

11-29-2011

# State v. Dieter Respondent's Brief Dckt. 38687

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"State v. Dieter Respondent's Brief Dckt. 38687" (2011). *Idaho Supreme Court Records & Briefs*. 3265.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/3265](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3265)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 38687
	)	
vs.	)	
	)	
PHILIP DIETER,	)	
	)	
Defendant-Appellant.	)	

---

**BRIEF OF RESPONDENT**

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

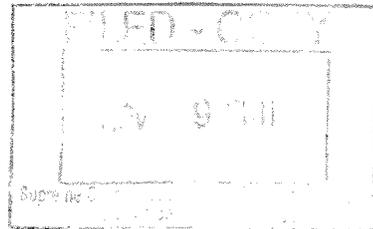
HONORABLE GEORGE D. CAREY  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

CHRISTOPHER D. BRAY  
Bray Law Offices  
P.O. Box 6344  
Boise, ID 83707-6344  
(208) 854-1144

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

JESSICA M. LORELLO  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534



ATTORNEYS FOR  
PLAINTIFF-RESPONDENT

ATTORNEY FOR  
DEFENDANT-APPELLANT

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUES.....	6
ARGUMENT .....	7
The District Court Had Jurisdiction To Deny Dieter's Motion To Dismiss Pursuant To I.C. § 19-2604 And Did Not Err In Denying That Motion.....	7
A.    Introduction.....	7
B.    Standard Of Review .....	7
C.    The District Court Had Authority To Deny Dieter's Motion To Dismiss .....	8
D.    The District Court Did Not Err In Denying Dieter's Motion To Dismiss .....	12
CONCLUSION.....	14
CERTIFICATE OF MAILING.....	15
APPENDICES A - C	

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>State v. Hanes</u> , 137 Idaho 40, 44 P.3d 295 (Ct. App. 2002) .....	11
<u>State v. Jones</u> , 140 Idaho 755, 101 P.3d 699 (2004) .....	7
<u>State v. Schumacher</u> , 131 Idaho 484, 959 P.2d 465 (Ct. App. 1998).....	7, 11, 12
<u>State v. Shock</u> , 133 Idaho 753, 992 P.2d 202 (Ct. App. 1999).....	7
 <u>STATUTES</u>	
I.C. § 18-8310 .....	5
I.C. § 19-2601(3) .....	8
I.C. § 19-2604 .....	passim

## STATEMENT OF THE CASE

### Nature Of The Case

Philip Dieter appeals from the order denying his motion to dismiss pursuant to I.C. § 19-2604.

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

On July 12, 1988, a grand jury indicted Dieter on three charges: lewd conduct with a minor under sixteen, infamous crime against nature, and sexual abuse of a child under sixteen. (R.<sup>1</sup>, pp.7-8.) Pursuant to a plea agreement, Dieter pled guilty to lewd conduct, and the state dismissed the other two charges. (R., pp.9-10.) On December 16, 1988, the court entered an order withholding judgment and placing Dieter on probation for five years.<sup>2</sup> (See R., pp.10A-10D (“Appendix A”).)

On June 1, 1990, Dieter filed a motion to “dissolve” his probation or, alternatively, to amend the conditions of his probation. (R., pp.14-17.) The parties thereafter stipulated to amend Dieter’s probationary terms. (R., pp.18-23.) One year later, Dieter filed another motion asking to “dissolve” his

---

<sup>1</sup> All references to the record will be to the augmented record, which includes both the original record and the additional pages requested by Dieter.

<sup>2</sup> While the order withholding judgment was signed on December 16, 1998 (R., p.10C), and the register of actions indicates it was filed that date (R., p.4A), for reasons which are not clear, the file stamp on the order is January 4, 1989 (R., p.10A). For consistency with the pleadings in this case, and because the difference in dates is not material for purposes of this appeal, the state will refer to the order using the December 16, 1998 date, rather than the January 4, 1989 date.

probation. (R., pp.28-29.) It is unclear whether that motion was ever heard but, in any event, it appears the motion was never granted. (See R., p.3.)

On August 17, 1992, the state filed a motion for a bench warrant for a probation violation alleging Dieter violated his probation by (1) having contact with minor children without the consent of his probation officer; (2) failing to report; (3) failing to submit monthly reports; (4) failing to comply with SANE Monitoring Contract; and (5) absconding. (R., pp.35-37.) Notwithstanding the state's pending motion alleging he violated the terms of his probation, Dieter filed another motion to "dissolve" his probation on September 22, 1992, claiming he "ha[d] complied with all requirements of the original and amended probation orders and completed approximately four years of the five year term." (R., p.39 ("Appendix B").) There is nothing in the record regarding the disposition of the alleged probation violations; however, the record does indicate that on October 9, 1992, the court entered an order terminating Dieter's probation and withholding judgment. (R., pp.59-60 ("Appendix C").) In that order, the court stated Dieter had "substantially complied with" his probation and, therefore, the court "dissolved" the order of probation. (Appendix C (R., p.60).) The order further stated: "As a consequence and pursuant to the Order entered December 16, 1988, the original Judgment and as it was subsequently amended is withheld, and the Clerk is appropriate directed to do so." (Appendix C (R., p.60).)

On September 16, 1999, Dieter filed a motion seeking "[e]xpungement of [his] criminal record from the Bureau of Criminal Identification . . . pursuant to I.C. 19-2604." (R., p.61.) The motion specifically asked the court to "expunge[]" and

“seal[]” all records in his case. (R., pp.61-62.) The court<sup>3</sup> denied the motion on December 29, 1999. (R., p.68.)

Nearly eleven years later, on December 14, 2010, Dieter filed a *pro se* motion asking the court to dismiss his case “pursuant to the Orders issued . . . on December 16, 1988 and on October 9, 1992.” (R., p.69.) The court issued a “Notice of Intent to Deny Motion to Dismiss” explaining, in relevant part:

Where a defendant has not complied with terms and conditions of probation “at all times,” as required by I.C. § 19-2604(1), a district court has no authority to grant a motion to dismiss. *Id.* In addition, a movant is required to make a “satisfactory showing,” convincing the court that it is “compatible with the public interest” that the defendant’s charges be dismissed.

Although [Dieter] claims he fully complied with the terms of probation, the record does not fully support his assertion. Based on the partial records before this Court, it appears that on August 17, 1992, a Motion and Order for Bench Warrant for PV (probation violation) was filed, and a Bench Warrant issued. Although the file does not contain the disposition of this Motion, it suggests that [Dieter] failed to abide by the terms of his probation. Nevertheless, on October 9, 1992, the Court entered an Order Terminating Probation and entering the withheld judgment, noting [Dieter] had “substantially complied” with the order of probation and withheld judgment.

(R., pp.72-73.) The court concluded that because Dieter failed to make a “satisfactory showing that he completed his probation while abiding by the terms and conditions of probation at all times, or that dismissal of his charge is in the public interest,” the motion would be denied. (R., p.73.) The court, however,

---

<sup>3</sup> The Honorable Robert Newhouse presided over Dieter’s case through the order terminating his probation entered October 9, 1992. (See generally R., pp.7-60.) The Honorable George Carey handled all subsequent proceedings. (See generally R., pp.68-165.)

gave Dieter 30 days "in which to request an evidentiary hearing or make supplementary filings in support of his Motion." (R., p.73.)

Counsel subsequently appeared on Dieter's behalf and requested an evidentiary hearing. (R., pp.75-78.) Dieter, through counsel, also filed a "Memorandum" in response to the court's notice. (R., pp.87-90.) In his memorandum, Dieter asserted his alleged probation violations were at "issue" before the court in 1992 when the court terminated his probation based on the affidavit filed in support of the September 22, 1992 Motion to Dissolve Probation in which Dieter, and others on his behalf, challenged the allegations, explained Dieter's non-compliance, and provided information about Dieter. (R., p.87; see also pp.41-58 (affidavits).) Dieter also argued in his memorandum that dismissal is in the public interest. (R., pp.88-90.) As a component of his "public interest" argument, Dieter noted:

A new statute has been passed by the Montana Legislature. It requires anyone who has a "sex offense" on his record to register that offense. Once the registration is made, the person will have any license removed and will not be allowed to vote. [Dieter] would have his Montana Fish and Game License terminated. He could not hunt to provide food for him and his wife. He would not be allowed to vote. Equally and no less important, [Dieter's] earned reputation as a hardworking Montana citizen would be destroyed. This based upon an offense which occurred in 1988.

(R., p.89.)

Although the state filed no written response to his memorandum, Dieter filed a "Response to Prosecutor" in which he responded to the prosecutor's off-the-record assertion that the issue before the court was governed by the Sexual Offender Registration and Notification Community Right to Know Act ("SORNA"),

and more specifically, I.C. § 18-8310. (R., p.97; Tr., p.45, Ls.6-24.) With respect to the application of that statute, Dieter asserted the provisions of SORNA did not apply because the original judgment entered in his case in 1988 predated the enactment of SORNA. (R., pp.97-98.) Dieter further asserted that I.C. § 19-2604(3) did not apply because it “did not exist” at the time judgment was entered in December 1988; as such, Dieter argued, “Judge Newhouse properly entered his order based upon Section 19-2604(1).” (R., p.98.)

At the evidentiary hearing, the parties agreed that SORNA did not apply to Dieter’s case “because the order withholding judgment was entered prior to July 1, 1993.” (Tr., p.45, L.22 – p.46, L.14; see R., p.125.) At the conclusion of the hearing Dieter asked the court to either “expunge” his case so he would not “have to go back into trying to interpret the nuances in Montana law” or to dismiss his case. (Tr., p.48, L.20 – p.49, L.6.) The court thereafter entered an order denying Dieter’s motion to dismiss, concluding dismissal was not in the public interest. (R., pp.124-127.) Dieter filed a motion to reconsider (R., pp.130-138), which the district court denied (R., pp.164-165). Dieter timely appealed. (R., pp.167-172.)

## ISSUES

Dieter states the issues on appeal as<sup>4</sup>:

1. Does the District Court have the jurisdiction or discretion to amend or modify the final orders entered by the original District Court in 1988, 1990, and 1992?
2. Must the District Court comply with the mandatory dismissal orders of the original District Court?
3. Did the District Court err in refusing to grant the Appellant's motion for dismissal?

(Appellant's Brief, p.10.)

The state rephrases the issues as:

Has Dieter failed to establish that the district court lacked jurisdiction to deny his motion to dismiss or that the court otherwise erred in denying the motion?

---

<sup>4</sup> Although not stated as an issue on appeal, the body of Dieter's brief includes an argument that SORNA does not apply to his case. (Appellant's Brief, p.13.) The state submits this argument is not relevant to the issues on appeal. Not only did the state concede below that SORNA had no application, there is no indication that Dieter has been required to register as a sex offender in Idaho, and his registration status has no bearing on whether the district court had authority to dismiss his case or erred in declining to do so. The state will, therefore, not address this argument beyond this footnote.

## ARGUMENT

### The District Court Had Jurisdiction To Deny Dieter's Motion To Dismiss Pursuant To I.C. § 19-2604 And Did Not Err In Denying That Motion

#### A. Introduction

On appeal, Dieter asserts the district court did not have “jurisdiction or discretion to amend or modify the final orders entered by Judge Newhouse in 1988, 1990 and 1992.” (Appellant’s Brief, p.10.) Dieter also asserts that even if the court had authority to “amend or modify” Judge Newhouse’s orders, it abused its discretion in doing so. (Appellant’s Brief, pp.13-14.) Dieter’s arguments fail. The district court did not amend or modify any of Judge Newhouse’s orders because whether Dieter was entitled to dismissal of his case was never presented to or ruled on by Judge Newhouse. Dieter has therefore failed to establish the district court lacked authority to deny his motion to dismiss. Dieter has likewise failed to establish the district court erred in denying his motion.

#### B. Standard Of Review

“Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review.” State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004). The appellate court also freely reviews the construction and application of a statute. State v. Shock, 133 Idaho 753, 755, 992 P.2d 202, 204 (Ct. App. 1999); State v. Schumacher, 131 Idaho 484, 485, 959 P.2d 465, 466 (Ct. App. 1998).

C. The District Court Had Authority To Deny Dieter's Motion To Dismiss

Dieter argues that the district court did not have “jurisdiction or discretion to amend or modify the final orders entered by Judge Newhouse in 1988, 1990 and 1992.” (Appellant’s Brief, p.10.) According to Dieter, this is true because the Order Terminating Probation, Dissolving Order of Probation, And Entering Order Withholding Judgment filed October 9, 1992, effectively dismissed his case because the original judgment entered on December 16, 1998, contemplated future dismissal.<sup>5</sup> (Appellant's Brief, pp.10-11.) This argument fails as a matter of fact and as a matter of law.

At all times relevant to this appeal, Idaho Code § 19-2604(1) provided<sup>6</sup>:

If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant; and this shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter.

Pursuant to I.C. § 19-2601(3), Judge Newhouse originally entered an order withholding judgment and placing Dieter on probation for five years. (Appendix A (R., pp.10A-10C).) The final paragraph of that order states:

---

<sup>5</sup> If, as Dieter asserts, his case was dismissed by Judge Newhouse in 1992, it is unclear why he needed to seek dismissal again in 2010. Nevertheless, the state will address the merits of his arguments on appeal.

<sup>6</sup> Effective July 1, 2011, I.C. § 19-2604(1) was amended to allow a district court to grant relief under this section even if the defendant did not at all times comply with the terms and conditions of probation.

AND IT IS FURTHER ORDERED that upon the expiration of the period of this order withholding judgment, or the earlier termination thereof, **and upon written showing by or on behalf of the defendant that he has fully complied with the terms of his probation**, then, and, in that event, this action shall be dismissed.

(Appendix A (R., p.10C) (emphasis added).)

On September 22, 1992, Dieter filed a "Motion To Dissolve Probation," which states:

This Motion is based upon the fact that [Dieter] has complied with all requirements of the original and amended probation orders and completed approximately four years of the five year term. The Probation Officer's admissions in her recommendations that the time and expense of supervising the probation status of Mr. Dieter warrants ending the probation. Further, that it would be in the best interest of both [Dieter] and the State of Idaho that the probation be terminated.

(Appendix B (R., pp.39-40).)

In response to Dieter's motion, and with the additional information that the state had alleged Dieter in fact violated his probation (R., pp.35-37), Judge Newhouse entered an "Order Terminating Probation, Dissolving Order Of Probation, And Entering Order Withholding Judgment" on October 9, 1992.<sup>7</sup>

(Appendix C (R., pp.59-60).) That order reads, in its entirety:

This matter came before the Court on October 8, 1992, pursuant to the Defendant's Motions [sic]. This matter was submitted to the Court based upon the Court file, Affidavits as filed on behalf of the Defendant, and following oral argument<sup>8</sup>. Upon consideration of same, and good cause appearing,

---

<sup>7</sup> It appears this order was drafted by counsel for Dieter. (See Appendix C (R., p.59).)

<sup>8</sup> Although the order indicates there was oral argument, a transcript of that argument is not included in the record.

IT IS HEREBY ORDERED AND THIS DOES ORDER AS FOLLOWS:

1. This Court entered its Order Withholding Judgment and order of Probation December 16, 1988, which included that upon the expiration of the period of this Order Withholding Judgment or the earlier termination thereof, and upon a proper showing of compliance by [Dieter], this action would be dismissed.

2. Approximately four years of the five year probation has elapsed and [Dieter] has **substantially complied** with the said Order.

3. The fifth year of the Order of Probation is terminated.

4. The Order of Probation as entered and as subsequently amended is hereby dissolved.

5. As a consequence and pursuant to the Order entered December 16, 1988, the original Judgment and as it was subsequently amended is withheld, and the Clerk is appropriately directed to do so.

6. Nothing herein will prevent the Court from considering [Dieter's] record upon sentencing should he be found guilty of any subsequent defense.

(Appendix C (R., pp.59-60) (emphasis added).)

The plain language of Judge Newhouse's order does not support Dieter's claim that his case was dismissed at that time because no form of the word "dismiss" appears anywhere in the order; in fact, the order only states that the judgment remains withheld. Although Dieter seems to believe dismissal would be automatic based on the language of the original judgment, which contemplated dismissal if he fully complied with the terms of his probation, he cites no authority for such a proposition, and the state is aware of none. (Appellant's Brief, p.12.) To the contrary, the original judgment itself required Dieter to make a written showing in support of dismissal, which is consistent with

the statute's requirement that the defendant make an "application" for dismissal. I.C. § 19-2604(1). Further, while Dieter made an "application," his application did not actually request dismissal; it only requested termination of his probation. (Appendix B (R., pp.39-40).) This limitation on his request is understandable given that he did not **fully** comply with the terms of his probation as required by both the original judgment and I.C. § 19-2604(1).

Dieter's failure to fully comply with the terms of his probation is also consistent with Judge Newhouse's finding that he only "substantially complied" and is consistent with the conclusion that Judge Newhouse did not dismiss his case. Any other reading of Judge Newhouse's 1992 order would be contrary to the actual language of the order, and would also be contrary to law. As explained in State v. Schumacher, 131 Idaho 484, 487, 959 P.2d 465, 468 (Ct. App. 1998):

[W]e conclude that I.C. § 19-2604(1) clearly and unambiguously states that a defendant cannot have his or her guilty plea set aside if he or she has violated the terms of probation. The applicable language of the statute states that the court may set aside a guilty plea if "the defendant has *at all times* complied with the terms and conditions upon which he as placed on probation." (Emphasis added.) This language establishes a condition which must be fulfilled *before* the guilty plea may be set aside. The statute does not permit any exception. The plain meaning of the statute is that the defendant must at all times comply with the terms of probation; otherwise, the district court does not have the necessary statutory authority to expunge the record and restore the defendant's civil rights.

(Emphasis original.) This limitation on the authority provided in I.C. § 19-2604(1) exists even if there has not been an adjudicated probation violation. State v. Hanes, 137 Idaho 40, 42, 44 P.3d 295, 297 (Ct. App. 2002). Once a defendant

moves for relief under I.C. § 19-2604(1), the state is free to assert, regardless of a lack of any prior allegations, that the defendant did not at all times comply with the terms of his probation, and the defendant must bring forth evidence of compliance. Id. In this case, the state clearly alleged Dieter did not, at all times, comply with the terms of his probation. (R., pp.35-37.) Although Dieter explained, by affidavit, the reasons for his non-compliance and refuted some of the allegations (R., pp.41-45, 51-56), the fact remains that he was not “at all times” in compliance with the terms of his probation and Judge Newhouse’s finding that Dieter only “substantially complied” confirms that he did not “fully” or “at all times” comply. As a result, while Judge Newhouse certainly could terminate Dieter’s probation, he could not dismiss Dieter’s case pursuant to I.C. § 19-2604(1). Schumacher, 131 Idaho at 487, 959 P.2d at 468; Hanes, 137 Idaho at 42, 44 P.3d at 297. Dieter’s contrary reading of Judge Newhouse’s October 9, 1992 order is contrary to the facts and the law.

Because Judge Newhouse never dismissed Dieter’s case, the district court had authority to consider Dieter’s 2010 motion to dismiss, and doing so did not result in any amendment to or modification of any of Judge Newhouse’s prior orders. Dieter’s assertion otherwise fails.

D. The District Court Did Not Err In Denying Dieter’s Motion To Dismiss

Dieter argues that even if the district court had authority to deny his motion to dismiss, it erred in doing so. (Appellant’s Brief, pp.13-14.) Dieter’s primary assertion in support of this argument is that Judge Newhouse reached a contrary conclusion when he decided to terminate Dieter’s probation. (Appellant’s Brief,

pp.13-14.) Judge Newhouse's decision to terminate Dieter's probation early is, however, irrelevant to whether Dieter is entitled to dismissal of his case. The only portion of Judge Newhouse's prior order that is relevant, and would qualify as "law of the case," as noted by Dieter and as found by the district court<sup>9</sup>, is the finding that Dieter only "substantially complied" with his probation, which precludes relief regardless of whether dismissal would otherwise be "compatible with the public interest." I.C. § 19-2604(1).

Even if a finding of only substantial compliance was sufficient for relief under I.C. § 19-2604(1) or even if the record could be interpreted as supporting Dieter's claim of full compliance, the district court was well within its discretion to nevertheless deny Dieter's motion to dismiss. Dieter claims otherwise, asserting the district court's public interest analysis was based solely on his guilty plea. (Appellant's Brief, p.14.) This claim is unsupported by the record. In considering the public interest, the court stated:

Balanced against [Dieter's] good record in the past twenty-plus years is the fact that the defendant took advantage of a vulnerable fifteen-year-old girl who was sixteen years his junior. Furthermore Dr. Engle's psychosexual evaluation, which was prepared for the court's use in sentencing and is part of the court record in this case, noted that "Mr. Dieter received scores indicating that he had been frankly dishonest about his sexually deviant

---

<sup>9</sup> Dieter notes that the district court "made an independent finding that [he] had met the conditions of his probation." (Appellant's Brief, p.14.) While the district court stated Dieter "appears to have complied with his conditions of probation" (R., p.126), the court also concluded Judge Newhouse's finding that Dieter only "substantially complied" was "necessarily . . . the law of the case" (R., p.125). To the extent the court's comment that Dieter "appears to have complied with his conditions of probation" can be viewed as a "finding," rather than a restatement of the conclusion that Dieter only substantially complied, it is not tantamount to a finding that Dieter "at all times" complied with his probation, and any such finding would be contrary to the record. (See Tr., p.18, L.3 – p.20, L.23.)

interests.” Dr. Engle also noted that “Mr. Dieter indicated a complete lack of motivation towards treatment focused upon the rehabilitation of sexual offenders.”

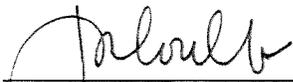
(R., p.126.)

The court also noted Dr. Engle’s conclusion that “Mr. Dieter is at risk for further instances of sexual misbehavior with minor girls should the opportunity present itself” and Dr. Engle’s impression that Dieter’s expression of remorse was “a superficial attempt to place himself in the best light” because Dieter was “unable to identify any possible harm which he might have done to his victim, and seemed quite surprised that the examiner would take such a question seriously.” (R., p.126.) While the district court concluded “[t]he public interest requires the continued protection afforded by the original guilty plea” (R., p.127), Dieter’s assertion that the court’s refusal to dismiss his case was predicated solely upon the guilty plea is without merit. Dieter has failed to establish the district court erred in denying his motion to dismiss.

#### CONCLUSION

The state respectfully requests that this Court affirm Dieter’s motion to dismiss.

DATED this 29<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of November 2011, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

CHRISTOPHER D. BRAY  
Bray Law Offices  
P.O. Box 6344  
Boise, ID 83707-6344



---

JESSICA M. LORELLO  
Deputy Attorney General

JML/pm

# **APPENDIX A**

DEC 21 1988

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FILED  
PM 1:35

1 THE STATE OF IDAHO, )  
2 )  
3 )  
4 )  
5 Plaintiff, )  
6 )  
7 vs. )  
8 )  
9 PHILIP DIETER, )  
10 )  
11 )  
12 )  
13 Defendant. )

JAN 4 1989

BY JOHN BASTIDA, CLERK  
DEPUTY

Case No. 15317

ORDER WITHHOLDING JUDGMENT  
AND ORDER OF PROBATION

10 WHEREAS, on the 22nd day of July, 1988, Philip Dieter  
11 was arraigned before the Honorable Robert G. Newhouse, Judge  
12 of the Fourth Judicial District, in and for the County of Ada,  
13 and charged with the crimes of I: Lewd Conduct With A Minor  
14 Under Sixteen, Felony, I.C. §18-1508; II: Infamous Crime  
15 Against nature, Felony, I.C. §18-6605; and III: Sexual Abuse  
16 Of A Child Under The Age Of Sixteen Years, Felony, I.C.  
17 §18-1506, committed on or between August, 1986 and October,  
18 1987,

19 AND WHEREAS, through due process of law, the defendant,  
20 Philip Dieter, plead guilty to said crime of I: Lewd Conduct  
21 With A Minor Under Sixteen, Felony, I.C. §18-1508, and  
22 requested probation from the District Court,

23 AND WHEREAS, the District Court, having ascertained the  
24 desirability of granting this petition of probation, does  
25 hereby order and decree that he be placed on probation, and  
26

+

000010A

1 judgment is hereby withheld for a period of 5 years, under the  
2 following conditions, to-wit:

3 1. That the probation is granted to and accepted by the  
4 probationer, subject to all its terms and conditions, and with  
5 the understanding that the court may, at any time, in case of  
6 the violation of the terms of the probation, cause the  
7 probationer to be returned to the court for the imposition of  
8 sentence as prescribed by law, or any other punishment as the  
9 court may see fit to hand down.

10 2. That the probationer shall be under the legal custody  
11 and control of the Director of Probation and Parole of the  
12 State of Idaho and the District Court and subject to the rules  
13 of probation as prescribed by the Board of Correction and the  
14 District Court.

15 3. Special Conditions, to-wit:

16 1. The probationer does hereby agree and consent to the  
17 search of his person, automobile, real property, and any other  
18 property, at any time, and at any place, by any law  
19 enforcement officer, peace officer, or probation officer, and  
20 does waive his constitutional rights to be free from such  
21 searches.

22 2. The probationer shall complete any training or  
23 counseling program established by the probation officer.

24 3. The probationer shall pay \$13.50 court costs, \$3.00  
25 P.O.S.T. fees, and \$20.00 fine for Victims' Compensation Fund,  
26 in such manner as shall be established by the probation  
officer.

1 4. The probationer shall contribute such monthly sum for  
2 probation supervisions as shall be established by the Idaho  
3 State Board of Correction. (20-225 I.C.)

4 5. The probationer shall have no contact with any minor  
5 children or the victim, until she turns 18 years of age,  
6 without the consent of his probation officer.

7 6. The probationer shall return all photographs or  
8 negatives of the victim to the victim.

9 7. The probationer shall pay cost of victim's counseling.

10 8. The probationer shall serve 30 days in the Ada County  
11 Jail with workout privileges as shall be set by his probation  
12 officer. He is to receive credit for 1 day served prior to  
13 this order .

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
000010B

1 4. THAT THE PROBATIONER, IF PLACED ON PROBATION TO A  
2 DESTINATION OUTSIDE THE STATE OF IDAHO, OR LEAVES THE CONFINES  
3 OF THE STATE OF IDAHO, WITH OR WITHOUT PERMISSION OF THE  
4 DIRECTOR OF PROBATION AND PAROLE, DOES HEREBY WAIVE  
5 EXTRADITION TO THE STATE OF IDAHO, AND ALSO AGREES THAT THE  
6 PROBATIONER WILL NOT CONTEST ANY EFFORT BY ANY STATE TO RETURN  
7 THE PROBATIONER TO THE STATE OF IDAHO.

8 AND IT IS FURTHER ORDERED that upon the expiration of the  
9 period of this order withholding judgment, or the earlier  
10 termination thereof, and upon written showing by or on behalf  
11 of the defendant that he has fully complied with the terms of  
12 his probation, then, and, in that event, this action shall be  
13 dismissed.

14 Dated this 16th day of December, 1988.

15 *Robert G. Newhouse*  
16 ROBERT G. NEWHOUSE  
17 District Judge

18 Copies:  
19 Ada County Prosecuting Attorney  
20 Chris Bray  
21 Ada County Jail  
22 File  
23  
24  
25  
26

000010C

# **APPENDIX B**

Christopher D. Bray  
 HYDE, WETHERELL, BRAY & HAFF  
 Owyhee Plaza - Suite 500  
 1109 Main Street  
 P.O. Box 139  
 Boise, Idaho 83701  
 Telephone: (208) 343-1855  
 Fax: (208) 343-4800  
 Attorneys for the Defendant

NO \_\_\_\_\_  
 PREP  
 AM \_\_\_\_\_ PM 7:55  
 SEP 2 1992  
 CLERK  
 DEPUTY  
*Almanes*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. 15317
	)	
v.	)	MOTION TO DISSOLVE
	)	PROBATION
	)	
	)	
PHILIP DIETER,	)	
	)	
Defendant.	)	

COMES NOW The Defendant Philip Dieter by and through his attorney of record, Christopher D. Bray of the firm of Hyde, Wetherell, Bray & Haff who respectfully moves this Court to dissolve the Probation Order as entered December 16, 1988. This Motion is based upon the fact that the Defendant has complied with all requirements of the original and amended probation orders and completed approximately four years of the five year term. The Probation Officer's admissions in her recommendations that the time and expense of supervising the probation status of Mr. Dieter

*me*

warrants ending the probation. Further, that it would be in the best interest of both the Defendant and the State of Idaho that the probation be terminated.

DATED this 21 day of September, 1992.

HYDE, WETHERELL, BRAY & HAFF

By Christopher D. Bray  
Christopher D. Bray

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on the 21 day of September, 1992, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

HAND DELIVERY  
 U.S. MAIL  
 OVERNIGHT MAIL  
 FAX TRANSMISSION

Roger Bourne  
Deputy Prosecuting Attorney  
602 W. Idaho  
Boise, Idaho 83702

Christopher D. Bray  
Christopher D. Bray

# **APPENDIX C**

Christopher D. Bray  
HYDE, WETHERELL, BRAY AND HAFF  
Owyhee Plaza - Suite 500  
1109 Main Street  
P.O. Box 139  
Boise, Idaho 83701  
Telephone: (208) 343-1855  
Facsimile: (208) 343-4800

Attorneys for Defendant

NO. \_\_\_\_\_  
FILED  
A.M. 8:55 P.M. \_\_\_\_\_

OCT 9 1992

J. DAVID NAVAREO, Clerk  
By *Kathleen March*  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. 15317
	)	
v.	)	
	)	ORDER TERMINATING PROBATION,
PHILIP DIETER,,	)	DISSOLVING ORDER OF PROBATION,
	)	AND ENTERING ORDER WITHHOLDING
Defendant.	)	JUDGMENT
_____	)	

This matter came before the Court on October 8, 1992, pursuant to the Defendant's Motions. This matter was submitted to the Court based upon the Court file, Affidavits as filed on behalf of the Defendant, and following oral argument. Upon consideration of same, and good cause appearing,

IT IS HEREBY ORDERED AND THIS DOES ORDER AS FOLLOWS:

ORDER TERMINATING PROBATION, DISSOLVING ORDER OF PROBATION, AND  
ENTERING ORDER WITHHOLDING JUDGMENT - PAGE 1  
1.bn.10.8.92.cb88.67

ec

CP: P & P

000059

1. This Court entered its Order Withholding Judgment and Order of Probation December 16, 1988, which included that upon the expiration of the period of this Order Withholding Judgment or the earlier termination thereof, and upon a proper showing of compliance by the Defendant, this action would be dismissed.

2. Approximately four years of the five year probation has elapsed and the Defendant has substantially complied with the said Order.

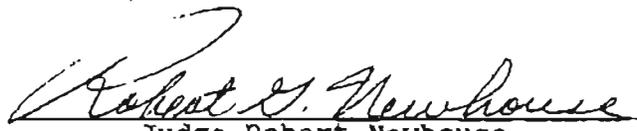
3. The fifth year of the Order of Probation is terminated.

4. The Order of Probation as entered and as subsequently amended is hereby dissolved.

5. As a consequence and pursuant to the Order entered December 16, 1988, the original Judgment and as it was subsequently amended is withheld, and the Clerk is appropriately directed to do so.

6. Nothing herein will prevent the Court from considering the Defendant's record upon sentencing should he be found guilty of any subsequent offense.

DATED This 9<sup>th</sup> day of October, 1992.

  
Judge Robert Newhouse