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IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

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ROBERT CLIFT CRACROFT,  
  
Petitioner,

vs.

LEGAL DEFENDERS ASSOCIATION,  
DISTRICT ATTORNEYS OFFICE, SLC,  
  
Respondents.<sup>1</sup>

STATE'S MEMORANDUM IN  
SUPPORT OF MOTION TO DISMISS  
PETITION FOR POST-CONVICTION  
RELIEF

Case No. 050910191

Judge Denise P. Lindberg

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**PROCEDURAL HISTORY**

On October 1, 2004, petitioner Cracroft was charged by Information with one count of Robbery, a second degree felony; one count of Burglary, a third degree felony; and one

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<sup>1</sup> Respondent assumes that petitioner has simply erroneously named these parties as respondents. Pursuant to Utah Rule of Civil Procedure 65C, "[i]f the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General." Utah R. Civ. P. 65C(h) (West 2005). The Attorney General therefore responds for the state of Utah as the appropriate respondent.

count of Unlawful Possession of Drug Paraphernalia, a misdemeanor (addendum A). On October 26, 2004, petitioner pled guilty to Attempted Robbery, a third degree felony, and Burglary, a third degree felony. The charge of possession of drug paraphernalia was dismissed (addendum B).

On the same day as entry of his plea, October 26, 2004, petitioner was sentenced to serve 0 to 5 years for each offense. The sentences to be served concurrently (addendum C).

On November 18, 2004, petitioner filed a “Letter re: Motion for appointment of counsel and withdrawal of plea agreement.” (addendum D). From the court docket, it does not appear that any hearing or ruling was ever made on the motion to withdraw plea, presumably because the motion was untimely because it was filed after sentencing. “A request to withdraw a plea of guilty . . . shall be made by motion before sentence is announced.” Utah Code Ann. § 77-13-6 (West 2004).

Petitioner did not file any appeal.

On June 8, 2005, petitioner filed his current petition for post-conviction relief. The State hereby responds to the petition for post-conviction relief.

## **FACTS<sup>2</sup>**

The police based the Information charging petitioner upon the following:

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<sup>2</sup> The facts are taken from the Probable Cause Statement, attached as addendum A. They are double spaced for ease of reading.

“The statement of Chrystal Weston that on or about September 29, 2004, at 329 West Mary Etta Ave, in Salt Lake County, Utah, she observed a person, ROBERT C. CRACROFT, who was arrested at the scene and another male who she knew as Brian, or by his street name “Twitch,” exiting her unattached garage/shop both carrying duffel bags and backpacks. Weston stated when she confronted the defendants asking to see what they had inside of their bags the person she knew as “Twitch” immediately took off running. As she detained CRACROFT while her neighbor Kurt Rose was calling the police, CRACROFT grabbed her by her throat, threw her down to the ground, and then took off running.

The statement of Kurt Rose that he heard yelling outside his house, so he looked to see what was going on. When he looked out the door he saw his neighbor, Chrystal Weston, having a verbal and physical altercation with the defendant, ROBERT C. CRACROFT, who he positively identified at the scene. Rose went inside to call the police, when he returned he observed CRACROFT pushing Weston and yelling at her. He then broke away and started running down the street.

The statement of Officer T. Boyd of the South Salt Lake Police Department that during a search of CRACROFT, he located a Utah ID card inside his wallet showing him to be ROBERT C. CRACROFT. Located in one of the lower pockets of his jeans, was a

reddish-orange shop type rag that was rolled up. Inside the rag was a glass pipe with residue in it.

Post-*Miranda*, CRACROFT stated to Officer C. Armstrong that a person he knows as Brian aka ‘Twitch’ took him to the back porch of a house at 329 West Mary Etta Avenue, in Salt Lake County, Utah, where they smoked meth. CRACROFT stated that Brian noticed the garage door to the garage was open. Brian asked CRACROFT if he had enough room in his backpack for some tools. Brian told CRACROFT that they could go pawn the tools and get some money. CRACROFT gave Brian his backpack and went inside the garage with Brian. CRACROFT stated that Brian loaded up two bags. Brian loaded up CRACROFT’S bag with a skill saw, a couple of grinders, and an impact wrench.” (addendum A).

## **ARGUMENT**

### **I. IN LIGHT OF THE RECENT DECISION OF THE UTAH SUPREME COURT IN MANNING V. STATE, THIS PETITION MUST BE DISMISSED.**

In his current petition for post-conviction relief, petitioner argues that he was denied his right to appeal. He asserts that he instructed his counsel to submit an appeal within the time limit, but counsel refused to file an appeal (pet. p. 7).

On September 23, 2005, the Utah Supreme Court held that “a criminal defendant claiming denial of the right to appeal must file a motion in the trial court for reinstatement

of a denied right to appeal under the exceptions outlined in this case, rather than under rule 65C and the Post-Conviction Remedies Act.” Manning v. State, 2005 UT 61, ¶1 (emphasis added).

Based on the Manning decision, petitioner cannot proceed with his claim of denial of the right to appeal in a petition for post-conviction relief, but instead, must raise his claim by filing a motion in the trial court.<sup>3</sup> Therefore, respondent respectfully requests that the petition for post-conviction relief be dismissed.<sup>4</sup>

## **II. PETITIONER’S ADDITIONAL ALLEGATIONS MUST ALSO BE DISMISSED.**

In addition to the claim that he was denied his right to appeal, petitioner also raises the following additional claims in his current petition for post-conviction relief:

- “I was misled by council [sic]. So therefore I would proceed with Inafective [sic] council [sic]”
- “I have New Evidence in my case.”

(pet. at 7).

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<sup>3</sup> If such a motion is filed in the criminal case, the defendant has the burden to “prove, based on facts in the record or determined through additional evidentiary hearings, that he has been unconstitutionally deprived, through no fault of his own, of his right to appeal.” Manning, 2005 UT 61, ¶ 31. The responding party would be the prosecuting agency in the criminal case, not the office of the Attorney General.

<sup>4</sup> An evidentiary hearing in the post-conviction case is currently scheduled for October 28, 2005. Respondent also requests that the evidentiary hearing be cancelled.

These additional claims must be dismissed because a civil petition for post-conviction relief is only available to a defendant “who challenges a conviction or sentence for a criminal defense and who has exhausted all other legal remedies.” Utah Code Ann. § 78-35a-102 (1) (West 2005). Based on Manning, petitioner has not exhausted all other legal remedies, because he may file a motion in the trial court for reinstatement of the right to appeal. Therefore, his petition for post-conviction relief must be dismissed because he has not exhausted all other legal remedies.

In addition, even if petitioner were allowed to proceed with these claims on post-conviction, neither of these claims sufficiently states a claim upon which relief may be granted. Petitioner baldly asserts that he was misled by counsel, however he fails to explain how he was misled by counsel or what counsel did to mislead him. Petitioner fails to include any facts, details, evidence, argument or authority in support of his claim.

Petitioner asserts that he has new evidence, but he fails to state what that new evidence is or how it would affect his case. Petitioner fails to include any facts, details, evidence, argument or authority in support his claim.

In a petition for post-conviction relief, “[t]he petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief.” Utah Code Ann. § 78-35a-105 (West 2005). In addition, the petition must “set forth

all claims that the petitioner has in relation to the legality of the conviction or sentence” and must include “in plain and concise terms, all of the facts that form the basis of the petitioner’s claim to relief.” Utah R. Civ. P. 65C(c) (3) (West 2004).

Petitioner has failed to meet his burden and has failed to include any facts that form the basis of his claims for relief. Therefore, these claims could also be dismissed for failure to state a claim upon which relief may be granted.

### **CONCLUSION**

Respondent respectfully requests that this court dismiss the petition for post-conviction relief based on the new ruling by the Utah Supreme Court in the case of Manning v. State. In addition, respondent requests that the evidentiary hearing currently scheduled for October 28, 2005 be cancelled.

Dated this \_\_\_\_ day of July, 2013.

MARK L. SHURTLEFF  
UTAH ATTORNEY GENERAL

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Erin Riley  
Assistant Attorney General  
Attorneys for Respondent

### **CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of July, 2013, I served a copy of the foregoing STATE'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PETITION FOR POST-CONVICTION RELIEF by causing the same to be mailed, via first class mail, postage prepaid, to the following:

Robert C. Cracroft, # 21679  
Utah State Prison  
PO BOX 250  
Draper, UT 84020

(petitioner pro se)

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