

IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 53158

JACKIE SHAYDE SEDILLO,	)	
	)	
Petitioner-Appellant,	)	Boise, April 2026 Term
	)	
v.	)	Opinion Filed: September 3, 2026
	)	
STATE OF IDAHO,	)	Melanie Gagnepain, Clerk
	)	
Respondent.	)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Idaho County. Mark Monson, District Judge.

The judgment of the district court is vacated, the order granting summary disposition is reversed, and the case is remanded.

Nevin, Benjamin & McKay, LLP, Boise, for Appellant, Jackie Shayde Sedillo. Dennis A. Benjamin argued.

Raúl R. Labrador, Idaho Attorney General, Boise, for Respondent State of Idaho. T. Michael MacEgan argued.

MEYER, Justice.

This case comes before the Court on a petition for review from an unpublished Idaho Court of Appeals opinion, which affirmed the summary dismissal of Jackie Shayde Sedillo’s amended petition for post-conviction relief. The central issue is whether Sedillo’s trial counsel was constitutionally ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984), for failing to raise a double jeopardy objection to Sedillo’s separate convictions and consecutive sentences for both grand theft and armed robbery. Both charges stemmed from a single incident in which Sedillo forcibly took a vehicle from its owner at gunpoint on September 3, 2019.

The outcome of Sedillo’s ineffective assistance of counsel claim depends on whether grand theft, as charged in the second amended information, qualifies as a lesser included offense of armed robbery under Idaho’s pleading theory. Because we conclude that grand theft is a lesser-included

offense of the armed robbery charged in the second amended information, we vacate the judgment of conviction and remand the case for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case begins with a crime spree and high-speed chase through Idaho County, during which Sedillo took a 2000 BMW while fleeing authorities. The second amended information alleged that Sedillo brandished a pistol, dragged the owner out of the vehicle, and threatened him at gunpoint to hand over the keys.

Following his arrest, Sedillo was charged with multiple offenses. The record does not clearly indicate the total number of initial charges, but it appears that Sedillo faced at least twelve. Pursuant to an Idaho Criminal Rule 11 plea agreement, he pleaded guilty to eight offenses: two counts of possession of stolen property, two counts of grand theft of an automobile, and one count each of armed robbery, eluding an officer, exhibition of a deadly weapon, and unlawful possession of a firearm. Of these, two charges are pertinent to this appeal: Count II – grand theft of an automobile under Idaho Code sections 18-2403(1) and 18-2407(1)(b)(1), and Count IV – armed robbery under Idaho Code sections 18-6501 and 18-6502.

With regard to grand theft of an automobile, the second amended information alleged:

That the Defendant, JACKIE SHAYDE SEDILLO, on or about the 3rd day of September, 2019, . . . did wrongfully take, obtain or withhold property with the intent to deprive the owner of the property and/or to appropriate the property to himself or a third person, to wit: [Sedillo] took a 2000 BMW, . . . with a value in excess of \$1,000.00, belonging to [the owner], with the intent to deprive [the owner] of the property and/or to appropriate the property to himself or a third person.

Grand theft carries a maximum penalty of fourteen years imprisonment. I.C. § 18-2408(2)(a).

Regarding armed robbery, the second amended information alleged:

That the Defendant, JACKIE SHAYDE SEDILLO, on or about the 3rd day of September, 2019, . . . did intentionally and by means of force or fear take from the possession of [the owner] certain personal property, to-wit: a 2000 BMW, . . . the property of [the owner] which was accomplished against the will of [the owner] in that [Sedillo] brandished a pistol and forcefully drug [the owner] out of his vehicle, the 2000 BMW, . . . and threatened [the owner] with a gun if the said [owner] did not turn over the 2000 BMW

Armed robbery may result in a life sentence. I.C. § 18-6503.

The plea agreement allowed for open sentencing, giving each party the freedom “to argue for whatever sentence they feel is appropriate.” At the change-of-plea hearing, the district court

confirmed with Sedillo that no promises had been made regarding his sentence and that the court was not bound by any recommendations:

THE COURT: All right. Has anyone promised you anything about what would happen to you by way of sentence if you pled [sic] guilty?

SEDILLO: No, your honor.

THE COURT: Do you understand that any recommendations that are made to me by either Mr. MacGregor or Mr. Wiltse are just recommendations and that I'm not bound to follow any of those?

SEDILLO: Yes, your Honor.

The district court sentenced Sedillo to the custody of the Idaho Board of Correction. He received consecutive determinate sentences of two years for Count I, possession of stolen property; two years for Count II, grand theft of an automobile; two years for Count III, grand theft of a different automobile; five years for Count IV, eluding a police officer; two years for Count VI, unlawful possession of a firearm; and two years for Count VIII, possession of stolen property. For Count IV, armed robbery, the court imposed a unified twenty-year sentence, with five years fixed, consecutively to Counts I, II, III, V, and VIII. For Count VII, exhibition of a deadly weapon, the court imposed six months in jail, with credit for time served.

Sedillo appealed, challenging only the length of his sentence as excessive. *See State v. Sedillo (Sedillo I)*, No. 48127, 2021 WL 2069935, at *1 (Idaho Ct. App. May 24, 2021) (per curiam). He did not raise a double jeopardy claim on direct appeal. The Court of Appeals affirmed Sedillo's judgment of conviction and sentence in an unpublished opinion. *Id.* This Court denied Sedillo's petition for review.

Sedillo filed a timely pro se petition for post-conviction relief. Appointed counsel filed an amended petition that realleged and incorporated Sedillo's initial petition. Sedillo asserted that he was subjected to double jeopardy by being convicted of both armed robbery and grand theft for the same conduct. He further alleged that his trial counsel gave him inaccurate information about double jeopardy and informed him all sentences would run concurrently. Based on these allegations, Sedillo argued that both trial and appellate counsel were ineffective for failing to raise double jeopardy challenges.

The district court issued a notice of intent to dismiss. The court noted that Sedillo's double jeopardy claim was barred under Idaho Code section 19-4901(b) because it could have been raised on direct appeal. The court continued to explain that even if that claim could not have been

addressed on direct appeal, there was no double jeopardy violation under the *Blockburger* test, *Blockburger v. United States*, 284 U.S. 299 (1932), or the pleading theory. The court reasoned that

[a]lthough the grand theft and robbery arose from the same factual circumstances, that is, the taking of a 2000 BMW, grand theft was not the means by which Sedillo committed the robbery. The charging document states that Sedillo threatened the owner with a gun, which was the means through which the State met the necessary robbery element of force or fear.

(Footnote omitted.) The court further noted that Sedillo's ineffective assistance of counsel subclaims were unsupported and contradicted by the record.

In response to the district court's notice, Sedillo alleged in a declaration that his trial counsel informed him after sentencing that he "in fact [had] a valid Double Jeopardy claim" and that trial counsel "failed to file a motion to dismiss and/or other appropriate filings raising that issue with the trial court." Sedillo further stated he would not have agreed to the plea had he known of the double jeopardy claim. He also alleged that counsel told him his sentences would run concurrently rather than consecutively.

The State filed a motion for summary disposition, adopting the district court's analysis under Idaho Code section 19-4906, and presenting additional argument. Sedillo's response argued that theft "is always an element of robbery" regardless of degree, citing out-of-state authority.

Following a hearing, the district court granted summary disposition on all claims. The district court concluded that it was not required to address the substance of Sedillo's double jeopardy claim under Idaho Code section 19-4901(b) because the claim could have been raised in a direct appeal; therefore, Sedillo was precluded from pursuing a post-conviction claim. The court nevertheless analyzed the merits of Sedillo's double jeopardy claim in the context of ineffective assistance of counsel and concluded that a double jeopardy challenge would not have been successful.

The district court analyzed whether grand theft was a lesser-included offense of armed robbery under both the *Blockburger* test and Idaho's pleading theory. The court concluded that "[u]nder either the *Blockburger* test or the pleading theory," grand theft is not a lesser-included offense of armed robbery. The court explained that grand theft requires proof of value over \$1,000, whereas armed robbery requires proof of force or fear, which is not required for grand theft. In the district court's view,

the language of Count IV did not allege or infer that Grand Theft was either a means or element of his Robbery charge. Had the State failed to prove the BMW at issue

had a value exceeding \$1000, it would have still been possible to prove Count IV while an acquittal would have been appropriate for Count II.

Since the double jeopardy claim would have failed on the merits, the court determined that Sedillo could not show prejudice from counsel's failure to raise double jeopardy. The district court entered a final judgment.

Sedillo appealed from the district court's judgment summarily dismissing his amended post-conviction petition. In an unpublished decision, the Idaho Court of Appeals affirmed the district court's judgment granting summary disposition of Sedillo's amended petition for post-conviction relief. *Sedillo v. State (Sedillo II)*, No. 51021, 2025 WL 1178388 (Idaho Ct. App. Apr. 23, 2025). Sedillo petitioned this Court for review, which we granted.

II. ISSUES ON APPEAL

1. Is grand theft, as charged in Count II of the second amended information, a lesser included offense of armed robbery, as charged in Count IV?
2. Did the district court err by summarily dismissing Sedillo's post-conviction petition alleging that trial counsel was ineffective for failing to raise a double jeopardy challenge?

III. STANDARDS OF REVIEW

When a defendant files a petition for post-conviction relief, the proceeding is civil and governed by the Idaho Rules of Civil Procedure. *Creech v. State*, 174 Idaho 578, 582, 558 P.3d 723, 727 (2024). "Summary dismissal of an application for post-conviction relief is the procedural equivalent of summary judgment" under Idaho Rule of Civil Procedure 56. *Id.* (citing *Takhsilov v. State*, 161 Idaho 669, 672, 389 P.3d 955, 958 (2016)). The Idaho Post-Conviction Procedure Act (IPCPA) provides for summary disposition of a post-conviction application "when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." I.C. § 19-4906(c). "When a genuine issue of material fact is shown to exist, an evidentiary hearing must be conducted." *Bell v. State*, 175 Idaho 911, ___, 572 P.3d 209, 214 (2025) (citation omitted).

"The determination of whether a particular crime is an included offense of the crime charged involves a question of law over which this Court exercises free review." *State v. Curtis*, 130 Idaho 522, 523, 944 P.2d 119, 120 (1997).

When reviewing a case on petition for review from the Idaho Court of Appeals, this Court gives serious consideration to the Court of Appeals' decision, but it reviews the district court's

decision directly. *Searcy v. Idaho State Bd. of Corr.*, 160 Idaho 546, 550, 376 P.3d 750, 754 (2016) (citing *Kelly v. State*, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010)).

IV. ANALYSIS

Sedillo contends the district court erred in summarily dismissing his claim that trial counsel was ineffective for failing to raise a double jeopardy challenge to the judgment of conviction and consecutive sentences for Count II (grand theft) and Count IV (armed robbery). The State responds that the district court correctly dismissed Sedillo's ineffective assistance of counsel claim because double jeopardy was not implicated in his case.

The resolution of Sedillo's ineffective assistance of counsel claim turns on whether his convictions for both grand theft and armed robbery of the same BMW automobile, committed at the same time and place and involving the same victim, violated the prohibition against double jeopardy. We conclude that because Count II and Count IV both allege the same taking of the same automobile from the same owner, grand theft as alleged in the second amended information is a lesser included offense of the armed robbery charge under the pleading theory. In summary, the theft was a means by which the armed robbery was accomplished.

A. Grand theft, as charged in Count II of the second amended information, is a lesser included offense of armed robbery, as charged in Count IV.

Article I, section 13 of the Idaho Constitution provides that “[n]o person shall be twice put in jeopardy for the same offense[.]” Idaho Const. art. I, § 13. The Fifth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb” U.S. Const. amend. V; *see Benton v. Maryland*, 395 U.S. 784 (1969) (incorporating right through the Fourteenth Amendment). The United States and Idaho Constitutions each provide three protections: (1) “against a second prosecution for the same offense after acquittal,” (2) “against a second prosecution for the same offense after conviction,” and (3) “against multiple punishments for the same offense.” *State v. Pizzuto*, 119 Idaho 742, 756, 810 P.2d 680, 694 (1991), *overruled on other grounds by*, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991); *Schiro v. Farley*, 510 U.S. 222, 229 (1994) (citation omitted). Sedillo invokes the third protection.

This Court has long recognized

that separate statutory crimes need not be identical either in constituent elements or in actual proof in order to be the same within the meaning of the constitutional prohibition. The prohibition against double jeopardy has been held to mean that a defendant may not be convicted of both a greater and lesser included offense.

State v. Thompson, 101 Idaho 430, 433, 614 P.2d 970, 973 (1980) (internal quotation marks and citations omitted) (footnote omitted).

1. *Under the Idaho Constitution, the pleading theory governs whether one charge is a lesser included offense of another.*

Two distinct theories are applied to determine whether a particular offense qualifies as a lesser-included offense of another charged offense. *See State v. Curtis*, 130 Idaho 522, 524, 944 P.2d 119, 121 (1997). Determining whether a defendant's prosecution or conviction and punishment for two offenses violates the Fifth Amendment's Double Jeopardy Clause requires application of the "strict elements" approach, also called the "statutory theory," as established in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). Under this theory, two offenses are not the "same" for double jeopardy purposes if "each provision requires proof of a fact which the other does not." *Id.* This test compares the statutory definitions of the two offenses. *Id.* at 303–04. If each statute contains an element the other does not, the offenses are not the same and double jeopardy does not bar conviction of both. *Id.* at 304. The *Blockburger* test does not consider how the offenses were charged or what facts were alleged in the information. *Id.* Sedillo does not contest the district court's determination that, under *Blockburger*, grand theft is not a lesser included offense of armed robbery. Accordingly, we do not address that test further.

To analyze whether there has been a violation of the Double Jeopardy Clause of the Idaho Constitution, however, this Court does not apply the *Blockburger* test. *Thompson*, 101 Idaho at 433–34, 614 P.2d at 973–74. Instead, we apply the "pleading theory," which was adopted "both by statute and by case law." *Id.*; *see* I.C. § 19-2312; *see also Sivak v. State*, 112 Idaho 197, 211, 731 P.2d 192, 206 (1986) ("Idaho . . . adopted the broader indictment or pleading theory."). Under this theory, a court must consider whether the terms of the charging document allege that both offenses arose from the same factual circumstances such that one offense was the means by which the other was committed. *Thompson*, 101 Idaho at 435, 614 P.2d at 975. The inquiry "is analyzed in reference to the facts of each case." *Sivak*, 112 Idaho at 211, 731 P.2d at 206. Still, we do not review the evidence adduced at trial; rather, we examine the language of the charging document. *See State v. McKinney*, 153 Idaho 837, 841, 291 P.3d 1036, 1040 (2013).

We recognize that over the years, this Court has not been entirely consistent in its application of either the *Blockburger* test or the pleading theory in double jeopardy cases. At times, this Court has applied the *Blockburger* test to cases arising under the Double Jeopardy Clause of the United States Constitution. *See State v. Osweiler*, 140 Idaho 824, 826–28, 103 P.3d 437, 439–

41 (2004); *State v. Lewis*, 123 Idaho 336, 346, 848 P.2d 394, 404 (1993). In *Thompson*, however, the pleading theory was used to determine “whether the charge of assault with a deadly weapon is a lesser included offense in a charge of attempted robbery, as alleged herein, such as to preclude conviction of both charges under the double jeopardy clause of the Fifth Amendment of the United States Constitution and the Idaho Constitution.” 101 Idaho at 433, 614 P.2d at 973; *see also McKinney*, 153 Idaho at 841, 291 P.3d at 1040; *State v. Anderson*, 82 Idaho 293, 301–03, 352 P.2d 972, 976–78 (1960).

Yet, in cases such as *Pizzuto*, 119 Idaho at 758, 810 P.2d at 696, *State v. Horn*, 101 Idaho 192, 196–97, 610 P.2d 551, 555–56 (1980), and *State v. Stewart*, 149 Idaho 383, 389, 234 P.3d 707, 713 (2010), this Court appears to have applied a statutory elements test similar to *Blockburger*. This inconsistency arises from the parties’ reliance, and consequently this Court’s analysis, on one or a combination of authorities for their arguments: i.e., the United States Constitution; the Idaho Constitution; or former Idaho Code section 18-301, which prohibited multiple prosecutions for various crimes arising from the same act. I.C. § 18-301 (1987) (“An act or omission which is made punishable in different ways by different provisions . . . in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other.”). The legislature repealed that statute on February 13, 1995. *See* Act of Feb. 13, 1995, ch. 16, § 1, 1995 Idaho Sess. Laws 22. We take this opportunity to clarify that the pleading theory applies when addressing double jeopardy claims under Article I, section 13 of the Idaho Constitution.

The pleading theory provides a broader definition of greater- and lesser-included offenses than the *Blockburger* test does because it relies on an examination of the charging indictment or information. *Thompson*, 101 Idaho at 433–34, 614 P.2d at 973–74. The *Blockburger* statutory elements test and the pleading theory may yield conflicting outcomes in the same case because each test poses and answers a different question. *See id.* at 433, 614 P.2d at 973; *see also Sivak*, 112 Idaho at 211, 731 P.2d at 206 (“The application of this test can result in two opposite conclusions depending upon whether the ‘statutory theory’ or ‘indictment’ or ‘pleading’ theory is utilized.”). The *Blockburger* test considers the statutory elements in the abstract, while the pleading theory focuses on the specific facts alleged in the charging document. *See Thompson*, 101 Idaho at 433, 614 P.2d at 973. This situation exemplifies an instance in which “the state constitution . . .

provides greater protection than the federal constitution.” See *CDA Dairy Queen, Inc. v. State Ins. Fund*, 154 Idaho 379, 383, 299 P.3d 186, 190 (2013).

For example, in *Sivak*, the State charged the defendant with first-degree murder and robbery arising from the killing of a gas-station attendant during a robbery. 112 Idaho at 199, 731 P.2d at 194. The jury acquitted the defendant of premeditated first-degree murder but found him guilty of robbery and of first-degree murder on a felony-murder theory—a killing committed in the pursuit of the robbery. *Id.*; see also *id.* at 217, 731 P.2d at 212 (Bistline, J., concurring). Under the *Blockburger* elements test, “the robbery would not be a lesser included offense of felony murder.” See *id.* at 211, 731 P.2d at 206 (majority). An offense is included under that theory only if “it is impossible to commit the greater without having committed the lesser,” *Thompson*, 101 Idaho at 433, 614 P.2d at 973, and first-degree murder may be committed without any robbery, such as a premeditated killing, see I.C. § 18-4003(a). Thus, because robbery and first-degree murder each require proof of a fact the other does not, they are not the “same offense” under *Blockburger*. 284 U.S. at 304.

However, the pleading theory produced the opposite result. 112 Idaho at 212, 731 P.2d at 207. Because the jury acquitted the defendant of premeditated murder in *Sivak*, the sole basis for his first-degree murder conviction was felony murder predicated on the robbery. *Id.* at 211, 731 P.2d at 206. Absent the robbery, the killing would have supported a conviction no greater than second-degree murder. *Id.* at 212–13, 731 P.2d at 207–08. The robbery was therefore the means by which the first-degree murder was committed and, as charged and tried, was a lesser included offense of the murder. *Id.* Applying the pleading theory, this Court vacated the defendant’s robbery conviction because it merged into his felony-murder conviction. *Id.* at 213, 731 P.2d at 208.

2. *Thompson governs our analysis.*

This Court, in *Thompson*, discussed the distinction between the *Blockburger* elements test and Idaho’s pleading theory. See 101 Idaho at 433–34, 614 P.2d at 973–74. In *Thompson*, the State charged the defendant with attempted robbery and assault with a deadly weapon. *Id.* at 431–32, 614 P.2d at 971–72. The State alleged that the defendant committed attempted robbery “by means of force and fear, attempt[ing] to take from the possession of (the victim) certain personal property, to-wit: money,” and that the defendant “attempted to gain entry into (victim’s) residence with the use of a shotgun and fired said shot gun into the door of said (victim’s) residence.” *Id.* at 432, 614 P.2d at 972. The assault with a deadly weapon charge alleged that the defendant “did make an

assault upon the person of (the victim) with a deadly weapon, to-wit: a shotgun, by firing said gun at and toward said (victim). . . .” *Id.*

On appeal, after examining the charging document, this Court determined that the shooting at the victim’s door was both the fact alleged in the assault with a deadly weapon charge and “the manner or means by which the robbery was attempted.” *Id.* at 435–36, 614 P.2d at 975–76. This Court held that the assault with a deadly weapon was a lesser included offense of the attempted robbery as charged because there was “only one event charged” and “[i]f no shooting could be proved then no conviction could be sustained.” *Id.* at 435, 614 P.2d at 975.

Under the pleading theory, the assault with a deadly weapon charge was a lesser-included offense because of the way in which the State’s information was drafted. *See id.* at 436, 614 P.2d at 976. Under *Blockburger*, however, assault with a deadly weapon “would not be a lesser included offense because attempted robbery could be committed in a manner other than by the use of a deadly weapon.” *See id.* at 433, 614 P.2d at 973.

The State relies on *State v. Monroe*, 172 Idaho 838, 537 P.3d 79 (2023), and *State v. Anderson*, 172 Idaho 133, 530 P.3d 680 (2023), to distinguish *Thompson* and redirect the analysis back to *Blockburger* and the statutory elements test. *Monroe* and *Anderson* addressed whether the district court must instruct a jury on an uncharged lesser-included offense. *Monroe*, 172 Idaho at 843, 537 P.3d at 84; *Anderson*, 172 Idaho at 141, 530 P.3d at 688. It is true, in *Thompson*, we explained:

The test for determining whether one offense is a lesser included of another is the same regardless of whether the determination is being made to decide if a requested instruction is proper or whether the determination is being made for the purposes of deciding if a defendant can be convicted of both offenses or only one under the double jeopardy clause.

101 Idaho at 435, 614 P.2d at 975.

Both *Monroe* and *Anderson* articulate the pleading theory as requiring that “the charging document alleges facts that, if proven, also necessarily prove the elements of the lesser-included offense.” *Monroe*, 172 Idaho at 844, 537 P.3d at 85 (citation omitted); *Anderson*, 172 Idaho at 142, 530 P.3d at 689 (citation omitted). This language is indicative of Idaho Code section 19-2312, which we have long identified as the source of the pleading theory. *See Thompson*, 101 Idaho at 433–34, 614 P.2d at 973–74. Section 19-2312 provides that “[t]he jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.” I.C. § 19-2312.

The test in *Monroe* and *Anderson* describes the same test as the one described in *Thompson*. In both *Thompson* and *Monroe*, we explained that under the pleading theory, an offense is a lesser included offense when it is alleged in the information as a “means *or* element of the commission of the higher offense.” *Thompson*, 101 Idaho at 434, 614 P.2d at 974 (emphasis added) (citation omitted); *Monroe*, 172 Idaho at 844, 537 P.3d at 85 (emphasis added) (citation omitted). However, the use of the disjunctive matters. A lesser offense merges if it is pleaded either as an element of the greater offense *or* as the means by which the greater offense was committed.

Even so, the State’s reliance on *Monroe* and *Anderson* is misplaced because those cases were decided in the specific context of a request to instruct the jury on an *uncharged* offense. *Monroe*, 172 Idaho at 843, 537 P.3d at 84; *Anderson*, 172 Idaho at 141, 530 P.3d at 688. In that context, the pleading theory fulfills a due process function: since a defendant generally cannot be convicted of an offense not charged by the State, *De Jonge v. Oregon*, 299 U.S. 353, 362 (1937), the charged offense must allege facts that, if proven, necessarily establish the uncharged lesser offense. This Court’s explanation in *Anderson* that the pleading theory depends on “the language of the charging document, not its omissions” confirms this notice requirement and prevents the State from obtaining a conviction for an uncharged offense not described on the face of the charging document. 172 Idaho at 142, 530 P.3d at 689; *see also Monroe*, 172 Idaho at 844–45, 537 P.3d at 85–86 (explaining that the State omitted a required element in the lesser included offense in the complaint alleging the greater offense).

Such notice concerns do not arise when both offenses are charged, as in this case, where grand theft and armed robbery were charged. *Monroe* and *Anderson* did not cite *Thompson* or address whether a defendant may be convicted of both a greater and a lesser offense that are separately charged in a single information. Instead, these cases addressed the jury’s authority to convict on an uncharged crime and did not overrule or abrogate *Thompson* regarding the double jeopardy implications of convictions for both a charged greater offense and a charged lesser offense. Therefore, *Thompson* is controlling.

3. *As alleged in the second amended information, grand theft of an automobile was the means by which Sedillo committed the armed robbery.*

Returning to the present case, we review the charging document itself, which is the second amended information. Count II, grand theft, alleged that Sedillo

did wrongfully take, obtain or withhold property with the intent to deprive the owner of the property and/or to appropriate the property to himself or a third person,

to wit: [Sedillo] took a 2000 BMW, . . . with a value in excess of \$1,000.00, belonging to [the owner], with the intent to deprive [the owner] of the property and/or to appropriate the property to himself or a third person.

Count IV, armed robbery, alleged that Sedillo

did intentionally and by means of force or fear take from the possession of [the owner] certain personal property, to-wit: a 2000 BMW, . . . the property of [the owner] which was accomplished against the will of [the owner] in that [Sedillo] brandished a pistol and forcefully drug [the owner] out of his vehicle, the 2000 BMW, . . . and threatened [the owner] with a gun if the said [owner] did not turn over the 2000 BMW

Like the charging document in *Thompson*, which did not allege a separate event for the additional charge, the information in this case describes a single event supporting both Counts II and IV. Count IV alleges that Sedillo took the BMW from the owner's possession by means of force or fear, specifically by brandishing a pistol, dragging the owner from the vehicle, and threatening him. Count II alleges that Sedillo took the same BMW, from the same owner, on the same date, and in the same county, with the intent to deprive. The action common to both counts is the taking of the BMW.

Armed robbery is a taking accomplished by force or fear. It is undisputed that the taking alleged in Count IV is identical to the taking alleged in Count II. As this Court clarified in *Thompson*, if "only one event [is] charged," such that "[i]f no [taking] could be proved then no conviction could be sustained." 101 Idaho at 435, 614 P.2d at 975. In this case, if the State failed to prove that Sedillo took the BMW, the armed robbery conviction could not be sustained. The theft of the BMW is the same underlying conduct in both counts and it is specifically alleged that way in both Counts II and IV. Thus, grand theft as alleged in Count II is a lesser included offense of the armed robbery alleged in Count IV.

The State maintains that grand theft cannot be a lesser included offense of armed robbery because grand theft requires proof of value in excess of \$1,000, which is not an element of robbery. This argument relies on the *Blockburger* test, which compares the statutory elements in the abstract. However, the pleading theory, rather than *Blockburger*, governs claims under Article I, section 13 of the Idaho Constitution.

Sedillo took the BMW once, regardless of its value. The value of the property taken determines the degree of the theft crime as *grand* (with a value of \$1,000 or more) or *petit* (with a value of less than \$1,000). See I.C. § 18-2407. However, a theft remains a theft, regardless of its value. Because the single taking of the BMW was alleged as conduct by which the armed robbery

in Count IV was committed, classifying that taking as grand theft does not render it an offense separately punishable from the armed robbery. To conclude otherwise would allow the State to obtain a separate conviction and consecutive sentence for the same taking already encompassed by the armed robbery charge and would effectively punish Sedillo twice for the same act, which is prohibited by Article I, section 13 of the Idaho Constitution.

Under the pleading theory, grand theft as charged in Count II constitutes a lesser included offense of armed robbery as charged in Count IV. If the State established that Sedillo committed armed robbery as alleged in the second amended information, then grand theft of an automobile is established because armed robbery requires the taking of the same BMW, which is the conduct underlying the grand theft charge. Consequently, the conviction and consecutive sentence on Count II violates the prohibition against double jeopardy under Article I, section 13 of the Idaho Constitution.

B. The district court erred by summarily dismissing Sedillo’s post-conviction petition.

“The right to counsel in criminal actions brought by the [S]tate of Idaho is guaranteed by the Sixth Amendment to the United States Constitution and Article [I], [s]ection 13 of the Idaho Constitution.” *Marsalis v. State*, 166 Idaho 334, 340, 458 P.3d 203, 209 (2020) (quoting *Dunlap v. State*, 159 Idaho 280, 295, 360 P.3d 289, 304 (2015)). This right encompasses the right to effective assistance of counsel. *Id.*

To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both that counsel’s performance was deficient and that the deficiency resulted in prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Deficient performance occurs when counsel’s actions fall below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687–88. Prejudice is shown by establishing a reasonable probability that, but for counsel’s errors, the outcome of the proceeding would have been different. *Id.* at 694. When the alleged deficiency involves the failure to file a motion, a determination that the motion would not have been granted generally resolves both prongs of the *Strickland* test. *State v. Hairston*, 133 Idaho 496, 512, 988 P.2d 1170, 1186 (1999).

The district court concluded that Sedillo did not establish prejudice because a double jeopardy challenge would have failed under both the *Blockburger* test and the pleading theory. That conclusion was based on the determination that grand theft is not a lesser-included offense of the armed robbery as charged. However, that determination was incorrect. Under the pleading

theory, grand theft, as charged in Count II, constitutes a lesser-included offense of armed robbery, as charged in Count IV. A motion to dismiss Count II on double jeopardy grounds, or to merge Count II into Count IV at sentencing, likely would have been successful. The failure to raise such a motion resulted in the entry of a conviction and the imposition of a consecutive two-year determinate sentence for an offense that, under the Idaho Constitution, should have merged into Count IV. *See Sivak v. State*, 112 Idaho 197, 213, 731 P.2d 192, 208 (1986) (vacating robbery conviction that merged into felony murder conviction). The additional conviction and consecutive sentence satisfy the prejudice requirement under *Strickland*.

The State argues that because Sedillo pleaded guilty, the prejudice standard is governed by *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). We disagree. *Hill* applies to challenges seeking to invalidate a guilty plea. *Id.* at 58. Here, Sedillo does not seek to invalidate the plea but instead seeks relief from the imposition of separate punishments for a greater offense and an included offense. A pre-sentencing motion to merge Count II into Count IV, or a post-sentencing motion to vacate the conviction and sentence on Count II, would not have affected the validity of the plea. Therefore, the prejudice inquiry on this claim is governed by the *Strickland* standard, not the *Hill* standard for challenges seeking to set aside a guilty plea. Sedillo has met this standard by demonstrating that a motion based on double jeopardy would have prevented the conviction and consecutive sentence on Count II.

Regarding the performance prong, Sedillo has established a genuine issue of material fact. Counsel failed to object to the entry of conviction or the imposition of a consecutive sentence on Count II, despite both counts involving the same vehicle, victim, and taking. When construing the facts and reasonable inferences in favor of the non-moving party, as required by Idaho Code section 19-4906(c), Sedillo has raised the question of whether counsel's representation fell below an objective standard of reasonableness. The district court did not address the performance prong, having resolved the claim solely on the prejudice prong. On remand, the district court must evaluate the *Strickland* performance prong.

Because the double jeopardy challenge likely would have been successful under the proper application of Article I, section 13 of the Idaho Constitution, the district court erred in concluding that Sedillo failed to establish a prima facie case of ineffective assistance of counsel. The district court therefore erred in granting summary disposition under Idaho Code section 19-4906(c).

V. CONCLUSION

We vacate the judgment, reverse the district court's order granting the summary disposition, and remand for further proceedings consistent with this opinion.

Chief Justice BEVAN and Justices BRODY, MOELLER and ZAHN CONCUR.