

10-12-2011

# Gosch v. State Augmentation Record Dckt. 38791

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# In the Supreme Court of the State of Idaho

KIRK JULLIARD GOSCH, )  
 )  
Petitioner-Appellant, ) **AMENDED ORDER**  
 )  
v. ) Supreme Court Docket No. 38791-2011  
 ) Kootenai County District Court No.  
STATE OF IDAHO, ) 2007-5443  
 )  
Respondent. ) Ref. No. 11-472

A MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE with attachments was filed by counsel for Appellant on September 21, 2011. Thereafter, an OBJECTION TO "MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE AND STATEMENT IN SUPPORT THEREOF" was filed by counsel for Respondent on September 23, 2011. Therefore, good cause appearing.

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED, *IN PART*, and the augmentation record in the above entitled appeal shall include the documents listed below, copies of which were attached to this Motion:

1. Minutes of Status Hearing held on February 17, 2009;
2. Minutes of Motion Hearing held on July 16, 2009;
3. Minutes of Status Hearing held on June 23, 2010;
4. Minutes of Pre-Trial Conference held on April 21, 2011;
5. Notice of Proposed Dismissal filed February 20, 2008;
6. Affidavit in Support of Retention filed March 6, 2008;
7. Affidavit in Support of Amended Petition for Post-Conviction Relief filed March 6, 2008;
8. Motion to Permit Plaintiff to file an Amended Post-Conviction Relief Petition filed March 6, 2008;
9. Order of Retention filed March 11, 2008;
10. Stipulation to Permit Plaintiff to file Amended Petition as Proposed & Vacate filed April 21, 2008;
11. Stipulation to Permit Plaintiff to file Amended Petition as Proposed & Vacate filed May 1, 2008;
12. Affidavit in Support of Amended Petition for Post Conviction Relief filed August 18, 2008;
13. Respondent's Witness List filed April 22, 2011;
14. Motion to Take Judicial Notice filed April 22, 2011;
15. Proposed Findings of Fact and Conclusions of Law filed April 22, 2011;
16. Amended Notice of Trial filed April 26, 2011;
17. 2<sup>nd</sup> Amended Notice of Trial filed April 26, 2011;

AMENDED ORDER – Docket No. 38791-2011

18. In Criminal Case CR-F-05-403: Court Memo Opinion of January 27, 2006; and
19. Order Denying Motion for Interlocutory Appeal filed February 24, 2006.

IT FURTHER IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, DENIED, *IN PART*, with regard to the transcripts requested:

1. Transcript of the Motion Hearing held on July 16, 2009; (Court Reporter Joann Schaller; estimation of less than 100 pages)
2. Transcript of the Motion Hearing held on June 23, 2010; (Court Reporter Joann Schaller; estimation of less than 100 pages)
3. Transcript of the Motion Hearing held on April 21, 2011; and (Court Reporter Joann Schaller; estimation of less than 100 pages)

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, DENIED and APPELLANT'S BRIEF SHALL BE FILED WITH THIS COURT FORTHWITH.

IT FURTHER IS ORDERED that this AMENDED ORDER shall be *NUNC PRO TUNC* to this Court's prior Order dated October 6, 2011.

DATED this 12<sup>th</sup> day of October, 2011.

By Order of the Supreme Court

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

## AUGMENTATION RECORD

AMENDED ORDER – Docket No. 38791-2011

LAW CLERK

# In the Supreme Court of the State of Idaho

KIRK JULLIARD GOSCH,	)	
	)	
Petitioner-Appellant,	)	<b>AMENDED ORDER</b>
	)	
v.	)	Supreme Court Docket No. 38791-2011
	)	Kootenai County District Court No.
STATE OF IDAHO,	)	2007-5443
	)	
Respondent.	)	Ref. No. 11-472

A MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE with attachments was filed by counsel for Appellant on September 21, 2011. Thereafter, an OBJECTION TO "MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE AND STATEMENT IN SUPPORT THEREOF" was filed by counsel for Respondent on September 23, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED, *IN PART*, and the augmentation record in the above entitled appeal shall include the documents listed below, copies of which were attached to this Motion:

1. Minutes of Status Hearing held on February 17, 2009;
2. Minutes of Motion Hearing held on July 16, 2009;
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(Court Reporter Joann Schaller; estimation of less than 100 pages)

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, DENIED and APPELLANT'S BRIEF SHALL BE FILED WITH THIS COURT FORTHWITH.

***IT FURTHER IS ORDERED that this AMENDED ORDER shall be NUNC PRO TUNC to this Court's prior Order dated October 6, 2011.***

DATED this 12<sup>th</sup> day of October, 2011.

By Order of the Supreme Court

  
\_\_\_\_\_  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

**Court Minutes:**

Session: HOSACK021709P  
Session Date: 02/17/2009  
Judge: Hosack, Charles  
Reporter: Schaller, Joann

Division: DIST  
Session Time: 14:57

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s): Raap, Marty

Public Defender(s):  
Anderson, Staci  
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

Case number: CV2007-5443  
Plaintiff: Gosch, Kirk  
Plaintiff Attorney:  
Defendant: Idaho, State of  
Pers. Attorney: Nixon, Jed  
Co-Defendant(s):  
State Attorney: Raap, Marty  
Public Defender:

02/17/2009

15:08:50

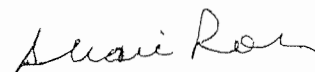
Recording Started:

15:08:50

Case called

15:09:13

Judge: Hosack, Charles  
Calls, def not present. Status Conf.



15:09:22 **State Attorney: Raap, Marty**

15:09:25 **Public Defender:**

15:09:42 **Pers. Attorney: Nixon, Jed**

15:09:48 **State Attorney: Raap, Marty**  
This is T. Laird's case. I believe she intends to do the summary dismissal.

15:10:16 **Pers. Attorney: Nixon, Jed**  
There's an Amended Pet filed, I don't see a motion for summary dismissal so I

15:10:35 have no obj to that. But I'm not available on March 18 if the court was

15:10:51 looking at that date.

15:11:21 **Judge: Hosack, Charles**  
In this case, if the state is going to file for summary dismissal and notice

15:11:42 up then we can do that. If there are no filing by the state then I'd set it

15:12:10 for evid. I'll tickle for 30 days and see if the state has filed, if not

15:12:45 the court will set it for evid.

15:13:01 **Pers. Attorney: Nixon, Jed**  
Agree.

15:13:22 **Stop recording**

---

**Court Minutes:**

Session: HOSACK071609P  
Session Date: 07/16/2009  
Judge: Hosack, Charles  
Reporter: Schaller, Joann

Division: DIST  
Session Time: 14:57

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s):  
Gardner, Donna  
Raap, Marty

Public Defender(s):  
Nixon, Jed  
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0007

Case number: CV2007-5443  
Plaintiff: Gosch, Kirk  
Plaintiff Attorney:  
Defendant: Of Idaho, State  
Pers. Attorney:  
Co-Defendant(s):  
State Attorney: Gardner, Donna  
Public Defender: Nixon, Jed

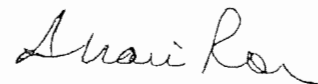
07/16/2009

16:15:48

Recording Started:

16:15:48

Case called



- 16:15:55 **Judge: Hosack, Charles**  
Calls, Motion to Dismiss.
- 16:16:04 **State Attorney: Gardner, Donna**
- 16:16:06 **Public Defender: Nixon, Jed**  
This is Art Verharen's case. I talked to Mr Raap  
earlier. I did submit a
- 16:16:32 brief. I need to talk to my client as to his  
wishes and what relief he is
- 16:16:49 requesting. Or set this for an evid hrg.
- 16:17:55 **State Attorney: Gardner, Donna**  
I'm not familiar with this case.
- 16:18:15 **Judge: Hosack, Charles**  
Let's approach this as a status conf. On the  
issue of being told that if he
- 16:18:35 appealed the dismissed charge he'd be charged  
again. So he didn't appeal. It
- 16:19:26 would seem to me that the Court may say there is  
an evidentiary issue there.
- 16:19:46 The attorney may have a very different take on  
the conversation. Then where
- 16:20:14 do we go on the Strickland test? What are the  
evidentiary issues?
- 16:23:45 **Public Defender: Nixon, Jed**  
Ask for 60 days to meet with my client. And if  
he doesn't contact me it would
- 16:24:06 be dismissed.
- 16:24:14 It appears there may be another file. I'd like  
to have a substantive
- 16:24:52 discussion with my client.
- 16:26:14 **Judge: Hosack, Charles**  
Let's do that and I'll enter an Order giving the  
Petitioner 60 days to set
- 16:26:37 forth the grounds as to the basis to appeal.
- 16:26:59 **Public Defender: Nixon, Jed**  
And if there is no Amended Petition would it be  
dismissed?
- 16:27:14 **Judge: Hosack, Charles**



I think so, there isn't anything alleged then.  
Under Strickland having failed  
to meet the burden of going forward. Order 60  
days.

16:27:36

16:28:27 Stop recording

---

**Court Minutes:**

Session: SIMPSON062310P  
Session Date: 06/23/2010  
Judge: Simpson, Benjamin  
Reporter: Schaller, Joann

Division: DIST  
Session Time: 13:14

Courtroom: Courtroom10

Clerk(s): Larsen, Denice

State Attorney(s): Wick, Ann

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

Case number: CV2007-5443  
Plaintiff: GOSCH, KIRK JULLIARD  
Plaintiff Attorney:  
Defendant: IDAHO, STATE OF  
Pers. Attorney:  
Co-Defendant(s):  
State Attorney: Wick, Ann  
Public Defender:

06/23/2010

15:02:56

Recording Started:

15:02:56

Case called

15:03:21

**Add Ins: CONFERENCE, STATUS**

15:03:22

**Defendant: IDAHO, STATE OF**



## PRESENT IN CUSTODY

- 15:03:28 **Add Ins: NIXON, JED**  
PRESENT
- 15:03:30 **State Attorney: Wick, Ann**  
PRESENT
- 15:03:40 **Judge: Simpson, Benjamin**  
STATUS CONF ON WHERE WE GO WITH POST CONVICTION
- 15:04:00 **State Attorney: Wick, Ann**  
WE NEED A TRIAL DATE
- 15:04:08 I WAS LAW CLERK FOR JUDGE HOSACK AT TIME OF  
CONVICTION SO I CAN'T HANDLE, MR
- 15:04:29 VERHAREN'S HANDLING-HE HAS NEW CRIMINAL CASE IN  
AUG
- 15:04:44 **Add Ins: NIXON, JED**  
THINK ISSUE IS FAIRLY SIMPLE-ANTICIPATE 2-3  
WITNESSES-JULY OR AUG OR SEPT-1
- 15:05:23 DAY
- 15:05:28 **Judge: Simpson, Benjamin**  
I WILL SET YOU PROBABLY IN SEPTEMBER-IF YOU HAVE  
UNAVAILABLE DATES, LET CLERK
- 15:05:40 KNOW WHAT THEY ARE-I WILL ISSUE ORDER-MR GOSCH  
IS CHALLENGING HIS CONVICTION
- 15:05:55 RE INEFFECTIVE ASSISTANCE RE HIS FORMER PD-NOT  
LEGALLY CORRECT WHAT HE TOLD
- 15:06:19 HIM-COURT MIGHT FIND INEFFECTIVE ASSISTANCE-  
HOWEVER 2ND STEP IS MR GOSCH HAS
- 15:06:34 TO SHOW WHAT HE WOULD ASSERT ON APPEAL AND IT'S  
A COLORFUL APPEAL AND HE
- 15:06:47 HASN'T DONE THAT-ORDER MR GOSCH THROUGH COUNSEL,  
ASSERT IN FORM OF SUPP
- 15:07:10 PLEADIGS WITHIN 20 DAYS AMENDED PETITION SHOWING  
BASIS FOR APPEAL-I WILL
- 15:07:26 ISSUE WRITTEN DECISION ON THAT REGARD-STATE CAN  
RESPOND TO THAT-LOOK AT ABOUT
- 15:07:40 30 DAYS BEFORE I SET YOU FOR TRIAL-IF YOU DON'T  
FILE ANYTHING, IT WILL BE
- 15:07:59 SUBJECT TO DISMISSAL WITHOUT FURTHER NOTICE
- 15:08:14 **Stop recording**

<b>Description</b>			CV 2007-5443 Kirk Julliard Gosch vs. State of Idaho 20110421 Pre-Trial Conference Judge Simpson Clerk Denice Larsen Court Reporter JoAnn Schaller
<b>Date</b>			4/21/2011
<b>Location</b>		1K-COURTROOM10	
<b>Time</b>			<b>Speaker</b>
<b>Note</b>			
07:59:49 AM	Judge Simpson	Calls case. Sean Walsh for def. Def not present. Art Verharen present for State. This is set for a half day trial	
08:00:23 AM	Sean Walsh	We are ready to go. 3 hours more than enough.	
08:00:34 AM	Art Verharen	Ready to go. 3 hours ok	
08:00:45 AM	Sean Walsh	I need a date certain. He will be appearing telephonically.	
08:01:08 AM	Judge Simpson	I will let you know for sure by Monday afternoon. You can plan on going to trial.	
08:01:38 AM	Art Verharen	Ms. Taylor is the one of the claim for ineffective counsel. She will not speak with me unless ordered by Court. She feels obligated to have court order it.	
08:02:17 AM	Judge Simpson	You can issue a subpeona to talk to you	
08:02:26 AM	Art Verharen	I have issued subpeona, she will not talk with me unless ordered. Pd's office will not talk about ineffective counsel without order.	
08:02:58 AM	Judge Simpson	If she will accept an order that is fine with me.	
08:03:11 AM	Art Verharen	Pd's office policy is that they need court order. It is not that she doesn't want to talk to me.	
08:03:34 AM	Judge Simpson	If she is not opposed to order, I will issue.	
08:03:44 AM	Sean Walsh	Ask for 4 or 5 days lead time to make arrangements for Mr. Gosch to be present. It is the bar's policy, not PD's office. She can't ethically talk without order from court.	
08:04:30 AM	Judge Simpson	I understand	
08:04:33 AM			
08:04:33 AM			
08:10:43 AM	Judge Simpson	Ms. Taylor present.	
08:10:56 AM	Anne Taylor	I don't feel like I can talk with Mr. Verharen pursuant to rules and instruction I'm given. that also applies to investigator Mr.	

*Denice Larsen*

		Durant. I would always protect a client's confidentiality.
<u>08:11:34 AM</u>	Judge Simpson	Confidentiality doesn't apply because he has dispersions against you.
<u>08:11:48 AM</u>	Anne Taylor	I understand. I need a Court order to speak to him. If court orders me to speak I'm not aware of any authority not to speak
<u>08:12:20 AM</u>	Judge Simpson	I will sign order upon presentment.
<u>08:12:29 AM</u>		
<u>08:12:29 AM</u>	End	

Produced by FTR Gold™  
[www.fortherecord.com](http://www.fortherecord.com)

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
IN AND FOR THE COUNTY OF KOOTENAI  
324 W. GARDEN AVENUE  
COEUR D'ALENE, IDAHO 83816-9000

FILED 2/20/2008 AT 09:42 PM  
STATE OF IDAHO, COUNTY OF KOOTENAI SS  
CLERK OF THE DISTRICT COURT

BY Patricia Dube DEPUTY

KIRK JUILLARD GOSCH  
63663 SICI - MENS CWC  
BOISE ID 83707

NOTICE OF PROPOSED DISMISSAL

Pursuant to Rule 40(c) of the Idaho Rules of Civil Procedure, notice is hereby given that in the absence of a showing, by written affidavit filed with this Court on or before **Monday, March 10, 2008 at 10:30 AM**, setting forth specific facts justifying retention and setting forth a specific time table for actions necessary to make the case ready for trial setting and processing the specific matters left at issue therein, all pending matters in the following case will be dismissed for inactivity on or after **March 10th, 2008**.

CASE NO.	CASE TITLE
CV-2007-0005443	Kirk Juillard Gosch, Plaintiff vs State Of Idaho, Defendant

Copies mailed, postage pre-paid to:

Counsel, as listed above.

Dated: Wednesday, February 20, 2008  
Daniel J. English  
Clerk Of The District Court

By: Patricia Dube, Deputy Clerk

Linda J. Payne  
Attorney at Law  
Contract Public Defender  
1034 N. Third Street, Suite 9  
Coeur d'Alene, Idaho 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: 8:41 am  
K.V.

2008 MAR -6 AM 8:41

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK JUILLARD GOSCH, )  
)  
Plaintiff, )  
)  
vs. )  
)  
STATE OF IDAHO, )  
)  
Defendant, )  
\_\_\_\_\_ )

CASE NO. CV-2007-5443

AFFIDAVIT IN SUPPORT OF  
RETENTION

STATE OF IDAHO )  
: ss  
County of Kootenai )

LINDA J. PAYNE, being first duly sworn under oath, deposes and says:

1. That I am the attorney for the Petitioner in the above-entitled matter.
2. On August 23, 2007, I was assigned to represent Mr. Gosch pursuant to the conflict contract with the Public Defender's Office.
3. At that time, Mr. Gosch was still in prison, but had been granted a parole date sometime in November, 2007. We talked and decided it would be more productive and time better spent if he were to contact me upon his


release from prison so that we could confer about how to proceed with his case.

4. Mr. Gosch contacted me in November, 2007. However, due to my conflict schedule and Mr. Gosch getting busy with the business of parole, we did not meet.
5. On February 15, 2008, I mailed my analysis letter regarding his post conviction claims to Mr. Gosch and directed that he contact me as soon as possible.
6. On February 22, 2008, I received the court's Notice of Proposed Dismissal.
7. On February 22, 2008, I mailed a copy of the Notice of Proposed Dismissal to Mr. Gosch along with a letter directing him to immediately contact me.
8. Mr. Gosch promptly contacted me, and we determined a course of action.
9. I have prepared an Amended Petition for Post Conviction Relief and Affidavit in Support of Amended Petition reducing the claim to one issue, namely, trial counsel's erroneous legal advice that should Mr. Gosch choose to appeal the marijuana-related charges for which he was found guilty by a jury, the state could re-file the cocaine charges for which the jury found him not guilty.
10. The Amended Petition and Affidavit will be signed by Mr. Gosch this week and will be filed by 5:00 p.m., Friday, March 7, 2008.

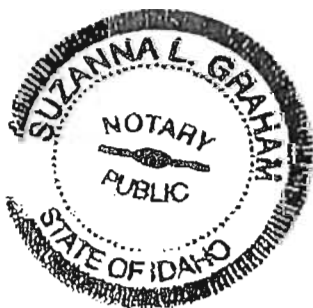


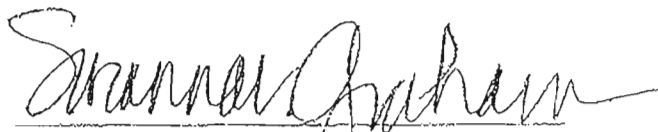
- 11. I intend to contact the state to seek a stipulation permitting me file the Amended Petition; if the state does not agree, counsel will seek leave of the Court to file the amended petition; if the Court does not agree, then this matter can go forward on the previous petition, which includes the appeal issue though it is not succinctly stated. Clarification can be made by filing a Supplemental Affidavit.
- 12. In any event, Petitioner intends to move for summary disposition on this sole issue and will request a hearing as soon as the Court's calendar permits.

DATED this 3 day of March, 2008.

  
 \_\_\_\_\_  
 LINDA J. PAYNE

SUBSCRIBED AND SWORN to before me this 3 day of March, 2008.



  
 \_\_\_\_\_  
 Notary Public, State of Idaho  
 Employed at Coeur d'Alene, Idaho  
 Commission expires: 10.31.2013

Linda J. Payne  
Attorney at Law  
Contract Public Defender  
1034 N. Third Street, Suite 9  
Coeur d'Alene, Idaho 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: 8:41 AM  
M-H

2008 MAR -6 AM 8:41

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK JUILLARD GOSCH, )  
)  
Plaintiff, )  
)  
vs. )  
)  
STATE OF IDAHO, )  
)  
Defendant, )  
)

CASE NO. CV-2007-5443

AFFIDAVIT IN SUPPORT OF  
AMENDED PETITION FOR POST  
CONVICTION RELIEF

STATE OF IDAHO )  
: ss  
County of Kootenai )

Plaintiff, KIRK JUILLARD GOSCH, being first duly sworn under oath, deposes  
and says:

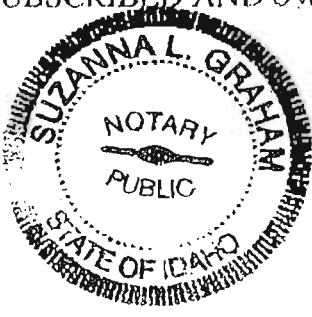
1. That I am the Petitioner in the above entitled matter, am over the age of 18  
years, and am competent to testify herein.
2. After I was convicted by a jury in this matter on the marijuana-related charges  
and found not guilty by a jury on the cocaine charge, I discussed the  
possibility of appealing the guilty verdicts with my attorneys, Anne Taylor  
and Christopher Schwartz.

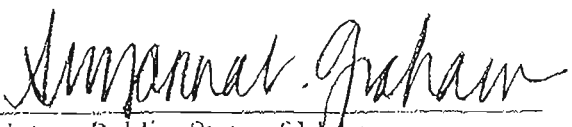
- 3. They told me that if I appealed the not guilty verdicts that I could be recharged with the cocaine charge despite the fact that the jury found me not guilty.
- 4. I questioned them because that did not seem right to me. Upon questioning, Mr. Schwartz told me that he had been a law clerk for the Idaho Supreme Court/Court of Appeals and that he had done research on this issue. He told me again that the law permits the prosecutor to refile the cocaine charge even though a jury found me not guilty.
- 5. Because of my attorneys' advice, I did not pursue an appeal. Had I not been told by my attorneys that the cocaine charge could be refiled, I would have timely filed an appeal.

DATED this 3 day of March, 2008.

  
 \_\_\_\_\_  
 KIRK JUIIARD GOSCH  
 Juillard

SUBSCRIBED AND SWORN to before me this 3 day of March, 2008



  
 \_\_\_\_\_  
 Notary Public, State of Idaho  
 Employed at Coeur d'Alene, Idaho  
 Commission expires: 10.31.2013

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: 8:41 AM

2008 MAR -6 AM 8:41

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

LINDA J. PAYNE  
ATTORNEY AT LAW  
CONTRACT PUBLIC DEFENDER  
1034 N. THIRD STREET, SUITE 9  
COEUR D'ALENE, IDAHO 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK J. GOSCH,	)	
	)	CASE NO. CV 2007-0005443
Plaintiff,	)	
	)	MOTION TO PERMIT PLAINTIFF TO
vs.	)	FILE AN AMENDED POST CONVICTION
	)	RELIEF PETITION
STATE OF IDAHO,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the defendant, Kirk J. Gosch, by and through his undersigned attorney, pursuant to I.R.C.P. 4(h), and hereby moves the Court for an order permitting him to amend his Petition for Post Conviction Relief.

This motion is based upon the grounds that plaintiff's appointed counsel has had an opportunity to review the petition and supporting documentation, as well as talk with the plaintiff. An amendment of the Petition would reduce the issues for the Court's consideration. A copy of the proposed Amended Petition for Post Conviction Relief and Affidavit in Support are attached hereto.

A hearing not to exceed 20 minutes is requested to present evidence and/or oral argument.

DATED this 5 day of March, 2008.

By: *L. Payne*  
LINDA J. PAYNE  
Attorney for Plaintiff

**CERTIFICATE OF MAILING**

I hereby certify that on the 5 day of March, 2008, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

*Kootenai Co. Prosecutor  
Ann Wick*

- U.S. Mail, Postage Prepaid
- Overnight Mail
- Hand delivered
- Facsimile No. 446-1840
- Courthouse Mail
- Other: \_\_\_\_\_

By: *L. Payne*

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
IN AND FOR THE COUNTY OF KOOTENAI  
324 W. GARDEN AVENUE  
COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2008 MAR 11 AM 11:44

Kirk Juillard Gosch, Plaintiff )

vs )

State Of Idaho, Defendant )

CLERK DISTRICT COURT  
Case No: CV-2007-0005443

DEPUTY  
ORDER OF DISMISSAL / RETENTION

KIRK JUILLARD GOSCH  
63663 SICI - MENS CWC  
BOISE, ID 83707  
FAX:

ORDER OF DISMISSAL / RETENTION

Pursuant to the Notice of Proposed Dismissal dated: 2/19/2008, giving a show cause date of 3/10/2008, IT IS HEREBY ORDERED that all pending matters in this case are hereby

Dismissed

Retained

Retained for \_\_\_\_\_ days only. The case will be dismissed at the end of that time unless proof of service has been filed I.R.C.P. 4 (c).

pursuant to Rule 40(c) of the Idaho Rules of Civil Procedure.

Dated: March 11 2008

Judge: [Signature]

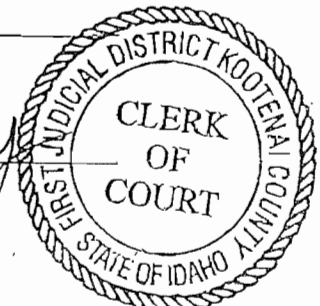
Copies sent as follows:

Faxed to Counsel as listed above

Plaintiff  
 Mailed to ~~Counsel~~ as listed above

Dated: 3-11-08  
Daniel J. English  
Clerk Of The District Court

By: [Signature]  
Deputy Clerk



STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 4-14-08  
AT 5:00 O'CLOCK P M  
CLERK, DISTRICT COURT  
*[Signature]*  
DEPUTY

LINDA J. PAYNE  
ATTORNEY AT LAW  
CONTRACT PUBLIC DEFENDER  
1034 N. THIRD STREET, SUITE 9  
COEUR D'ALENE, IDAHO 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK J. GOSCH,	)	CASE NO. CV 2007-0005443
Plaintiff,	)	
vs.	)	STIPULATION TO PERMIT PLAINTIFF TO
	)	FILE AMENDED PETITION AS PROPOSED
STATE OF IDAHO,	)	AND TO VACATE MOTION SET FOR
	)	4/15/2008 AT 3:00 P.M.
Defendant,	)	

COME NOW the parties, by and through their respective counsel, and hereby stipulate to permitting the plaintiff to file his Amended Petition as set forth and attached to his Motion to Amend filed on or about March 5, 2008.

The parties further stipulate to vacating the hearing on the Motion to Amend set for Tuesday, April 15, 2008, at the hour of 3:00 p.m.

DATED this 14 day of April, 2008.

KOOTENAI COUNTY  
PROSECUTING ATTORNEY

By *[Signature]*  
ANN WICK  
Deputy Prosecuting Attorney

By *[Signature]*  
LINDA J. PAYNE  
Attorney for Plaintiff

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: 9:40am  
HRT

2008 MAY -1 AM: 9: 39

CLERK DISTRICT COURT  
*Joanna Burke*  
DEPUTY HRT

LINDA J. PAYNE  
ATTORNEY AT LAW  
CONTRACT PUBLIC DEFENDER  
1034 N. THIRD STREET, SUITE 9  
COEUR D'ALENE, IDAHO 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK J. GOSCH,	)	
	)	CASE NO. CV 2007-0005443
Plaintiff,	)	
	)	STIPULATION TO PERMIT PLAINTIFF TO
vs.	)	FILE AMENDED PETITION AS PROPOSED
	)	AND TO VACATE MOTION SET FOR
STATE OF IDAHO,	)	4/15/2008 AT 3:00 P.M.
	)	
Defendant.	)	

COME NOW the parties, by and through their respective counsel, and hereby stipulate to permitting the plaintiff to file his Amended Petition as set forth and attached to his Motion to Amend filed on or about March 5, 2008.

The parties further stipulate to vacating the hearing on the Motion to Amend set for Tuesday, April 15, 2008, at the hour of 3.00 p.m.

DATED this 14 day of April, 2008.

KOOTENAI COUNTY  
PROSECUTING ATTORNEY

By: *A. Wick*  
ANN WICK  
Deputy Prosecuting Attorney

By: *L. Payne*  
LINDA J. PAYNE  
Attorney for Plaintiff



Linda J. Payne  
Attorney at Law  
Contract Public Defender  
1034 N. Third Street, Suite 9  
Coeur d'Alene, Idaho 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *MM*

2007 AUG 18 AM 10:57

CLERK DISTRICT COURT  
*Christina [Signature]*  
DEPUTY

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK JUILLARD GOSCH,	)	
	)	
Plaintiff,	)	CASE NO. CV-2007-5443
	)	
vs.	)	
	)	
STATE OF IDAHO,	)	AFFIDAVIT IN SUPPORT OF
	)	AMENDED PETITION FOR POST
Defendant,	)	CONVICTION RELIEF
	)	

STATE OF IDAHO )  
: ss  
County of Kootenai )

Plaintiff, KIRK JUILLARD GOSCH, being first duly sworn under oath, deposes  
and says:

1. That I am the Petitioner in the above entitled matter, am over the age of 18 years, and am competent to testify herein.
2. After I was convicted by a jury in this matter on the marijuana-related charges and found not guilty by a jury on the cocaine charge, I discussed the possibility of appealing the guilty verdicts with my attorneys, Anne Taylor and Christopher Schwartz.

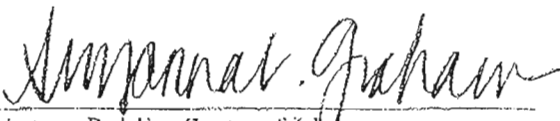
- 3. They told me that if I appealed the not guilty verdicts that I could be recharged with the cocaine charge despite the fact that the jury found me not guilty.
- 4. I questioned them because that did not seem right to me. Upon questioning, Mr. Schwartz told me that he had been a law clerk for the Idaho Supreme Court/Court of Appeals and that he had done research on this issue. He told me again that the law permits the prosecutor to refile the cocaine charge even though a jury found me not guilty.
- 5. Because of my attorneys' advice, I did not pursue an appeal. Had I not been told by my attorneys that the cocaine charge could be refiled, I would have timely filed an appeal.

DATED this 3 day of March, 2008.

  
 \_\_\_\_\_  
 KIRK JULLARD GOSCH  
 Juillard

SUBSCRIBED AND SWORN to before me this 3 day of March, 2008



  
 \_\_\_\_\_  
 Notary Public, State of Idaho  
 Employed at Coeur d'Alene, Idaho  
 Commission expires: 10.31.2013

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18 day of August, 2008, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Kootenai County Prosecuting Attorney

- U.S. Mail, Postage Prepaid
- Overnight Mail
- Hand delivered
- Facsimile No.
- Courthouse Mail
- Other \_\_\_\_\_

By Missy Wilson

Linda J. Payne  
Attorney at Law  
Contract Public Defender  
1034 N. Third Street, Suite 9  
Coeur d'Alene, Idaho 83814  
(208) 665-1303; 255-7555  
(208) 667-8292 FAX  
ISB #6222

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]*  
2008 AUG 18 AM 10:57  
CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY *[Signature]*

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK JUILLARD GOSCH,	)	
	)	
Plaintiff,	)	CASE NO. CV-2007-5443
	)	
vs.	)	
	)	
STATE OF IDAHO,	)	AMENDED PETITION
	)	FOR POST CONVICTION
Defendant,	)	RELIEF
	)	

COMES NOW, plaintiff, and hereby amends his Petition for Post Conviction Relief as follows:

1. Petitioner is not in custody.
2. The Court which imposed the sentence is the First Judicial District of the State of Idaho, In and For the County of Kootenai.
3. The case number is CR-2005-403. The sentence was imposed for a conviction of Manufacturing a Controlled Substance (Marijuana), a violation of Idaho Code 37-2732(a), Possession of Marijuana with Intent to Deliver, a violation of Idaho Code 37-2732(a), and Possession of

Marijuana in Excess of Three Ounces, a violation of Idaho Code 37-2732(e).

4. The sentence was imposed on September 20, 2006, probation violation disposition October 18, 2006. The sentence was two determinate plus three indeterminate for a total unified sentence of 5 years. The sentence was the same on each count, run concurrently.

5. A finding of guilty was made after a plea of not guilty.

6. No appeal from the judgment of conviction was made.

7. The grounds upon which this application for post conviction relief are based follow:

Ineffective Assistance of Trial Counsel in violation of the Sixth Amendment.

8. Prior to this petition, petitioner has filed no state or federal habeas corpus petitions. Prior to this petition, petitioner has filed no other petitions, motions or applications in any other court.

WHEREFORE, plaintiff prays as follows:

1. That the Court find that defendant's counsel was ineffective and in violation of his Sixth Amendment Right to Counsel by erroneously advising Mr. Gosch that if he appealed, he could be retried on the trafficking in cocaine not guilty jury verdict, and that such advise caused Mr. Gosch to refrain from filing an appeal, and that he was prejudiced thereby.

- 2. That the Court grant Mr. Gosch 42 days from the entry of its Order on this post conviction matter to file an appeal.
- 3. For other and further relief as the court deems just and equitable

DATED this 3 day of March, 2008.

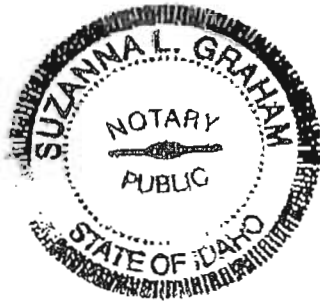
  
 KIRK JUILLARD GOSCH


STATE OF IDAHO )  
 : ss  
 County of Kootenai )

I, KIRK JUILLARD GOSCH, being first duly sworn upon oath, depose and say, that I am the plaintiff herein, and all statements made in the foregoing Amended Petition for Post Conviction Relief are true and correct to the best of my knowledge and belief.

  
 KIRK JUILLARD GOSCH

SUBSCRIBED AND SWORN to before me this 3 day of March, 2008.



  
 Notary Public, State of Idaho  
 Employed at Coeur d'Alene, Idaho  
 Commission expires: 10/31/2013

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of August, 2008, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Kootenai County Prosecuting Attorney

- U.S. Mail, Postage Prepaid
- Overnight Mail
- Hand delivered
- Facsimile No.
- Courthouse Mail
- Other: \_\_\_\_\_

By Missy Wilson

ORIGINAL

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83814  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
ARTHUR VERHAREN

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: SS

2011 APR 22 AM 10:05

CLERK DISTRICT COURT

*Patty B. [Signature]*  
DEPUTY  
PS

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK GOSCH,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV 2007-5443

RESPONDENT'S WITNESS LIST

Respondent may call the following witnesses at trial in this matter:

1. Anne Taylor, Public Defenders Office.
2. Mark Durant, Public Defenders Office.

DATED this 21 day of April, 2011

*Arthur Verharen*  
ARTHUR VERHAREN  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 21 day of April, 2011, a true and correct copy of the foregoing was caused to be FAXED to SEAN WALSH.

*Arthur Verharen*



ORIGINAL

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83814  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
ARTHUR VERHAREN

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: SS

2011 APR 22 AM 10:05

CLERK DISTRICT COURT

*Patty Barber*  
DEPUTY  
PK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

KIRK GOSCH,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV 2007-5443

**MOTION TO TAKE  
JUDICIAL NOTICE**

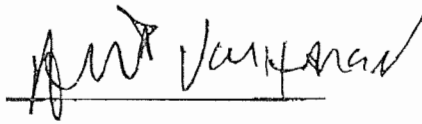
COMES NOW, Arthur Verharen, Deputy Prosecuting Attorney for Kootenai County, and hereby moves this Court to take judicial notice, pursuant to I.R.E. 201, of the underlying criminal proceedings in CR F 05-403, specifically, the Court's Memorandum Opinion of January 27<sup>th</sup> 2006 and the Court's Order Denying Defendant's Motion for Interlocutory Appeal of February 24<sup>th</sup>, 2006.

DATED this 21 day of April, 2011.

*Arthur Verharen*  
ARTHUR VERHAREN  
Deputy Prosecuting Attorney

**CERTIFICATE OF MAILING**

I hereby certify that on the 21 day of April, 2011, a true and correct copy of the foregoing was FAXED to SEAN WALSH.

  
\_\_\_\_\_

BARRY McHUGH  
Prosecuting Attorney  
501 Government Way/Box 9000  
Coeur d'Alene, ID 83814  
Telephone: (208) 446-1800

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI }  
FILED: 4-22-11  
AT 4:39 O'CLOCK P.M.  
CLERK DISTRICT COURT  
[Signature]  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI.

KIRK GOSCHEL,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV 2007-5443

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

The above matter came on for hearing before Judge Simpson on \_\_\_\_\_. The Petitioner and his attorney were present as was an attorney for Respondent.

FINDINGS OF FACT

1. Defendant's trial counsel, Anne Taylor, (did - did not) communicate to Petitioner that the state could recharge him with the cocaine count if he filed an appeal.
2. Defendant did not file an appeal because \_\_\_\_\_.

CONCLUSIONS OF LAW

1. (Proposed conclusions of law will be forwarded when Respondent is able determine what the facts will be).

ORDER: Based on the Findings of Fact and Conclusions of Law,

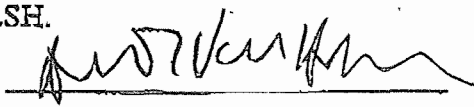
IT IS HEREBY ORDERED that the Petition for Post Conviction Relief be \_\_\_\_\_.

DATED this \_\_\_\_\_ day of April, 2011

\_\_\_\_\_  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the 22 day of April, 2011, a true and correct copy of the foregoing was caused to be FAXED to SEAN WALSH.

  
\_\_\_\_\_

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
IN AND FOR THE COUNTY OF KOOTENAI  
324 W. GARDEN AVENUE  
COEUR D'ALENE, IDAHO 83816-9000

FILED 4/26/2011 AT 08:29 AM  
STATE OF IDAHO, COUNTY OF KOOTENAI SS  
CLERK OF THE DISTRICT COURT  
BY Denice Larsen DEPUTY

KIRK JUILLARD GOSCH, PLAINTIFF  
VS  
STATE OF IDAHO, DEFENDANT

)  
) Case No: CV-2007-0005443  
)  
)  
)  
) NOTICE OF TRIAL  
) AMENDED  
)

NOTICE IS HEREBY GIVEN that the above-entitled case is set for:

Court Trial Scheduled **Friday, April 29, 2011 at 08:30 AM**  
Half day trial  
Judge: Benjamin R. Simpson

Additional Presiding Judges: Charles W. Hosack; John P. Luster; John T. Mitchell; Lansing L. Haynes; Fred M. Gibler; Steven Verby; George Reinhardt, III; George D. Carey.

I certify that copies of this Notice were served as follows on Tuesday, April 26, 2011.

SEAN P. WALSH [ ] Mailed [ ] Hand Delivered [  ] Faxed  
FAX: (208) 765-4636  
ARTHUR VERHAREN [ ] Mailed [ ] Hand Delivered [  ] Faxed  
FAX: (208) 446-1833

#  
24/16

Dated: Tuesday, April 26, 2011  
Clifford T. Hayes  
Clerk Of The District Court

By: Denice Larsen, Deputy Clerk

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
IN AND FOR THE COUNTY OF KOOTENAI  
324 W. GARDEN AVENUE  
COEUR D'ALENE, IDAHO 83816-9000

FILED 4/26/2011 AT 10:31 AM  
STATE OF IDAHO, COUNTY OF KOOTENAI SS  
CLERK OF THE DISTRICT COURT  
BY Denice Larsen DEPUTY

*a*

KIRK JULLARD GOSCH, PLAINTIFF  
VS  
STATE OF IDAHO, DEFENDANT

)  
)  
)  
)  
)  
)  
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)  
)  
)

Case No: CV-2007-0005443

NOTICE OF TRIAL  
2<sup>ND</sup> AMENDED

NOTICE IS HEREBY GIVEN that the above-entitled case is set for:

Court Trial Scheduled  
Half day trial

Tuesday, May 03, 2011 at 09:00 AM

Judge: Benjamin R. Simpson

Additional Presiding Judges: Charles W. Hosack; John P. Luster; John T. Mitchell; Lansing L. Haynes; Fred M. Gibler; Steven Verby; George Reinhardt, III; George D. Carey.

I certify that copies of this Notice were served as follows on Tuesday, April 26, 2011.

SEAN P. WALSH [ ] Mailed [ ] Hand Delivered [] Faxed  
FAX: (208) 765-4636

ARTHUR VERHAREN [ ] Mailed [ ] Hand Delivered [] Faxed  
FAX: (208) 446-1833

*2425*

Dated: Tuesday, April 26, 2011  
Clifford T. Hayes  
Clerk Of The District Court

By: Denice Larsen, Deputy Clerk