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IN THE SUPREME COURT Vol. 2 of 2

OF THE

STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

CHARLES E. GUESS,

Defendant -Appellant.

LAW CLERK

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

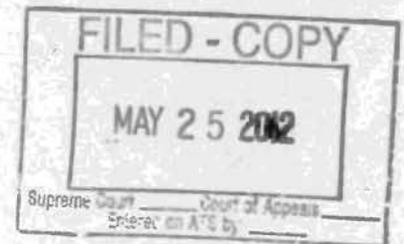
HON. JOHN R. STEGNER, DISTRICT JUDGE

LAWRENCE WASDEN

ATTORNEY FOR RESPONDENT

RODERICK C. BOND

ATTORNEY FOR APPELLANT



Filed this ___ day of _____, 2012.

STEPHEN W. KENYON, CLERK

SEE AUGMENTATION RECORD

By _____
Deputy

SUPREME COURT CASE NO. 39646-2012

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39646

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CASE NO CR-2006-1646

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CLERK OF DISTRICT COURT
LATAH COUNTY
BY mb DEPUTY

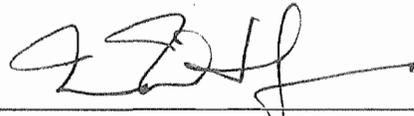
LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
(208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2006-01646
)	
V.	)	NOTICE OF FILING
	)	VICTIM STATEMENT
CHARLES EARL GUESS,)	
Defendant.)	
_____)	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully submits the attached statement from the victim regarding the defendant's pending request for early release from probation. This statement is submitted pursuant to Idaho Code 19-5306(1)(a) and (e), and Article I, Section 22(1) and (6).

Respectfully submitted this 3d day of April, 2009.



William W. Thompson, Jr.
Prosecuting Attorney

ORIGINAL

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the NOTICE OF FILING VICTIM STATEMENT were served on the following in the manner indicated below:

Catherine M. Mabbutt
Mabbutt Law Office
P.O. Box 9303
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Dated this 3rd day of April, 2009.

Kate Mecham

April 2, 2009

Honorable John R. Stegner,

Thank you for allowing me to defend my rights as the victim of this crime against me by Charles E. Guess.

Let me be clear, I am the victim, not Charles.

On April 25, 2006, Charles was deposed by my attorney, Stan Welsh, also a victim of this crime. In the deposition, Charles perjured himself by saying he had not removed any assets from our residence, when in fact it was proven he had taken items from the house vault and stored them in a storage unit. My attorney insisted that we inspect the vault due to such circumstances. When we arrived, Charles had the vault door open and a gun planted. We walked through the doorway and then he came from behind and pointed the gun at us saying, "I am going to kill you, I am going to kill Stan and then myself." Charles then took his fist and with great force, hit me twice on the face causing me to fall and strike the heavy steel vault door dislocating my jaw, as well as causing both a concussion and whiplash. Since that incident, I have not only had to have counseling for suffering Post Traumatic Stress Syndrome, but have also been seen by several physicians for my injuries. To this day, I continue to experience jaw pain, migraines, nightmares, flashbacks and fear caused by this traumatic incident.

I supported Charles for 30 years as any loving wife would, even under circumstances that are embarrassing and hurtful to this day. These circumstances include his numerous lawsuits with people in our community, his mental and physical issues and the emotional and verbal abuse that only I, as his wife of 30 years, would know about.

Yes, my son supports both of us. As his mother, I never told him about his father's abuse to me because I sheltered my son from it. But now that he is older and the divorce has ended, I have told my son the events that have taken place and explained why I did shelter him. I never have used my son for gain throughout this painful divorce process because a good parent does not do that. My son and I have an understanding and a good relationship.

I left the marriage to save both my mental and physical health and as you can see Your Honor, the violence was there and it surfaced on April 25, 2006. Charles does not respect women as individuals and he certainly did not respect me or give me worth, as well.

The letters from individuals on Charles' behalf are some of the same people he berated and chastised to me in the past. He has a way of making up to people he berates and chastises and then later on manipulatively convinces them to side with him. Please find enclosed an article by a well-known author on abuse, Lundy Bancroft. As you can see, Charles fits the profile of a classic batterer and abuser.

I continue to feel disappointment that Charles received only five years probation. Because of his violent actions and the threat of killing my attorney, and myself, I feel he deserved more punishment and should continue to be held accountable for his actions as long as possible.

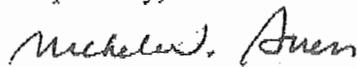
I have earned my voice on this matter through the most difficult, imaginable way and have also earned my right to speak out about my feelings as one of the victims. I should not be discounted. He has never once said he was sorry to me, not once! I have worked very hard to overcome my trauma and the abusive behavior over the years and throughout the divorce proceedings, but I still cannot stand before you because of my ultimate fear and anxiety resulting from this ordeal.

An early release of probation will give him the right to bear arms. I plead for my right to have peace of mind for at least 2½ more years and beg you not to grant an early probation release, which would only diminish the severity of his crime and increase my fear and anxiety.

For the court's record, I do not trust Charles Guess' actions and if anything life threatening happens to me, I want the court to know of my high anxieties and ultimate fears he has caused me to date and continues to cause me. I continue to hold in my possession my "No Contact Order" against Charles E. Guess and I plan on extending that order as long as possible. I am asking for protection for my life.

I respectfully ask that you deny Charles Guess a "Withdraw of Guilty Plea" because HE did commit the crime! I also ask you deny the case to be dismissed. I feel he should and needs to continue his full term.

Respectfully,



Michele D. Guess

UNDERSTANDING THE BATTERER IN CUSTODY AND VISITATION DISPUTES

by R. Lundy Bancroft

c 1998

A sophisticated understanding of the mind of the abuser, his style as a parent, and of the tactics that he most commonly employs during separation and divorce, are essential to anyone making custody recommendations or working to design visitation plans that are safe for the children and their mother. Contrary to popular belief, children of batterers can be at just as much risk psychologically, sexually, and even physically after the couple splits up as they were when the family was still together. In fact, many children experience the most damaging victimization from the abuser at this point. A genuine batterer can convincingly play the part of a man who has been unfairly accused, and batterers who will be a grave risk to their children during unsupervised visitation can be hard to separate from those who can visit safely. The insights and expertise of those service providers who have extensive experience working directly with abusers needs to be drawn from, and the level of contribution from victims themselves to policy design also needs to be greatly increased. Custody and visitation battles amidst allegations of domestic violence require policies and interveners (judges, mediators, and Guardians Ad Litem) based in the most detailed knowledge, experience, sensitivity, and integrity. The stakes for children are very high.

This article is drawn largely from the author's ten years of experience working as a counselor and supervisor in programs for abusive men, involving contact with some 1500 abusers, and hundreds of their victims, over that period. During the first few years of this period I worked almost exclusively with voluntary clients, and during the latter period worked primarily with court-mandated ones. The characteristics of the clients changed remarkably little during that shift. In the late 1980's, professionals in batterer programs began paying particular attention to the behavior of clients with respect to probate processes, and we began asking victims more questions about the man's conduct with respect to visitation and custody. Since leaving direct work with batterers, I have served with increasing frequency as a custody evaluator (both as Guardian ad Litem and as Care and Protection Investigator), and have worked closely with child protective services.

I also have drawn from numerous published studies, several of which are listed in the back of this article. [I have chosen for reasons of ease to refer to the abuser as "he" and the victim as "she," but I am aware that there is a small percentage of cases of domestic violence to which this language does not apply.]

PROFILE OF THE BATTERER

Generalizations about batterers have to be made with caution. Batterers come from all socioeconomic backgrounds and levels of education. They have the full range of personality types, from mild and mousy to loud and aggressive. They are difficult to profile

psychologically; they frequently fare well in psychological testing, often better than their victims do. People outside of a batterer's immediate family do not generally perceive him as an abusive person, or even as an especially angry one. They are as likely to be very popular as they are to be "losers," and they may be visible in their communities for their professional success and for their civic involvement. Most friends, family, and associates in a batterer's life find it jarring when they hear what he has done, and may deny that he is capable of those acts.

The partner and children of a batterer will, however, experience generalizable characteristics, though he may conceal these aspects of his attitude and behavior when other people are present:

The batterer is *controlling*; he insists on having the last word in arguments and decision-making, he may control how the family's money is spent, and he may make rules for the victim about her movements and personal contacts, such as forbidding her to use the telephone or to see certain friends.

He is *manipulative*; he misleads people inside and outside of the family about his abusiveness, he twists arguments around to make other people feel at fault, and he turns into a sweet, sensitive person for extended periods of time when he feels that it is in his best interest to do so. His public image usually contrasts sharply with the private reality.

He is *entitled*; he considers himself to have special rights and privileges not applicable to other family members. He believes that his needs should be at the center of the family's agenda, and that everyone should focus on keeping him happy. He typically believes that it is his sole prerogative to determine when and how sexual relations will take place, and denies his partner the right to refuse (or to initiate) sex. He usually believes that housework and childcare should be done for him, and that any contributions he makes to those efforts should earn him special appreciation and deference. He is highly demanding.

He is *disrespectful*; he considers his partner less competent, sensitive, and intelligent than he is, often treating her as though she were an inanimate object. He communicates his sense of superiority around the house in various ways.

The unifying principle is his attitude of *ownership*. The batterer believes that once you are in a committed relationship with him, you belong to him. This possessiveness in batterers is the reason why killings of battered women so commonly happen when victims are attempting to leave the relationship; a batterer does not believe that his partner has the right to end a relationship until he is ready to end it.

Most abusers do not express these beliefs explicitly; they are more likely to deny having them, or even to claim to have opposite convictions that are humane and egalitarian. An experienced batterers' counselor may have to spend several hours with the abuser before the underlying attitudes begin to show. These attitudes are generally evident to victims, however, who often feel frustrated at the batterer's ability to present a markedly different face to the outside world. This dual aspect to his personality also helps to keep the victim confused about what he is really like, and can contribute to her blaming herself for his abusive behaviors.

Spectrum of Violence and Other Forms of Abuse

The level of physical violence used by batterers is on a wide spectrum. Some use violence as much as a few times per month, while others do so once or twice a year or less. A significant proportion of batterers required to attend counseling because of a criminal conviction have been violent only one to five times in the history of their relationship, even by the victim's account. Nonetheless, the victims in these cases report that the violence has had serious effects on them and on their children, and that the accompanying pattern of controlling and disrespectful behaviors are serving to deny the rights of family members and are causing trauma.

Thus the nature of the *pattern* of cruelty, intimidation, and manipulation is the crucial factor in evaluating the level of abuse, not just the intensity and frequency of physical violence. In my decade of working with abusers, involving over a thousand cases, I have almost never encountered a client whose violence was not accompanied by a pattern of psychological abusiveness.

The Perceptual System of Men Who Batter

Because of the distorted perceptions that the abuser has of rights and responsibilities in relationships, he considers himself to be the victim. Acts of self-defense on the part of the battered woman or the children, or efforts they make to stand up for their rights, he defines as aggression *against* him. He is often highly skilled at twisting his descriptions of events to create the convincing impression that he has been victimized. He thus accumulates grievances over the course of the relationship to the same extent that the victim does, which can lead professionals to decide that the members of the couple "abuse each other" and that the relationship has been "mutually hurtful."

Although a percentage of batterers have psychological problems, the majority do not. They are often thought to have low self-esteem, high insecurity, dependent personalities, or other results from childhood wounds, but in fact batterers are a cross-section of the population with respect to their emotional make-up. Certain labels such as "control freak" or "self-centered" have the appearance of accuracy, but even these overlook the fact that the battering problem is very context-specific; in other words, most batterers do not have an inordinate need for control, but rather feel an inordinate right to control under family and partnership circumstances. Thus unlike other problems with violence, battering behavior is mostly driven by culture rather than by individual psychology. Many batterers are "in touch with" their feelings and skilled in the language of therapy and recovery, which throws evaluators off the track. They may use their childhoods and emotions as an excuse, to divert attention from their entitled and possessive attitudes.

Battering is a learned behavior, with its roots in attitudes and belief-systems that are reinforced by the batterer's social world. The problem is specifically linked to how the abuser formulates the concepts of *relationship* and *family*; in other words, within those realms he believes in his right to have his needs come first, and to be in control of the conduct (and often even of the feelings) of others. A recent research study showed that two factors, the belief that battering is

justified and the presence of peers who support abusiveness, are the single greatest predictors of which men will batter; these two had a considerably greater impact than whether or not the man was exposed to domestic violence as a child (Silverman and Williamson).

Each batterer has his own mix of controlling and entitlement. Some monitor every move their partners make like a prison guard, but at the same time are somewhat lower in entitlement, contributing more to housework and childcare than other batterers (though still less than non-batterers). Other batterers don't control their partners freedom as severely, but become irate or violent when they are not fully catered to, or when victims remind them of responsibilities that they are shirking. The levels of manipulateness and overt disrespect also vary, so that each batterer has a particular style.

Because batterers are typically charming and persuasive, and are often kind and attentive early in relationships, he does not necessarily need to seek out a special kind of woman to victimize. Efforts to find common ground among battered women from the point of view of background or personality type have been largely unsuccessful (Hotaling and Sugarman), just as they have been with batterers. Service providers who assume that the victim must have had pre-existing problems of her own can make counterproductive interventions, as pathologizing of the victim can lead to re-injury.

BATTERERS' STYLE DURING SEPARATION AND DIVORCE

An abuser's desire for control often intensifies as he senses the relationship slipping away from him. He tends to focus on the debt he feels his victim owes him, and his outrage at her growing independence. (This dynamic is often misread as evidence that batterers have an inordinate "fear of abandonment.") He is likely to increase his level of intimidation and manipulation at this point; he may, for example, promise to change while simultaneously frightening his victim, including using threats to take custody of the children legally or by kidnapping.

Those abusers who accept the end of the relationship can still be dangerous to their victims and children, because of their determination to maintain control over their children and to punish their victims for perceived transgressions. They are also, as we will see later, much more likely than non-batterers to be abusive physically, sexually, and psychologically to their children.

The propensity of a batterer to see his partner as a personal possession commonly extends to his children, helping to explain the overlap between battering and child abuse. He tends, for example, to have an exaggerated reaction when his ex-partner begins a new relationship, refusing to accept that a new man is going to develop a bond with "his" children; this theme is a common one in batterer groups. He may threaten or attack the new partner, make unfounded accusations that the new partner is abusing the children, cut off child support, or file abruptly for custody in order to protect his sole province over his children.

Batterers' Advantages in Custody Disputes

A batterer who does file for custody will frequently win, as he has numerous advantages over his partner in custody litigation. These include, 1) his typical ability to afford better representation (often while simultaneously insisting that he has no money with which to pay child support), 2) his marked advantage over his victim in psychological testing, since she is the one who has been traumatized by the abuse, 3) his ability to manipulate custody evaluators to be sympathetic to him, and 4) his ability to manipulate and intimidate the children regarding their statements to the custody evaluator. There is also evidence that gender bias in family courts works to the batterer's advantage. (Massachusetts Supreme Judicial Court Gender Bias Study) Even if the batterer does not win custody, his attempt can be among the most intimidating acts possible from the victim's perspective, and can lead to financial ruin for her and her children.

After a break-up, the abuser sometimes becomes quickly involved with a new partner whom he treats relatively well. Abusers are not out of control, and therefore can be on "good" behavior for extended periods of time - even a year or two - if they consider it in their best interest to do so. The new partner may insist, based on her experience with him, that the man is wonderful to her, and that any problems reported from the previous relationship must have been fabricated, or must result from bad relationship dynamics for which the two parents are mutually responsible. The abuser can thus use his new partner to create the impression that he is not a risk.

Creation of a Positive Public Image ★

An abuser focuses on being charming and persuasive during a custody dispute, with an effect that can be highly misleading to Guardians ad Litem, court mediators, judges, police officers, therapists, family members, and friends. He can be skilled at discussing his hurt feelings and at characterizing the relationship as mutually destructive. He will often admit to some milder acts of violence, such as shoving or throwing things, in order to increase his own credibility and create the impression that the victim is exaggerating. He may discuss errors he has made in the past and emphasize the efforts he is making to change, in order to make his partner seem vindictive and unwilling to let go of the past.

Harassment and Intimidation Tactics ★

Where manipulation and charm do not work, the abuser may switch to intimidation, threatening or attacking those whom he perceives as being supportive to his partner. In the most extreme cases the abuser may attempt to kill the woman, her lawyer, or the children, and sometimes will succeed. In some cases custody evaluators have been afraid to release their recommendations because of their fear of the batterer's retaliation.

Batterers may continue their harassment of the victim for years, through legal channels and other means, causing periodic re-traumatizing of the victim and children and destroying the family's financial position. Motions by abusers for custody or for increases in visitation are common forms of retaliation for things that he is angry about. (They are also used to confuse the court; for example, lawyers who represent abusers encourage clients who are accused of sexual abuse to file for custody immediately; this move will cause the court to treat the

allegation as "occurring in the context of a custody dispute.") If the abuser meets with periodic success in court, he may continue his pattern of abuse through the legal system until the children reach majority.

BATTERERS' STYLE IN MEDIATION OR CUSTODY EVALUATION

Batterers naturally strive to turn mediation and GAL processes to their advantage, through the use of various tactics. Perhaps the most common is to adopt the role of a hurt, sensitive man who doesn't understand how things got so bad and just wants to work it all out "for the good of the children." He may cry in front of the mediator or GAL and use language that demonstrates considerable insight into his own feelings. He is likely to be skilled at explaining how other people have turned the victim against him, and how she is denying him access to the children as a form of revenge, "even though she knows full well that I would never do anything to hurt them." He commonly accuses her of having mental health problems, and may state that her family and friends agree with him. The two most common negative characterizations he will use are that she is hysterical and that she is promiscuous. The abuser tends to be comfortable lying, having years of practice, and so can sound believable when making baseless statements. The abuser benefits to the detriment of his children if the court representative fails to look closely at the evidence - or ignores it - because of his charm. He also benefits when professionals believe that they can "just tell" who is lying and who is telling the truth, and so fail to adequately investigate.

Because of the effects of trauma, the victim of battering will often seem hostile, disjointed, and agitated, while the abuser appears friendly, articulate, and calm. Evaluators are thus tempted to conclude that the victim is the source of the problems in the relationship.

Abusers increasingly use a tactic I call "preemptive strike," where he accuses the victim of doing all the things that he has done. He will say that she was violent towards him and the children, that she was extremely "controlling" (adopting the language of domestic violence experts), and that she was unfaithful. If he has been denying her phone access to the children during their weekend visits with him, he will likely complain to the court that she is preventing *him* from calling the children during the week. If he has been highly inflexible about the visitation schedule, he will accuse her of inflexibility. These tactics can succeed in distracting attention from his pattern of abusiveness; in the midst of a cross-fire of accusations, court representatives are tempted to throw up their hands and declare the couple equally abusive and unreasonable.

Mediators and GAL's tend to have a bias in favor of communication, believing that the more the two parents speak to each other, the better things will go for the children. In domestic violence cases the truth is often the opposite, as the abuser uses communication to intimidate or psychologically abuse, and to keep pressuring the victim for a reunion. Victims who refuse to have any contact with their abusers may be doing the best thing both for themselves and for their children, but the evaluator may then characterize her as being the one who won't let go of the past or who can't focus on what is good for the children. This superficial analysis works to the batterers advantage.

Abusers are likely to begin the mediation process with an unreasonable set of demands, and then offer compromises from those positions. This strategy can make the victim look inflexible, as she refuses to "meet him in the middle." She may relent under these circumstances out of fear that the mediator will describe her negatively to the judge. These compromises may then be used against the victim later. For example, she may agree to unsupervised day visits in order to avoid the risk that the judge will award overnight visitation, and then months later she is asked by a lawyer, mediator, or GAL, "If he is so dangerous, why did you voluntarily allow him unsupervised visitation?" On the other hand, if she is inflexible from the beginning, the abuser will accuse her of being on a campaign to get revenge by cutting him off from the children. There is, in other words, no path she can take to avoid criticism and suspicion, and the abuser capitalizes on her dilemma.

Finally, mediation sessions and the time spent waiting for them to begin are opportunities for the abuser to re-victimize the battered woman with scary looks, threatening comments muttered in passing, degrading accusations made about her to the mediator, and intimidating or ridiculing comments made to her by his lawyer.

WHY DOMESTIC VIOLENCE MAY BE REPORTED AT SEPARATION/DIVORCE FOR THE FIRST TIME

Court personnel and other service providers look skeptically at allegations of abuse that arise during custody and visitation battles. Batterers try to feed these doubts by saying, "She never said I was abusive before; she's just using this accusation to get the upper hand." In fact, there is no evidence that false allegations rise substantially at this time, and there are many reasons why an abused woman may not have made prior reports. Judges, mediators, and court investigators need to take each allegation on its own terms and examine the evidence without assumptions about the timing.

It is not at all uncommon for a battered woman to tell no one about the abuse prior to separation because of her shame, fear, and desire to help the abuser change. Many victims quietly hope that ending the relationship will solve the problem, a myth that most professionals share; when she discovers that his abuse is continuing or even escalating after separation, she finds herself forced to discuss the history of abuse in hopes of protecting herself and her children. It is not uncommon for an abuser to be more frightening after separation than he was before, and to increase his manipulation and psychological abuse of the children, for reasons covered above.

A victim's decision to separate from an abuser is often the last step in a gradual process of realization that she has been undergoing. Because of increased support from friends, a helpful book that she has read, or a series of discussions with a helpful advocate or support group, she may have come to understand that she has options to get free from the abuse. She is taking the leap of openly discussing domestic violence for the first time precisely because she is healing. Some influential psychologists, such as Janet Johnston (see below) interpret the woman's reevaluation of the history of the relationship as evidence of vindictiveness or scapegoating on her part, when it may actually indicate growing health.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Sheryl Engler
Court Reporter
Recording: Z: 3: 2009-04-06
Time: 3:04 P.M.

Date: April 6, 2009

STATE OF IDAHO,)

Plaintiff,)

vs.)

CHARLES EARL GUESS,)

Defendant.)

Case No. CR-06-01646

APPEARANCES:

William W. Thompson, Jr., Prosecutor
Appearing on behalf of the State

Defendant present with counsel,
Catherine Mabbutt, Moscow, ID

=====
Subject of Proceedings: MOTION FOR EARLY RELEASE FROM PROBATION

This being the time fixed pursuant to written notice for hearing of the defendant's Motion for Early Release From Probation and for Order Allowing Defendant to Withdraw Guilty Plea and Dismiss Case in this case, Court noted the presence of counsel and the defendant.

Court noted for the record the submissions it has reviewed in support of the defendant's motion.

Court was at ease for a few minutes to review the Notice of Victim's Statement which the State had filed last Friday, but was not contained in the court file. Court noted for the record that an article was attached to the Notice of Victim's Statement, but due to the length of the article did not read it at this time.

Ms. Mabbutt argued in support of the defendant's motion. Defendant made a statement to the Court in his own behalf. Mr. Thompson argued in opposition to the defendant's motion. Ms. Mabbutt argued in rebuttal. For reasons articulated on the record, the Court denied the motion. Court instructed Mr. Thompson to prepared an order in accordance with its ruling.

Court recessed at 3:23 P.M.

APPROVED BY:



JOHN R. STEGNER
DISTRICT JUDGE

Terry Odenborg
Deputy Clerk

COURT MINUTES

CASE NO. CR 2006-1646

2009 APR -7 AM 11:56

CLERK OF DISTRICT COURT
LATAH COUNTY

BY AR DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
V.)
CHARLES EARL GUESS,)
Defendant.)
_____)

Case No. CR-2006-01646

**ORDER DENYING DEFENDANT'S
"MOTION FOR EARLY RELEASE FROM
PROBATION AND FOR ORDER
WITHDRAWING GUILTY PLEA
AND DISMISSING CASE"**

On the 6th day of April, 2009, the defendant, CHARLES EARL GUESS, his counsel, Catherine M. Mabbutt, and the State's attorney, William W. Thompson, Jr., appeared before the Court for hearing of the defendant's "Motion for Early Release from Probation and for Order Withdrawing Guilty Plea and Dismissing Case." The Court heard arguments of Counsel, reviewed the case file herein, directed statements to the Defendant and counsel, and HEREBY ORDERS Defendant's "Motion for Early Release from Probation and for Order Withdrawing Guilty Plea and Dismissing Case" BE DENIED, without prejudice, for reasons articulated by the Court on the record.

DATED this 7th day of April, 2009.

John R. Stegner
John R. Stegner
DISTRICT JUDGE

ORDER DENYING DEFENDANT'S "MOTION FOR EARLY RELEASE FROM PROBATION AND FOR ORDER WITHDRAWING GUILTY PLEA AND DISMISSING CASE:" Page -1-

ORIGINAL

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the ORDER DENYING DEFENDANT'S "MOTION FOR EARLY RELEASE FROM PROBATION AND FOR ORDER WITHDRAWING GUILTY PLEA AND DISMISSING CASE" were served on the following in the manner indicated below:

Catherine M. Mabbutt
Mabbutt Law Office
P.O. Box 9303
Moscow, ID 83843

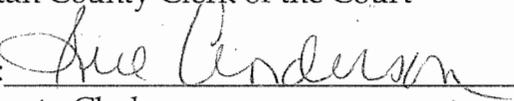
U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

William W. Thompson, Jr.
Prosecuting Attorney
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Dated this 8 day of April, 2009.

SUSAN PETERSEN
Latah County Clerk of the Court

By: 
Deputy Clerk

MABBUTT LAW OFFICE
 111 E. First Street
 P.O. Box 9303
 Moscow, ID 83843
 (208)883-4744
 fax:(208) 883-4480
 e-mail: cmabbutt@clearwire.net
 Catherine M. Mabbutt, PLLC, ISB#6433
 Attorney for Defendant

CASE NO. CR-2006-1646

2009 SEP 28 PM 1:29

CLERK OF THE DISTRICT COURT
 LATAH COUNTY
 BY *VWJ* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	Case No. CR-2006-0001646
Plaintiff,)	
	)	MOTION FOR TRANSFER TO
vs.	)	UNSUPERVISED PROBATION
)	
CHARLES EARL GUESS,)	
)	
Defendant.)	
)	
_____)	

COME NOW the Defendant, CHARLES EARL GUESS, by and through his attorney, Catherine M. Mabbutt, and hereby moves the Court for an Order transferring Defendant to unsupervised probation on the Court's standard terms. This Motion is based on the following:

1. The Defendant has complied with all the terms and conditions of his supervised probation, as evidenced by the Court's file in this matter. The Defendant has served all of his incarceration; paid all of his fines and court costs; served his hours of community service; paid full restitution as ordered by this Court; and has successfully complied with all other terms of his supervised

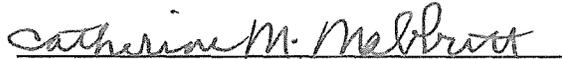
probation.

2. The Defendant has had ongoing counseling by Tim Rehnberg, a licensed psychologist.
3. Unsupervised probation would afford the Defendant the opportunity to continue to prove himself worthy of additional consideration in this case while allowing the Court to maintain a reasonable degree of protection for the victim.

WHEREFORE, Defendant prays for the following:

1. That a hearing be held on Defendant's Motion for Transfer to Unsupervised Probation if it is contested.
2. That Defendant be transferred to unsupervised probation.
3. For such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 28th day of September, 2009.


Catherine M. Mabbutt
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was hand delivered on the 28th day of September, 2009, to the following:

William W. Thompson, Jr.
Latah County Prosecutor
PO Box 8068
Moscow, ID 83843

MABBUTT LAW OFFICE



By: Catherine M. Mabbutt

CASE NO. CR-04-1646

2010 OCT 14 AM 10:45

CLERK OF DISTRICT COURT
LATAH COUNTY
BY MB DEPUTY

Annie McDevitt
NEVIN, BENJAMIN, McKAY & BARTLETT LLP
303 W. Bannock
P.O. Box 2772
Boise, ID 83701
(208) 343-1000

Attorney for Defendant

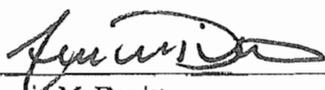
IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR2006-1646
)	
vs.)	
	)	STIPULATION TO
CHARLES EARL GUESS,	)	RELEASE PRESENTENCE
	)	INVESTIGATION
Defendant.)	
_____)	

The State, through its attorney William Thompson, and the Defendant, through his attorney Annie McDevitt, stipulate to the release of the presentence report in the above entitled case to Ms. McDevitt pursuant to I.C.R. 32(h). Ms. McDevitt substituted in as counsel of record in this case and believes reviewing the presentence report will aid her in effectively representing the Dr. Guess. Ms. McDevitt is aware of, and will comply with, the rules regarding the confidentiality of the report.

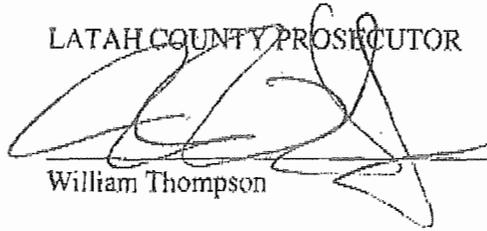
DATED this 12th day of October, 2010.

NEVIN, BENJAMIN, McKAY & BARTLETT



Annie McDevitt

LATAH COUNTY PROSECUTOR



10/12/10

William Thompson

2 • STIPULATION TO RELEASE PRESENTENCE INVESTIGATION

Annie McDevitt
NEVIN, BENJAMIN, McKAY & BARTLETT LLP
303 W. Bannock
P.O. Box 2772
Boise, ID 83701
(208) 343-1000

Attorney for Defendant

CASE NO. CR06-1646
2010 OCT 19 AM 10:53
CLERK OF DISTRICT COURT
LATAH COUNTY
BY *MB* DEPUTY

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
CHARLES EARL GUESS,)
)
Defendant.)
_____)

CASE NO. CR2006-1646

**ORDER RELEASING
PRESENTENCE INVESTIGATION
REPORT**

Pursuant to Stipulation of the parties, and good cause appearing,

IT IS ORDERED that the presentence investigation report be release to counsel for Defendant, Annie McDevitt and that she comply with the rules regarding the confidentiality of the report.

DATED this 19th day of October, 2010.

Jon A. Steyer

*Copies to counsel
10-22-10 170
By MB*

CASE NO. CR-2006-1646

2011 JAN 27 AM 10:26

CLERK OF DISTRICT COURT
LATAH COUNTY
BY SA DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2006-01646
V.)	
	)	ORDER TRANSFERRING TO
CHARLES EARL GUESS,	)	UNSUPERVISED PROBATION
Defendant.)	
_____)	

The above matter having come before the court upon motion of the defendant, and the court being fully advised in the premises and good cause appearing;

IT IS HEREBY ORDERED that the above-named defendant be and hereby is transferred to unsupervised probation for the remaining period of probation until August 31, 2011, on the following terms and conditions:

- (1) **Laws and Cooperation:** The defendant shall respect and obey all city, county, state and federal laws and have no law violations (other than a traffic infraction as defined by the State of Idaho).

- (2) **Controlled Substances:** The defendant shall not use or possess any controlled substance unless lawfully prescribed to the defendant by a licensed physician or dentist; the defendant shall submit to tests of bodily fluids for traces of controlled substances at the defendant's own expense whenever requested by any agent of the Division of Probation and Parole of the Idaho State Board of Correction.
- (3) **Weapons:** The defendant shall not purchase, carry, or have possession of any firearms or weapons.
- (4) **Search:** The defendant shall submit to a search of the defendant's person, vehicle, residence, and/or property conducted in a reasonable manner and at a reasonable time or times by any agent of the Division of Probation and Parole of the Idaho State Board of Correction in order to determine whether or not the defendant is complying with the terms and conditions of probation.
- (5) **Duration:** Probation has been ordered for a specific length of time; however, probation shall not be terminated until the court has both reviewed the performance of the probationer and has signed an order discharging the probationer. Probation is subject to extension for unsatisfactory performance.

SO ORDERED this 27th day of January, 2011.



John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete and correct copies of the foregoing ORDER TRANSFERRING TO UNSUPERVISED PROBATION were delivered to the following as indicated:

Annie McDevitt
Nevin, Benjamin, McKay & Bartlett
P.O. Box 2772
Boise, ID 87301

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Warren Lanphier
Probation & Parole
P.O. Box 1408
Lewiston, ID, 83501

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

William W. Thompson, Jr.
Latah County Prosecuting Attorney
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

on this 27 day of January, 2011.

SUSAN PETERSEN
Latah County Clerk of the Court

By: Sue Anderson
Deputy Clerk

CASE NO. CR 2006-16

2011 SEP -7 PM 2:21

CLERK OF DISTRICT COURT
LATAH COUNTY
BY AM DEPUTY

Annie McDevitt
NEVIN, BENJAMIN, McKAY & BARTLETT, LLP
P.O. Box 2772
303 W. Bannock
Boise, Idaho 83701
(208) 343-1000

Attorneys for Defendant

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

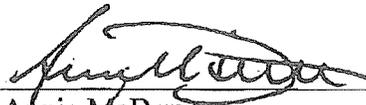
STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLES EARL GUESS,)
)
 Defendant.)
)
 _____)

CASE NO. CR-2006-01646

**MOTION TO DISMISS
WITHHELD JUDGMENT**

The Defendant, through his attorney Annie McDevitt, moves the Court, pursuant to I.C. § 19-2604(1) for its Order terminating the sentence and setting aside the guilty plea of the Defendant, and finally dismissing the case and discharging the Defendant. Such dismissal shall have the effect of restoring the Defendant to his civil rights.

DATED this 7th day of September, 2011.



Annie McDevitt

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 7th day of September, 2011, I caused a true and correct copy of the foregoing document to be:

mailed

faxed

hand delivered

to: William W. Thompson, Jr., Latah County Prosecuting Attorney, Moscow, ID 83843; fax 208-883-2290


Annie McDevitt

CASE NO. CR 2006-1646

Annie McDevitt
NEVIN, BENJAMIN, McKAY & BARTLETT, LLP
P.O. Box 2772
303 W. Bannock
Boise, Idaho 83701
(208) 343-1000

2011 SEP -7 PM 2:21

CLERK OF DISTRICT COURT
LATAH COUNTY
BY QJN DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NO. CR-2006-01646
)	
vs.)	
)	
CHARLES EARL GUESS,	)	AFFIDAVIT OF CHARLES
	)	GUESS IN SUPPORT OF
Defendant.	)	MOTION TO DISMISS
	)	WITHHELD JUDGMENT

Charles Guess, being first duly sworn upon oath, deposes and says:

1. That I am the Defendant in the above-entitled case.
2. That on August 31, 2006, the Court withheld judgment for a period of five (5) years, and placed me on supervised probation.
3. On January 27, 2011, the Court transferred my probation to unsupervised for the remaining period of probation.
3. During my five (5) years of probation, I have, at all times, fully complied with and satisfied the terms and conditions of probation.
4. Therefore, I ask the Court to dismiss the charge.

CERTIFICATE OF MAILING

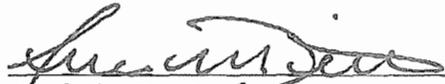
I HEREBY CERTIFY That on this 7th day of September, 2011, I caused a true and correct copy of the foregoing document to be:

mailed

faxed

hand delivered

to: William W. Thompson, Jr., Latah County Prosecuting Attorney, Moscow, ID 83843


Annie McDevitt

Annie McDevitt
NEVIN, BENJAMIN, McKAY & BARTLETT, LLP
P.O. Box 2772
303 W. Bannock
Boise, Idaho 83701
(208) 343-1000

CASE NO. CR 2006-1646

2011 NOV 14 PM 12:00

CLERK OF DISTRICT COURT
BY: AM

Attorneys for Defendant

IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
CHARLES EARL GUESS,)
)
Defendant.)
_____)

CASE NO. CR-2006-01646

**LETTERS IN SUPPORT OF
MOTION TO DISMISS
WITHHELD JUDGMENT**

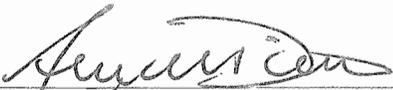
The Defendant, through his attorney Annie McDevitt, submits the following letters in support of his Motion to Dismiss Withheld Judgment:

1. Letter from Griffin Guess;
2. Letter from Tim Rehnberg, Ph.D.;
3. Letter from Alan R. Peeples, M.D.;
4. Letter from Roderick C. Bond;
5. Letter from Anthony Hobbs;
6. Letter from Charles Powell;
7. Letter from Sandra Dunn;
8. Letter from Patrick Brandt;
9. Letter from Richard Fredericks, M.D.;
10. Letter from Sally Fredericks, M.D.;
11. Letter from Gerald Weitz, D.D.S.;
12. Letter from Sue and Phillip Starkey;
13. Letter from Kathleen Weber;
14. Letter from Larry Clott, Ph.D.

1 • LETTERS IN SUPPORT OF MOTION TO DISMISS WITHHELD JUDGMENT

ORIGINAL 179

DATED this 11th day of November, 2011.



Annie McDevitt

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 11th day of November, 2011, I caused a true and correct copy of the foregoing document to be:

mailed

faxed

hand delivered

to: William W. Thompson, Jr., Latah County Prosecuting Attorney, Moscow, ID 83843; fax 208-883-2290



Annie McDevitt

Griffin Charles Guess
3872 Moscow Mtn. Rd.
Moscow, ID 83843

November 1, 2011

John R. Stegner
District Judge
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843

Dear Judge Stegner,

I would once again like to articulate support for my father, and speak to my observations over the past five years as his only child.

I have noticed a perfect compliance with the terms and stipulations set upon him, and an adamancy to live a healthy and productive life. I again relate that I have not witnessed nor been subject to any maltreatment by my father. I continue to meet friends and former patients of his in the community who recognize our name and relate a story of his care and compassion. The community knows and recognizes him as a great physician. Restricting an educated, able, and valuable member of the community from full liberties will be a loss.

In my communications with my mother she has had no objection to full reinstatement of his civil liberties. Indeed, my only request throughout this process of divorce and probation has been resolution. I wish to improve my relationship with my parents and believe that finality, as full restoration of my father's civil liberties, is the only measure that will encourage resolve.

Sincerely,



Griffin Guess



EDUCATIONAL & PSYCHOLOGICAL SERVICES
2301 WEST "A" STREET, SUITE C
P.O. BOX 9764
MOSCOW, IDAHO 83843
(208) 883-1144

11/04/2011

Judge John R. Stegner
District Judge
Latah County Courthouse
5th and VanBuren
P.O. Box 8068
Moscow, ID 83843

RE: Charles Guess
DOB: [REDACTED]

Honorable Judge Stegner;

Charles Guess has asked that I provide you of a summary of my work with him, and I am happy to do so.

I am currently a psychologist with active licenses in both Idaho and Washington. I have worked in the Mental Health field since 1973, and have been licensed as a psychologist for the last eighteen years. I have also worked as a university faculty member and supervisor/mentor to psychologists in training during that time. I am sending a copy of my resume as an attachment to this letter.

I have known Charles Guess since March of 2000 when I conducted a disability evaluation on him at the request of the Social Security. I am attaching a copy of the letter that I sent to the Department of Probation and Parole as part of his pre-sentence investigation in July of 2006.

Since 2006, I have seen Dr. Guess in counseling on an on-going basis. During the time that I have worked with him, he has been consistent in keeping his appointments and has been totally and completely cooperative with treatment. Dr. Guess had some difficulties with psychotropic medications approximately five years ago. At this time, he not taking any psychotropic medication and is managing his life well with diet, meditation, exercise and social support. My last formal counseling session with Dr. Guess was last summer, when it was my belief that he was stable, doing well, and no longer in need of regular and on-going sessions. Since that time we have had occasional contact by e-mail and telephone. He is certainly welcome to return to counseling at any time that he feels the need, and I believe he has good judgment regarding his needs in this area.

JEANNE M. BULGIN, PH D
LICENSED PSYCHOLOGIST

TIM S. REHNBERG, PH D
LICENSED PSYCHOLOGIST

W. RAND WALKER, PH D
LICENSED PSYCHOLOGIST

JAROD J. FITZGERALD, PH D
LICENSED PSYCHOLOGIST

MASHA A. GARTSTEIN, PH D
LICENSED PSYCHOLOGIST

PRISCILLA HERNANDEZ HACKER, PH D
CLINICAL PSYCHOLOGIST

Charles Guess
Page Two

I have found Dr. Guess to be a very easy man to work with. He has complied with all the request of the court, and has completed his formal probation without incident. At no time in our counseling sessions has he ever expressed wanting to harm his ex-wife in any way. Overall, he has left me with the impression that he has no desire to have any additional contact with her, except in the context of co-parenting their son. I do not believe that he currently poses a threat to her, or to himself at this time.

Please feel free to contact me, should you require additional information.

Sincerely,



Tim Rehnberg, Ph.D.
Licensed Psychologist

Copies: Annie McDevitt
File

REHNBERG PSYCHOLOGICAL SERVICES, P.C.
2301 WEST "A" STREET, SUITE C
P.O. Box 9764
Moscow, ID 83843
(208) 883-1144

07/20/2006

Jackye Squire Leonard
Presentence Investigator
316 N. Main
Moscow, ID 83843

RE: Guess, Charles E.
DOB: [REDACTED]

Ms. Squire Leonard

Dr. Charles Guess has been a patient in my practice since March of 2000. My first contact with him was to conduct an evaluation at the request of the Social Security Administration as part of his application for disability benefits. My primary diagnosis at that time was Anxiety Disorder, mixed, with anxiety and depression. I rated his Global Assessment of Functioning at a 51, which corresponds with moderate to severe symptoms. When I first met him, he was also recovering from multiple physical injuries he had received in a motor vehicle accident in 1998. This issue became an area of focus during our initial work together, as there was complicated litigation involved in arriving at a settlement from this accident.

In July of 2000, Dr. Guess again contacted me about getting into my schedule for on-going counseling. At that time, he had recently been involved in a physical altercation with another driver who "almost ran him off the road" near the location of his motor vehicle accident in 1998. This became a very complicated case with more litigation and a less than satisfactory resolution. At that time, Dr. Guess was being treated with Serzone and Paxil, under the care of Dr. Dennis Simpson in Pullman, WA.

Over the last six years, I have seen Dr. Guess for a variety of reasons, most of which involved managing his anxiety, dealing with the legal system, and (most recently) the extreme stress that he has been under because of his impending (and unexpected) divorce. Given my work with him, I will provide you with a summary of my impressions and some thoughts on how to proceed with him in the future.

Dr. Guess was raised in Arkansas in a blue-collar family. He was the second of four children and continues to have a good relationship with his younger sister. His relationships with his brothers are tenuous at best. Both of his parents are deceased, with his mother dying when she was 51 and his father dying at 61.

Dr. Guess has always been a hard-working over-achiever. He graduated from the University of Arkansas in Fayetteville, and then attended medical school at the University of Arkansas. After graduating from medical school, he completed his residency in radiology in Cincinnati. During his residency, he married his first wife who died in a motor vehicle accident in Ohio. She was pregnant at the time, and he continues to blame himself for her death.

Charles Guess

Page Two

Dr. Guess served in the Air Force, which included nine months with a medical team in Vietnam in 1966. Following his discharge from the Air Force, he was gainfully employed as a radiologist (thirty years of which were in the Moscow-Pullman area), until going on disability benefits in 2000.

From a personal perspective, Dr. Guess has some personality traits that warrant mention. He is conservative, is strongly opinionated and has very well defined beliefs about right and wrong. There are very few "shades of gray" in his life, a characteristic that has been a double-edged sword for him in many ways. His decision-making style and decisiveness have been assets to him in his professional and financial life; however, these characteristics have often worked against him in this politically correct society and in interpersonal relationships. Dr. Guess has strong loyalty to people until he feels that he has been slighted and/or deceived in any way, at which time his loyalty disintegrates. He is often distrustful of people and their motives, and people often have to "prove themselves" to him before he will trust them.

For most of his life, Dr. Guess has measured his value by his work and by the material possessions and financial security that he has obtained for his family. He spent many hours away from home working as a physician, often providing emergency coverage and providing many services "pro bono" for indigent or low-income patients. Like his personality style, this was a "double-edged sword", as his time away from home was stressful to his family. Over the years, Dr. Guess made investments in real estate and recreational property near Riggins, ID., where he invested many hours fixing up the property and enhancing its value as a "nest egg" for his wife and son. He also started raising elk for commercial purposes, which was another significant investment both in time and in money. During my early work with Dr. Guess, he often talked about how important it was to him to know that his wife and son were secure financially, should something happen to him. During the years that he was working as a physician, he also traveled extensively with his wife, including many trips to Europe and Africa. He reported that he has also been very generous to his wife over the years, as she has been allowed to travel extensively on her own.

The recent losses of the marriage and the financial problems that have plagued this family have been devastating to Dr. Guess. He freely admits that he should have been keeping better track of the family resources over the years; however, he was often told, "things were under control". Over the last sixteen months, he has seen his financial security taken away, including the loss of his son's college fund and the need to liquidate the resources that he had counted on for his family's financial future. This has been very difficult for him because he believed that he was "doing the right thing" by working long hours and putting "sweat equity" into his property in Riggins. Much of his frustration is based on the fact that now these things are being used against him in the divorce.

I believe that the incident that led to the legal charges against him was "the straw that broke the camel's back" for him. I do not believe that his actions were premeditated, and that they were impulsive and reactive. Dr. Guess has always been a very proud man. Being confronted by his wife's attorney (who he reports had previously been sarcastic with him in an e-mail) was very humiliating, which was the trigger for his actions. I do not believe that Dr. Guess intended to kill his wife or her attorney, and I have always believed that he poses a much greater threat to himself than to others. Dr. Guess has had suicidal thoughts in the past, and often talks of suicide as an option as the legal proceedings against him (and the divorce) have "gone public".

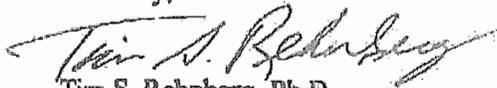
Charles Guess
Page Three

During the time that we have worked together, I have found Dr. Guess to be cooperative and compliant with treatment. We have not always agreed on some of the decisions that he has made about how to deal with situations in his life; however, he has always taken full responsibility for his beliefs and behaviors.

I hope that I can continue to work with Dr. Guess in the future. My primary treatment plan continues to be to provide supportive therapy and to function as a "sounding board" for him during high stress times. I believe that he has many admirable attributes and also believe that he has the potential and desire to provide many more years of valuable service to the medical community, if given the chance to do so.

Please feel free to contact me, should you require additional information.

Sincerely,



Tim S. Rehnberg, Ph.D.
Licensed Psychologist

Copy: File

TIM S. REHNBERG, PH.D.
S.E. 765 DERBY
PULLMAN, WA 99163
(509) 332-8817

Academic Background

- Ph.D. Washington State University
College of Education
1991 Pullman, WA
Major: Counseling Psychology
Dissertation: "The Effect of a Health Belief Intervention on Safer Sex Practices in a Sexually Active College Female Population"
- M.A. University of Northern Colorado
Department of Special Education
1973 Greeley, CO
Major: Vocational Rehabilitation Counseling
- B.S. Colorado State University
Department of Psychology
1971 Fort Collins, CO
Major: Psychology

Licenses and Certifications

- Licensed Psychologist in Washington, Lic. # PY1711
- Licensed Psychologist in Idaho, Lic. # PSY280
- National Register of Health Service Providers in Psychology, # 42866

Employment History

August, 1993 to Present Educational and Psychological Services, PLLC
2301 West "A" Street, Suite # C
Moscow, ID 83843

Private Practice in Psychology:

Responsible for all phases of running a private practice in psychology. Provide individual and couples therapy with children, adolescents and adults. Specialize in Learning Disability and ADD/ADHD Assessments with children, adolescents and adults. Conduct psychological assessment and disability determination evaluations for Social Security Administration, Health and Welfare, Department of Labor and Industries and the court systems. Consultant to Opportunities Unlimited, Inc., providing staff training, psychological evaluations and life-skills planning for developmentally disabled adults.

July, 1989 to May, 1998: Student Counseling Services
Washington State University
305 Administration Annex
Pullman, WA 99164-4120

Tim Rehnberg, Ph.D.

Page Two

Coordinator of Testing Services: (09/92-05/98, Part-Time)

Responsible for the management and coordination of the university testing program. Supervise a small office staff, assist with scheduling and administration of standardized tests for commercial testing companies (SAT, GRE, GMAT, LSAT, etc.) and for individual departments (Foreign Language and Math Placement). Administer individual tests to university students including personality tests, intelligence tests, vocational tests, learning disability and ADD/ADHD assessments and neuro-psychological screening. Train doctoral interns and graduate level practica students in administering, scoring and interpretation of standardized tests. Carry a half-time counseling caseload and supervise two graduate students providing therapy.

Staff Psychologist: (08/91-08/97)

Responsible for providing individual, couples and group counseling to college students. Administered and interpreted individual psychological tests as required. Supervised doctoral practica students in both Clinical and Counseling Psychology. Provided outreach and educational programs to both the college community and public agencies dealing with a variety of psychological issues.

Co-Coordinator of Career Services: (08/90-08/91)

Provided vocational counseling and career development assistance to college students and university staff. Taught an undergraduate class on career development issues. Supervised one doctoral level counseling assistant working in the career development office. Provided outreach and educational presentations on career development and life transition issues to the campus community.

Doctoral Intern in Psychology: (07/89-07/90)

Provided individual, couples and group counseling to college students under the direct supervision of senior faculty. Provided educational outreach and educational programs to both the local and campus community. Provided crisis on-call counseling and coordinated services with county designated mental health professionals.

June 1992 to Present: Adjunct Faculty status in the Department of Educational and Counseling Psychology at Washington State University and in the Counseling Department at the University of Idaho. Teach graduate level classes in Theories of Career Development, Psychological Assessment, Research Methods, Statistics and Psychosocial Aspects of Disability.

Aug. 1986- May 1988

Department of Educational and Counseling Psychology
Cleveland Hall, Rm. 320
Washington State University
Pullman, WA, 99164-2131

Teaching Assistant: (08/86-05/89)

Responsible for teaching one section of a three credit undergraduate class in Educational Psychology. Developed lesson plans in line with existing curricular standards and guidelines, presented all lectures and led class discussions. Assisted with the development and writing of exams, graded examinations and term papers.

Tim Rehnberg, Ph.D.
Page Three

(Employment History, cont.)

Research Assistant: (08/88-05/89)

Assisted with the development of two funded research projects. Assisted with project development, literature review, development of research hypotheses, data collection, data analysis and write-up. Was second author on two articles submitted for publication

Jan. 1983- Aug. 1986: International Rehabilitation Associates
N 112 University Rd. Suite 105
Spokane, WA 99206

Rehabilitation Consultant: Provided vocational rehabilitation evaluations and services to industrially injured workers. Interpreted medical, psychological and vocational reports, completed on-site job analyses and made recommendations for direct job placement or vocational re-training. Worked closely with physicians, attorneys, and the Department of Labor and Industries personnel to assist in resolving disputes regarding workers compensation claims.

Dec. 1973- Jan. 1983: Idaho Division of Vocational Rehabilitation
414 Coeur d'Alene Ave.
Coeur d'Alene, Idaho 83814

Vocational Rehabilitation Counselor: Provided personal and vocational counseling with handicapped adolescents and adults. Collected and evaluated medical, psychological, psychiatric, academic and vocational information. Developed formal vocational rehabilitation plans. Coordinated services with the Social Security Administration, State Industrial Commission, Department of Public Assistance, private rehabilitation companies and the legal profession. Worked as a consultant to the Post Falls School District. Supervised Master's level interns during a three month field assignment.

Honors and Awards

1988: Phi Kappa Phi National Academic Honor Society
1977 Elkins Counselor of the Year for the State of Idaho

Professional Affiliations

American Psychological Association
Phi Delta Kappa Professional Educators Organization
National Register of Health Service Providers in Psychology



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(601) 355-7035 fax

October 27, 2011

Judge John R. Stegner
District Judge
Latah County Courthouse
5th & VanBuren
P.O. Box 8068
Moscow, ID 83843

Judge Stegner,

I am writing this letter in support of Dr. Charles Guess. He has had a great influence not only on my life, but the lives of my entire family.

Charles is a first cousin to me as his mother and my mother were sisters. Charles is 16 years older (there were 10 children in my mother's family) so my earliest memories of him involve his college years and then Medical School and his training as a Radiologist. Charles' childhood was typical for the 1940's and 1950's in rural Arkansas. He had plenty of love but times were tough otherwise, and I believe that is what made Charles into the strong and loving person he is today. He learned at an early age the values of family and hard work.

My father, a former B-17 pilot who will turn 90 early next year, is a physician and he was a role model for Charles. Dad still talks about how Charles pulled himself up by his own bootstraps and worked his way through college and medical school. Whether he was working in the kitchen of his rooming house or in the great outdoors in the summer he was always working. They are still in touch so many years later.

My adult relationship with Charles began with a visit to his home in Idaho in 1978. After I married and began to have children we saw each other more and more, both in Idaho or when he visited Arkansas. My wife, Holly, and my 4 children have had the opportunity to get to know Charles well. My oldest son, Sam, and Charles' son Griffin are the same age and Sam was able to visit in the summers and Charles' even took them fishing in Alaska. We always had a great time when we visited.

Charles is also a brilliant person with many interests. Not only is he an accomplished Radiologist but also an avid outdoorsman, an art collector and a man of literature – just to mention a few. But what impresses me and my family the most is his work ethic. Outside of his work as a Radiologist he has always stayed in constant motion working on his ranch, building an elk farm, raising a garden, raising turkeys, building cabins – Charles likes to be busy and accomplish things. I will never forget when he showed my children how to bottle feed a crippled baby elk named Norman. They still talk about Norman!

But after all the hard work, when Charles relaxes and unwinds, he is kind and gentle and a great conversationalist who can discuss just about any subject. We love to talk about our large extended family and he loves his trips back to Arkansas to visit relatives.

Charles is 73 now and busy building a cabin. Because of his influence my 2 sons live in Missoula, where one is attending the University of Montana and the other is a graduate. I am buying a cabin in the Bitterroot Valley next week; this is a direct result of the love of the outdoors that I have learned through Charles - so I guess that makes him a teacher of sorts also. I will now be able to visit Charles more often. My hope is that he can spend the latter part of his life in a serene and healthy manner, doing the things he loves most, and showing his friends and loved ones, in his own special way, that the benefits of loving, working hard, and playing hard make for a life well lived.

My life would be completely different, in many ways, had I not had this special relationship with Charles Guess.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alan R. Peeples, M.D.", written in dark ink.

Alan R. Peeples, M.D.

CB | LAWYERS

CAMPBELL & BISSELL | PLLC

November 8, 2011

The Honorable John R. Stegner
District Court Judge
Latah County Courthouse
5th & VanBuren
P.O. Box 8068
Moscow, ID 83843

Re: Charles E. Guess

Dear Judge Stegner:

I am writing this letter in unequivocal support of Charles E. Guess. After Charles asked that I write a letter in support of him, I spent a great deal of thought trying to determine where I should start and what I should say or discuss. While I could write a book in support of Charles, I thought the best approach would be to try to provide a brief history of my interaction with Charles and to try to address some issues that you might be concerned about.

I have personally known Charles for over 20 years now. I have frequently spoken with Charles since the unfortunate incident. Although I have not acted as his attorney with respect the subject matter of the criminal action, he has always sought my advice, as a friend, to ensure that he is complying with the obligations of his withheld judgment and that he was being a good citizen. He has constantly reiterated to me that he is ashamed of what transpired and how much he wished that it had never happened. Although Charles has always been a caring and unselfish person, I have observed these traits become even more apparent in Charles since the incident with his ex-wife. He is even more kind and compassionate to others since the incident. Moreover, I believe that Charles has changed in that he even more appreciates and respects the simple things in life. He simply wants to enjoy the remainder of his life as a law abiding citizen and hopefully be able to again enjoy hunting in the mountains of Idaho, including near his home—which is something that has always been very important and greatly cherished by him.

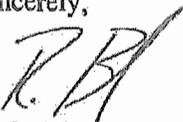
After careful consideration, it appears that the overreaching questions before you are: (1) whether Charles is a risk for the community or the public; and (2) whether restoring all of his civil rights (including the right to bear arms) poses a risk for the community or the public (including Charles' former wife). As a citizen and member of the Idaho State Bar, I unequivocally believe that the answer to both of the forgoing questions is "NO". I do not believe that Charles poses any risks of harming anyone. Furthermore, I do not believe that restoring all of his civil rights would pose any risks to the community, public or his ex-wife.

The Honorable John R. Stegner
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In closing, I would like to just reiterate that I would not write this letter but for my unequivocal belief in Charles and that he does not pose any risks to society. I respectfully urge you to dismiss the remaining charges against Charles and restore all of his civil rights. I truly believe that he will not let you or the community down—and, most importantly, that he will never forget what he did and never repeat what occurred that day. Upon your request, I would be happy to attend any hearing and answer any questions you may have or go over the many other facts and reasons that I support Charles, which cannot be summed up in a two page letter.

I appreciate the opportunity to write on behalf of Charles. Thank you for your time and consideration.

Sincerely,



Roderick C. Bond

10/29/11
Anthony W. Hobbs
3967 HWY 278E
Dermott, AR 71638
870-723-4147

Judge John R. Stegner
District Judge
Latah County Courthouse
5th & VanBuren
P.O. Box 8068
Moscow, ID 83843

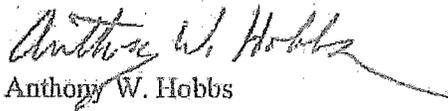
Dear Sir,

My name is Anthony Hobbs. I am writing this letter to give you my insights on the character of Charles Guess. My background and life experiences are what I will use to draw my conclusions. I am a Christian, husband of the same wife for 32 years, have raised 4 children and have been employed with the same company for 33 years. I have worked my way up through the company to the current position of Supervisor. My duties include evaluation of employee's performance as well as evaluation and assessment of new employee's, training or coaching for improvement on job abilities or advancement in job position and on occasion have to start action on disciplinary procedures.

I have known Charles for about 20 years. We started swapping hunting and fishing trips between Arkansas and Idaho about 20 years ago and spent many hours together camping in the woods or on rivers. We shared this comradeship with many hour discussing life's events and whatever makes the world go round. Charles is my wife's uncle, but our relationship developed over the years as friends. I have called him in the last 5 years and more for advice about problems with my children and he has shared his current situation with me and asked for my advice about his son as well. Charles is a compassionate guy that cares about other people. I know of one occasion that he covered the medical expense for an employee going through radical prostate surgery. We talk on a fairly regular basis and he always inquires about family in Arkansas. Since his retirement, he has spent time with his brothers and sister and his siblings have visited in Idaho. He has made two fishing trips to Arkansas in the last 5 years and I have stayed or visited with him several times when in the area on business. Charles has a lifetime display of collectables from his travels in his home. He enjoys showing them and sharing tales of his adventures with people. He shares fish from Arkansas and enjoys being the dinner host with friends. I am welcomed to bring business associates to his home for the tour, and have done so. Changes in Charles from the beginning of his divorce proceedings to date are very evident. He has embraced the changes in his life and remains very active for a man of his age. He once stated to me that he was a humbled man. Charles has moved on with his life. He naturally longs for a

companion. He is now dating a woman that I was introduced to. She is active in her church, very positive and is having a positive influence on Charles. He gardens and tackles projects. He is very active, does things for fiends, like removing large trees from their yard with his tree felling skills. His log house project has brought employment to the community in these hard economic times. In my opinion, Charles is just a regular guy with a passion for the outdoors who enjoys life and enjoys people around him who enjoy the same. The one reason that I know Charles would like to have his rights back is to be able to continue his passion for hunting with friend and family.

Sincerely,

A handwritten signature in cursive script that reads "Anthony W. Hobbs". The signature is written in dark ink and has a long, sweeping underline that extends to the right.

Anthony W. Hobbs

October 26, 2011

The Honorable Judge John R. Stegner
Latah County Courthouse
5th & Van Buren
P.O. Box 8068
Moscow, ID 83843

Dear Judge Stegner:

This letter is written addresses the upcoming hearing to decide on the dismissal of charges for crimes committed by Dr. Charles Guess and for which he has completed his probation without exception.

I am currently the Senior Public Information Officer for Washington State University's College of Veterinary Medicine and the Public Information Director for the Washington State Veterinary Medical Association. I have been in these roles for 22 and 19 years concurrently.

Prior to this from 1981 to 1988, I was a board-certified orthopaedic surgical technologist and EMT-1 employed first by Pullman Memorial Hospital and then Dr. Richard B. Donati. During this time I met and began interacting almost daily with Dr. Charles Guess who was the chief radiologist for the three hospitals where I worked as a private duty first assistant in surgery. I hold degrees in Bacteriology, Animal Sciences, and did my graduate work in Endocrine Physiology (insulin-like growth factors). I am married, the father of two grown daughters, and about to be a grandfather to identical twin boys. My wife, Connie S. Powell, is a Registered Nurse employed by Gritman Medical Center and has known Dr. Guess longer than I have. We live in Moscow, Idaho, at 244 N. Lilley St. I also teach/have taught at WSU:

- PR 475—Crisis and Risk Communication, including hostage crisis negotiation.
- VMS 361—Agricultural Animal Health, lectures on agroterrorism, bioterrorism, and media relations during disease events
- PEACTION 265—Fly Fishing
- COMM 475—Broadcast Management, lectures on media relations from a public information viewpoint.
- SPTMGT 540—Current Issues in Sport Management, lectures on risk and media implications at mass sporting events and venues.

During my undergraduate education, I worked for a mobile home assembly plant in Mountain Home, Idaho, and was the sub-floor foreman for a group of seven trustees transported daily from the state penitentiary in Boise. Later on, I served as a Deputy Sheriff in Elmore County was tasked as a Corrections Officer on nights, weekends, holidays and I served arrest warrants in the field on occasion. These included warrants for convicted felons who had committed violent and intimidating acts with firearms. From there I gained significant experience with criminals, incarceration, and violent act threat assessment. At WSU and also in my role with the WSVMA, I have received training in Workplace Violence from Eugene A. Rugala, FBI Supervisory Special Agent (retired) and editor of the standard field text, *Workplace Violence; Issues in Response*.

This text is published by the Critical Incident Response Group of the National Center for Analysis of Violent Crime, FBI Academy, Quantico, Virginia.

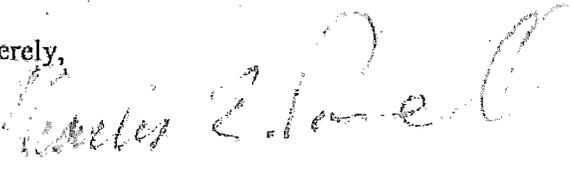
Shortly after his release from incarceration, I voluntarily sought Dr. Guess out in my position at WSU to perform part of his community service in our radiology department. He was tasked with sorting films for disposal as we converted to an all digital system. I consulted with the Washington Attorney General's Office and they felt he posed no risk to students, staff, or faculty. He responded enthusiastically and worked hard at tasks far below his level of education and experience. He was never late, never complained, never unaccounted for, and in my view represented no risk to our faculty staff or students during his time here. There were no complaints about his presence here despite the significant local notoriety that surrounded his case. I would hire him immediately if I had the need and that authority.

I have known Dr. Guess and his family for almost 30 years. I know him as a radiologist, business owner, patient of our surgical service, and casual friend. I understand completely—as does he—the crimes he committed and the attendant penalties that accompanied them. Dr. Guess is remorseful, humiliated, and embarrassed by his egregious acts and simply wants to restore his life and rights as a citizen. Dr. Guess has used his probationary period to bring his mental and physical well-being into an optimal position for continued success in life. He has forged new relationships with others and maintained old ones without incident. He has done well at this goal and I have met with him occasionally to listen, offer suggestions, and provide emotional support.

I also know Dr. Guess' son Griffin, quite well as he was one of my students and also was employed by our surgical services at WSU before going to dental school. I made a habit of asking about Dr. Guess each time I saw Griffin. I watched Griffin deal with his father's incarceration and probation and it is my opinion that Griffin completely understood the situation and accepted the inevitabilities as did Dr. Guess. Yet, through all of this it was apparent that Griffin knew that despite crimes his father committed, a positive outlook and constant family support were vital. He has provided that consistently.

Based upon my experiences and training and my knowledge of Dr. Guess and his family, I believe there is no reason his case should not be dismissed because of his exemplary completion of probation. I believe the court's actions to date have been rightful and just in this matter without qualification. I humbly urge the court to return to Dr. Guess the full rights afforded all citizens and thereby make him whole again so he can take the final steps in reforming his life completely.

Sincerely,



Charles E. Powell, Senior Public Information Officer

p.s. I am omitting letterhead here to avoid any inference that this is an official communication from the university or the WSVMA which it is not.

October 29, 2011

Judge John R. Stegner
District Judge
Latah County Courthouse
5th & Van Buren
P.O. Box 8068
Moscow, Id. 83843

My name is Sandra D. Clunn. I lived in Moscow for 40 years before moving to Boise.

I graduated from high school in 1959. I received my Associate degree as a Lat & Tray Technician and also Medical Assistant. I put myself through school by working for an Orthopedic Surgeon after school and on Saturdays. I met my husband while working at the National Orthopedic Hospital in Washington D.C. He was a medical student at George Washington University.

We moved to Moscow, where my husband grew up, in 1967. He was an Ophthalmologist there for 27 years until he passed away.

Charlie moved to Moscow a few months after we did and we became friends, so I've known Charlie a long time. He's been a wonderful friend to me all these years and we keep in touch to this day.

I know Charlie has worked hard to fulfill his obligations to the Court during his probation. He has worked very hard on his house and property and he also helped on the Palouse River Restoration project.

Charlie is a good person and he has a big heart
and would do anything to help someone if they needed
it. I know I can always count on Charlie if I need
anything.

Very truly yours,

Andrew D. Reed

Patrick E. Brandt
121 Big Meadow Rd.
Troy, Idaho 83871

October 24, 2011

The Honorable John R. Stegner

District Judge, Latah County Courthouse
5th & VanBuren
Moscow, Idaho 83843

Dear Judge Stegner,

I write to you today about the character and personal observations of Charles Guess of Moscow, Idaho. Before I do so, I will give you a little history of myself. After high school (1971) I was called to active duty in the United States military during the Vietnam conflict. I was recruited into the Special Forces for Para-Rescue. Served eighteen months in Vietnam from 1972 through 1974. After my term of service ended with an Honorable discharge, I enlisted in the Air National Guard in Spokane, Washington for an eight year term as a Radar Technician. At the same time, I was employed by Washington State University and retired with 33 years of service as an Electronic Technician 3.

Shortly after retiring from WSU, I joined the Schweitzer Engineering team in Pullman, Washington as an Electronic Field Technician working for the Product Hospital where I'm presently employed.

I have served as a juror multiple times in the Latah County courtrooms. And presently serving my community as an EMT for the Troy Ambulance. I'm married with no children. My wife is a drug and alcohol counselor in Moscow, Idaho.

As for Charles Guess, I have known him since 1978 as a Hunting and Fishing partner and personal friend. I have always known Mr. Guess as an honorable man with integrity and constantly helping others in need. Life has a tendency to hand out some vicious blows from time to time, and Charles and I have walked through many of them together. Mr. Guess has continuously since the birth of his son been a remarkable and caring father, instructing his son on social and moral issues. Even when I have said or considered doing something foolish unknowingly, Charles would approach me and say: Patrick, what are you doing? He is the type of man that will keep you in check.

During his five year probation period, I personally attest he has never violated what has been expected of him. He has carried out the full letter of the law. I have spoken and visited with him almost daily since that time. His actions have been reasonable and prudent for the past five years. Each time his probation officer made visits to his residence, he has been cooperative and polite. When Mr. Guess is in town on Sunday's, he will attend church with me. He uses wisdom by seeking the advice of others that are versed in matters beyond his knowledge or abilities. I firmly believe Mr. Charles Guess is an asset to his friends and community and always will be in the future.

October 24, 2011

Page 2

Respectfully yours,

Patrick Edwin Brandt

Patrick Edwin Brandt

3821 Moscow Mountain Road
Moscow, ID 83843
October 31, 2011

Judge John Stegner
District Judge
Latah County Courthouse
5th & Van Buren
P. O. Box 8068
Moscow, ID 83843

Dear Judge Stegner,

I have known Charles Guess for over 30 years. He is a rural neighbor and friend, living about a mile from us. I also know him professionally as a fellow M. D. and I had many years of professional contact with him in my capacity as a student health physician at Washington State University/Pullman Hospital, where Charlie was the primary radiologist for years.. In that capacity, I had great respect for his skill and knowledge in x-ray imaging and diagnosis, as I believe most physicians in the community did. I am a 1959 graduate of the University of Washington School of Medicine, retired many years now but continuing my medical credentials and license. I have no hesitation in asking Charlie for his interpretation of my personal x-ray studies, although I know he has retired from active practice..

He has been helpful to us in a number of other capacities. He has developed many practical skills in home improvement and gardening and as an amateur orchardist. For many years he raised elk on his extensive acreage and worked prodigiously to develop the necessary infrastructure (buildings, fences, water supplies). In earlier years, he hired both of our teenage sons to help him. He and his son also helped install a fine deer proof fence for us around our major garden, asking no remuneration. That is an example of his generosity. He is also generous with his garden produce, as well as fish he caught on an Alaska trip. Like us, he loves dogs and has had several over the years we have known him.

He took great pride in the extensive work he did on property he and his wife owned in the French Creek area of the Salmon River country, and where he had spent many enjoyable weeks each year. The loss of that property was deeply felt.

I have always been impressed with his compliance with the conditions of his probationary status as I understand them.

Sincerely,



Richard Fredericks, M. D.

3921 Moscow Mountain Road
Moscow, ID 83843
October 30, 2011

Judge John R. Stegner
District Judge
Latah County Courthouse
5th and Van Buren
P. O. Box 8038
Moscow, ID 83843

Dear Judge Stegner,

I am writing about Charles Guess, at the request of his attorney. As background information on myself, I practiced medicine for 37 years, the last 19 years as a psychiatrist in local area mental health centers plus a private practice. My husband and I have lived in Moscow since 1974 and for me it was returning to the state of my birth. Dr. Guess and his wife moved into the rural area where we reside in about 1978 and we have had intermittent social contact with him since then. In addition, I have known him professionally as a very competent radiologist.

During our years as neighbors, I have found Charley to be generous with his time and skills, as well as with his garden produce and the "bounty" of his fishing trips. He went so far as to give us recently caught tuna for our family reunion of 19 people. While this may well be irrelevant to the court, I thought it was extremely generous.

Charley is intelligent and well informed in many areas. He uses his abundant energy in a wide variety of activities, including building projects, growing fruits and vegetables (giving a portion of it away), reading, and, prior to the past five years, his work as a radiologist. In his professional area, I was impressed with how he kept up to date in both his reading and attending ongoing training seminars. In his diagnostic conclusions he was precise, thorough and helpful to the attending physician. On a more personal note, I recall how pleased and proud he was when his son, Griffin was born. I was surprised at the delight he showed.

My husband and I both felt bad about the acrimonious end to his marriage and were surprised at the state of health and distress he was experiencing at that time. My observation is that he has made a very good recovery and I was impressed with his avoidance of alcohol during that time and his perseverance in not being able to hunt. These observations are from contact with him in the range of 7-10 per year, some of them dinners where alcohol was available.

While my relationship with Dr. Guess is not deep, it does have a time span of many years, during which time we have valued many aspects of his personality, observed some of the ups and downs of his life, benefited from his generosity and been respectful of the way he seems to be attempting to get his life back together.

Respectfully Submitted,



Sally Fredericks, M. D.

Judge John R. Stegner
District Judge
Latah County Courthouse
5th & VanBuren
P.O. Box 8068
Moscow, ID 83843

October 22, 2011

Dear Judge Stegner,

I am writing in support of Charles Guess' case being dismissed. I have known Charles Guess for over thirty years. His son interned at our office and is presently a dental student at the University of Pennsylvania. His son, Griffin, worked at our dental office during his senior year at Moscow High School and during his tenure as an honor student at Washington State University. Griffin was one of the best interns our dental office has had. He plans to come back as a practicing dentist on the Palouse and will be an asset to the community.

For background, our dental office provides extensive internships for U of I and WSU pre dental students. We also provide job shadow opportunities during the school year and summer jobs for area high school students who are interested in careers in dentistry. Our office is an active research office for Northwest Precedent and works closely with the University of Washington School of Dentistry. Northwest Precedent is a practice-based research collaborative in evidence-based dentistry.

Dr Charles Guess practiced as a radiologist on the Palouse for years. He practiced with heartfelt respect for his patients and would waive his fees if a patient could not afford to pay. He, at times, would personally pay for needed medical services and would ask other medical professionals to help when a patient could not afford the needed care. As a radiologist, his diagnostic opinions were remarkably straight forward and without some of the defensive diagnostic opinions that we presently see all too often to protect the practitioner from medical malpractice. Dr Guess practiced in the best interest of his patients and is a very straight forward person.

In the last five years, Dr. Guess accepted his duty to complete a successful probation and has made serious efforts in that regard. Charles Guess is not a danger to society and is an example of taking probation very seriously. Thus, it is my opinion that Charles Guess' case should be dismissed since he has successfully completed probation.

Respectfully yours,


Gerald Weitz, D.D.S.

Judge John R. Stegner
District Judge
Latah County Courthouse
5th & VanBuren
P.O. Box 8068
Moscow, ID 83843

Sue Sharkey
Phillip Sharkey
2232 Willoby Ct.
Morrow Ga.
30260

Dear Honorable Judge Stegner,

This letter is in reference to Charles E. Guess who is trying to get his rights restored. We are his sister and brother-in-law who totally support him as a hard working individual, honest, and trustworthy in relationships concerning us. We visit Charles on average every two years, and communicate often by phone and email.

I, his sister seek his advice concerning family and other matters. He has always been supportive and helpful with these issues. I, his brother-in-law have always felt welcome in his home.

We are very proud of his hard work and studies to become a Radiologist. He paid the majority of his expenses for college and Medical school. We both feel he has been a good father to his son Griffin, who is currently in Dental school and doing well.

Phil and I have been married 47 years in May. Phil is a retired aircraft maintenance foreman from Delta Air Lines, and I am a former X-Ray Technician and homemaker.

Sincerely,



Sue Sharkey

Phillip Sharkey

4 November 2011

Judge John R Stegner

District Judge

Latah County Courthouse

5th and VanBuren Streets

PO Box 8068

Moscow, Idaho 83843

Dear Judge Stegner,

I am writing in support of Charles Guess' case being dismissed and am happy to do this for him.

I am the Broker of RE/MAX Connections in Moscow, have been a licensed agent since 1980, a Broker since 1988 and a Designated Broker since 2007. This summer Governor Otter appointed me to a four year term as an Idaho Real Estate Commissioner, I am also a member of the Idaho Association of REALTORS Professional Standards Committee. Presently I have been asked to be a professional witness in a Sandpoint case.

In the many years I have been a REALTOR I have and do work with a wide variety of people and get to know them on a very intimate basis since buying and selling homes can be traumatic and personal. That experience has been very helpful both professionally and personally. It has helped me be a better judge of character and to recognize situations that cause people to act in certain ways.

I met Charles in the mid 1990's and knew of him professionally as a highly regarded Radiologist for many years prior. He has requested my professional services throughout the years when he needed a market analysis for one of his properties. Because of that we got to know each other on a more personal basis and have become friends. Charles has always been very upfront in his dealings with me and in conversations we've had I feel he treats others the same way. He has a dry sense of humor, especially when it comes to himself; he is able to laugh at himself and have kind words for others.

I have seen him often these past five years and have never seen him do anything that went against his probation or make aggressive statements about anyone. Charles has mentioned his probation to me openly and always showed a willingness to complete it so he can go forward with his life.

Please don't hesitate contacting me if I can be of any further help and thank you for taking time to read this.



Kathleen Weber

November 2, 2011,

Judge John R. Stegner
District Judge
Latah County Courthouse
5th & VanBuren
P.O. Box 8068
Moscow, ID 83843

Subject: Letter of support for Charles Guess

Dear Judge Stegner:

As a long-time friend of the Guess family and Charles in particular, I am writing this letter of support because I feel Dr. Guess has clearly and definitely completed his parole with exemplary behavior which is reflection of the man I have known for the past 21 years. Over the past five years I have witnessed Charles not only be regretful for his actions regarding his wife, but conduct himself both privately and publicly in the most admirable and respectful manner.

Within days following the incident, I made contact with Charles to find him going through confinement, something completely out of his character. It is clear that he is aware that his actions were impulse-driven and incorrect. Never has he regretted or blamed anyone but himself for his behavior and has accepted his punishment and penalties. The Charles I know has not distributed blame toward others over his actions and instead regrouped and occupies his time on numerous projects and past-times while waiting for the termination of his parole. During the entire time of his parole, I saw a man who trusted the system and knew that if he conducted himself appropriately and above reproach, his parole would be terminated after five years or, better yet be dismissed earlier. Each appeal was denied, yet he persevered.

The Charles I know was a very prominent community member which meant his fall was greater than most. Yet, he found ways to deal with his loss of public character and moved on. This is the gentleman's behavior I grew to know and love in Dr. Charles Guess.

Let me express my background and how we became such close acquaintances. My educational background consists of a bachelor's degree in Speech from the University of North Dakota, a master degree in Speech and Organization Communications from Washington State University and a doctorate degree in Educational Psychology from the same university. I am a published author in professional journals and national social services magazines. I have held 27 board positions nationally, regionally and locally. My awards include "Presidential Citizenship award from President George H.W. Bush, Governor's appointments to numerous state committees under Governor Evans and service on local city task forces. My work experience began with my instructing at

W.S.U. I counseled for W.S.U.'s athletic department and then was employed by Washington State's Protection & Advocacy System for Disability Rights. While operating a private counseling business in 1980, I was lured away to help develop new programs for disabled citizens under new Federally appropriated money. In the process, I helped improve services and laws within the state of Idaho. In 1982 I was one of 11 disabled citizens who began the process of crafting a Federal bill, later to become The American's with Disabilities Act. I have served as CEO of an organization which built three Intermediate Care Facilities for the Mentally Retarded (I.C.F.M.R.) as well as provided services for independent living to individuals wishing to live in their homes while experiencing a disability.

I must say that my background includes working as a private counseling which at a period in my life, I was regularly appointed by a judge in Whitman County, Washington to act as Guardian Ad Litem in guardianship cases. It included preparing appropriate background reviews and interviews, submitting appropriate documentation to the court followed by personally testifying in court. I have appeared at ALJ level hearing for numerous, possibly 20 court hearing regarding Social Security eligibility as an expert witness.

In 1989, I met the Guess family with one simple thing in common and that being our children who both attended preschool together. At first it appeared we had very little in common since Charles had attained a higher level of status in the medical field while I, a quadriplegic was fighting in the trenches for disability rights. With both our family having had only one child later in life, it was the bond that has held us together to this day. However, in the process, I learned to enjoy Charles and Michele's company and to respect Charles' professionalism. My wife and I were extremely gregarious whereas Charles and Michelle appeared quite reserved as they experienced their privacy on their mountain farm. My daughter, Lysie often times visited the farm for weekends to participate in such things as fishing, animal husbandry, sledding, hay-rides and other rural activities as you can image.

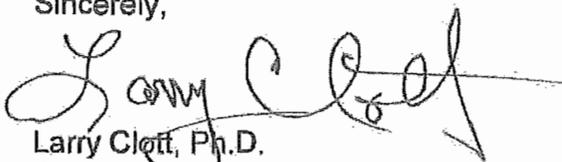
My wife and I both experienced life-threatening misdiagnosed illnesses with which Charles took a personal concern and sought out appropriate care for us. With his empathetic behavior and professional skills, he used his medical skills to explore our illnesses and secure appropriate care for us. For that, I am extremely grateful. However, it was not something done for great rewards, but rather was merely a reflection of the type of person Charles really is. I have said time and again that I would trust him implicitly with the lives of my family members. Our friendship with Charles and Michele grew when my wife unsuccessfully fought her battle with cancer. Their friendship poured forth in so many ways which included personal help and psychological support.

As I expressed above, that friendship has continued after their divorce and my wife's death. Charles has been a great personal support for me at the time of my loss as I witnessed him putting his own life back together.

Let me summarize by saying that I have always found Charles to be an extremely educated person who acts and reacts with clear and rationale thought. He has always analyzed and evaluated situations before proceeding with the most methodical and humanitarian approaches. His actions which led to his parole were completely out of context to his personality. In the past five years, the time of his parole, I have in no way found him to be a threat to anyone, nor could I ever see him a threat to anyone in the future. It is time to restore all of his rights as a citizen of this country and allow him to carry on his life in full with dignity. He is possibly one of only three people I feel I could count on in time of need. I know I could trust him as a referral for my daughter if she is ever in need, and my daughter is the love of my life.

Please feel free to call on me at any time regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Clott". The signature is fluid and cursive, with a long horizontal line extending to the right.

Larry Clott, Ph.D.
1634 Damen Street
Moscow, ID 83843
208-8823-4404
509-595-2812

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Sheryl Engler
Court Reporter
Recording: Z: 2:2011-11-16
Time: 9:31 A.M.

Date: November 16, 2011

STATE OF IDAHO,)	
	)	Case No. CR-06-01646
Plaintiff,)	
	)	APPEARANCES:
vs.)	
	)	William W. Thompson, Jr., Prosecutor
CHARLES EARL GUESS,	)	Appearing on behalf of the State
)	
Defendant.	)	Defendant represented by counsel,
	)	Annie McDevitt & David Nevin, Boise, ID

=====
Subject of Proceedings: **MOTION TO DISMISS WITHHELD JUDGMENT by
telephone conference call**

This being the time fixed pursuant to written notice for hearing of the defendant's Motion to Dismiss Withheld Judgment in this case, Court noted the participation of counsel, the defendant, and the victim, Michelle Guess, in this conference call.

Court noted for the record the submissions it has reviewed in support of the defendant's motion.

Mr. Nevin argued in support of the defendant's Motion to Dismiss Withheld Judgment.

Michelle Guess made a victim's statement to the Court, indicating that herself and her immediate family still feared the defendant.

Mr. Thompson directed statements to the Court, indicating that it appears that the defendant has fully complied with the terms and conditions of his probation. Mr. Nevin had no rebuttal argument.

For reasons articulated on the record, Court denied the defendant's Motion to Dismiss Withheld Judgment without prejudice. Court instructed Mr. Thompson to

Terry Odenborg
Deputy Clerk

submit an order in accordance with its rulings.

Court recessed at 9:52 A.M.

APPROVED BY:



JOHN R. STEGNER
DISTRICT JUDGE

Terry Odenborg
Deputy Clerk

CASE NO. CR 2006-1646

2011 DEC 23 PM 4:56

CLERK OF DISTRICT COURT
LATAH COUNTY
BY CCM DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
V.)
CHARLES EARL GUESS,)
Defendant.)
_____)

Case No. CR-2006-01646

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS
WITHHELD JUDGMENT**

The Defendant's "Motion to Dismiss Withheld Judgment" having come on for hearing before the Court by conference call on November 16, 2011; the Defendant appearing by telephone with his attorneys, David Nevin and Annie McDevitt; the State appearing telephonically through the Latah County Prosecuting Attorney; and the victim, Michelle Guess, appearing telephonically; the Court having heard the arguments of the parties, the statement of the victim and having reviewed the file including the Defendant's submission of letters in support of his motion, and the Court being fully advised in the premises, good cause appearing;

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS WITHHELD
JUDGMENT: Page -1-

It is HEREBY ORDERED that the Defendant's Motion to Dismiss Withheld Judgment BE and the same HEREBY IS DENIED without prejudice for the reasons articulated by the Court on the record;

PROVIDED, however, the Defendant, having successfully completed the period of probation ordered by the Court, is DISCHARGED from probation.

DATED this ^{23rd}~~20th~~ day of ^{December}~~November~~, 2011.



John R. Stegner
District Judge

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the **ORDER DENYING DEFENDANT'S MOTION TO DISMISS WITHHELD JUDGMENT** were served on the following in the manner indicated below:

Annie McDevitt
Nevin, Benjamin, McKay & Bartlett
P.O. Box 2772
Boise, ID 83701

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

William W. Thompson, Jr.
Prosecuting Attorney
Latah County Courthouse
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Dated this 27 ^{December} day of ~~November~~, 2011.

SUSAN PETERSEN
Latah County Clerk of the Court

By: 
Deputy Clerk

CASE NO. CR2006016

2012 JAN 10 PM 4:40

CLERK OF DISTRICT COURT
LATAH COUNTY
BY CM DEPUTY

RODERICK C. BOND, ISB No. 8082
RODERICK BOND LAW OFFICE, PLLC
800 Bellevue Way NE, Suite 400
Bellevue, WA 98004
Tel: (425) 591-6903
Fax: (425) 321-0343
Email: rod@roderickbond.com

Attorneys for Defendant Charles E. Guess

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, an individual;

Plaintiff,

v.

CHARLES E. GUESS;

Defendant.

Case No.: CR-2006-0001646

STIPULATION FOR SUBSTITUTION OF
COUNSEL

The Defendant Charles E. Guess, pursuant to I.C. § 19-106 and the Idaho Criminal Rules, exercises his right to select counsel of his choice and directs that effective January 9, 2012, the Defendant Charles E. Guess has changed attorneys by substituting Roderick C. Bond of Roderick Bond Law Office, PLLC in place of Annie O. McDevitt and David Z. Nevin of Nevin, Benjamin, McKay & Bartlett, LLP as attorney for Defendant Charles E. Guess.

Service of all further papers and proceedings in this action, except original process, should be served upon Roderick C. Bond of Roderick Bond Law Office, PLLC at the address indicated on the top of page 1 of this Stipulation.

The undersigned agree that this Notice of Substitution of Counsel may be executed in counterparts and by facsimile or email attachment (e.g., pdf), which shall constitute an original.

DATED this 9th day of January, 2012.

WITHDRAWING ATTORNEYS:

Nevin, Benjamin, McKay & Bartlett, LLP

By: *Angie G. McDevitt*
Angie G. McDevitt, ISB No. 8261
David Z. Nevin, ISB No. 2280

NEW ATTORNEY:

RODERICK BOND LAW OFFICE, PLLC

By: *RBA*
Roderick C. Bond, ISB No. 8082

CHARLES E. GUESS

Charles E. Guess
Charles E. Guess

CERTIFICATE OF SERVICE

I, Roderick Bond, declare that, on the date indicated below, I served a true and correct copy of the foregoing on the following party(ies) via the method(s) indicated below:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile - (208) 883-2290
- Email (pdf attachment)

Signed this 10th day of January, 2012.



Roderick C. Bond

Since Charles' Motion to Dismiss Withheld Judgment was denied by this Court without prejudice, Charles requests that the Court grant him the required relief by enforcing his Rule 11 Plea Agreement and resulting Order Withholding Judgment because "a court, as well as the prosecution and defendant, is bound by the agreement *once the plea agreement is accepted without qualification.*" *State v. Horkley*, 125 Idaho 860, 865, 876 P.2d 142, 147 (1994). When the Court accepted the terms of the Rule 11 Plea Agreement without qualification, it lost its discretion under I.C. § 19-2604(1) – so long as Charles complied with the terms of that Rule 11 Plea Agreement and the resulting Order Withholding Judgment. As a result, Charles is entitled to "specific performance of the terms of that agreement." *Id.*

After the Rule 11 Plea Agreement was accepted, "[a] trial court exceeds its authority when it inserts additional, non-negotiated terms into a plea bargain agreement between the State and the defendant." *Costilow v. State*, 318 S.W.3d 534, 537 (Tex. Ct. App. 2010). Moreover, even if the Rule 11 Plea Agreement is ambiguous, any "ambiguities are construed in favor of the defendant." *State v. Peterson*, 148 Idaho 593, 596, 226 P.3d 535, 538 (2010). Thus, the Rule 11 Plea Agreement must be specifically enforced in a manner consistent with Charles' *reasonable understanding*, which was that his guilty plea would be set aside after completing probation. *Id.*

Moreover, there is absolutely no evidence before the Court to find that it would not be "compatible with public interest" to set aside Charles' guilty plea and dismiss this action. In two of the letters submitted to the Court, Charles' son stated that Michele advised him that she has "no objection to the full reinstatement of [Charles'] civil liberties," while Dr. Rehnberg (Charles' long-term Psychologist) stated that Charles posed no "threat to [Michele], or to himself..." Thus, even if the Rule 11 Plea Agreement was not at issue, there is nothing in the record to

warrant, let alone suggest, that setting aside Charles' guilty plea and dismissing this action would not be "compatible with public interest." *See* I.C. § 19-2604(1).

II. FACTS¹

On April 26, 2006, Charles was charged with two counts of Aggravated Assault and one count of Domestic Violence Battery involving his ex-wife, Michele Guess ("Michele"). (Criminal Information.) Prior to this action, Charles had never been accused of domestic violence or arrested or charged with any criminal offense, with the exception of minor traffic infractions. (Affidavit of Charles Guess dated January 19, 2012 ("Guess Aff."), ¶3.)

Charles is sorry and ashamed for what has transpired. (*Id.*, ¶10) With the understanding that Charles would be permitted to have his guilty plea set aside, the charges dismissed and his civil right restored, he decided to enter into a plea agreement and take responsibility for what transpired, serve his sentence, have his civil rights restored and his record erased of the charges of this action. (Guess Aff., ¶¶4 & 6.) Charles' testimony is consistent with what he advised his friend and former divorce attorney. (Affidavit of Roderick C. Bond dated January 19, 2011 ("Bond Aff."), ¶2.)

On June 16, 2006, Charles and the prosecuting attorneys executed a Rule 11 Plea Agreement, which required Charles to plead guilty to a single count of aggravated assault (the other two counts were dismissed) and he would be placed on probation for a maximum of five years and receive a withheld judgment.² (Rule 11 Plea Agreement, p. 1-3.) The terms were clear and unambiguous:

¹ All of the facts set forth in this Section II and the evidence relied cited therein are incorporated by reference into each and every argument asserted below.

² After the Rule 11 Plea Agreement was executed in 2006, I.C.R. 11 was amended on March 28, 2007. The Rule 11 Plea Agreement references "I.C.R. 11(d)(1)(C)" and subsection "(d)" is now subsection "(f)" under the amended I.R.C. 11. However, the relevant portions of the rule remain the same as it pertains to this Motion.

That the Defendant shall receive a Withheld Judgment and shall be placed on probation to the Idaho State Department of Correction for a period of no more than five (5) years...

(Rule 11 Plea Agreement, p. 2.) Charles would never have agreed to be bound by the Rule 11 Agreement, but for his *reasonable understanding* that his guilty plea would be set aside, this action dismissed and his civil rights restored upon his completion of the terms of probation. (Guess Aff., ¶¶4-9.) This was consistent with the prosecuting attorney's expectation that Charles would be permitted to have his guilty plea set aside upon completion of the terms of probation. (*Id.*; Bond Aff., ¶2; Guess Aff., ¶6.) The Rule 11 Plea Agreement was based upon the same or substantially same form that the prosecuting attorney uses for most Rule 11 Plea Agreements for a withheld judgment, with the same expectation that the guilty plea would be set aside so long as the defendant complies with the ordered conditions. (*Id.*)

The Rule 11 Plea Agreement did not contain any terms reserving any discretion for the Court regarding the timing or authority to deny setting aside his guilty plea, but the Court did have discretion to sentence Charles up to a maximum of five years of probation, determine certain conditions of probation and order certain restitution. (Rule 11 Plea Agreement, p. 1-3.) However, the Rule 11 Plea Agreement did provide that Charles would lose his right to have his guilty plea set aside, should he breach any of the terms of that Agreement. (Rule 11 Plea Agreement, p. 3.)

On August 31, 2006, a hearing was held and the Court gave *unqualified* approval of the Rule 11 Plea Agreement. (Order Withholding Entry of Judgment and Order of Probation ("Order Withholding Judgment"), p. 1-8; Rule 11 Plea Agreement, p. 1-3.) The Court's decision to accept the terms of the Rule 11 Plea Agreement³ and the authorized sentence were

³ The Court's Order stated "the defendant entered a plea of guilty to such charge which plea was accepted by the Court." (Order Withholding Judgment, p. 2.)

memorialized in the Order Withholding Judgment, which was filed on September 6, 2006 and ordered effective *nunc pro tunc* to August 31, 2006. (Order Withholding Judgment, p. 1-8.) Under the terms of the Order Withholding Judgment, the Court found “that the interests of justice would be best served if entry of judgment were withheld and the defendant placed on probation...” as required by I.C. § 19-2604(1). (Order Withholding Judgment, p. 2.)

Charles’ *reasonable understanding* of the Rule 11 Plea Agreement was that his guilty plea would be set aside, this action dismissed and his civil rights restored once he complied with his sentence and terms of probation. (Guess Aff., ¶¶4-9; Bond Aff., ¶2.) On August 31, 2011, the five-year term of probation expired. (Order Withholding Judgment.) Consequently, on September 7, 2011, Charles filed a Motion to Dismiss Withheld Judgment. (Motion to Dismiss Withheld Judgment.) Charles testified that he had complied with all terms of probation. (Affidavit of Charles Guess filed on September 7, 2011.) On November 14, 2011, fourteen letters supporting Charles were submitted to the Court. (Letters in Support of Motion to Dismiss Withheld Judgment (“Letters”).) In one of the letters, Charles’ long-term Psychologist, without compensation, advised the Court:

At no time in our counseling sessions has [Charles] ever expressed wanting to harm his ex-wife in any way. Overall, he has left me with the impression that he has no desire to have any additional contact with her, except in the context of co-parenting their son. **I do not believe that he currently poses a threat to her, or to himself at this time.**

(Letters, 11/04/2011 Rehnberg Letter, p. 2 (emphasis added); Guess Aff., ¶19.) No evidence was submitted to the Court that the “public interest” would not be served by setting aside his guilty plea, dismissing this action and restoring his civil rights. (Court File.)

On December 23, 2011, the Court denied Charles’ Motion, but it ruled that he had “successfully completed the period of probation ordered by the Court” and discharged him from

probation.⁴ (Order Denying Defendant's Motion to Dismiss Withheld Judgment.) Consequently, Charles moves this Court to enforce his contractual, constitutional and legal rights. In this Motion, Charles respectfully asserts, *inter alia*, the refusal to set aside his guilty plea, dismiss this action and restore his civil rights constitutes separate breaches of his Rule 11 Plea Agreement and resulting Order Withholding Judgment, a violation of his constitutional rights and an illegal sentence. (Rule 11 Plea Agreement; Order Withholding Judgment; Order Denying Defendant's Motion to Dismiss Withheld Judgment.)

III. ARGUMENT

Pursuant to I.C.R. 11(f), I.C.R. 33(d), I.C.R. 46.2(a), I.C.R. 47, I.C. § 19-2601(3), I.C. § 19-2604(1) and the specific terms of the Rule 11 Plea Agreement and Order Withholding Judgment, Charles moves the Court to enforce his contractual rights to have the guilty plea set aside, all charges dismissed, and his civil rights restored for the reasons set forth below. All arguments below are supported by the Affidavit of Charles Guess dated January 19, 2012 and the Affidavit of Roderick C. Bond dated January 19, 2012, which were both filed contemporaneously with this Motion.⁵

A. Charles, the prosecuting attorney and the Court entered into a valid and enforceable Rule 11 Plea Agreement.

"If the court accepts the plea agreement, the court shall inform the defendant that it will implement the disposition provided for in the plea agreement." I.C.R. 11(f)(3). "If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact." I.C.R. 11(f)(4). If a court rejects a plea agreement, it must "afford the defendant the opportunity to then withdraw the defendant's plea..." I.C.R. 11(f)(4). The court may "withhold judgment, and

⁴ Charles was on probation for 114 days longer than authorized under the Rule 11 Plea Agreement.

⁵ Although Charles provides citations to certain paragraphs of these Affidavits in this Motion, Charles incorporates by reference both of those Affidavits into each and every argument asserted below.

place the defendant on probation as provided by law and these rules.” I.C.R. 33(d). The Court has authority to “[w]ithhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation.” I.C. § 19-2601(3).

Here, all parties, including the Court, are bound by the Rule 11 Plea Agreement.

[t]hat the Defendant shall receive a Withheld Judgment and shall be placed on probation to the Idaho State Department of Corrections for a period of no more than five (5) years.

(Rule 11 Plea Agreement, p. 2.) The Rule 11 Plea Agreement did not reserve any discretion for the Court to determine if, or when, Charles would be permitted to set aside his guilty plea. (*Id.*, at p. 1-3.) On August 31, 2006, the Court gave *unqualified* approval to the terms and conditions of the Rule 11 Plea Agreement:

the defendant entered a plea of guilty to such charge *which such plea was accepted by the Court.*

(Order Withholding Judgment, p. 2 (emphasis added.) Thus, Charles and the prosecutor agreed to the Rule 11 Plea Agreement, and the Court gave *unqualified* approval of that Agreement.⁶ Thus, the Rule 11 Plea Agreement is a valid and enforceable contract, as discussed below.

B. The Court is also bound by the terms of the Rule 11 Plea Agreement.

A court is bound by the terms of a Rule 11 Plea Agreement to the same extent as a defendant and prosecutor. *State v. Horkley*, 125 Idaho 860, 865, 876 P.2d 142, 147 (1994); *Costilow v. State*, 318 S.W.3d 534, 537 (Tex. Ct. App. 2010) (“The role of the trial judge is to follow or reject the agreement...”); *Clark v. State*, 468 S.E.2d 653, 655 (S.C. 1996) (“Once a court accepts a plea agreement, it is bound to honor its promise to perform the agreement...”); *U.S. v. Ritsema*, 89 F.3d 392, 401-02 (7th Cir. 1996) (explaining that “[o]nce the court signed off on the agreement...it became bound by the terms of the agreement”); *U.S. v. Fernandez*, 960

⁶ If the Court had refused to give *unqualified* approval of the Rule 11 Plea Agreement, it would have been required to comply with I.R.C. 11(f)(4).

F.2d 771, 773 (9th Cir. 1991) (“the district court could not both accept the plea agreement made pursuant to Rule 11...and reject the sentencing provision of that agreement.”).

In *State v. Horkley*, the Idaho Supreme Court held that courts, like the defendant and prosecutor, are bound by the terms of plea agreements:

[w]e also agree with the statement of many federal courts **that a court, as well as the prosecution and defendant, is bound by the agreement once the plea agreement is accepted without qualification.**

Horkley, 125 Idaho at 865 (bold, underlined emphasis added). In *U.S. v. Ritsema*, the Seventh Circuit Court of Appeals explained how courts may not re-examine their wisdom:⁷

[O]nce [district judges] have given unqualified approval to the plea agreement, they, like the parties, become bound by the terms of that agreement. **Were courts free to re-examine the wisdom of plea bargains with the benefit of hindsight, the agreements themselves would lack finality** and the benefits that encourage the government and defendants to enter into pleas might prove illusory...Once the court signed off on the agreement at [the defendant’s] first sentencing in 1993, it became bound by the terms of the agreement...

Ritsema, 89 F.3d at 401-02 (emphasis added). In *Costilow v. State*, the Texas Court of Appeals explained how a trial court exceeds its authority if it inserts any additional, non-negotiated terms:

Only the state and the defendant may alter the terms of the agreement. The role of the trial judge is to follow or reject the agreement, not to modify its terms. If the trial court rejects the plea agreement, the defendant shall be permitted to withdraw his guilty or nolo contendere. **A trial court exceeds its authority when it inserts additional, non-negotiated terms into a plea bargain agreement between the State and the defendant,** and then makes acceptance or rejection of the plea bargain contingent on whether or not defendant complies with the additional, non-negotiated terms.

Costilow, 318 S.W.3d at 537 (internal citations omitted) (emphasis added). In *U.S. v. Fernandez*, the Ninth Circuit Court of Appeals held that the court, like the other parties, is bound by the *written* terms and conditions of the plea agreement:

⁷ In this case, apparently the Court has emphasized that Charles got a “good deal.” While this may be true for which Charles is grateful, the issue is no longer relevant. The Court accepted the Rule 11 Plea Agreement.

the district court could not both accept the plea agreement made pursuant to Rule 11...which calls for a specific sentence, **and reject the sentencing provision of that agreement.**

Fernandez, 960 F.2d at 773 (emphasis added).

Here, the Court's *unqualified* approval constitutes its agreement to be bound by the Rule 11 Plea Agreement. (See Section A.) Under the terms of the Rule 11 Plea Agreement, Charles was required to complete the terms of probation and, in return, he would receive a withheld judgment. (Rule 11 Plea Agreement.) There were no terms authorizing the Court to retain discretion to deny Charles the right to set aside his guilty plea, once he complied with the required terms. Therefore, the Court is bound by the *written* terms of the Rule 11 Plea Agreement and resulting Order Withholding Judgment, and it may not impose any new terms or conditions at this time. See *Fernandez*, 960 F.2d at 773. The refusal to set aside Charles' guilty plea is not authorized by the Rule 11 Plea Agreement and constitutes a breach of that Agreement. To the extent that the Court or prosecutor desired to retain discretion over whether Charles' guilty plea would ever be set aside, it was incumbent upon them make such terms a *written* condition of accepting the Rule 11 Plea Agreement, but they did not do so. The Court is bound by the *written* terms and conditions of the Rule 11 Plea Agreement.

C. The Court must construe the Rule 11 Plea Agreement in favor of Charles.

"The meaning of an unambiguous contract must be determined from the plain meaning of the contract's own words." *State v. Hosey*, 134 Idaho 883, 886, 11 P.3d 1101, 1104 (2000). However, any ambiguities in a plea agreement must be interpreted in favor of the defendant. *State v. Peterson*, 148 Idaho 593, 596, 226 P.3d 535, 538 (2010); *U.S. v. Jensen*, 423 F.3d 851, 854 (8th Cir. 2005) (if "a plea agreement is ambiguous, the ambiguities are construed against the

government.”). In *Peterson*, the Idaho Supreme Court held that an oral plea agreement was enforceable and explained how plea agreements must be construed in favor of the defendant:

Ambiguities in a plea agreement are to be interpreted in favor of the defendant. “As with other contracts, provisions of plea agreements are occasionally ambiguous; the government ‘ordinarily must bear the responsibility for any lack of clarity.’ “[A]mbiguities are construed in favor of the defendant. Focusing on the *defendant’s* reasonable understanding also reflects the proper constitutional focus on what induced the *defendant* to plead guilty.”

Peterson, 148 Idaho at 596 (internal citations omitted) (emphasis in original); *see also U.S. v. Fernandez*, 960 F.2d 771, 772 (9th Cir. 1992) (“To determine...the terms of the plea agreement, we look to what was reasonably understood by the defendant when he entered his plea.”).

Here, there is nothing ambiguous about the Rule 11 Plea Agreement and the terms are consistent with its clear terms and the parties’ *reasonable* understanding:

That the Defendant shall receive a Withheld Judgment and shall be placed on probation...for a period of no more than five (5) years.⁸

(Rule 11 Plea Agreement, p. 2; *see also* Guess Aff., ¶¶ 4-9; Bond Aff., ¶2.) The plain meaning of the terms of the Rule 11 Plea Agreement and resulting Order Withholding Judgment are clear and unambiguous. Charles *reasonably understood* that his plea would be set aside, this action would be dismissed and his civil rights would be restored once he complied with the terms of the Rule 11 Plea Agreement. (Guess Aff., ¶¶4-9 & 12.) Charles’ *reasonable understanding* is consistent with that of the prosecutor’s *reasonable understanding*. (Bond Aff., ¶2; Guess Aff., ¶6.) In fact, the prosecuting attorney could not recall a time when a defendant’s guilty plea was not set aside and the action dismissed once that defendant had complied with the terms and conditions imposed upon him. (Bond Aff., ¶2.)

⁸ Although the Rule 11 Plea Agreement provided flexibility with respect to the period of probation, five years was the maximum period of probation to which Charles could be sentenced under the Agreement. The Court sentenced Charles to that maximum five years of probation, in accordance with its discretion on that issue.

Moreover, the Court did not insert any further *written* terms to reserve any discretion by under that Rule 11 Plea Agreement the resulting Order Withholding Judgment, and its discretion was limited solely to determining probation as long as Charles complied with its terms.⁹ (Rule 11 Plea Agreement, p. 1-3; Order Withholding Entry of Judgment, p. 1-8.) The only *reasonable* interpretation of the Rule 11 Plea Agreement and the Order Withholding Judgment is that Charles' guilty plea will be set aside, the case dismissed and his civil rights restored, once he complied with the terms of probation. The *written* terms of the Rule 11 Plea Agreement and the resulting Order Withholding Judgment do not authorize the Court to continue withholding judgment for any period of time beyond the five years of probation agreed to by the parties.

To reiterate, the standard for interpreting the Rule 11 Plea Agreement is what Charles *reasonably understood* the *written* terms to mean when he executed that Agreement. However, even if the Rule 11 Plea Agreement was ambiguous, the *written* terms must be construed in favor of Charles. Thus, the *reasonable* interpretation of those *written* terms, construed in Charles' favor, mandates that his guilty plea must be set aside, this action dismissed and his civil rights restored. *Peterson*, 148 Idaho at 596 (“Focusing on the *defendant's* reasonable understanding also reflects the proper constitutional focus on what induced the *defendant* to plead guilty.”).

D. The Court has no discretion under I.C. § 19-2604(1).

1. The Rule 11 Plea Agreement and Order Withholding Judgment require that Charles' guilty plea be set aside and this action be dismissed.

Under I.C. § 19-2604(1), a court has authority to withhold judgment and order probation:

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 public interest,

⁹ The parties did agree that the Court would have the discretion to determine the period of probation, provided that such discretion would not exceed ordering five years of probation. The Court exercised its discretion and imposed the maximum period of five years. In addition, if Charles had breached the Rule 11 Plea Agreement, the Court would have reestablished its discretion on all matters. However, Charles never breached that Agreement.

terminate sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant...

I.C. § 19-2604(1).

Here, when the Court agreed to be bound by the terms of the Rule 11 Plea Agreement, the Court lost any discretion under I.C. § 19-2604(1) – so long as Charles complied with terms of the Rule 11 Plea Agreement and resulting Order Withholding Judgment.

First, the Court may not revisit the issue of whether it is “convinced by the showing made that there is no longer cause for continuing the period of probation.” I.C. § 19-2604(1). Charles has complied with all of the terms of probation. (Guess Aff., ¶¶9-11.) Thus, the Court has no discretion to extend Charles’ probation under I.C. § 19-2604(1). (*See also* Section I below) The Court is bound by the terms of the Rule 11 Plea Agreement, which included the *written* terms that probation may not exceed the period of five years.

Second, the Court already made the required finding under I.C. § 19-2605(1) that it was “compatible with the public interest” to accept the terms of the Rule 11 Plea Agreement:

the defendant entered into a plea of guilty to such charge which plea was accepted by the Court...**the interests of justice would be best served if the entry of judgment were withheld** and the defendant placed on probation to the Idaho State Board of Correction.

(Order Withholding Judgment, p. 2 (emphasis added).) That finding is consistent with the terms of the Rule 11 Plea Agreement and the “compatible with public interest” requirement of I.C. § 19-2604(1). Thus, the Court may not now revisit whether it is “compatible with public interest” to accept the Rule 11 Plea Agreement. The Court has already, directly or implicitly, made that finding when it accepted that Agreement *without qualification*.

Therefore, based upon the Rule 11 Plea Agreement, the Court has no discretion to extend probation or to now refuse to allow Charles to set aside his guilty plea because it is not

“compatible with public interest” as provided under I.C. § 19-2604(1). The Court lost that discretion when it gave *unqualified* approval of the Rule 11 Plea Agreement.

2. Regardless, there is no evidence before the Court that it would not be “compatible with public interest” to set aside the guilty plea.

In order to refuse a request to set aside a guilty plea, there must be evidence that it is not “compatible with public interest.” I.C. § 19-2604(1); *see also State v. Wagenius*, 99 Idaho 273, 581 P.2d 319 (1978); *Breakzone Billiards v. City of Torrance*, 81 Cal.App.4th 1205, 1246, 97 Cal.Rptr.2d 467, 499 (Cal. Ct. App. 2000) (in a civil context, explaining “it is appropriate for an agency to consider traffic, parking, safety, noise and nuisance problems; these clearly represent concerns that are well within the domain of the public interest...”). “Public interest” means:

The general welfare of the public that warrants recognition and protection...Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

Black’s Law Dictionary, p. 1350 (9th ed. 2004) (emphasis added). In *State v. Wagenius*, the dissent explained the meaning of “compatible with public interest” (although it was not at issue):

Clearly, the successful completion of two years of a three year probation period, during which she was subject to the constant threat of 30 days’ incarceration in the Kootenai County jail, together with some bona fide effort at restitution, should result in a dismissal and discharge as being “compatible with the public interest.”

Wagenius, 99 Idaho at 286 (Bistline, J. dissenting) (emphasis added).

Here, Charles has complied with all terms of probation, served thirty days in jail, paid all restitution, completed community service and paid all fines. (Guess Aff., ¶¶9-11.) Charles is ashamed of what transpired and has learned from his mistakes. (*Id.*, at ¶10.) Fourteen people wrote letters to the Court supporting Charles. (Letters.) Other individuals with knowledge of the situation have stated that Charles poses no threat to Michele, including Charles’ long-term Psychologist who voluntarily wrote a letter on behalf of Charles without compensation. (Letters;

Bond Aff., ¶6; Guess Aff., ¶19.) Dr. Rehnberg, voluntarily and without being paid any compensation, addressed any concerns about Charles harming Michele:

At no time in our counseling sessions has [Charles] ever expressed wanting to harm his ex-wife in any way. Overall, he has left me with the impression that he has no desire to have any additional contact with her, except in the context of co-parenting their son. **I do not believe that he currently poses a threat to her, or to himself at this time.**

(Letters, 11/04/2011 Rehnberg Letter, p. 2 (emphasis added); Guess Aff., ¶19.) Other than Michele's statement at the last hearing, no person has taken any action or provided any testimony or evidence that Charles poses any risks or threats to anyone or the public. There is also no evidence that Charles poses any threats to Michele, other than the statements made by her. Charles' satisfactory completion of probation, payment of restitution, payment of fines, community service and incarceration for 30 days, together with his testimony, unequivocally proves that he has complied with all obligations and is reformed. (Guess Aff., ¶¶1-21.)

There is absolutely no evidence that it is not "compatible with public interest" to set aside Charles' guilty plea, dismiss this action and to restore his civil rights. A defendant who complies with all terms imposed upon him has satisfied the "compatible with public interest" requirement. *See Wagenius*, 99 Idaho at 286 (Bistline, J. dissenting). "A withheld judgment is a judgment subject to a condition. Unless the defendant complies with the condition, judgment will not be withheld and the guilty plea will not be erased." *U.S. v. Locke*, 409 F. Supp. 600, 604 (D.C. Idaho 1976). Charles has satisfied all conditions imposed upon him. (Guess Aff., ¶¶9-14; Rule 11 Plea Agreement; Order Withholding Judgment.) Charles has been reformed. He remains apologetic and ashamed of what transpired. (*Id.*, ¶10.) There is no evidence that he poses a risk to anyone – let alone the community as a whole. With all due respect to the Court and Michele,

there is no basis to not set aside Charles' guilty plea because it is not "compatible with public interest" based exclusively on Michele's statements or concerns.¹⁰

There is no evidence that setting aside Charles' guilty plea is not "compatible with public interest." I.C. § 19-2604(1). Without evidence that Charles poses a risk to the public or that he has not complied with his sentence and probation, there is no basis to find that it is not "compatible with public interest" to set aside his guilty plea, dismiss this action and restore his civil rights – notwithstanding his rights under the Rule 11 Plea Agreement.

E. The Rule 11 Plea Agreement prevails over I.C. § 19-2604(1).

"[W]here conflict exists between statutory criminal provisions and the Idaho Criminal Rules in matters of procedure, the rules will prevail." *State v. Currington*, 108 Idaho 539, 541, 700 P.2d 942, 944 (1985).

Here, Charles has complied with the required terms of probation. Thus, the only issue is the *procedural* step of setting aside his guilty plea, dismissing this action, and restoring his civil rights. Once the Court accepted the Rule 11 Plea Agreement, entered the resulting Order Withholding Judgment and Charles complied with the required conditions, the remaining issue is the purely the *procedural* step of setting aside his guilty plea. Thus, the Rule 11 Plea Agreement prevails over I.C. § 19-2604(1), and the Court is required to set aside Charles' guilty plea.

F. Charles has complied with the terms and conditions of the Order Withholding Judgment, which was based upon the Rule 11 Plea Agreement.

A court may "[w]ithhold judgment on such terms and for such time as it may prescribe and may place the defendant on probation." I.C. § 19-2601(3). If a defendant completes probation, a court has authority to "set aside the plea of guilty...and finally dismiss the case..."

¹⁰ With all due respect to the Court and Michele, if the standard for setting a guilty plea aside is whether the victim consents or still has fear of the perpetrator, guilty pleas would never be set aside because no victim would ever want the perpetrator to have his guilty plea set aside. This is precisely why I.C. § 19-2604(1) required "compatible with public interest" and not "compatible with the victim's interest."

I.C. § 19-2604(1). A “court...may...withhold judgment, and place the defendant on probation as provided by law and these rules...[and] [t]he conditions of a withheld judgment or probation may also include...provisions” such as the payment of fees or voluntary services. I.C.R. 33(d).

Where the language of a statute is plain and unambiguous, the court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000).

“A withheld judgment does not erase a conviction unless defendant satisfactorily completes the conditions of sentence imposed upon him...” *Locke*, 409 F. Supp. at 604;¹¹ see also *Ex parte Medley*, 73 Idaho 474, 479, 253 P.2d 794, 797 (1953). In *Medley*, the Idaho Supreme Court explained the intent of a withheld judgment:

The obvious and commendable objective of the Act which seeks in a proper case to avoid the stigma of a judgment of conviction would be in major part defeated if the contention of petitioner is accepted. To withhold judgment after a plea of guilty protects the defendant at that time against the stigma of a conviction which may be forever avoided should the defendant conform to its terms and conditions. **This creates, and rightfully so, a hope in the heart of the accused that he may ultimately be released under an order of probation without the stigma of a judgment of conviction.** This is an incentive for complete rehabilitation and reform, one of the salutary objectives of the Act.

Medley, 73 Idaho at 479 (emphasis added). In *Locke*, the court explained how a withheld judgment is implemented:

A withheld judgment is a judgment subject to a condition. **Unless defendant complies with the condition, judgment will not be withheld and the guilty plea will not be erased...**

Locke, 409 F.Supp. at 604 (emphasis added). In *State v. Hanes*, 139 Idaho 392, 394, 79 P.3d 1070, 1072 (2003), the Idaho Supreme Court rejected the argument that a defendant should be

¹¹ In *Locke*, a stipulation governed the withheld judgment and not the written terms of a constitutionally protected Rule 11 Plea Agreement. In Charles' case, the Court already made the required findings when it accepted the Rule 11 Plea Agreement and entered the Order Withholding Judgment. (Order Withholding Judgment.)

afforded relief so long as he did not “willfully” violate his probation, but the Court explained the intent of the Idaho Legislature to permit a defendant to have his guilty plea set aside:

we presume that the legislature intended that in order for a defendant to be granted relief under I.C. § 19-2604(1), he or she must comply with the terms and conditions of probation at all times and that noncompliance with the terms and conditions of probation for whatever reason precludes relief. Therefore, the plain language of the statute permits a district court to deny relief if the defendant violates the terms and conditions of his or her probation, regardless of whether the violation was willful.

Hanes, 139 Idaho at 394 (emphasis added).

The holdings in *Hanes*, *Locke* and *Medley* are consistent with the requirement that if a defendant complies with all of the terms of a withheld judgment, then the defendant will be permitted to withdraw his guilty plea and the case will be dismissed. Further, these cases implicitly hold that a court has no discretion to deny a request to set aside a guilty plea upon the defendant’s compliance with the terms of probation. This is sound judicial policy implemented by the Legislature to reform defendants. The Legislative intent of reforming criminals would be defeated if the government is not required to live up to its end of the bargain. It rewards defendants who comply with the terms of a withheld judgment and punishes those who fail to comply. Defendants who properly and timely perform under withheld judgments are rewarded by having their guilty pleas set aside and their cases dismissed.

Here, the terms and conditions of the Order Withholding Judgment are consistent with the plain and unambiguous interpretation of I.C. § 19-2601(3) and I.C. § 19-2604(1) – that Charles, like any other defendant, would be entitled to have his guilty plea withdrawn and the action dismissed once he complied with the required terms and conditions. Under the plain and obvious reading of I.C. § 19-2601(3) and I.C. § 19-2604(1), Charles is entitled to have his guilty plea set aside, this action dismissed and his civil rights restored since he has complied with all

the terms of probation. (Guess Aff., ¶¶9-11.) This is an independent basis to set aside Charles' guilty plea, assuming that the parties had never executed the Rule 11 Plea Agreement.

Notably, if a court does not abuse its discretion by denying a defendant's request for a withheld judgment "if the trial court has sufficient information to determine that a withheld judgment would be inappropriate" (*State v. Geier*, 109 Idaho 963, 965, 712 P.2d 664, 666 (1985)), then it follows that a court abuses its discretion if it does not dismiss a withheld judgment after a defendant has complied with the terms prescribed by the court (particularly, as here, where there is no information indicating that the Court should not set aside the guilty plea). Charles has timely and satisfactorily complied with all of the terms and conditions of the Order Withholding Judgment.¹² The Court's discretion to impose additional terms or conditions upon Charles has long passed. Charles has lived up to his end of the bargain. Charles should be permitted to set aside his guilty plea, dismiss this action and restore his civil rights.

G. Although Charles appreciates the Court's concerns, he respectfully asserts the Court is barred from considering matters outside of the Rule 11 Plea Agreement, except for whether Charles complied with the terms of probation.

Res judicata and collateral estoppel may be applied to criminal actions. *State v. Rhoades*, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000); *State v. Powell*, 120 Idaho 707, 819 P.2d 561 (1991). "A consent judgment is conclusive adjudication with the same force and effect as any other judicially enforceable decree...except to the extent that the consent excuses error and operates to end all controversy between the parties." 46 Am. Jur. 2d Judgments § 198.

Res judicata and collateral estoppel bar the reconsideration of any facts and legal claims at issue when the Court gave *unqualified* approval of the Rule 11 Plea Agreement. The same parties, claims, issues and evidence was at issue and conclusively resolved when the Court

¹² The Court has already ruled that Charles satisfactorily completed the terms of his probation, and, consequently complied with the terms of the Order Withholding Judgment. (See Order Denying Motion to Dismiss Withheld Judgment.)

accepted the Rule 11 Plea Agreement. Thus, all issues and evidence relating to this action known at that time were merged into the Rule 11 Plea Agreement and the resulting Order Withholding Judgment. From that point onward, the only issue in this case is whether Charles complied with the terms of the Rule 11 Plea Agreement and resulting Order Withholding Judgment. If he complies, there is nothing left to decide.

In addition, the resulting Order Withholding Judgment separately bars reconsideration of any issues under I.C. § 19-2604(1) because the Court agreed to the terms of the Rule 11 Plea Agreement, placed Charles on probation and made the required finding that “the interests of justice would be best served” as required I.C. § 19-2604(1). (Order Withholding Judgment, p. 2.)

Charles complied with the terms of probation. (Guess Aff., ¶¶9-11.) Thus, there are no further issues or claims that the Court may consider, other than to enforce Charles’ end of the bargain and rights under the Rule 11 Plea Agreement. Therefore, the Rule 11 Plea Agreement and resulting Order Withholding Judgment bars the re-litigation or consideration of any facts, issues or claims that were known or at issue at the time the Rule 11 Plea Agreement was accepted in this action pursuant to the doctrines of *res judicata* and collateral estoppel.

H. Charles is entitled to seek specific performance of the Rule 11 Plea Agreement.

“Allowing the government to breach a promise that induced a guilty plea violates due process.” *Margalli-Olvera v. INS*, 43 F.3d 345, 351 (8th Cir. 1994). When a defendant’s guilt plea rests in any significant degree on a promise or agreement of the prosecution, such promise must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495 (1971). “If the court accepts the plea agreement, the court...will implement the disposition provided for in the plea agreement.” I.C.R. 11(f)(3).

“One possible remedy for the breach of a plea agreement is specific performance of the terms of that agreement.” *State v. Horkley*, 125 Idaho 860, 865, 876 P.2d 142, 147 (1994); *see also U.S. v. Yellow*, 627 F.3d 706, 709 (8th Cir. 2010) (“...to breach a promise that induced a guilty plea violates due process’ and undermines the ‘honor of the government, public confidence in the fair administration of justice...’”) (citations omitted); *U.S. v. Ritsema*, 89 F.3d 392, 402 (7th Cir. 1996) (“We believe the plea agreement must be honored...”).

In *Horkley*, the Idaho Supreme Court held that a defendant is entitled to seek specific performance of the terms of a plea agreement:

Once a defendant’s plea agreement has been entered, the defendant has some enforcements rights analogous to those in contract law. One possible remedy for the breach of a plea agreement is specific performance of the terms of that agreement....We also agree...**that a court**, as well as the prosecution and defendant, **is bound by the agreement** *once the plea is accepted without qualification*.

Horkley, 125 Idaho at 865 (internal citations omitted) (emphasis added).

Here, Charles and the prosecutor executed the Rule 11 Plea Agreement and the Court accepted that Agreement *without qualification*. (See also Sections A-C above.) Thus, everyone, including the Court, is bound by the terms of that Rule 11 Plea Agreement. No one, including the Court,¹³ may now insert any new non-negotiated terms or conditions into that Rule 11 Plea Agreement or the resulting Order Withholding Judgment, as set forth in Section B above. The terms and conditions presently at issue in the Rule 11 Plea Agreement are clear and unequivocal:

That the Defendant shall receive a Withheld Judgment and shall be placed on probation...for a period of no more than five (5) years.¹⁴

(Rule 11 Plea Agreement, p. 2.)

¹³ It appears that the Court has refused to set aside Charles’ guilty plea because of Michele’s fears of Charles. We respect the Court’s concern and mean no disrespect to either Michele or the Court by asserting the arguments in this Motion.

¹⁴ Although the Rule 11 Plea Agreement provided discretion with respect to the length of probation, the five years of probation ordered by the Court was the maximum length authorized by that Agreement.

The Rule 11 Plea Agreement has been breached. Charles' guilty plea has not been set aside, this action has not been dismissed and his civil rights have not been restored. He faithfully completed the terms of his probation. He served 30 days in jail. He has paid his price. He has lived up to his end of the bargain, yet he remains a convicted felon with limited civil rights. (Guess Aff., ¶¶9-11.) Charles should receive what is due to him under the Rule 11 Plea Agreement by specifically performing it by setting aside his guilty plea, terminating his probation, dismissing this action and restoring his civil rights.

I. Charles has received an illegal sentence.

“The court may correct an illegal sentence at any time and may correct an illegal sentence at any time.” I.C.R. 35. For aggravated assault, the maximum sentence is five years of imprisonment. I.C. § 18-906. Under I.C. § 19-2601(7), the maximum time Charles may be on probation is “for a period not more than the maximum period for which the defendant might have been imprisoned.” I.C. § 19-2601(7).

Respectfully, the Court's Order Denying Defendant's Motion to Dismiss Withheld Judgment constitutes an illegal sentence under I.C.R. 35. The same holds true for any further delay in allowing Charles to withdraw his plea, dismiss this action and have his rights restored. The longest Charles should be punished is five years – regardless of whether such punishment is in the form of extended probation or the refusal to allow him to set aside his guilty plea and dismiss this action. Even though Charles is grateful that the Court terminated his probation, he is still considered a convicted felon based upon the denial of his request to set aside his guilty plea and restore his civil rights. He has limited civil rights. He has a criminal record. These conditions imposed upon Charles, which were not included in the *written* Rule 11 Plea Agreement, constitute an illegal sentence. Thus, the Court should correct the illegal sentence.

J. The Court has no jurisdiction to withhold judgment indefinitely.

Once a district court enters a withheld judgment, it has no power or discretion to indefinitely withhold ruling on a withheld judgment:

The court has power in the exercise of its discretion to withhold judgment for a reasonable time for any purpose and, where this is done, **jurisdiction is retained during the period of probation**; on the other hand, **the power of the court to indefinitely suspend the pronouncement of sentence or the withholding of judgment is denied...**¹⁵

Ex parte Medley, 73 Idaho 474, 483-84, 253 P.2d 794, 800 (1953) (emphasis added).

Here, since Charles has completed his terms of probation, the Court had no jurisdiction over him to continue withholding judgment for an indefinite period of time – let alone any period of time. Moreover, the Order Denying Defendant’s Motion to Dismiss is arguably void. The Court lacks the jurisdiction and authority to take any other action other than setting aside Charles’ guilty plea, dismissing this action and restoring his civil rights.

K. The failure to set aside Charles’ guilty plea, dismiss this action and restore his civil rights violates Charles’ constitutional rights, and further constitutes cruel and unusual punishment.

“Allowing the government to breach a promise that induced a guilty plea violates due process.” *Margalli-Olvera*, 43 F.3d at 351. Under the Idaho and U.S. Constitutions, no person shall “be deprived of life, liberty, or property with due process of law.” Idaho Const. art. 1 § 13; U.S. Const. Amend 14 § 1. States may not pass any “law impairing the obligation of contracts.” U.S. CONST. Art. 1 § 10. “[N]o cruel and unusual punishments” may be inflicted. U.S. Const. Amend 8.

Charles respectfully asserts that his constitutional rights are being violated and he is being deprived of life and liberty, including the restoration of his civil liberties. Charles was

¹⁵ However, this does not deprive the Court of jurisdiction to grant Charles the requested relief. *Housely v. State*, 119 Idaho 885, 890, 811 P.2d 495, 500 (1991) (holding that Court has jurisdiction to grant a defendant relief under I.C. 19-2604, even though the defendant delayed ten years.)

induced to enter into the Rule 11 Plea Agreement and thereby waived his right to a jury trial and due process. The inducement that Charles' plea would be set aside and his civil rights restored is not being honored. He is being deprived of living his life without indefinitely having a withheld judgment held over him. Until his plea is set aside, Charles is considered a convicted felon. Having a withheld judgment being indefinitely held over Charles' head, depriving him of his civil rights and the continued branding of him as a convicted felon constitutes cruel and unusual punishment – Charles has served his required sentence and punishment. Charles' constitutional rights require the enforcement of the terms of the Rule 11 Plea Agreement based upon Charles' *reasonable* understanding of the terms of that Agreement when he waived his rights and executed it.

If, on the other hand, Court believes that I.C. § 19-2601 or I.C. § 19-2604 grants it the unlimited discretion to indefinitely suspend Charles' withheld judgment, then Charles asserts that those statutes are vague, indefinite and uncertain, and are, therefore, unconstitutional. Finally, Charles asserts that it would be unconstitutional to permit I.C. § 19-2604 or I.C. § 19-2601 from interfering with his contractual rights under the Rule 11 Plea Agreement. Charles respectfully asserts that his constitutional rights under the U.S. Constitution and the Idaho Constitution have been, and are being, violated.

L. The Court should grant Charles Motion effective September 1, 2011.

1. Any order granting Charles Motion should be effective September 1, 2011.

“Clerical mistakes in judgments, orders or other parts of the record arising from oversight or omission may be corrected by the court at any time...” I.C.R. 36. Idaho recognizes the court's inherent authority to enter orders *nunc pro tunc*. See e.g., *State v. Broadhead*, 139 Idaho

663, 669, 84 P.3d 599, 605 (Ct. App. 2004) (explaining that “[t]his shortcoming can be remedied, and the fine will be enforceable *nunc pro tunc*...”).

Here, the Court can easily remedy any oversight by simply entering the order granting Charles’ Motion and date that order effective *nunc pro tunc* to September 1, 2011. That way, the order would reflect the proper date that Charles’ probation should have been terminated.¹⁶ In addition, it follows that the other relief Charles requests herein should also be dated effective September 1, 2011, since that is the date that triggers Charles’ right to have his guilty plea set aside, this action dismissed and his rights restored.

2. The order should include the restoration of Charles’ civil rights.

“The final dismissal of the case as herein provided shall have the effect of restoring the defendant with his civil rights.” I.C. § 19-2604(1). There are no limits or conditions on the rights which a defendant regains. *Manners v. Bd. of Veterinary Med.*, 107 Idaho 950, 952, 694 P.2d 1298, 1300 (1985).

There is nothing in the Rule 11 Plea Agreement or the Order Withholding Judgment that states – let alone even infers – that Charles’ civil rights will not be restored, and, as discussed above, any ambiguities, if they existed, must be resolved in favor of Charles. Thus, Charles’ civil rights, including, without limitation, his right to vote, must be restored since he has complied with the terms of the Rule 11 Plea Agreement and Order Withholding Judgment.

3. The order granting Charles’ Motion, if any, should include a formal termination of the no contact order.

Under the terms of the Order Withholding Entry of Judgment, probation was only subject to extension “for non-payment of costs, fines, and restitution or for unsatisfactory performance.”

¹⁶ Charles acknowledges and appreciates that the Court discharged Charles from probation in its Order Denying Defendant’s Motion to Dismiss Withheld Judgment, but he still asserts that probation should be terminated again for clarification and to reflect the correct termination date of September 1, 2011.

(Order Withholding Judgment, p. 7.) One of the “Special Conditions of Probation” was the “No Contact Order,” more specifically, that “[t]he defendant shall have no contact with the victims herein outside of legal proceedings.” (*Id.*, p. 7-8.)

When Charles completed his five years of probation, not only is the Court and State bound by the terms of the Rule 11 Plea Agreement to dismiss his withheld judgment, but the “No Contact Order automatically terminated when his probation was terminated.”¹⁷

M. In the alternative, Charles requests clarification of the Court’s Order Denying Defendant’s Motion to Dismiss Withheld Judgment.

If the Court denies Charles the relief that he is seeking in his Motion, then he respectfully requests that the Court clarify its Order Denying Motion to Dismiss Withheld Judgment. Specifically, Charles respectfully requests that the Order be clarified to address: (1) when he may renew his motion to set aside his guilty plea, have this action dismissed, and have his civil rights restored; (2) the specific terms and/or conditions, if any, imposed by the Court, so that Charles may comply with such terms and/or conditions; (3) whether the order specifically terminates the “No Contact Order” so that Charles may attend his son’s graduation, as Michele will undoubtedly be at the ceremony as well;¹⁸ and (4) Charles respectfully requests a written decision explaining the legal and factual basis for that Order.

IV. CONCLUSION

For the reasons articulated above, Charles respectfully requests that the Court grant his Motion, permit him to set aside his guilty plea, terminate probation, terminate the no contact

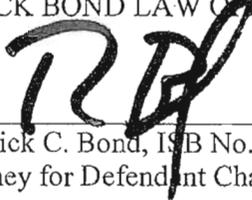
¹⁷ To the extent required, Charles requests that the order include any necessary notices as required by I.C.R. 46.2(a). The undersigned, no being a well-versed criminal attorney, is unsure of the procedure.

¹⁸ The no contact order appears to have terminated when the Court terminated probation. However, Charles respectfully requests clarification of the termination of the no contact order so that he has a written order stating so. Charles intends to travel to his son’s graduation ceremony and it is anticipated that Michele will attend as well. (Guess Aff., ¶18.)

order, dismiss this action and restore his civil rights. In the alternative, Charles requests clarification of the Court's Order Denying Defendant's Motion to Dismiss Withheld Judgment.

RESPECTFULLY SUBMITTED this 19th day of January, 2012.

RODERICK BOND LAW OFFICE, PLLC

By: 
Roderick C. Bond, ISB No. 8082
Attorney for Defendant Charles E. Guess

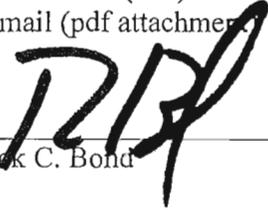
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of January, 2012 I caused to be served true and correct copies of the foregoing document to the following parties:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile - (208) 883-2290
- Email (pdf attachment)



Roderick C. Bond

information on the facts and my state of mind leading up to my execution of that Rule 11 Plea Agreement. The true and correct originals of my Rule 11 Plea Agreement and the Order Withholding Judgment were filed in this action on June 16, 2006 and September 6, 2006, respectively. Therefore, I will not attach them to this Affidavit.

3. I have lived in Moscow, Idaho for thirty-seven years. Prior to and after the event that resulted in the charges being filed against me in this action, I had never been arrested or charged with any crime, with the exception of minor traffic infractions. Other than the unfortunate event that took place pertaining to this action (for which I am truly sorry), there were never any accusations of domestic abuse or domestic violence charges over the course of my approximate thirty-year marriage with my ex-wife Michele D. Guess ("Michele"). With the exception of my acts that day which resulted in the filing of charges against me in this action, I believe that I have lived my life as a good citizen, caring and generous physician, and a devoted father and husband. These facts, coupled with wanting to take responsibility for my actions, played a significant role in my decision to agree to a Rule 11 Plea Agreement.

4. I was aware that I had the option of having my case decided by jury, but I wished to accept responsibility for my actions, pay the price and then be rewarded for doing so. I carefully reviewed the Rule 11 Plea Agreement prior to signing it. It was explained to me by my attorney and I understood that if I complied with all of the terms and conditions in that Rule 11 Plea Agreement (including up to five years of probation), then I would be permitted to have my guilty plea set aside, this action dismissed and my civil rights restored, and there would be nothing on my previously unblemished criminal record. Based upon my understanding that I

would receive a withheld judgment and that my guilty plea would be set aside in no more than five years if I complied with all the terms of my sentence and probation under the terms of the Rule 11 Plea Agreement (and that no trace of this action would be on my record), I agreed to waive my right to a jury trial and pled guilty to one of the three charges.

5. On June 16, 2006, I executed the Rule 11 Plea Agreement, which was filed with the Court on that same day. I understood that the Rule 11 Plea Agreement was subject to Court approval in this action. I understood that if the Court rejected the Rule 11 Plea Agreement, then I could withdraw my guilty plea and be afforded my right to a jury trial on the charges against me. I also understood that if the Court accepted the terms of my Rule 11 Plea Agreement, then it was also bound by the terms of the Rule 11 Plea Agreement.

6. I cherish my civil rights. Having my civil rights is extremely important to me and this was one of the material reasons why I agreed to be bound by the Rule 11 Plea Agreement. I wanted to be able to once again enjoy all my civil liberties. I understood my obligations under the Rule 11 Plea Agreement and pledged to comply with those obligations. In return, I had the expectation that if I complied with my obligations that I would be permitted to withdraw my guilty plea, have this case dismissed and have my cherished civil rights restored. I was specifically advised and understood that with the Rule 11 Plea Agreement, not only would the charges be dropped and rights restored, but my record would be expunged and all that all remaining as far as this case was concerned was that I had been arrested. I was subsequently advised by the Court after the Order Withholding Judgment was entered that "I got a good deal." I was in agreement with the Court's statement and continued to be compliant in the court

mandates for my probation requirements for the duration of the five years. My former attorney and I met with Mr. Thompson at about the half way point in the probationary period and I asked him when Michele would cease to be able to exert any influence on me regarding my crime. He told me, that once I satisfactorily completed my probation, the restraining order is removed and she has no further involvement or influence in this case. His statement reassured and strengthened my resolve to continue my compliance as to what to expect going forward. Mr. Thompson further indicated to my former attorney that after my probation period was completed that he believed that Michele should not be allowed to have any input into whether or not the Rule 11 Plea Agreement was honored.

7. At no time before entering into the Rule 11 Plea Agreement up to the time that the Court accepted that Agreement by entering the Order Withholding Judgment did anyone (including the Court) advise me that if I complied with all of the terms and conditions imposed upon me in the Rule 11 Plea Agreement, the Court could still deny my request to have my guilty plea withdrawn, to have the action dismissed and to have my civil rights restored.

8. At no time before or after entering into the Rule 11 Plea Agreement up to the time that the Court accepted that Agreement by entering the Order Withholding Judgment did anyone (including the Court) advise me that judgment could be withheld indefinitely. I would have never executed the Rule 11 Plea Agreement or pled guilty had I known that the Court could refuse to have my guilty plea set aside, dismiss this action or restore my civil rights. It was my understanding that everyone was bound by the Rule 11 Plea Agreement.

9. As of September 1, 2011 and through the date that my probation was terminated, I

faithfully and without violation served my sentence and completed my 5 years of probation in accordance with the Rule 11 Plea Agreement and Order Withholding Entry of Judgment and Order of Probation. I was also never found to be in violation of my probation, despite several unannounced visits by the probation officers to my residence. I was under the constant threat that if I violated the terms of my probation in any way, then I would be in violation of the Rule 11 Plea Agreement and I could be subject to significant time in jail. I served my 30 days in jail. I promptly paid all court costs, fines, and other mandated costs, sometimes two months in advance of the due date. Because of my compliance, over time I was given certain additional liberties to travel and was eventually placed on unsupervised status.

10. I apologize to the Court and the prosecuting attorney's office for having to expend time and resources in this action. Although I will forever be ashamed and sorry to Michele, Stan Welsh, my friends, my family, my colleagues and the general public for the events that took place that led up to this action, I have complied with the sentence, probation and restitution ordered by the Court and have learned from my mistakes. I know that there are not enough words or apologies that can take back what I did to Michele and her attorney Mr. Welsh that day during my divorce proceedings. There was no excuse for what I did that day. All I can say is that it will never happen again. The only contact that I may have with Michele is if we both attend events or holidays for our son, e.g., his graduation, wedding, grandchildren birthdays, or other special holidays or events.

11. As noted by the Court in its Order Denying Defendant's Motion to Dismiss Withheld Judgment and as I previously testified, I have complied with all the terms of my

probation and all other terms of the Rule 11 Plea Agreement and the Order Withholding Entry of Judgment and Order of Probation. In addition, I paid all restitution ordered by the Court in this action. In fact, I was actually on probation for over five years, which was more than I agreed to in the Rule 11 Plea Agreement and almost four months more than was the maximum possible sentence under the terms of the Rule 11 Plea Agreement. Probation was a material portion of my punishment and it was very stressful. I do not feel any different at this time as my future is unknown, my liberties are not restored and I still live under a cloud of suspicion and uncertainty.

12. Had I known before I executed the Rule 11 Plea Agreement that after I completed the terms and conditions required under the Rule 11 Plea Agreement and the Order Withholding Judgment that I would not have the right to set aside my guilty plea, have this action dismissed and have my civil rights restored, I would never had executed the Rule 11 Plea Agreement or pled guilty to any of the charges against me. I would have proceeded to trial.

13. Although I respect the Court and appreciate its concern for Michele, I had no knowledge that if I complied with all of the terms and conditions imposed in my Rule 11 Plea Agreement and the resulting Order Withholding Judgment, the Court would still have the discretion to not allow me to set aside my guilty plea, have this action dismiss and my civil rights restored. These are terms and conditions that were never included in the Rule 11 Plea Agreement and were not otherwise explained to me by the Court or any attorney prior to entering into the Rule 11 Plea Agreement or when I appeared at the hearing when the Court accepted the terms of the Rule 11 Plea Agreement. By having the Order Withholding Judgment held over my

head, I am considered a convicted felon under the law.

14. Although I can appreciate the Court's concerns, I believe that I have contractual rights under the Rule 11 Plea Agreement. The prosecutor and I agreed to be bound by the terms of the Rule 11 Agreement. The refusal to allow me to withdraw my guilty plea, dismiss this action and restore my civil rights is the equivalent to extending probation, but indefinitely doing so. Even though the Court terminated my probation when it entered its Order Denying Defendant's Motion to Dismiss Withheld Judgment, I continue to feel as though nothing has changed, only now I do not understand what is required of me in order to have this action dismissed and my civil rights restored. The Court's Order does not state when, or if, I can request for my guilty plea to be withdrawn, the case dismissed and my civil rights restored.

15. I retained a well-respected law firm from Boise who emphasizes "criminal law" in its practice to ensure that that my plea was set aside, this action was dismissed and, equally important, that my civil rights were restored. I was referred to them by my former divorce attorney and present attorney, Roderick C. Bond, who does not focus his practice on criminal law matters. After I had completed my probation and all other terms asked of me, my former attorneys filed a Motion to Dismiss Withheld Judgment. In that Motion, my former attorneys only addressed I.C. § 19-2604(1) and did not address my rights under the Rule 11 Plea Agreement, despite my belief that the Rule 11 Plea Agreement was controlling.

16. Without waiving any attorney-client privilege as to other matters, I expressed my concerns that my Rule 11 Plea Agreement was not being honored. Despite my concerns, no action was taken by my past attorneys to enforce my rights under the Rule 11 Plea Agreement.

Notwithstanding my Rule 11 Plea Agreement, the Court entered its Order Denying Defendant's Motion to Dismiss Withheld Judgment. Because of the Court's decision and my belief that my former attorneys had not presented adequate arguments to enforce my rights under my Rule 11 Plea Agreement, I retained Roderick C. Bond to handle the present motion. Upon Mr. Bond's advice, I am pursuing the Motion filed contemporaneously with this Affidavit. I know that the Court's time is valuable, so I apologize for any inconvenience.

17. As a result of the above and the legal arguments asserted by my attorney Roderick Bond and based upon the fact that I have complied with all terms, conditions and restitution imposed upon me, I am respectfully requesting that the Court enforce my Rule 11 Plea Agreement and Order Withholding Entry of Judgment and Order of Probation, and permit me to withdraw and/or set aside my guilty plea, terminate all probation, terminate the "No Contact Order" with my ex-wife Michele, dismiss this action and restore all of my civil rights. I have lived up to my end of the bargain under the Rule 11 Plea Agreement, and, in fact, was on probation for almost 4 months longer than the maximum amount under the terms of my Rule 11 Plea Agreement. As a result, I respectfully request that my rights be honored under the Rule 11 Plea Agreement.

18. A term of the probation included a "No Contact Order" with Michele and I understood that the "No Contact Order" would terminate in accordance with the Rule 11 Plea Agreement and Order Withholding Judgment, which was not to exceed five years. Although I was advised by the clerk's office that the "No Contact Order" against me has been terminated, I respectfully request confirmation that I still have a "No Contact Order" against me with respect

to my ex-wife, Michele. If there is still a "No Contact Order" or there is a risk that one is still in effect, then I will be unable to attend my son's graduation ceremony because he has advised me that Michele plans to attend that ceremony. To my knowledge, there is no specific document or order that specifically states that the "No Contact Order" has been terminated. It is my wish to be able to attend my son's graduation on May 14, 2012, in Philadelphia, Pennsylvania, without fear of potentially violating any no contact orders or provisions. Thus, I am respectfully requesting that the Court enter a formal order clarifying this issue.

19. On November 14, 2011, fourteen different letters were submitted to the Court in my support. I did not pay any compensation or otherwise influence any of those individuals in any way to submit his or her letter in my support. They willingly submitted the letters. I would point out that one of the letters was from my long-term Psychologist Tim Rehnberg, Ph.D. I did not compensate Dr. Rehnberg for submitting his letter on my behalf, and he willingly submitted that letter.

20. If the Court, for some reason, is not inclined to grant my motion. Then I respectfully request that the court clarify its Order Denying Defendant's Motion to Dismiss Withheld Judgment and indicate what, if anything, I need to do for the Court to grant my request to withdraw my guilty plea, dismiss this action and restore my civil rights and how long I need to wait until I can resubmit the issue to the Court. I request clarification as to the reasons why the Court denied my Motion to Dismiss Withheld Judgment so that I am able to take all necessary steps to convince the Court that I should be permitted to withdraw my guilty plea, have the case dismissed and have my civil rights restored.

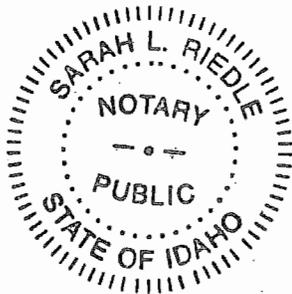
21. I would like to reiterate that I mean no disrespect to the Court, Michele, Stan Welsh or Mr. Thompson's office for the contents of this Affidavit or my Motion. This Affidavit and my Motion are being submitted with the utmost in respect for the Court, Michele, Stan Welsh and Mr. Thompson's office. I appreciate the Court's time and consideration of this Affidavit and my motion. I respectfully request that the Court grant me relief.

RESPECTFULLY DATED: This 19th day of January, 2012.


Charles E. Guess

SUBSCRIBED AND SWORN to before me this 19th day of January, 2012.


Notary Public for Idaho
Residing at: Lewiston
My commission expires: 6/11/2014



CERTIFICATE OF SERVICE

I, Roderick Bond, declare that, on the date indicated below, I served a true and correct copy of the foregoing on the following party(ies) via the method(s) indicated below:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile - (208) 883-2290
- Email (pdf attachment)

Signed this 19th day of January, 2012.



Roderick C. Bond

CE 2006-1646
CASE NO _____

2012 JAN 19 PM 2:59

RODERICK C. BOND, ISB No. 8082
RODERICK BOND LAW OFFICE, PLLC
800 Bellevue Way NE, Suite 400
Bellevue, WA 98004
Tel: (425) 591-6903
Fax: (425) 321-0343
Email: rod@roderickbond.com

CLERK OF DISTRICT COURT
LATAH COUNTY
BY *PA* CLERK

Attorneys for Defendant Charles E. Guess

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, an individual;

Plaintiff,

v.

CHARLES E. GUESS;

Defendant.

Case No.: CR-2006-0001646

AFFIDAVIT OF RODERICK C. BOND

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I, Roderick C. Bond, being first duly sworn on oath, deposes and says:

1. I am over the age of eighteen years, competent to testify in court, the attorney for the defendant in this action, and make this Affidavit based upon my personal knowledge.

2. In the days preceding the filing of this Affidavit, I had the opportunity to discuss this case with William Thompson Jr., the Latah County Prosecuting Attorney. Mr. Thomson confirmed to me that the Rule 11 Plea Agreement signed by Charles Guess in this action was

based upon the same or substantially the same form generally used by his office for Rule 11 plea bargain agreements. Mr. Thompson further advised me that it was his office's expectation that Charles Guess would be permitted to have his guilty plea set aside and his case dismissed if he complied with the terms and conditions imposed upon him through the Rule 11 Plea Agreement and Order Withholding Entry of Judgment and Order of Probation. Finally, Mr. Thompson advised me that in his years as a prosecuting attorney that he cannot ever recall a defendant not being permitted to have his guilty plea set aside once he complied with the terms and conditions imposed upon him by the Court as a result of a Rule 11 Plea Agreement.¹ Mr. Thompson and Charles Guess' understanding of the terms of the Rule 11 Plea Agreement was consistent with what Charles' understanding of that Agreement, as confirmed to me through our many communications that were not in the context of an attorney-client relationship. He consistently maintained that understanding from the time leading up to his execution of the Rule 11 Plea Agreement through the time that he retained me in this action (including during the time the Court heard his last Motion in this action). Charles has always asserted and maintained to me that once he complied with the terms of sentence and probation imposed upon him by the Rule 11 Plea Agreement, the Court would set aside his guilty plea, dismiss this case and restore his civil rights.

3. I have known Charles and Michele Guess (the victim) in this action for many years. My former partner was Charles' primary divorce attorney. However, I also appeared on behalf of Charles in his divorce action. After the unfortunate events that resulted in the charges

¹ These are not quotes from Mr. Thompson. Rather, this is simply my understanding of portions of our communications.

filed against Charles in this action, I became more involved in Charles' divorce action. Before I was working on the case, my former partner and Michele's attorney, Stan Welsh, had negotiated an agreement whereby Michele and Charles would hold an auction for their extensive personal property. In other words, they would each bid on every piece of personal property owned by the community and the highest bidder would win and be required to pay the community for that item. This auction would be time consuming and expensive because Charles and Michele had a significant amount of personal property. As a result, I immediately attempted to persuade Mr. Welsh to forego the auction and see if we could get Michele and Charles to simply divide up their personal property and forego the auction. I feared that having Michele and Charles bid against each other on every piece of personal property would be costly and only create more animosity between them. Michele declined my proposal that the parties simply agree to divide up their personal property and she insisted on holding the auction.

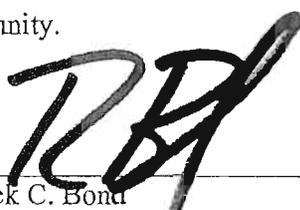
4. I do not recall whether the auction lasted for two or three days. Despite what Charles had done, Michele and Mr. Welsh both agreed to come to Charles' home to hold the auction. The only new condition was that they requested that a single security guard must be present. I was surprised that either Michele or Mr. Welsh would agree to return to the same home where the events took place with only one security guard. Nevertheless, the auction proceeded for at least two days. If there was something in particular that Michele really wanted, Charles would give in. If Michele questioned whether certain property was Charles' separate property, Charles gave in on many occasions. Charles was a complete gentleman over the course of the entire auction, despite seeing Michele bidding against and acquiring many items that she

knew were special to him knowing that Charles could not afford to purchase everything. Charles made lunch for everyone. There were several times the security guard was not even in the same room as Michele and Charles. If my recollection is correct, there were also times the security guard was not even in the house. There were times in which Michele and Charles laughed, despite the auction being inherently competitive. My overall impression was that neither Michele nor Mr. Welsh were scared of Charles during those days we held the auction.

5. In addition to the auction, I also attended a hearing in Moscow with Charles, Michele and Mr. Welsh. During that time, we were at the courthouse and negotiated a resolution as to several outstanding issues. There was at least one occasion that I recall in which Michele and Charles were left in a room at the courthouse alone, while Mr. Welsh and I addressed matters. Again, my impression was that Michele was not afraid of Charles.

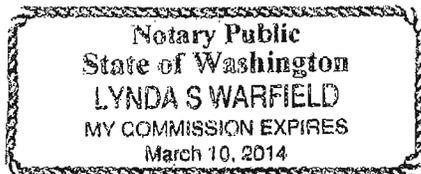
6. Based upon the foregoing, I concur with Charles' Psychologist Dr. Rehnberg that Charles poses no threat to Michele. I also believe that Michele is not afraid of Charles. I also do not believe that Mr. Welsh is afraid of Charles. Most importantly, I do not believe that Charles poses any risks to Michele, Mr. Welsh or the community.

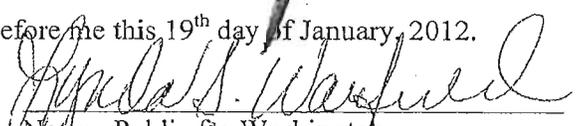
DATED: This 19th day of January, 2012.



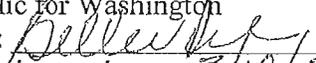
Roderick C. Bond

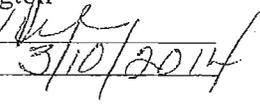
SUBSCRIBED AND SWORN to before me this 19th day of January, 2012.





Notary Public for Washington

Residing at: 

My commission expires: 

CERTIFICATE OF SERVICE

The undersigned declares that, on the date indicated below, I served a true and correct copy of the foregoing on the following party(ies) via the method(s) indicated below:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile - (208) 883-2290
- Email (pdf attachment)

Signed this 19th day of January, 2012.



Roderick C. Bond

CE 2006-1164
CASE NO _____

2012 JAN 20 PM 3:32

CLERK OF DISTRICT COURT
LATAH COUNTY
BY _____ DEPUTY

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 2613

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2006-01646
)	
V.	)	RESPONSE TO "DEFENDANT'S
	)	MOTION TO ENFORCE RULE 11
CHARLES EARL GUESS,	)	PLEA AGREEMENT ..."
Defendant.)	
_____)	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully submits the following response to the motion filed on January 19, 2012, on defendant's behalf seeking to have his guilty plea set aside and the case dismissed.

As the State has previously represented to the Court, the State is unaware of any factual basis or event that would automatically disqualify Dr. Guess from receiving Idaho

Code 19-2604 relief in that it appears to the State's knowledge that the defendant has at all times complied with the terms and conditions of his probation.

That being said, the State does not agree with the defendant's proffered theory that the Court's denial of the prior request for Idaho Code 19-2604 relief somehow constitutes a breach of the original plea agreement. The plea agreement in this case, as with virtually all other similar agreements, does not contain specific language about withdrawal of the guilty plea and ultimate dismissal of the case. Rather, it uses my office's standard language which agrees to the Court withholding judgment, but which does not specify what that means prospectively as far as Idaho Code 19-3604 relief.

While it is true that the undersigned cannot recall any other case where a defendant complied with his probation and did not receive Idaho Code 19-2604 relief, the State cannot agree with the defendant's proposal that acceptance of a plea agreement that merely provides for the withholding of judgment deprives the Court of jurisdiction and discretion of the issue of Idaho Code 19-2604 relief. Under the language of that statute as it existed at the time of the plea agreement in this case, setting aside the guilty plea and dismissing the case would require that the Court find that Dr. Guess not only "at all times complied with the terms and conditions" of probation, but also that the requested relief "be compatible with the public interest." This is a different determination than the Court's original decision to withhold judgment. (Note: Idaho Code 19-2604(1) has subsequently

been amended to remove the requirement that a defendant "at all times complied with the terms and conditions" of probation, and substituted a new provision which only requires that the Court "not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation." Consequently, under the current wording of the statute, the standard for receiving 19-2604 relief is actually lessened.)

Although I was not directly a signatory to the original Rule 11 Plea Agreement, after reviewing the file and incorporating my historic knowledge of this case, I believe I can accurately state that the State's intent at the time of the plea was that by virtue of the Court withholding judgment, Idaho Code 19-2604 relief would be available to Dr. Guess (and, practically speaking, the State would expect that the Court would grant the relief) if Dr. Guess was fully compliant with his probation.

The January 19, 2012, filings also specifically seek restoration of Dr. Guess's civil rights and the affirmative termination of probation and the No Contact Order. As to the first, by virtue of Idaho Code 18-310, Dr. Guess's civil rights have been fully restored by operation of law with the exception of his right to possess firearms (for which he will need to petition the Parole Commission at a future date). The granting of Idaho Code 19-2604 relief in no way changes either of those facts.

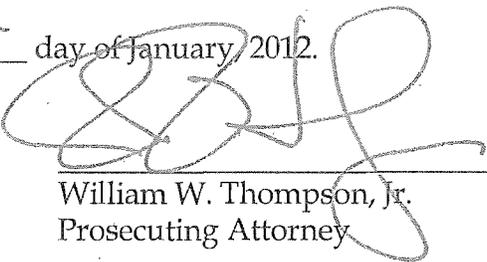
Second, to the extent that Dr. Guess asserts a belief that he continues to be on

probation and subject to the No Contact Order, those beliefs are erroneous. In fact, the Court's December 23, 2011, order specifically confirms that the defendant is discharged from his probation. As to the No Contact Order, on its face, it expired at 11:59 p.m. on August 31, 2011 (copy attached as Exhibit "A").

Finally, in the last sentence of paragraph 7, page 4, of Dr. Guess's affidavit he represents that "Mr. Thompson further indicated to my former attorney that after my probation period was completed that he believed that Michelle should not be allowed to have any input into whether or not the Rule 11 Plea Agreement was honored." Having no independent recollection of making such a statement, I reviewed my notes of the December 22, 2009, meeting with Ms. Mabbutt and Dr. Guess and find nothing there to indicate that I made such a statement. This is consistent with my and my office's philosophy that victims should always have the opportunity to be heard in accordance with their Constitutional and statutory rights.

Finally, knowing that the Court has consistently wanted to consider the feelings of the victim, Michelle Guess, I am forwarding copies of the defendant's recent filings to her for review and such comment as she deems appropriate.

Respectfully submitted this 20th day of January, 2012.



William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing RESPONSE TO "DEFENANT'S MOTION TO ENFORCE RULE 11 PLEA AGREEMENT . . ." was

mailed, United States mail, postage prepaid

hand delivered

sent by facsimile, original by mail

sent via e-mail rod@roderickbond.com

to the following:

Roderick C. Bond
Roderick Bond Law Office, PLLC
800 Bellevue Way NE, Suite 400
Bellevue, WA 98004

Dated this 20th day of January, 2012.

Kate Mecham

CR06-01646
A JUDGE 31 2006 4:52 P

[Handwritten Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH COUNTY

STATE OF IDAHO, Plaintiff

Case No. CR-2006-0001646

vs. CHARLES EARL GUESS

NO CONTACT ORDER

Defendant

Eff. 07/01/04

DOB: [REDACTED]

SSN: [REDACTED]

The Defendant has been charged with or convicted of violating Idaho Code Section(s):

- 18-901 Assault
- 18-903 Battery
- 18-905 Aggravated Assault
- 18-907 Aggravated Battery
- 18-909 Assault with Intent to Commit Felony
- 18-911 Battery with Intent to Commit Felony
- 18-913 Felonious Administering of Drug
- 18-915 Assault or Battery upon Certain Personnel
- 18-918 Domestic Assault or Battery
- 18-919 Sexual Exploitation by Medical Provider
- 18-6710 Use of Telephone – Lewd/Profane
- 18-6711 Use of Telephone – False Statements
- 18-7905 Stalking (1st °)
- 18-7906 Stalking (2nd °)
- 39-6312 Violation of a Protection Order
- Other: _____

against the ALLEGED VICTIM(S) [REDACTED]

THE COURT, having jurisdiction, and having provided the Defendant with notice of his opportunity to be heard, either previously or herein, ORDERS THE DEFENDANT TO HAVE NO DIRECT OR INDIRECT CONTACT WITH THE ALLEGED VICTIMS, unless through an attorney. You may not harass, follow, contact, attempt to contact, communicate with (in any form or by any means including another person), or knowingly go or remain within 300 feet of the alleged victim's person, property, residence, workplace or school. This order is issued under Idaho Code 18-920, Idaho Criminal Rule 46.2 and Administrative Order 2004 - 2.

IF THIS ORDER REQUIRES YOU TO LEAVE A RESIDENCE SHARED WITH THE ALLEGED VICTIMS, you must contact an appropriate law enforcement agency for an officer to accompany you while you remove any necessary personal belongings, including any tools required for your work. If disputed, the officer will make a preliminary determination as to what are necessary personal belongings; and in addition, may restrict or reschedule the time spent on the premises.

NOTICE OF RIGHT TO A HEARING: You have the right to a hearing before a Judge on the continuation of this Order within a reasonable time of its issuance. To request that hearing, and TO AVOID GIVING UP THIS RIGHT you must contact the Clerk of Court, Latah County Courthouse, 522 S. Adams, Moscow ID 83843, 208-883-2255.

VIOLATION OF THIS ORDER IS A SEPARATE CRIME UNDER Idaho Code 18-920 for which bail will be set by a judge; it is subject to a penalty of up to one year in jail and up to a \$1,000 fine. THIS ORDER CAN ONLY BE MODIFIED BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON August 31, 2011, OR UNTIL THIS CASE IS DISMISSED.

If another DOMESTIC VIOLENCE PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT (Title 39, Chapter 63 of the Idaho Code), the most restrictive of any conflicting provisions between the orders will control; however, entry or dismissal of another order shall not result in dismissal of this order.

The Clerk of the Court shall give written notification to the records department of the sheriff's office in the county of issuance IMMEDIATELY and this order shall be entered into the Idaho Law Enforcement Telecommunications System.

8/31/06
Date of Order

8-31-06
Date of Service

8/31/06
Date of Service

[Signature]
JUDGE

[Signature]
DEFENDANT/ATTORNEY

[Signature] # 357
Signature of Service

CERTIFIED COPY OFFICER/AGENCY SERVING (include badge no.)

EXHIBIT "A"

RODERICK C. BOND, ISB No. 8082
RODERICK BOND LAW OFFICE, PLLC
800 Bellevue Way NE, Suite 400
Bellevue, WA 98004
Tel: (425) 591-6903
Fax: (425) 321-0343
Email: rod@roderickbond.com

CASE NO. CR-06-1676

2012 JAN 24 PM 4:12

CLERK OF DISTRICT COURT
LATAH COUNTY
BY TS DEPUTY

Attorneys for Defendant Charles E. Guess

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, an individual;

Plaintiff,

v.

CHARLES E. GUESS;

Defendant.

Case No.: CR-2006-0001646

DEFENDANT CHARLES E. GUESS'
REPLY IN SUPPORT OF MOTION

Defendant Charles E. Guess ("Charles") respectfully submits this Reply in Support of his Motion to Enforce his Rule 11 Plea Agreement and Order Withholding Judgment and to Set Aside Guilty Plea, Terminate Probation, Dismiss this Action and Restore Civil Rights, or alternatively, Motion for Clarification of the Order Denying Motion to Dismiss Withheld Judgment ("Motion"):

II. ARGUMENT

Charles responds to the State's arguments in the same order as asserted in its Response:

A. Any ambiguities in the Rule 11 Plea Agreement must be interpreted and enforced in Charles' favor.

Criminal statutes must be construed in favor of the defendant. *State v. Thompson*, 101 Idaho 430, 437, 614 P.2d 970, 977 (1980). Any ambiguities in a Rule 11 Plea Agreement must

be construed in favor of the defendant. *State v. Peterson*, 148 Idaho 593, 596, 226 P.3d 535, 538 (2010).

Ambiguities in a plea agreement are to be interpreted in favor of the defendant. “As with other contracts, provisions of plea agreements are occasionally ambiguous; the government ordinarily must bear the responsibility for any lack of clarity. “[A]mbiguities are construed in favor of the defendant. Focusing on the *defendant’s* reasonable understanding also reflects the proper constitutional focus on what induced the *defendant* to plead guilty.”

Peterson, 148 Idaho at 596 (emphasis added).

Here, the State argues that the Rule 11 Agreement is silent over when or if Charles’ withheld judgment would be dismissed, and that, apparently, this silence should be construed against Charles:

The plea agreement in this case, as with virtually all other similar agreements, does not contain specific language about withdrawal of the guilty plea and ultimate dismissal of the case. Rather, it uses my office’s standard language¹ which agrees to the Court withholding judgment, but which does not specify what means prospectively as for as Idaho Code 19-3604² relief.

(Response, p. 2.) The State’s apparent position is contrary to all of the authorities regarding the interpretation and enforcement of Rule 11 Plea Agreements. (Motion, p. 6-8.) There are no terms or conditions in the Rule 11 Plea Agreement which expressly state, let alone infer, that the Court or State retained any discretion regarding setting aside the guilty plea, dismissing this action or any limits to the civil rights that would be restored, so long as Charles complied with the terms of probation.³ (Rule 11 Plea Agreement, p. 1-3.) Moreover, in order for the State’s arguments to have merit, it was incumbent upon the State to include any such terms or conditions in the Rule 11 Plea Agreement, but it failed to do so. This is precisely why Rule 11 Plea

¹ The State concedes that the “standard language” has resulted in setting aside the guilty pleas and the dismissal of actions for all other defendants (to the prosecutor’s recollection), except for Charles.

² It appears that the State was referring to I.C. § 19-2604, rather than I.C. § 19-3604.

³ The State also asserts that Charles’ civil rights would be restored, except for his “right to possess firearms...” (Response, p. 3.) There are no terms or conditions in the Rule 11 Plea Agreement that limit the restoration of any of Charles’ civil rights. (Rule 11 Plea Agreement, p. 1-3.) Again, any ambiguities must be construed in favor of Charles. However, the State’s argument fails for the reasons discussed in Section E below.

Agreements are interpreted and construed in favor of defendants, rather than in favor of the State. Notably, the State included specific terms regarding Charles' failure to comply, but it omitted specific language for Charles to enforce his rights. (Rule 11 Plea Agreement, p. 3.) The State must bear the responsibility for any lack of clarity for Charles.

Finally, the fact that the State apparently utilized the same "form" for virtually all Rule 11 plea agreements further supports Charles' arguments. (Response, p. 2.) Since the same agreement was used for Charles' felony as would have been used for a less egregious offense, then the State clearly intended that Charles be afforded the same relief. The State cannot use the fact that it utilized the same plea agreement "form" as a basis to interpret the Rule 11 Plea Agreement against Charles.⁴

Thus, the State has failed to submit any evidence or authority to rebut Idaho's standard that Rule 11 Plea Agreements must be interpreted and construed in favor of the defendant. The State may not insert any new terms or conditions, or offer any interpretation based upon terms or conditions that were never part of the Rule 11 Plea Agreement. Moreover, I.C. § 19-2604(1) must be construed in favor of Charles, and the State "must bear the responsibility for any lack of clarity." *Peterson*, 148 Idaho at 596. The terms of the Rule 11 Plea Agreement, as *reasonably understood* by Charles, were that once he complied with the terms of probation his guilty plea would be set aside and his case dismissed. Those *reasonably understood* terms must be enforced in Charles' favor. *Id.*

B. The State and Court already agreed to grant Charles relief.

As set forth in Charles' Motion, the State and Court already agreed to grant Charles a withheld judgment, and Charles will not repeat those authorities here. (*See* Motion, p. 5 -18.)

⁴ Based upon all of the authorities and arguments asserted in Charles' Motion, it is apparent that more care must be taken by the defense and prosecution when they draft Rule 11 Plea Agreements, particularly since such agreements govern the parties. However, any ambiguities in this case must be construed in favor of Charles.

It appears that the State asserts that the Court must find it “compatible with public interest” before it can set aside Charles’ guilty plea.⁵ (Response, p. 2.) While such a finding should be included in the order, a withheld judgment was already agreed to under the Rule 11 Plea Agreement. (Rule 11 Plea Agreement, p. 1-3.) It would have been impossible for Charles to obtain a withheld judgment from the Court if it had not found that it was “compatible with public interest.” Charles is not petitioning the Court to have his guilty plea set aside after a conviction by a jury. The withheld judgment was the key and crucial term that induced Charles to execute the Rule 11 Plea Agreement in the first place. (1/19/12 Guess Aff., ¶3-12.) If the terms of probation or the “compatible with public interest” required by I.C. 19-2604(1) were not satisfied at the time the Court accepted the Rule 11 Plea Agreement, then the State and the Court could not have accepted it as it would have violated I.C. 2604(1). Instead, the State and the Court accepted Charles’ Rule 11 Plea Agreement. It would be entirely illogical and contrary to the intent of I.C. § 19-2604(1) for the State and Court to grant Charles a withheld judgment and then find that he does not qualify for it after he faithfully and diligently lives up to his end of the bargain. Likewise, it is a red herring to say that Charles does not qualify for a withheld judgment after he has already received one and already complied with its terms and conditions.

Charles complied with all conditions and he is entitled to relief. *See State v. Smith*, 121 Idaho 20, 23 n. 2, 822 P.2d 539, 542 n. 2 (1991) (“Upon accepting the subject plea of guilty, the court imposed a withheld judgment of conviction. When Smith fulfilled the terms and conditions of probation, the former guilty plea was withdrawn, a plea of not guilty entered, and the case was finally dismissed...”).

⁵ To clarify, Charles is requesting that a plea of “not guilty” be entered before this action is dismissed.

C. The newer, less stringent standard under I.C. § 19-2604(1) applies to Charles.

The State correctly points out that the revised version of I.C. § 19-2604(1) is actually less burdensome to Charles. (Response, p. 2-3.) Thus, to the extent that it is applicable, Charles should be governed by the more recent I.C. § 19-2604(1). (See authorities in Section E.) This point is irrelevant, however, because Charles has complied with both.

D. Charles simply requests that the Court include a formal written provision in the order terminating any no contact orders.

Charles' counsel apologizes to the Court for not obtaining a copy of the no contact order from Mr. Thompson.⁶ However, Charles simply requested a formal notification that the no contact order had been terminated, so that he can attend his son's graduation this spring without worrying about being in the same building or room as Michele.

E. Once this action is dismissed, Charles has a right to bear firearms under federal and Idaho law.

"The purpose of an order withholding judgment, as an alternative to a conviction, is to allow the defendant an opportunity to rehabilitate himself and thereby avoid the burden of a criminal record." *State v. Parkinson*, 144 Idaho 825, 828, 172 P.3d 1100, 1103 (2007). "[W]here a judgment has been vacated, it is a nullity, and the effect is as if it had never been rendered at all." *State v. Barwick*, 94 Idaho 139, 143, 483 P.2d 670, 674 (1971). "The final dismissal of the case as herein provided shall have the effect of restoring the defendant with his civil rights." I.C. § 19-2604(1). There are no limits or conditions on the rights which a defendant regains. *Manners v. Bd. of Veterinary Med.*, 107 Idaho 950, 952, 694 P.2d 1298, 1300 (1985) ("Nowhere in that statute is there language which limits or conditions the rights which a defendant regains.").

⁶ The undersigned counsel was retained to expeditiously pursue this Motion, but he did not have the luxury of having a copy of the entire court file.

A conviction for which a person has had his civil rights restored under the law of the convicting jurisdiction is not considered a conviction for the purposes of federal law. 18 U.S.C. § 921(1)(a)(20). I.C. 18-310(2) does not expressly limit the restoration of the right to possess, ship, receive or transport firearms when a guilty plea has been set aside. I.C. § 18-310(2).

“When interpreting statutes, the Court strives to give force and effect to the legislature’s intent. Statutes...relating to the same subject, should be construed harmoniously, if possible to further the legislative intent.” *State v. Gamino*, 148 Idaho 827, 828, 230 P.3d 437, 438 (2010) (internal citations omitted). A specific statute governs or controls over a general statute. *Ausman v. State*, 124 Idaho 839, 842, 864 P.2d 1126, 1129 (Ct. App. 1993). Criminal statutes, including sanctions, must be construed in favor of the defendant. *State v. Thompson*, 101 Idaho 430, 437, 614 P.2d 970, 977 (1980).

Here, the State asserts that Charles’ civil rights have been restored, “with the exception of his right to possess firearms (for which he will need to petition the Parole Commission at a future date.)” (Response, p. 3.) This argument fails for three separate reasons.

First, under Idaho law, there are no limitations regarding the civil rights that are restored to a defendant after a guilty plea is set aside and the case is dismissed. I.C. § 19-2604(1); *Manners*, 107 Idaho at 952. I.C. § 19-2604(1) is controlling and it must be construed in favor of Charles. The legislature’s intent was to reform defendants and allow them to avoid any burdens associated with a criminal record. Since Charles has complied with all conditions imposed upon him, his guilty plea must be set aside, this action dismissed and all of this civil rights restored. *Id.* Any other interpretation of I.C. § 19-2604(1) would not be in harmony with I.C. § 18-310, would result in construing that statute against Charles and would further constitute an interpretation beyond the legislature’s intent and the clear and unambiguous meaning of I.C. §

19-2604(1).⁷ (See also Motion, p. 13-15.)

Second, the State appears to insert new terms and conditions in the Rule 11 Plea Agreement pertaining to the restoration of Charles' civil rights, specifically the right to bear firearms. The State's position is not supported by any terms or conditions in the Rule 11 Plea Agreement. Charles was induced to enter into that Rule 11 Plea Agreement on the *reasonable understanding* that, upon completion of the conditions imposed upon him, his guilty plea would be set aside, this action would be dismissed and all of this civil rights would be restored. (1/19/12 Guess Aff., ¶3-18.) Under the Rule 11 Plea Agreement, the State did not include any terms or conditions limiting which civil rights would be restored or that the right to bear firearms would be subject to any limitations, including I.C. § 18-310. (Rule 11 Plea Agreement, p. 1-3.) Thus, the State is separately barred from attempting to limit Charles' rights to possess firearms.

Third, Charles has a right under federal law to bear firearms once his guilty plea is set aside and the case is dismissed, since Idaho law does not expressly bar him from possessing firearms, and, in fact, restores all of his civil rights. I.C. § 19-2604(1); *U.S. v. Gomez*, 911 F.2d 219, 222 (9th 1990) ("Because Idaho has no such express provision in its code, we must overturn Gomez's conviction."); *U.S. v. Erwin*, 902 F.2d 510, 513 (7th Cir. 1990) ("A state must tell the felon point blank that weapons are not kosher."); 18 U.S.C. § 921(1)(20); 18 U.S.C. § 921(1)(a)(20); U.S. CONST. Amend 2.; I.C. 18-310(2). Once an order is entered setting aside Charles' guilty plea and dismissing this action, Charles' civil rights are fully restored under Idaho law, including his right to bear firearms under both Idaho and federal law. *Id.*

⁷ In *U.S. v. Sharp*, the Idaho Supreme Court held that "[a]n outstanding withheld judgment based on a guilty plea qualifies as a conviction under Idaho law." *Id.*, 145 Idaho 403, 407, 179 P.3d 1059, 1063 (2008). Charles concedes that he is not entitled to possess firearms while his withheld judgment is still "outstanding." However, this holding is consistent with I.C. § 19-2604(1) – that once the plea is set aside and the case is dismissed, all civil rights (including the right to bear firearms) are restored because the withheld judgment is not "outstanding."

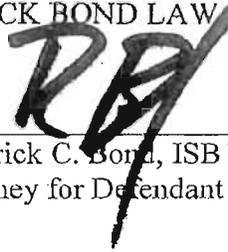
Accordingly, there is no basis under the law or the Rule 11 Plea Agreement to limit or bar Charles from having all of his civil rights restored, including, his right to bear firearms. Once Charles complied with the terms of the Rule 11 Plea Agreement and his guilty plea is set aside, he is entitled to have all of his civil rights restored.

II. CONCLUSION

For the reasons articulated above, the State has failed to rebut Charles' arguments and therefore the Court should grant his Motion.

RESPECTFULLY SUBMITTED this 24th day of January, 2012.

RODERICK BOND LAW OFFICE, PLLC

By: 
Roderick C. Bond, ISB No. 8082
Attorney for Defendant Charles E. Guess

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of January, 2012 I caused to be served true and correct copies of the foregoing document to the following parties:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

- Via:
- U.S. Mail, Postage Prepaid
 - Hand Delivered
 - Overnight Mail
 - Facsimile - (208) 883-2290
 - Email (pdf attachment)


Roderick C. Bond

RODERICK C. BOND, ISB No. 8082
RODERICK BOND LAW OFFICE, PLLC
800 Bellevue Way NE, Suite 400
Bellevue, WA 98004
Tel: (425) 591-6903
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Email: rod@roderickbond.com

CASE NO. CR-06-1646

2012 JAN 26 PM 2:17

CLERK OF DISTRICT COURT
LATAH COUNTY

BY: RC DEPUTY

Attorneys for Defendant Charles E. Guess

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, an individual;

Plaintiff-Respondent,

v.

CHARLES E. GUESS;

Defendant-Appellant.

Case No.: CR-2006-0001646

NOTICE OF APPEAL

TO: The State of Idaho and the Latah County Prosecuting Attorney; AND

TO: The Clerk of the above-entitled Court.

NOTICE IS HEREBY GIVEN THAT:

A. The above named Appellant Charles E. Guess appeals against the above-named Respondent to the Idaho Supreme Court from the Order Denying Defendant's Motion to Dismiss Withheld Judgment, entered in the above entitled action on the 23rd day of December, 2011, the Honorable John R. Stegner presiding.

B. Appellant has a right to appeal to the Idaho Supreme Court, and the Judgment/Order described in paragraph A above is an appealable Order under and pursuant to I.A.R. 4 and I.A.R. 11(b)(4), (6) and/or (9).

C. A preliminary statement of issues on appeal, which the Appellant intends to assert in this appeal are as follows; provided, the following list of issues is not exhaustive and Respondent should expect others from Appellant:

1. Whether a district has discretion to deny a defendant's request to set aside a guilty plea, dismiss an action and restore civil rights after said defendant has complied with all terms and conditions imposed upon him through that Rule 11 Plea Agreement, which was accepted by the Court without qualification?

2. Whether a defendant who complies with all terms and conditions under a five-year period of probation, pays all restitution, serves 30 days in jail and performs all other required terms of probation (including community service) has satisfied the "compatible with public interest" element of I.C. § 19-2604(1).

3. Whether the satisfaction of the "compatible with public interest" element of I.C. § 19-2604(1) may be determined exclusively based upon the desire of one of the two victims that the defendant's plea not be set aside after said plea was entered pursuant to a Rule 11 Plea Agreement (which said Agreement required a withheld judgment)?

4. Whether may a district court deny the defendant's request to set aside his guilty plea, dismiss the action and restore civil rights after said defendant received a withheld judgment pursuant to the terms of a Rule 11 Plea Agreement and said defendant has complied with all terms and conditions imposed upon him?

5. Whether a defendant has contractual and constitutional rights to enforce a Rule 11 Plea Agreement (which contractually provided said defendant with a withheld judgment) to set aside a guilty plea, enter a plea of not guilty, dismiss the action and have all civil rights restored, once the defendant complied with all terms and conditions imposed upon him?

6. Whether, assuming a plea agreement is vague, the Rule 11 Plea Agreement may be construed and interpreted in favor of the State when the terms of said Rule 11 Plea Agreement were vague as to when the defendant's guilty plea would be set by the State, even though the State concedes that it expected the defendant to obtain relief under I.C. § 19-2604 and had no recollection of a defendant never obtaining such relief after complying with the terms and conditions imposed upon the defendant?

7. Whether a district court judge may indefinitely suspend a withheld judgment entered pursuant to a Rule 11 Plea Agreement after the defendant has complied with all terms and conditions imposed upon him?

8. Whether there is a limitation of the civil rights which will be restored to a defendant under I.C. § 19-2604(1) when there were no such limitations in the Rule 11 Plea Agreement and I.C. § 19-2604(1) provides that all rights shall be restored?

D. No orders have been entered sealing any documents which are relevant to this Appeal.

E. Appellant requests the preparation of the following portions of the reporter's transcript:

1. June 19, 2006; Hearing on arraignment;
2. August 17, 2006; Interim Hearing;
3. August 31, 2006; Sentencing Hearing;
4. November 16, 2011; Hearing on Defendant's Motion to Dismiss Withheld Judgment; and
5. January 26, 2011; Hearing on Defendant's Motion to Enforce Rule 11 Plea Agreement and Order Withholding Judgment, or, alternatively, Motion for Clarification of Order Denying Defendant's Motion to Dismiss Withheld.

F. Appellant requests the following documents be included in the clerk's record, in addition to those automatically included under I.A.R. 28:

1. Affidavit of Charles E. Guess. (filed September 7, 2011);
2. Letters in Support of Motion to Dismiss Withheld Judgment (filed on November 16, 2011);
3. Affidavit of Charles E. Guess (filed on January 19, 2012);
4. Affidavit of Roderick C. Bond (filed on January 19, 2012);
5. Response to Defendant's Motion to Enforce Rule 11 Plea Agreement (filed on January 20, 2012);
6. Defendant Charles E. Guess' Reply in Support of Motion (filed on January 24, 2012).

G. The undersigned certifies that:

1. A copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Sheryl Engler (hearings held on 11/16/2011 & 1/26/2012)
P.O. Box 8068
Moscow, ID 83843

Jodi Stordiau (hearings on 6/19/2006, 8/16/2006 & 8/17/2006)
4476 Foxview Loop
Helena, MT 59602

2. The clerk of the district court has been paid (or will be promptly paid by the undersigned counsel upon request) the estimated fee for the preparation of the reporter's partial transcript.

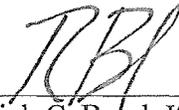
3. The estimated fee, if one was requested, for preparation of the clerk's record has been paid. If the estimated fee was not requested, it will be promptly paid by the undersigned counsel upon request.

4. No filing fee is required.

5. Service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 26th day of January, 2012.

RODERICK BOND LAW OFFICE, PLLC

By: 

Roderick C. Bond, ISB No. 8082
Attorney for Defendant Charles E. Guess

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of January, 2012 I caused to be served true and correct copies of the foregoing document to the following parties:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, Idaho 83843

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile - (208) 883-2290
- Email (pdf attachment)

Sheryl Engler
P.O. Box 8068
Moscow, ID 83843

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Email (pdf attachment)

Jodi Stordiau
4476 Foxview Loop
Helena, MT 59602

Via:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Email (pdf attachment)



Roderick C. Bond

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Sheryl L. Engler
Court Reporter
Recording: Z: 3: 2012-01-26
Time: 10:09 A.M.

Date: January 26, 2012

STATE OF IDAHO,)	
	)	Case No. CR-2006-1646
Plaintiff,)	
	)	APPEARANCES:
vs.)	
	)	William W. Thompson, Jr., Prosecutor
CHARLES EARL GUESS,	)	Appearing on behalf of the State
)	
Defendant.	)	Defendant present with counsel,
	)	Roderick C. Bond, Bellevue, WA

=====
Subject of Proceedings: **Defendant's Motion to Enforce Rule 11 Plea Agreement and Order Withholding Judgment, and to Set Aside Guilty Plea, Terminate Probation, Dismiss Action and Restore Civil Rights or, in the Alternative, to Clarify Order Denying Defendant's Motion to Dismiss Withheld Judgment**

This being the time fixed pursuant to written notice for hearing of the defendant's Motion to Enforce Rule 11 Plea Agreement and Order Withholding Judgment, and to Set Aside Guilty Plea, Terminate Probation, Dismiss Action and Restore Civil Rights or, in the Alternative, to Clarify Order Denying Defendant's Motion to Dismiss Withheld Judgment in this case and noted the presence of counsel and the defendant.

Mr. Bond argued in support of the defendant's motion and requested that the defendant's passport be returned to him.

Court informed counsel that he had been invited to a Christmas party in Pullman, Washington, last month at one of his wife's colleague's home and one of the attendees was engaged to Griffin Guess, the defendant's son. Court stated that during the course of the evening she tried to engage this Court in a conversation about this case, which he tried to avoid. She indicated during the course of that conversation that she realized and appreciated that it was a difficult case and said something to the effect that she thought Griffin recognized it was a challenging case and appreciated the time devoted to the case. Court stated that no specifics or details of the case had been discussed, but wanted to disclose that contact to counsel in the event they wanted to contact that young lady about that conversation. Neither counsel wished to take

Terry Odenborg
Deputy Clerk

any action with regard to the Court's disclosure.

Court returned the defendant's passport to him in open court.

Mr. Thompson argued in opposition to the defendant's motion. Mr. Bond argued in rebuttal.

For reasons articulated on the record, Court denied the defendant's Motion to Enforce Rule 11 Plea Agreement, with prejudice; informing Mr. Bond that, if need be, it would certify that ruling for appeal.

For reasons articulated on the record, Court denied the defendant's motion to reconsider the defendant's motion to dismiss pursuant to the provisions of the withheld judgment, without prejudice.

Court informed the defendant that the No Contact Order has expired and is no longer in effect.

Court informed counsel that it would prepare a written order in accordance with its rulings.

Court recessed at 10:56 A.M.

APPROVED BY:

JOHN R. STEGNER
DISTRICT JUDGE

Terry Odenborg
Deputy Clerk

CASE NO. CR 2006-1646

2012 FEB -6 AM 8:03

CLERK OF DISTRICT COURT
LATAH COUNTY
BY CAM DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,	)	Case No. CR-2006-1646
)	
Plaintiff,	)	ORDER DENYING
	)	DEFENDANT'S MOTION TO
vs.	)	ENFORCE RULE 11 PLEA
	)	AGREEMENT AND ORDER
CHARLES EARL GUESS,	)	DENYING DEFENDANT'S
	)	MOTION TO SET ASIDE
Defendant.	)	GUILTY PLEA, TERMINATE
	)	PROBATION, DISMISS ACTION
	)	AND RESTORE CIVIL RIGHTS
)	

The Defendant, Charles Earl Guess ("Guess"), brought a Motion to Enforce Rule 11 Plea Agreement and to Set Aside Guilty Plea, Terminate Probation, Dismiss Action and Restore Civil Rights. A hearing on Guess's motion was held on January 26, 2012. The following individuals appeared before this Court: the State's attorney, William W. Thompson, Jr.; Guess's attorney, Roderick C. Bond; and Guess. For the reasons stated at the hearing and in this Order, Guess's motion will be denied.

ORDER DENYING DEFENDANT'S
MOTION TO ENFORCE RULE 11
PLEA AGREEMENT AND ORDER
DENYING DEFENDANT'S MOTION
TO SET ASIDE GUILTY PLEA, . . .

BACKGROUND

In April 2006, Guess and his then-wife, Michele Guess (“Michele”), were going through a bitter divorce. On April 25, 2006, Guess was being deposed by Michele’s lawyer, Stanley Welsh (“Welsh”) in Lewiston. The deposition adjourned so that Guess, Michele, and Welsh could travel to the Guess’s home in rural Latah County to physically examine the contents of the couple’s home. While there, Michele and Welsh went to the home’s vault. While their backs were turned to Guess, he produced a .40 caliber Glock pistol and moved the slide to indicate a bullet had been advanced into the gun’s barrel. When Michele and Welsh turned around to face Guess, he threatened to kill both of them and then commit suicide. Guess then struck Michele in the face, twice, with his left hand, while holding the gun in his right. While Guess never carried out his threats to kill Michele and her attorney, he was ultimately charged with two counts of felony aggravated assault and one count of misdemeanor domestic battery.

Guess eventually entered into a Rule 11, I.C.R., Plea Agreement with the State on June 16, 2006, in which he agreed to plead guilty to one count of Aggravated Assault, a felony in violation of I.C. § 18-905. *See Rule 11 Plea Agreement* at 1. The State agreed to recommend that Guess receive a Withheld Judgment and be placed on no more than five-years probation with the Idaho Department of Correction. *See id.* at 2. This Court accepted Guess’s plea of guilty to the charge of Aggravated Assault at his arraignment, held on June 19, 2006. *See Ct. Mins. of “Arraignment”* at 2.

At sentencing held on August 31, 2006, this Court accepted the parties' Rule 11 Plea Agreement and the proposed sentence set forth in that agreement. *See Ct. Mins. of "Sentencing"; Rule 11 Plea Agreement.* In accordance with that agreement, this Court entered a Withheld Judgment and placed Guess on probation with the Idaho Department of Correction for a period of five years. *Order Withholding Entry of J. and Order of Probation* (Aug. 31, 2006). Guess successfully completed his term of probation as of September 1, 2011. *See id at 2.* Shortly after completing his probation, Guess brought a Motion to Dismiss Withheld Judgment. After a hearing on that motion, this Court entered an order denying the motion, without prejudice. *Order Denying Def.'s Mot. to Dismiss Withheld J.* (Dec. 23, 2011). At that time, this Court made it clear that Guess was "discharged from probation." *Id.* at 2.

Guess now seeks to have his guilty plea set aside, his withheld judgment dismissed, and civil rights restored through one of two avenues: (1) through enforcement of the terms of the parties' Rule 11 Plea Agreement, or (2) pursuant to I.C. § 19-2604(1).

ANALYSIS

- 1. The unambiguous language of the Rule 11 Plea Agreement does not authorize the relief Guess seeks.**

Plea agreements are examined by courts in accordance with the standards of contract law. *State v. Gomez*---P.3d---,2011 WL 10855989 *3 (citation omitted). The burden of proving the existence of an agreement, and a breach thereof, is on the moving party. *State v. Peterson*, 148 Idaho 593, 595, 226 P.3d 535, 537 (2010). In

determining whether there has been a breach, courts must examine the language of the particular agreement. *Gomez*, ---P.3d---,2011 WL 10855989 *3. If an agreement is unambiguous, its meaning and legal effect “must be determined from the plain meaning of the [agreement's] own words.” *Win of Michigan, Inc. v. Yreka United, Inc.*, 137 Idaho 747, 751, 53, P.3d 330, 334 (2002).

On the other hand, if an agreement is “reasonably subject to conflicting interpretation, then it is ambiguous.” *DeLancey v. DeLancey*, 110 Idaho 63, 65, 714 P.3d 32, 34 (1986) (citation omitted). Any ambiguities shall be resolved in favor of the defendant. *Gomez*, ---P.3d---,2011 WL 10855989 *3. (citation omitted). Thus, the State must bear the burden for any lack of clarity in the agreement. *Peterson*, 148 Idaho at 596, 226 P.3d at 538. In construing that ambiguity in favor of the defendant, courts should look to the defendant’s “reasonable understanding” of the terms of the agreement. *Id.* This approach also “reflects the proper constitutional focus on what induced the *defendant* to plead guilty.” *Id.* quoting *U.S. v. De la Fuente*, 8 F. 3d 1333, 1337, n. 7 (9th Cir. 1993) (emphasis in original).

When district courts give “unqualified approval to a plea agreement they, like the parties, become bound by the terms of that agreement.” *U.S. v. Ritsema*, 89 F. 3d 392, 401 (7th Cir. 1996); *see also State v. Horkley*, 125 Idaho 860, 865, 876 P.2d 142, 147 (App. Ct. 1994).

In this case, the language of the parties’ Rule 11 Plea Agreement is unambiguous. The agreement states in relevant part, “the Defendant shall receive

a Withheld Judgment and shall be placed on probation to the Idaho State Department of Corrections for a period of no more than five (5) years.” *Rule 11 Plea Agreement* at 1-2, para. 2. Pursuant to those express and unambiguous terms, Guess received a withheld judgment and was placed on probation for not more than five years. Because the language of the parties Rule 11 Plea Agreement is unambiguous, this Court need not construe any of its terms in favor of Guess.

The agreement does not contain a single term regarding the ultimate disposition of this case. The governing statute for the relief Guess seeks has always been I.C. § 19-2604(1). That statute vests discretion in this Court to determine whether the defendant should be allowed to withdraw his guilty plea and have the charges against him dismissed. The issue is simply not controlled by the Rule 11 Plea Agreement entered into in this case. It is governed by the application of facts to the law and the exercise of this Court’s discretion. This Court declines to grant such relief based on the unambiguous language contained in the Rule 11 Plea Agreement.

- 2. Guess is not entitled to relief pursuant to I.C. § 19-2604(1) because it would be incompatible with the public interest.**

A defendant may apply to the court to have his withheld judgment dismissed under I.C. § 19-2604(1), which states in relevant part,

[u]pon application of the defendant and upon satisfactory showing that: the court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of probation; . . . the court *may*, if convinced by the showing 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 The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

I.C. § 19-2604(1)(a) (italics added). The statute therefore authorizes the court to grant relief where: (1) the defendant had no adjudicated probation violation and (2) it is compatible with the public interest. The decision of whether to grant relief pursuant to I.C. § 19-2604(1) is a matter within the sound discretion of the district court. *Housley v. State*, 119 Idaho 885, 890, 811 P.2d 495, 500 (1991).

In this case, there have been no adjudicated probation violations. As a result, this Court is convinced that there is no longer cause for continuing probation. In fact, Guess has fully complied with every court-imposed term and condition of his probation. However, this Court finds that granting Guess relief pursuant to I.C. § 19-2604(1) would not be compatible with the public interest. While Guess has taken considerable and commendable strides toward rehabilitation, one of the victims in this case, Michele Guess, still fears him. The fact that one of the victims in this case still fears the party who is seeking the extraordinary relief granted by I.C. § 19-2604(1) is no small issue for this Court. This Court acknowledges that Guess is on the right track to obtaining the relief he seeks, which is why this Court indicated that it would be willing to revisit this issue in the future. The determination that Guess should be granted relief under I.C. § 19-2604(1) is not entirely dependent on Michele's acquiescence. Such acquiescence may never occur. Nonetheless, this Court is unwilling to disregard her fear of the Defendant and her objection to him

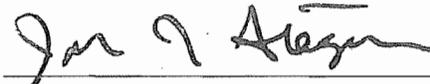
being granted relief pursuant to I.C. § 19-2604(1), at this time. Because this Court finds that it would not be compatible with the public interest to set aside Guess's plea of guilty, dismiss his case, and restore his civil rights, it declines to do so.

Good cause appearing,

It is ORDERED, that the Motion of the Defendant, Charles Earl Guess, To Enforce Rule 11 Plea Agreement is DENIED, with prejudice.

It is FURTHER ORDERED, that the Motion of the Defendant, Charles Earl Guess, to Set Aside Guilty Plea, Terminate Probation, Dismiss Action and Restore Civil Rights pursuant to I.C. § 19-2604(1) is DENIED, without prejudice.

Dated this 3rd day of February 2012.



John R. Stegner
District Judge

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing order were delivered by the following methods to the following:

William W. Thompson, Jr.
Latah County Prosecuting Attorney
P.O. Box 8068
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Roderick C. Bond
Attorney at Law
800 Bellevue Way N.E., Ste. 400
Bellevue, WA 98004

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

On this 6 day of February 2012.



Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	Supreme Court No. 39646-2012
Plaintiff-Respondent,)	
	)	CLERK'S CERTIFICATE
vs.	)	RE: EXHIBITS
)	
CHARLES E. GUESS,)	
)	
Defendant-Appellant.)	
_____)	

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the transcript of the Arraignment hearing held on June 19, 2006, the transcript of the Interim Hearing held on August 17, 2006, the transcript of the Sentencing Hearing held on August 31, 2006, the transcript of the Defendant's Motion to Dismiss Withheld Judgment Hearing held on November 16, 2011, the transcript of the Defendant's Motion to Enforce Rule 11 Plea Agreement and Order Withholding Judgment or, Alternatively, Motion for Clarification of Order Denying Defendant's Motion to Dismiss Withheld Hearing held on January 26, 2012,

AND FURTHER that the Pre-Sentence Investigation Report dated August 10, 2006, and the Addendum to the Pre-Sentence Investigation Report dated August 21, 2006, will be lodged with the Clerk of the Supreme Court as exhibits as provided by Rule 31(a)(3), IAR.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 25 day of April, 2012.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	Supreme Court Case No. 39646-2012
)	
vs.	)	CLERK'S CERTIFICATE
)	
CHARLES E. GUESS,)	
)	
Defendant-Appellant.)	
)	
_____)	

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the above and foregoing transcript in the above entitled cause was compiled and bound under my direction as, and is a true, full, complete and correct transcript of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 25 day of April 2012.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
vs.)
)
CHARLES E. GUESS,)
)
Defendant-Appellant.)
_____)

Supreme Court Case No. 39646-2012

CERTIFICATE OF SERVICE

I, Ranae Converse, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that I have mailed, by United States mail, one copy of the Presentence Investigation Report, Reporter's Transcript and Clerk's Record to each of the attorneys of record in this cause as follows:

RODERICK C. BOND
800 BELLEVUE WAY NE SUITE 400
BELLEVUE, WA 98004

LAWRENCE WASDEN
ATTORNEY GENERAL
CRIMINAL APPELLATE DIVISION
700 WEST STATE STREET 4TH FLOOR
BOISE, ID 83720-0010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 25 day of April 2012.

Susan R. Petersen, Clerk of the
District Court, Latah County, ID

By Ranae Converse
Deputy Clerk