

## SUMMARY STATEMENT

*Lawrence Scott Andrus v. State of Idaho*  
Docket No. 45297

Andrus filed a petition for post-conviction relief and requested that counsel be appointed. The district court granted an extension of time to allow Andrus time to file an amended petition. Conflict counsel was appointed on April 21, 2016. The State filed its answer on June 15, 2016. On July 11, 2016, the district court filed a notice of intent to dismiss the initial petition pursuant to Idaho Code § 19-4906(b). As of July 11, 2016, no documents had been filed by appointed counsel. However, on July 26, 2016, conflict counsel requested an extension of time to amend the petition. The motion provided no explanation of the steps taken to contact Andrus or why he had not spoken to his client in more than three months. Also on July 26, 2016, counsel sent what appears to be the first and only letter to Andrus. The court granted Andrus a thirty-day extension; however, no other motions, documents, amendments, or pleadings were filed in the case, and the court dismissed Andrus's petition for post-conviction relief with prejudice. Andrus timely appealed and this Court affirmed the dismissal. *Andrus v. State*, Docket No. 44686 (Ct. App. Jan. 24, 2018) (unpublished).

Next, Andrus filed a motion seeking relief pursuant to Idaho Rule of Civil Procedure 60(b)(6) and asserted that his conflict counsel's inaction constituted a complete absence of meaningful representation and that Andrus relied on his counsel's representation to Andrus's detriment. The district court denied Andrus's motion, holding that Andrus had not established a unique and compelling circumstance justifying relief because the district court dismissed the petition on its merits and because Andrus had not shown by way of affidavit or otherwise that there were any amendments to the petition or additional facts or arguments that would have prevented summary dismissal.

Where counsel has been appointed, it is error to dismiss claims on the merits when there is an allegation, supported by some evidence, of the complete absence of any assistance of counsel to review, develop, or amend those claims. The district court erred in denying Andrus's I.R.C.P. 60(b)(6) motion. The Court of Appeals reversed the district court's order denying relief from the judgment and remanded the case for further proceedings consistent with this opinion.