

**SUMMARY STATEMENT**  
*Juan Manuel Arellano v. State*  
Docket No. 45179

Juan Manuel Arellano was charged with and pled guilty to the first degree murder of his wife. Arellano appealed his sentence as excessive, which was affirmed. Arellano then filed a pro se petition for post-conviction relief, which the district court summarily dismissed. Arellano appealed, and the Idaho Court of Appeals reversed the district court's summary dismissal on one claim of ineffective assistance of counsel: that defense counsel informed Arellano that his mental state at the time of his wife's death was irrelevant. On remand, Arellano filed a post-evidentiary hearing brief in which he argued defense counsel was ineffective for failing to inform him of the elements of second degree murder.

The claim argued in Arellano's post-evidentiary hearing brief was a new claim not previously asserted. Idaho Rule of Civil Procedure 54(c) allows a court to grant any relief necessary; however, I.R.C.P. 15(b) requires both parties' consent to try the issues, either expressly or impliedly. The record did not show that the parties expressly or impliedly consented to try the new claim. Further, Idaho Code § 19-4908 requires all grounds for relief available to an applicant for post-conviction relief must be raised in his original, supplemental, or amended petition. Arellano raised his new claim for the first time in his post-evidentiary hearing brief. Therefore, the issue was not properly raised before the district court and therefore was not considered on appeal.