FOR IMMEDIATE RELEASE: **Contact:** James Hallinan

May 25, 2017 (505) 660-2216

AG Balderas Keeps Serial Murderer Clifton Bloomfield in Prison

Albuquerque, NM – In December 2016, the office of Attorney General Hector Balderas appeared before Judge Benjamin Chavez to argue to keep five-time convicted murderer Clifton Bloomfield in prison for the rest of his life. Today, Attorney General Balderas announced that Judge Chavez agreed with the Office of the Attorney General by denying Bloomfield's attempt to get out of prison. Bloomfield, who pleaded guilty in 2008 to murdering five people in New Mexico, filed a writ of habeas corpus to withdraw his guilty plea. The Office of the Attorney General Criminal Appeals Division argued to the court in December that Clifton Bloomfield's petition for writ of habeas corpus should be dismissed on the pleadings, without an evidentiary hearing, because Bloomfield's claims are refuted by the record, including the transcripts of the plea and sentencing hearings.

"Serial murderer Clifton Bloomfield terrorized New Mexico families with his horrific crimes and now thanks to the work of our office, he will remain in prison for the rest of his life," said Attorney General Balderas. "My office will continue to do everything in its power to keep violent offenders like Clifton Bloomfield behind bars in order to protect New Mexicans. The Office of the Attorney General is focused on working with local law enforcement and district attorneys to accomplish this mission."

Clifton Bloomfield admitted to murdering the following individuals:

The Oct. 24, 2005, killing of Carlos Esquibel, 37

The Oct. 27, 2005, murder of Josephine Selvage, 81

The Dec. 4, 2007, murders of Tak and Pung Yi

The June 28, 2008, killing of Scott Pierce, 40

Please see attached for a photo of Bloomfield and the Judge Chavez's order.

# # #

ENDORSED
FILED IN MY OFFICE THIS
MAY 25 2017
CLERK DISTRICT COURT

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

CLIFTON BLOOMFIELD,

Petitioner,

v.

No. D-202-CR-2008-3350

STATE OF NEW MEXICO and
MANUEL PACHECO, Warden,

Respondents.

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER came before the Court on Amended Petition for Writ of Habeas Corpus filed October 15, 2015, and Response filed September 23, 2016. The Court, having reviewed the pleadings, transcripts, court records, supplemental filings and affidavits, and being otherwise fully advised, hereby **FINDS** and **ORDERS** as follows:

I. BACKGROUND

a. On October 10, 2008, Petitioner entered into a Plea Agreement containing the following terms:

i. Petitioner would plead guilty to five counts of first degree murder (count 1 from the indictment (hereinafter "Indictment CR 08-3350")) and (counts 11, 12, 15 and 17 from the information (hereinafter "Information CR 08-3350")), two counts of conspiracy to commit murder (count 2 from

Indictment CR 08-3350 and count 13 from Information CR 08-3350), and three counts of aggravated battery (count 5 from Indictment CR 08-3350 and counts 14 and 16 of Information CR 08-3350);

ii. The State agreed not to pursue the death penalty;

iii. The parties agreed Petitioner would be transported to an out-of-state facility for incarceration;

iv. Petitioner agreed that if the plea was accepted the potential sentence was five consecutive life sentences, plus 45 years of incarceration;

v. The State agreed to dismiss counts 3, 4, 5, 6, 7, 8, 9, and 10 from Indictment CR 08-3350 and any additional charges arising out of DA 2008- and PV 06-1856.

b. At a hearing on October 10, 2008, the Court went through the Agreement and advised Petitioner of the following:

i. The Court informed Petitioner he was giving up his right to a speedy trial, the right to appeal, the right to present his own witnesses, and the right to confront and cross-examine witnesses against him;

ii. The Court went through the terms of the Agreement and asked Petitioner if he had been promised anything not mentioned. Petitioner asked the Court to explain and the Court asked if "any promised you anything that we have not spoken about" to which Petitioner said no;

iii. Petitioner stated he had not been forced or threatened to enter the plea that the plea was the best thing for him;

iv. He stated he was not under the influence of alcohol or any narcotics and did not have any physical or mental health problems which would make it difficult to understand the proceedings;

v. Petitioner was informed and stated he understood that he did not have to plead and could go to trial;

vi. He stated he had enough time to review and discuss the plea, including the rights he was giving up, with his attorney and he was very satisfied with her advice;

vii. Defense counsel stated there were no claimed violations of constitutional rights and that she had explained to Petitioner that he would be waiving such claims by entering into the Agreement; and

viii. Petitioner stated he understood the Agreement and that he did not have any questions for either the Court or his lawyer.

c. On the record, Petitioner pled guilty to counts 1 and 2 of Indictment CR 08-3350 and counts 11, 12, 13, 14, 15, 16, and 17 of Information CR 08-3350. He did not enter a plea to count 5 of Indictment CR 08-3350.

d. At the sentencing hearing on October 24, 2008, Petitioner was given an opportunity to speak and refused. However, defense counsel noted that Petitioner did not have to admit to three additional murders and that the closure he gave to the families in coming forward should be considered when sentencing Petitioner.

e. While the Court imposed the maximum sentence, it stated it would recommend Petitioner be housed outside the state of New Mexico, but that the decision was ultimately up to the jail.

f. Petitioner was sentenced for five counts of first degree murder, two counts of conspiracy to commit murder, and three counts of aggravated burglary.

g. Petitioner was sentenced to five consecutive life sentences, plus 45 years.

h. The Judgment, Sentence, and Commitment contained a recommendation that Petitioner be confined outside the State of New Mexico.

i. On December 16, 2011, Petitioner filed a pro se Petition for Writ of Habeas Corpus.

j. Counsel was appointed and an Amended Petition for Writ of Habeas Corpus was filed on October 15, 2015, raising the following issues:

   i. Deprivation of the right to counsel when the public defender failed to appoint a death penalty qualified attorney;

   ii. Involuntary plea;

   iii. The State failed to comply with the terms of the Plea Agreement;

   iv. Prosecutorial misconduct occurred during plea negotiations; and

   v. Ineffective assistance of counsel based on counsel's failure to move for death penalty qualified counsel, failure in negotiating and advising Petitioner about the Agreement, and failure to perfect Petitioner's right to appeal.

k. The State responded to the Amended Petition, providing the Court with transcripts from the plea and sentencing hearings and an affidavit from Petitioner's trial counsel.

l. The affidavit from defense counsel stated the following:

i. The case was not a death penalty case and if it had been she would have sought to withdraw so death penalty counsel could be appointed;

ii. Petitioner was the driving force behind the plea, that the Agreement was in his best interest, was knowing and voluntary, and that she and Petitioner discussed it in depth;

iii. She had advised Petitioner that a recommendation would be made that he be housed outside of New Mexico and he understood that there was no guarantee as the ultimate decision was in the authority and discretion of the Department of Corrections;

iv. She stated Petitioner was housed in Connecticut for a period of time and was returned to New Mexico due to behavior issues; and

v. She stated there was never a request made to file an appeal and Petitioner received the sentence he negotiated.

II. EVIDENTIARY HEARING

Having reviewed the pleadings, trial transcripts, and court record this Court has determined an evidentiary hearing is unnecessary. *Cf. State v. Bruce*, 1971-NMSC-022, ¶ 4, 82 N.M. 315, 481 P.2d 103 (holding that "[i]t [is] incumbent on defendant, to merit a hearing on the motion to set forth matters therein which, if proved, would require the setting aside of the conviction").

III. ANALYSIS

(1) Deprivation of effective assistance of counsel for failure to appoint death penalty qualified counsel.

Petitioner argues he was deprived of his right to counsel contending that, as the State had threatened to bring death penalty charges, under Rule 5-704 NMRA, he was entitled to representation by two qualified attorneys and his trial counsel was not qualified.

The Sixth Amendment guarantees the right to reasonably effective assistance of counsel, *see Patterson v. LeMaster*, 2001-NMSC-013, ¶ 16, 130 N.M. 179, and trial counsel is generally presumed to have provided adequate assistance, *see State v. Bernal*, 2006-NMSC-050, ¶ 32, 140 N.M. 644. Rule 5-704(C) sets forth the qualifications for attorneys representing defendants in death penalty cases. In addition, Rule 5-704 requires the State to file a notice of intent to seek the death penalty and requires a hearing to determine whether aggravating circumstances exist.

In this case, while defense counsel may not have been qualified under Rule 5-704, no notice of intent to seek the death penalty was filed and no hearing was held. As the case had not been qualified as a death penalty case, Petitioner's argument that death penalty counsel should have been appointed fails.

Having determined that the requirements of Rule 5-704 were not triggered, Petitioner's claims of ineffective assistance of counsel are in the same vein as any other ineffective assistance of counsel claims and must be tested under the *Strickland* factors. *See Strickland v. Washington*, 466 U.S. 668, 697-98 (1984). That is, Petitioner must establish that the performance of his trial counsel was deficient and that he was prejudiced by this deficient performance. *See Patterson*, 2001-NMSC-013, ¶ 17 (holding that the defendant must demonstrate "defense counsel's

performance fell below the standard of a reasonably competent attorney, and due to the deficient performance, the defense was prejudiced").

Petitioner argues that trial counsel's failure to withdraw so that qualified counsel could be appointed constituted *per se* ineffective assistance of counsel and prejudice should be presumed. Petitioner contends a Motion to Withdraw filed by defense counsel, indicating a conflict of interest, demonstrates ineffective assistance of counsel. However, the details of the conflict of interest were not mentioned and five days later, a motion was filed noting there were discussions in progress which may have obviated the ineffective assistance of counsel issues.

While there may be some circumstances "that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified[,]" none of those circumstances are present in this case. *See U.S. v. Cronic*, 466 U.S. 648, 658-59 (1984) (circumstances where prejudice need not be shown are complete denial of counsel at a critical stage of the trial, defense counsel entirely failing to subject the state's case to meaningful adversarial testing, and where defense counsel is called upon to render assistance under circumstances where competent counsel could not). At most, the conflict indicated by Petitioner was a *potential* conflict and appears to have been resolved and was not raised again by defense counsel. *See Strickland,* 466 at 692 (holding that a case-by-case inquiry into prejudice is not worth the cost where "counsel is burdened by an *actual* conflict of interest" (emphasis added)); *Cronic*, 466 U.S. at n. 31 (noting that prejudice is presumed "when counsel labors under an actual conflict of interest").

Furthermore, as the case had not yet qualified as a death penalty case and there was no requirement for death penalty counsel to be appointed, it was not deficient for trial counsel to fail to move to withdraw on these grounds and, any alleged prejudice from the lack of death penalty qualified counsel is purely speculative. *See State v. Chandler*, 1995-NMCA-033, ¶ 35, 119 N.M.

727, 895 P.2d 249 (holding that it is not ineffective to fail to file a futile motion); *see also State v. Orosco*, 1991-NMCA-084, ¶ 39, 113 N.M. 789, 833 P.2d 1155 (rejecting defendant's ineffective assistance of counsel claim because speculation about what the state may have done does not demonstrate prejudice).

Having failed to establish either deficient performance or prejudice, the presumption of effective counsel applies and Petitioner's claim fails.

(2) Involuntary plea

Petitioner contends his plea was not knowing and voluntary for the following reasons: public opinion was tainted when information about his plea negotiations were released to the media which essentially forced him to accept the plea; a copy of the plea was never presented to him to review prior to signing before the trial court and trial counsel did not advise him of the terms; and his plea was induced by improper representations, promises, or threats.

"New Mexico has long recognized that for a guilty plea to be valid it must be knowing and voluntary." *State v. Garcia*, 1996-NMSC-013, ¶ 8, 121 N.M. 544, 915 P.2d 300. Rule 5-303 NMRA (2008) codifies the requirement that the plea be voluntary and intelligent. *See Garcia*, 1996-NMSC-013, ¶ 9; *see also State v. Johnathan B.*, 1998-NMSC-003, ¶ 11, 124 N.M. 620, 954 P.2d 52 ("The rule serves to provide evidence that a plea is knowing and voluntary."). For a plea to be knowing and voluntary, "[t]he defendant must understand his guilty plea and its consequences" meaning the defendant "has been informed of the nature of the charges, acts sufficient to constitute the offense, the right to plead not guilty, the right to a jury trial, the right to counsel, and the permissible range of sentences." *Garcia*, 1996-NMSC-013, ¶ 9 (quotation marks and citations omitted). "[A]bsent a showing of prejudice to the defendant's right to

understand his guilty plea and its consequences, substantial compliance with Rule 5-303(E) is sufficient." *Id.* ¶ 12.

Petitioner presents no evidence to support his claims that he was forced into accepting the plea because the State released information about the plea negotiations to the media. *Cf. Bruce*, 1971-NMSC-022. Furthermore, the record belies his contentions that a copy of the plea was never presented to him to review prior to signing before the trial court and trial counsel did not advise him of the terms and that his plea was induced by improper representations, promises, or threats. Petitioner stated to the Court that he had read and understood the Plea Agreement, had reviewed it with his attorney, that he was satisfied with his attorney's advice, and that no threats or promises had been made to induce him into entering into the Plea Agreement. Given the thoroughness of the plea hearing, the Court finds no support for Petitioner's argument that the plea was not knowing or voluntary and denies this claim.

(3) Failure to comply with terms of the Plea Agreement.

Petitioner asserts that the State failed to honor terms of the Plea Agreement, namely that Petitioner would be incarcerated outside of New Mexico and in one of five specific states. He also contends that the Plea Agreement was ambiguous as to whether count 5 of Indictment CR 08-3350 was to be pled to or dismissed and this ambiguity should be resolved in his favor and count 5 dismissed.

"In reviewing and interpreting the agreement [the] court should construe the terms 'according to what [petitioner] reasonably understood when he entered his plea.'" *State v. Mares*, 1994-NMSC-123, ¶ 12, 119 N.M. 48, 888 P.2d 930 (quoting *Lucero v. Kerby*, 7 F.3d 1520, 1522 (10th Cir. 1993)) (quotation marks and citation omitted) (alteration in original). "If the trial court resolves alleged ambiguities and no further objection is made, the agreement is no

longer ambiguous on those points[.]" *Mares*, 1994-NMSC-123, ¶ 12. "[I]f the ambiguities are not addressed by the...court and there is no other relevant extrinsic evidence to resolve the ambiguity, the reviewing court may rely on the rules of construction, construing any ambiguity in favor of the [petitioner]." *State v. Fairbanks*, 2004-NMCA-005, ¶ 15, 134 N.M. 783, 82 P.3d 954 (citing *Mares*, 1994-NMSC-123).

While he was ultimately sentenced on count 5 of Indictment CR 08-3350, the Plea Agreement states both that count 5 would be pled to and dismissed. At the plea hearing, however, the Court did not address this ambiguity and Petitioner did not plead to count 5 on the record. The State does not contest the allegations by Petitioner on this issue and agree that the conviction for count 5 of Indictment CR 08-3350 should be vacated and Petitioner's sentence amended.

Regarding Petitioner's claim that the State promised he would be housed outside of New Mexico one of five specific states: the record reveals that the State made a recommendation that Petitioner be housed outside of New Mexico, and the Court, although indicating it would make the recommendation, noted that the ultimate decision rested with the jail. Petitioner never raised an issue that there was a promise he would be sent to a specific State or that he understood there was an agreement to anything other than a recommendation, even after the trial court informed him all he could do was make a recommendation. *Cf. State v. Lord*, 1977-NMCA-139, ¶¶ 10-17, 91 N.M. 353, 573 P.2d 1208 (noting that nondisclosure of an alleged promise waives any claim of an unkept promise by the State). Furthermore, Petitioner concedes that he was incarcerated outside of New Mexico, indicating that at least for a period of time, the Department of Corrections followed the recommendation to incarcerate Petitioner outside of New Mexico.

Petitioner's claims that the State failed to comply with the agreed upon terms of the Plea Agreement are denied.

(4) Prosecutorial Misconduct During Plea Negotiations

Petitioner contends that attorneys for the State released statements from Petitioner's plea negotiations to the media and other defendants in violation of the Rules of Professional Conduct and other court rules, engaged in unfair dealings during plea negotiations to entice Petitioner to make disclosures, and that the prosecutorial misconduct of the State amounted to fundamental error.

While fundamental error generally concerns the conduct of a trial, it can be applied in other contexts. *See State v. Bencomo*, 1990-NMCA-028, ¶ 6, 109 N.M. 724, 790 P.2d 521 (recognizing fundamental error in the context of plea negotiations). Fundamental error "must...go to the foundation of the case" and in the context of guilty or no contest pleas "the 'foundation of the case' is the validity of the plea." *Id.* (citation omitted). To show fundamental error regarding a guilty or no contest plea, "(1) the error must be clear, and (2) the error must clearly have affected the outcome." *Id.* ¶ 7; *see also Marquez v. Hatch*, 2009-NMSC-040, ¶ 15, 146 N.M. 556, 212 P.3d 1110.

Even assuming error occurred, that is that the State released statements about the plea negotiations to the media as true, Petitioner's main claim is that the release of these statements deprived him of a fair trial by prejudicing a potential jury pool. This claim is speculative, as there was never a jury pool assembled, and even if a jury pool had been assembled there is no reason to believe (1) that the publicity would have affected the outcome of the trial, *cf. State v. Robinson*, 1983-NMSC-040, ¶ 21, 99 N.M. 674, 662 P.2d 1341 (holding that defendant was not deprived a fair trial when his co-defendant's plea was presented the day the jury was being

picked for defendant's trial and noting that the publicity resulting from such plea did not deny the defendant a fair trial), or (2) that he would not have moved for a change of venue, *see* NMSA 1978, § 38-3-3 (2003).

Additionally, it is not clear that Petitioner would not have pled had the alleged misconduct not occurred. *See Bencomo*, 1990-NMCA-028, ¶ 8. At the plea hearing, Petitioner was clear that he believed the Plea Agreement was in his best interest, that he desired to plead, that he had not been coerced in the Agreement, and that he understood he could reject the Agreement and proceed to trial. Any claims to the contrary are based solely upon Petitioner's self-serving statements and are insufficient to establish prejudice. *See Patterson*, 2001-NMSC-013, ¶ 29 ("Because courts are reluctant to rely solely on the self-serving statements of defendants, which are often made after they have been convicted and sentenced, a defendant is generally required to adduce additional evidence[.]"). Petitioner's claims related to prosecutorial misconduct in the plea negotiations are denied.

(5) Ineffective assistance of counsel

The Court has previously addressed Petitioner's claim of ineffective assistance of counsel related to trial counsel withdrawing or moving for death penalty qualified counsel to be appointed. Petitioner's remaining ineffective assistance claims relate to the advice he was given regarding the plea and the failure of trial counsel to perfect the right to appeal.

To prevail on an ineffective assistance of counsel claim, Petitioner must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *See Strickland,* 466 U.S. at 687; *State v. Schoonmaker,* 2008-NMSC-010, ¶ 32, 143 N.M. 373, 176 P.3d 1105 ("To establish a claim of ineffective assistance, a defendant must show error on the part of counsel and prejudice resulting from that error."), *overruled on other grounds by State*

v. Consaul, 2014-NMSC-030, ¶ 38, 332 P.3d 850; *State v. Grogan*, 2007-NMSC-039, ¶ 11, 142 N.M. 107, 163 P.3d 494 (holding "[t]he defendant has the burden to show both incompetence and prejudice[]"). An error exists "if the attorney's conduct fell below that of a reasonably competent attorney." *Schoonmaker*, 2008-NMSC-010, ¶ 32. (internal quotation marks and citation omitted). "There is a strong presumption that trial counsel's conduct 'falls within the wide range of reasonable professional assistance.'" *State v. Garcia*, 2011-NMSC-003, ¶ 33, 149 N.M. 185, 246 P.3d 185 (quoting *State v. Hunter*, 2006-NMSC-043, ¶ 13, 140 N.M. 406, 143 P.3d 168).

To succeed on a claim of ineffective assistance of counsel "in the plea bargain context a defendant must establish [1] that his counsel's performance was objectively unreasonable and [2] that but for counsel's errors, he would not have pleaded guilty and instead gone to trial." *Patterson v. LeMaster*, 2001-NMSC-013, ¶ 18, 130 N.M. 179, 21 P.3d 1032 (quotation marks and citations omitted).

Petitioner contends his trial counsel failed to ensure the Agreement accurately reflected the verbal agreements, failed to advise him of the terms of the Agreement, failed to provide him a copy of the Agreement and, as a result, he was unable to examine the Agreement until after sentencing. As an initial matter related to both of Petitioner's ineffective assistance of counsel claims, he has failed to allege prejudice result from any defective performance of trial counsel. *See State v. Plouse*, 2003-NMCA-048, ¶ 13, 133 N.M. 495, 64 P.3d 522 (recognizing that "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice…that course should be followed" (internal quotation marks and citation omitted)); *Strickland*, 466 U.S. at 697 (holding that "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the

defendant makes an insufficient showing on one[]"). There were no pre-conviction statements made which would indicate Petitioner's desire to proceed to trial, and, at the plea hearing, Petitioner's statements and those made by defense counsel indicate that he desired to enter into the Plea Agreement. *See Patterson*, 2001-NMSC-013, ¶¶ 29-31 (discussing the reluctance of courts to rely on the self-serving statements of petitioners made post-conviction and identifying additional evidence to consider in examining the prejudice prong of an ineffective assistance claim including pre-conviction statements of the petitioner and the strength of the evidence).

Additionally, the record does not support Petitioner's contentions that trial counsel was defective. Petitioner stated at his plea hearing that he had reviewed the Agreement with his attorney, that he understood the Agreement, and that no additional promises, other than those contained in the Agreement, were made. The Court, therefore, finds no support for Petitioner's claims of ineffective assistance of counsel in advising him of the Agreement. *See State v. Wildenstein*, 1978-NMCA-027, ¶ 4, 91 N.M. 550, 577 P.2d 448 (Vague conclusory charges are insufficient to support a collateral attack. A claim is insufficient without a specific factual basis.).

Petitioner also asserts his trial counsel was ineffective for failing to perfect his right to appeal. He cites to Rule 5-702 NMRA which requires counsel to file a notice of appeal or affidavit of defendant's decision not to appeal. Petitioner further cites to *State v. Duran*, 1986-NMCA-125, ¶ 10 105 N.M. 231, 731 P.2d 374, which held that "failure to file a timely notice of appeal or an affidavit of waiver constitutes ineffective assistance of counsel *per se*, and the presumption [of prejudice] thereof is conclusive." However, "a voluntary guilty plea ordinarily constitutes a waiver of the defendant's right to appeal his conviction on other than jurisdictional grounds." *State v. Hodge*, 1994-NMSC-087, ¶ 14, 118 N.M. 410, 882 P.2d 1; *see also State v.*

Peppers, 1990-NMCA-057, ¶ 21, 110 N.M. 393, 796 P.2d 614 ("[w]e have never suggested that counsel should obtain affidavits of waiver of appeal when appeals are not pursued after a plea of guilty or no contest" and that "creation of a conclusive presumption of ineffective assistance of counsel when such a plea has not been appealed would provide defendants with an automatic right to an untimely appeal from the plea"). As Petitioner entered into an unconditional plea, and as the Court has addressed that the plea was voluntary, the presumption of effective counsel controls and the Court finds no support for Petitioner's claim that trial counsel should have perfected his right to appeal.

Petitioner's ineffective assistance of counsel claims are denied.

IV. CONCLUSION

Petitioner has failed to establish he is subject to relief from his conviction for counts 1 and 2 of Indictment CR 08-3350 and counts 11, 12, 13, 14, 15, 16, and 17 of Information CR 08-3350. Petitioner's conviction for count 5 from Indictment CR 08-3195 is vacated.

IT IS THEREFORE ORDERED, that Petitioner's Petition for Habeas Corpus is **GRANTED IN PART AND DENIED IN PART;**

IT IS FURTHER ORDERED that the Parties submit an amended Judgment, Sentence, and Commitment consistent with this Order.

BENJAMIN CHAVEZ
District Court Judge, Division XIX