for the purpose of avoiding the possibility of the mandatory life sentence for first degree murder while continuing to maintain his innocence caused the judge to perceive his mitigation evidence as efforts to avoid responsibility and resulted in his receiving a harsher sentence than he would have received if the plea had been properly explained to the judge.

Mr. Renner requests remand to the trial court for a hearing on a claim of ineffective assistance of counsel in two particulars: failure to timely investigate the case and specifically the mental and head injury status of Mr. Renner at the time of the incident, and failure to present the plea agreement as an Alford plea on the murder and attempted murder charges and a no contest plea on the remaining charges.

DATED this 11th day of December, 2014.

s/Eric M. Alden  
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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 11, 2014, a true and correct copy of the foregoing was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System, addressed as follows:

Jenny L. Craig  
Senior Assistant Attorney General  
123 Capitol Building  
Cheyenne, WY 82002

And via U.S. mail, postage prepaid, to:

Daniel James Itzen  
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Don Fuller  
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Kurt Infanger  
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The undersigned also certifies that all required privacy redactions have been made and, with the exception of any required redactions, this document is an exact copy of the written document filed with the Clerk. Furthermore, this document has been scanned for viruses and is free of viruses.

s/Eric M. Alden  
Eric M. Alden