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# State v. Gillespie Respondent's Brief Dckt. 39426

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, )  
 )  
 vs. )  
 )  
 CHASE DALTON GILLESPIE, )  
 )  
 Defendant-Appellant. )

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Nos. 39426, 39427  
  
Bingham Co. Case Nos.  
CR-2008-6803/CR-2011-5618

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BINGHAM**

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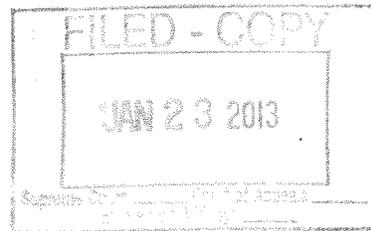
**HONORABLE DARREN B. SIMPSON**  
District Judge

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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE CASE .....	1
Nature Of The Case.....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUES .....	3
ARGUMENT .....	4
I.    Gillespie Has Failed To Establish Error In The District Court’s Determination That Images Of Sexually Exploitative Material Housed On A Thumb Drive Were Encompassed Within The Definitions Of Idaho Code § 18-1507(2)(k).....	4
A.    Introduction.....	4
B.    Standard Of Review .....	4
C.    Gillespie Violated Idaho Code § 18-1507A As It Existed When He Was Charged.....	4
II.   Gillespie Has Failed To Establish That His Double Jeopardy Rights Were Violated.....	6
A.    Introduction.....	6
B.    Standard Of Review .....	7
C.    Because Gillespie Committed Multiple Violations Of Idaho Code § 18-1507A, Multiple Charges For Violating That Statute Did Not Constitute Double Jeopardy.....	7
III.  Gillespie Has Failed To Establish An Abuse Of The District Court’s Discretion In Imposing And Executing A Sentence Of Ten Years With Two Years Fixed Upon Revoking His Withheld Judgment And Probation.....	10

A.	Introduction.....	10
B.	Standard Of Review .....	10
C.	The District Court Did Not Abuse Its Discretion When It Imposed And Executed A Sentence Of Ten Years With Two Fixed Upon Revoking Gillespie's Probation.....	11
IV.	Gillespie Has Failed To Establish An Abuse Of The Court's Sentencing Discretion .....	13
A.	Introduction.....	13
B.	Standard Of Review .....	14
C.	The District Court Did Not Abuse Its Sentencing Discretion When It Imposed Consecutive Sentences Of Ten Years With Three Years Fixed, Ten Years With Three Years Fixed, And Ten Years With Two Years Fixed On Gillespie's Multiple Convictions For Possession Of Sexually Exploitative Materials.....	14
	CONCLUSION.....	17
	CERTIFICATE OF SERVICE .....	17

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>McLean v. Maverik Country Stores, Inc.</u> , 142 Idaho 810, 135 P.3d 756 (2006) .....	5
<u>Robison v. Bateman-Hall, Inc.</u> , 139 Idaho 207, 76 P.3d 951 (2003).....	4
<u>Schiro v. Farley</u> , 510 U.S. 222 (1994) .....	7
<u>State v. Alsanea</u> , 138 Idaho 733, 69 P.3d 153 (Ct. App. 2003).....	7
<u>State v. Baker</u> , 136 Idaho 576, 38 P.3d 614 (2001) .....	14
<u>State v. Doe</u> , 147 Idaho 326, 208 P.3d 730 (2009) .....	5
<u>State v. Dorn</u> , 140 Idaho 404, 94 P.3d 709 (Ct. App. 2004).....	4
<u>State v. Lafferty</u> , 125 Idaho 378, 870 P.2d 1337 (Ct. App. 1994).....	11
<u>State v. Lundquist</u> , 134 Idaho 831, 11 P.3d 27 (2000) .....	14
<u>State v. Major</u> , 111 Idaho 410, 725 P.2d 115 (1986).....	7, 8
<u>State v. McKeeth</u> , 136 Idaho 619, 38 P.3d 1275 (Ct. App. 2001).....	7
<u>State v. Moore</u> , 131 Idaho 814, 965 P.2d 174 (1998).....	14
<u>State v. Oliver</u> , 144 Idaho 722, 170 P.3d 387 (2007) .....	14, 16
<u>State v. Pina</u> , 149 Idaho 140, 233 P.3d 71 (2010) .....	4
<u>State v. Sanchez</u> , 149 Idaho 102, 233 P.3d 33 (2009).....	11
<u>State v. Santana</u> , 135 Idaho 58, 14 P.3d 378 (Ct. App. 2000) .....	7
<u>State v. Thompson</u> , 140 Idaho 796, 102 P.3d 1115 (2004).....	4
<u>State v. Toohill</u> , 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982) .....	15
<u>State v. Turney</u> , 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009).....	9
<u>State v. Wersland</u> , 125 Idaho 499, 873 P.2d 144 (1994).....	14
<u>State v. Wolfe</u> , 99 Idaho 382, 582 P.2d 728 (1978).....	14

Verska v. St. Alphonsus Regional Medical Center,  
151 Idaho 889, 265 P.3d 502 (2011) ..... 5

Wilkoff v. Superior Court, 696 P.2d 134 (Cal. 1985)..... 7

**STATUTES**

I.C. § 18-1507.....passim

I.C. § 19-2601..... 10

**CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. V..... 7

## STATEMENT OF THE CASE

### Nature Of The Case

Chase Dalton Gillespie appeals from his convictions for possession of sexually exploitative materials in Docket No. 39427 and from the district court's order revoking his withheld judgment and probation in Docket No. 39426.<sup>1</sup>

### Statement Of The Facts And Course Of The Proceedings

In 2008, in Docket No. 39426, the state charged Gillespie with possession of sexually exploitative material. (39426 R., pp.92-93.) Pursuant to a plea agreement, Gillespie pleaded guilty. (39426 R., pp.105-08, 113-15.) The district court entered an order withholding judgment and placed Gillespie on probation for five years. (39426 R., pp.129-34, 138.) The state subsequently alleged that Gillespie violated his probation by viewing pornography and engaging in a sexual relationship with another probationer. (39426 R., pp.151-52.) Ultimately, Gillespie admitted the violations. (39426 R., p.163.)

Investigation of the probation violations also resulted in a separate criminal prosecution for possession of sexually exploitative materials. In Docket No. 39427, the state charged Gillespie with two counts of possession of sexually exploitative material. (39427 R., pp.9-10.) Gillespie waived his right to a jury trial and requested a bench trial. (39427 R., p.11.) The parties stipulated that Gillespie possessed a thumb drive which contained multiple sexually exploitative images and videos. (39427 R., pp.12-13.) The parties also stipulated that there were "only three questions before the court[:]" (1) whether Gillespie possessed the images/videos, *knowingly and willfully*[:]; (2) whether

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<sup>1</sup> On February 28, 2012, the Idaho Supreme Court entered an order consolidating Docket Nos. 39426 and 39427 for purposes of this appeal.

possessing multiple images and videos on a single digital device is a single possession or whether each image or video may be prosecuted individually[; and] (3) [d]o the images meet the definition of Idaho Code [§] 18-1507(2)(k).” (39427 R., p.13 (emphasis original).)

At the close of the bench trial, the district court found that Gillespie possessed the images knowingly and willfully, but asked the parties to brief the second and third issues. (Tr., p.263, L.21 – p.264, L.3; p.269, L.3 – p.271, L.24.) Subsequently, the district court determined that sexually exploitative images housed on a thumb drive were encompassed within the definition of Idaho Code § 18-1507(2)(k), and that, because there were multiple images of multiple victims, each image or video could be prosecuted individually without violating Gillespie’s right to be free from double jeopardy. (39427 R., pp.32-41.)

In Docket No. 39427, the district court entered judgment against Gillespie and imposed consecutive unified sentences of ten years with three years fixed on each count of possession of sexually exploitative material. (39427 R., pp.54-56.) In Docket No. 39426, the district court revoked Gillespie’s withheld judgment and probation, and sentenced him to ten years with two years fixed, to run consecutive to his sentences in Docket No. 39427. (39426 R., pp.179-80.) Gillespie filed timely notices of appeal. (39426 R., pp.185-86; 39427 R., pp.64-65.)

## ISSUES

Gillespie states the issues on appeal as:

1. Did the district court err in 39427 when the court determined that the thumb drive in Mr. Gillespie's possession fell within the definition of "sexually exploitative material" under the versions of I.C. § 18-1507 and I.C. § 18-1507A that were in effect at the time of Mr. Gillespie's alleged offenses?
2. Did the district court err in 39427, and violate Mr. Gillespie's constitutional right against double jeopardy, when the court entered two convictions of possession of sexually exploitative material for a non-commercial purpose when Mr. Gillespie possessed a single thumb drive that contained multiple images?
3. Did the district court err in 39426 when the court revoked Mr. Gillespie's probation and executed a sentence of ten years, with two years fixed?
4. Did the district court impose excessive sentences, and thereby abuse its discretion, when the court sentenced Mr. Gillespie to ten years, with three years fixed, for each count of possession of sexually exploitative material in 39427; with these sentences to be served consecutively to each other and to Mr. Gillespie's sentence in 39426?

(Appellant's brief, p.14.)

The state rephrases the issues as:

1. Has Gillespie failed to show error in the district court's legal determination that images of sexually exploitative material housed on a thumb drive were encompassed within the definition of Idaho Code § 18-1507(2)(k)?
2. Has Gillespie failed to show that his double jeopardy rights were violated when he was charged with multiple counts of possession of sexually exploitative material where he possessed multiple images of sexually exploitative material in multiple media depicting multiple victims, all housed on a single thumb drive?
3. Has Gillespie failed to establish that the district court abused its discretion by imposing and executing a sentence of ten years with two years fixed in Docket No. 39426 upon revoking his withheld judgment and probation?
4. Has Gillespie failed to establish an abuse of the court's sentencing discretion?

## ARGUMENT

I.

### Gillespie Has Failed To Establish Error In The District Court's Determination That Images Of Sexually Exploitative Material Housed On A Thumb Drive Were Encompassed Within The Definitions Of Idaho Code § 18-1507(2)(k)

#### A. Introduction

Gillespie was convicted of two counts of possession of sexually exploitative material under Idaho Code § 18-1507A. (39427 R., pp.54-56.) On appeal, Gillespie argues that his possession of sexually exploitative material was not encompassed within the statute as it existed when he was charged because the images he possessed were in digital format. (Appellant's brief, pp.15-20.) Gillespie's argument fails. Gillespie's possession of child pornography falls squarely within the conduct prohibited by Idaho Code § 18-1507A as it existed. His convictions should therefore be affirmed.

#### B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

#### C. Gillespie Violated Idaho Code § 18-1507A As It Existed When He Was Charged

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because "the best guide to legislative intent" is the words of the statute, the interpretation of a statute must begin with the

literal words of the statute. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). Where the statutory language is unambiguous, a court does not construe it but simply follows the law as written. McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006). Thus, if the plain language of a statute is capable of only one reasonable interpretation, it is the Court's duty to give the statute that interpretation. Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 896, 265 P.3d 502, 509 (2011) (disavowing cases with language that Court might not give effect to unambiguous language of statute if such was "palpably absurd").

At the time of Gillespie's offenses, Idaho Code § 18-1507A prohibited the possession of sexually exploitative material, as defined in Idaho Code § 18-1507, for noncommercial purposes. Sexually exploitative material was defined as:

any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

I.C. § 18-1507(2)(k). Gillespie was charged with possessing a digital image of a minor child engaged in sexual conduct and a digital video of a minor child engaged in sexual conduct, both of which were contained on a thumb drive. (39427 R., pp.9-10.) Those files on Gillespie's thumb drive did not originate on that thumb drive; they were electronically reproduced onto the thumb drive. Thus, they are "electronically ... reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct." Gillespie was therefore guilty of possessing sexually exploitative material in violation of Idaho Code § 18-1507A.

On appeal, Gillespie argues that the images he possessed were *digitally* reproduced material rather than *electronically* reproduced material. (Appellant's brief,

pp.15-20.) This is a distinction without a difference. When the images were transferred from a hard drive to Gillespie's thumb drive, they were electronically reproduced.

Gillespie further argues that "radical changes were made" to the statutes that criminalized the possession of sexually exploitative material, such that the definition of sexually exploitative material was enlarged and the scope of prohibited conduct expanded. (Appellant's brief, pp.18-19.) The amended version of Idaho Code § 18-1507 consolidates and clarifies the previous versions of Idaho Code §§ 18-1507 and 18-1507A. As expressed by the legislature, and noted by Gillespie on appeal, "[t]he purpose of this bill is to *restructure the format* of the child exploitation law *to make it easier to follow*, *update definitions* to more closely match technological trends that exist in today's society, and *more clearly differentiate penalties* based upon the severity of the crime." (Appellant's brief, p.18, citing RS21245 (emphasis added).) The amended statute restructures, clarifies, and updates the prior statutes; it does not, as Gillespie claims, make sweeping alterations to the law regarding the scope of conduct prohibited. Compare I.C. §§ 18-1507 (2006) and 18-1507A (2006) with I.C. § 18-1507 (2012).

Gillespie committed the acts that were prohibited by Idaho Code § 18-1507A. Gillespie has failed to show otherwise.

## II.

### Gillespie Has Failed To Establish That His Double Jeopardy Rights Were Violated

#### A. Introduction

On appeal, Gillespie argues that his multiple convictions for possession of sexually exploitative material violates his right to be free from double jeopardy because he only possessed a single thumb drive that contained multiple image files. (Appellant's

brief, pp.26-33.) Because Gillespie possessed multiple files of sexually exploitative material in multiple media depicting multiple victims, there was no double jeopardy violation.

B. Standard Of Review

Whether a defendant's prosecution complies with the constitutional protection against double jeopardy is a question of law subject to free review. State v. Santana, 135 Idaho 58, 63, 14 P.3d 378, 383 (Ct. App. 2000).

C. Because Gillespie Committed Multiple Violations Of Idaho Code § 18-1507A, Multiple Charges For Violating That Statute Did Not Constitute Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. This clause affords a defendant three basic protections: It protects against a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple criminal punishments for the same offense. Schiro v. Farley, 510 U.S. 222, 229 (1994); State v. McKeeth, 136 Idaho 619, 622, 38 P.3d 1275, 1278 (Ct. App. 2001). However, "offenses committed against multiple victims are not the same offense, for double jeopardy purposes, even though they may arise from the same criminal episode." State v. Alsanea, 138 Idaho 733, 744, 69 P.3d 153,164 (Ct. App. 2003); see also State v. Major, 111 Idaho 410, 415 n.1, 725 P.2d 115, 120 n.1 (1986) (citing Wilkoff v. Superior Court, 696 P.2d 134, 138 (Cal. 1985)).

The state charged Gillespie with multiple violations of Idaho Code § 18-1507A for possessing "a digital image of a minor child engaging in sexual conduct" and for

possessing “a digital video of minor child engaging in sexual conduct.” (39427 R., pp.9-10.) Gillespie argues that these charges violate his double jeopardy rights because the files depicting the sexually exploitative material were housed on a single thumb drive. (Appellant’s brief, pp.26-33.) Gillespie’s argument that his double jeopardy rights were violated relies on the Idaho Supreme Court’s opinion in State v. Major. Gillespie’s reliance is misplaced. In Major, the Idaho Supreme Court held that charging multiple counts of violating a statute is appropriate only where the *actus reus* prohibited by the statute has been committed more than once. Id. at 415, 725 P.2d at 120. In this case, contrary to Gillespie’s assertions, he committed the prohibited *actus reus* multiple times; multiple charges were therefore appropriate.

The state concedes that the sexually exploitative images Gillespie possessed were housed on a single thumb drive. However, Idaho Code § 18-1507A did not criminalize the possession of thumb drives. It criminalized the possession of “sexually exploitative material as defined in Idaho Code § 18-1507.” As noted above, sexually exploitative material was defined as

any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.

I.C. § 18-1507(2)(k). Contained on Gillespie’s thumb drive were myriad files of sexually exploitative material. (Tr., p.169, Ls.16-19.) These files included an image of “a minor child engaging in sexual conduct,” which formed the basis for the charge in Count I, and a separate video of a “9-12 year old girl removing her clothes and performing oral sex on an adult male penis,” which formed the basis for the charge in Count II. (39427 R., pp.9-10, 12-13.) This is analogous to charging a defendant with one count for

possessing a photograph depicting sexually exploitative material and a separate count for possessing a separate video depicting sexually exploitative material. That Gillespie had both items on a single thumb drive is no different than having both items in a single briefcase. The statute criminalized possessing the images, not possessing the device that housed them. See I.C. § 18-1507A. Gillespie, by possessing the multiple images in multiple media, committed multiple violations of Idaho Code § 18-1507A.

The Court previously addressed a similar argument in State v. Turney, 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009). In Turney, the defendant was charged with two counts of aggravated DUI when he, while intoxicated, ran into a parked patrol vehicle, severely injuring the two officers inside of it. Turney, 147 Idaho at 691, 214 P.3d at 1170. Turney argued that the state violated his double jeopardy rights by filing multiple charges because, he asserted, the *actus reus* was his DUI. Id. at 691-92, 214 P.3d at 1170-71. The Court disagreed, holding that the *actus reus*, as defined by the statute, was “causing great bodily harm, permanent disability, or permanent disfigurement to any person.” Id. at 692, 214 P.3d at 1171. Because Turney caused great bodily harm to multiple victims, multiple charges were appropriate. Id. Similar to the statute in Turney, Idaho Code § 18-1507A criminalized the possession of any image that sexually exploits minors. Because Gillespie possessed multiple images depicting this type of sexually exploitative material, he was properly charged with, and convicted of, multiple counts of possession of sexually exploitative material.

Furthermore, the Court in Turney noted that the statute in that case was intended to protect individual victims. Turney, 147 Idaho at 692, 214 P.3d at 1171. Similar to the

statute in Turney, Idaho Code § 18-1507A was intended to protect individual victims. In enacting the statute, the legislature explained:

It is the policy of the legislature in enacting this section to protect children from the physical and psychological damage caused by their being used in photographic representations of sexual conduct which involves children. It is, therefore, the intent of the legislature to penalize possession of photographic representations of sexual conduct which involves children in order to protect the identity of children who are victimized by involvement in the photographic representations, and to protect children from future involvement in photographic representations of sexual conduct.

I.C. § 18-1507A(1). Because Gillespie's crimes implicated multiple victims, multiple charges were appropriate, and he has failed to show that his double jeopardy rights were violated.

### III.

#### Gillespie Has Failed To Establish An Abuse Of The District Court's Discretion In Imposing And Executing A Sentence Of Ten Years With Two Years Fixed Upon Revoking His Withheld Judgment And Probation

##### A. Introduction

Gillespie argues that, in light of allegedly mitigating factors, the district court abused its discretion when it imposed and executed a sentence of ten years with two years fixed in Docket No. 39426 upon revoking his probation. (Appellant's brief, pp.33-37.) Gillespie has failed to establish an abuse of discretion.

##### B. Standard Of Review

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation and execute the underlying sentence is reviewed for

an abuse of discretion. State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009) (citing State v. Lafferty, 125 Idaho 378, 381, 870 P.2d 1337, 1340 (Ct. App. 1994)).

C. The District Court Did Not Abuse Its Discretion When It Imposed And Executed A Sentence Of Ten Years With Two Fixed Upon Revoking Gillespie's Probation

In reviewing a district court's decision to revoke probation, this Court employs a two-step analysis. Sanchez, 149 Idaho at 105, 233 P.3d at 36 (citation omitted). First, the Court considers whether the defendant actually violated his probation. Id. "If it is determined that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation." Id. A district court's decision to revoke probation and execute a sentence is a discretionary one that will not be overturned on appeal absent an abuse of that discretion. Id.

On appeal, Gillespie does not argue that the district court abused its discretion by revoking his probation. Instead, he argues that the district court abused its discretion by imposing and executing a sentence of ten years with two years fixed upon revoking probation. (Appellant's brief, pp.33-37.) None of Gillespie's arguments establish an abuse of the district court's discretion in this case.

Initially, the state charged Gillespie with possessing sexually exploitative material for other than commercial purposes. (39426 R., pp.92-93.) Pursuant to an agreement, Gillespie pleaded guilty to the possession of sexually exploitative material. (39426 R., pp.105-08; Tr., p.13, Ls.8-12.) The district court gave Gillespie the opportunity of a withheld judgment and placed him on probation for five years. (39426 R., pp.129-32.) Among the terms of his probation, Gillespie was required to truthfully submit to regular polygraph examinations, was not allowed to view or possess sexually explicit materials,

and was not allowed to develop relationships with individuals that were currently on community supervision or that were engaged in illegal behavior. (See 39426 R., pp.130-31.) Gillespie was not a successful probationer.

Gillespie violated the rules of his probation several times. A few months after being placed on probation, he admitted viewing pornography during a polygraph examination and was incarcerated for seven days. (39426 R., pp.140-41.) A few months later, he admitted that he was viewing R rated movies with sexual content after being told that he had to remove all R rated videos from his home and could not view them, and he was deceptive on a polygraph exam. (39426 R., pp.144-45.) On these violations, Gillespie was incarcerated for 14 days. (39426 R., p.146.) Gillespie continued to violate his probation, admitting that he viewed pornography and engaged in a prohibited sexual relationship with another probationer. (39426 R., pp.151-52, 163.) Gillespie's conduct also resulted in a separate criminal prosecution for possession of sexually exploitative material. (39427 R., pp.9-10.) Ultimately, the state filed a probation violation and the district court revoked Gillespie's probation and entered a judgment of conviction, imposing and executing a unified sentence of ten years with two years fixed. (39426 R., pp.151-52, 179-80.)

On appeal, Gillespie argues that the district court's sentence of ten years with two years fixed is excessive in light of Gillespie's history of victimization. (Appellant's brief, pp.34-37.) At sentencing, the district court recognized the severity of the victimization Gillespie suffered as a youth. (Tr., p.295, L.9 – p.296, L.9.) However, it also recognized that, as an adult, Gillespie had chosen to succumb to his deviant sexual desires. (Tr., p.296, L.17 – p.297, L.2.) His failures on probation, and the lengths to

which he went in order to hide his continuing criminal conduct, demonstrated that he presented a risk to the community. (Tr., p.298, L.10 – p.300, L.7.)

As noted by the district court in its order denying Gillespie's subsequently filed Rule 35 motion:

Gillespie's possession of sexually exploitive [sic] material is a serious one, but Gillespie's actions show he has not taken his original conviction seriously. Gillespie was given an opportunity to avoid criminal conviction and to change his conduct. Despite receiving leniency, Gillespie violated the terms of his probation by viewing pornography and having sexual relations with another probationer, then incurred new charges for the same conduct.

In order to protect society from Gillespie's apparent inability to control his criminal conduct, incarceration is necessary. In November of 2009, Gillespie served seven (7) days discretionary jail time in November of 2009 [sic] for viewing pornography and accessing internet chat rooms. This shock treatment failed to gain Gillespie's attention. Gillespie's unwillingness to abide by the rules of his probation, and his failure to learn from discretionary incarceration lead [sic] to the imposition of judgment and to his sentence.

(39426 R., pp.197-98.) For the reasons articulated by the district court, Gillespie's sentence is reasonable. Gillespie has failed to show an abuse of the district court's discretion.

#### IV.

#### Gillespie Has Failed To Establish An Abuse Of The Court's Sentencing Discretion

##### A. Introduction

Gillespie argues that the district court abused its discretion by imposing consecutive sentences of ten years with three years fixed on each of his convictions for possession of sexually exploitative materials in Docket No. 39427, and by running those

sentences consecutive to his sentence of ten years with two years fixed in Docket No. 39426. (Appellant's brief, pp.38-40.) Gillespie has failed to establish an abuse of the district court's sentencing discretion.

B. Standard Of Review

"Sentencing decisions are reviewed for an abuse of discretion." State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The District Court Did Not Abuse Its Sentencing Discretion When It Imposed Consecutive Sentences Of Ten Years With Three Years Fixed, Ten Years With Three Years Fixed, And Ten Years With Two Years Fixed On Gillespie's Multiple Convictions For Possession Of Sexually Exploitative Materials

Where a sentence is within statutory limits, an appellant is required to establish that the sentence is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry his burden, Gillespie must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable if appropriate to achieve the primary objective of protecting society, and any or all of the related sentencing goals of deterrence, rehabilitation, or retribution. State v. Wolfe, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). The Court reviews the whole sentence on appeal, with the presumption that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). In deference to the trial judge, the Court will not substitute its

view of a reasonable sentence where reasonable minds might differ. State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Considering the nature of Gillespie's crimes and his character, his consecutive sentences of ten years with three years fixed, ten years with three years fixed, and ten years with two years fixed are not excessive. Gillespie is a repeat offender, both with theft crimes and with possession of sexually exploitative materials. (PSI, p.66.) In fact, not only is Gillespie a repeat offender, in the case of possessing sexually exploitative materials, he committed his repeat offenses *while on probation for the initial offense*. (Compare 39426 R., p.129 (five year probation commenced April 9, 2009) with 39427 R., pp.9-10 (new crimes occurred on or about February 16, 2011).) The district court considered the mitigating evidence referenced by Gillespie in this case, but concluded that despite the victimization Gillespie suffered as a child, as an adult he chose to succumb to his own sexually deviant desires. (Tr., p.295, L.9 – p.297, L.2.) The district court also considered Gillespie's behavior during probation, where he went to great lengths to hide his crimes by purchasing computers and then disposing of them after using them to view sexually exploitative materials, and it considered the demonstrated risk Gillespie posed to the community, as concluded in his psychosexual evaluation. (Tr., p.297, L.7 – p.300, L.7.) Ultimately, recognizing that protecting the community was its highest obligation, the district court imposed sentences that best served that objective. (Tr., p.300, L.8 – p.301, L.6.)

On appeal, Gillespie argues that the district court's decision to run the sentences consecutively instead of concurrently also represents a special abuse of discretion in this case. (Appellant's brief, pp.39-40.) First, as noted above, this Court begins with

the presumption that Gillespie will serve the fixed portion of his sentences in confinement with the indeterminate portion being served on parole. See Oliver, 144 Idaho at 726, 170 P.3d at 391. That would place Gillespie in custody for eight years, with the additional 22 years served while on parole. When initially given the opportunity of a withheld judgment and probation, Gillespie repeatedly violated the terms of his probation, including committing the crime again. (See 39426 R., pp.140, 144-45, 151-52; 39427 R., pp.9-10.) Requiring Gillespie to serve eight years in confinement under these circumstances, where he is a repeat offender and has demonstrated that he presents a continuing risk to the community when not confined, is not unreasonable. Giving Gillespie a long tail also provides some deterrent effect, both to him and others, and may promote Gillespie's ultimate rehabilitation as parole supervision will provide a framework for accountability.

Gillespie has failed to show that the district court's sentences are excessive. The district court's sentences protect society from a repeat offender, offer some deterrence, and may also promote rehabilitation. The district court's sentences are therefore reasonable and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm Gillespie's convictions and sentences for possession of sexually exploitative material, and the district court's order revoking Gillespie's probation and entering a judgment of conviction.

DATED this 23rd day of January, 2013.

  
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RUSSELL J. SPENCER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of January, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SARAH E. TOMPKINS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
\_\_\_\_\_  
RUSSELL J. SPENCER  
Deputy Attorney General

RJS/pm