

5-21-2012

# Bottum v. Idaho State Police Clerk's Record Dckt. 39772

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## Recommended Citation

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Vol. 1 of 2

**LAW CLERK**  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

IN THE MATTER OF RANDALL PHILLIP BOTTUM

RANDALL PHILLIP BOTTUM

Petitioner-Appellant.

v.

IDAHO STATE POLICE, BUREAU OF CRIMINAL  
IDENTIFICATION CENTRAL SEX OFFENDER REGISTRY

Respondent

*Appealed from the District Court of the First Judicial District of  
the State of Idaho, in and for the County of Kootenai.*

FREDERICK G. LOATS  
PO Box 831  
Coeur d'Alene, ID 83814

*Attorney for Appellant*

STEPHANIE A. ALTIG  
Deputy Attorney General  
PO Box 700  
Meridan, Idaho 83680-0700

*Attorney for Respondent*



39772

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**PETITION TO BE RELEASED FROM SEX OFFENDER REGISTRATION REQUIREMENTS**

Filed June 15, 2011.....1

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF RANDALL	)	
PHILLIP BOTTUM	)	
	)	
RANDALL PHILLIP BOTTUM	)	SUPREME COURT
	)	CASE NO. 39772-2012
Petitioner-Appellant,	)	
	)	
V.	)	
	)	
IDAHO STATE POLICE, BUREAU OF	)	
CRIMINAL IDENTIFICATION CENTRAL	)	
SEX OFFENDER REGISTRY,	)	
Respondent	)	
_____	)	

CLERK'S RECORD ON APPEAL

FREDERICK G. LOATS  
PO Box 831  
Coeur D' Alene, ID 83814

STEPHANIE A. ALTIG  
Deputy Attorney General  
PO Box 700  
Meridan, ID 83680-0700

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

## In The Matter Of Randall Phillip Bottum

Date	Code	User	Judge
6/15/2011	NCOC	LISONBEE	Robert Caldwell
		LISONBEE	Robert Caldwell
			New Case Filed - Other Claims
			Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Loats, Frederick G (attorney for Bottum, Randall Phillip) Receipt number: 0025326 Dated: 6/15/2011 Amount: \$88.00 (Check) For: Bottum, Randall Phillip (subject)
6/24/2011	NOTC	LEU	Robert Caldwell
	NOAP	LEU	Robert Caldwell
			Idaho State Police, Bureau Of Criminal Identification, Notice And Affidavit Of Ineligibility Of Release From Sex Offender Registry
			Notice Of Appearance-Stephanie A. Altig obo ISP
7/25/2011	ADMR	SREED	John T. Mitchell
		SREED	John T. Mitchell
			Administrative assignment of Judge
			Notice of Reassignment of Case to Correct Jurisdiction and Judge
7/29/2011	HRSC	CLAUSEN	John T. Mitchell
	MEMS	BAXLEY	John T. Mitchell
	CVDI	VIGIL	John T. Mitchell
	FJDE	VIGIL	John T. Mitchell
			Hearing Scheduled (Motion 10/05/2011 02:30 PM) Remove from Sex Offender Registry - Loats
			Memorandum In Support Of Petition
			Civil Disposition entered for: Idaho State Police, Other Party; Bottum, Randall Phillip, Subject. Filing date: 7/29/2011
			Memorandum Decision and Order on Petition for Release from Sex Offender Registration Requirements
8/8/2011	HRSC	CLAUSEN	John T. Mitchell
			Hearing Scheduled (Motion to Amend 08/22/2011 10:30 AM) Loats
8/10/2011	MNAM	ROSENBUSCH	John T. Mitchell
	MEMO	CLAUSEN	John T. Mitchell
			Motion To Alter/Amend, (Reconsideration), Notice of Hearing
			Memorandum Decision and Order Rescinding Memorandum Decision and Order Entered 7/28/11, Denying Petition for Release from Sex Offender Registration Requirements; and Order Setting Briefing Schedule and Oral Argument
8/11/2011	HRSC	CLAUSEN	John T. Mitchell
	HRVC	CLAUSEN	John T. Mitchell
	HRVC	CLAUSEN	John T. Mitchell
			Hearing Scheduled (Oral Argument on Appeal 10/11/2011 02:00 PM)
			Hearing result for Motion scheduled on 10/05/2011 02:30 PM: Hearing Vacated Remove from Sex Offender Registry - Loats
			Hearing result for Motion to Amend scheduled on 08/22/2011 10:30 AM: Hearing Vacated Loats
8/29/2011	ANSW	ZOOK	John T. Mitchell
			Response to Petition and to Memorandum in Support of Petition
9/12/2011	MEMO	SREED	John T. Mitchell
			Reply Memorandum
9/28/2011	ADMR	MEYER	Jeff M Brudie
	ORAJ	LSMITH	John T. Mitchell
			Administrative assignment of Judge
			Order Assigning Judge

## In The Matter Of Randall Phillip Bottum

Date	Code	User	Judge
9/29/2011	HRVC	CLAUSEN	Hearing result for Motion scheduled on 10/11/2011 02:00 PM: Hearing Vacated RE: Sex Offender Registry
	ADMR	CRUMPACKER	Administrative assignment of Judge
10/20/2011	HRSC	HOFFMAN	Hearing Scheduled (Status Conference 02/06/2012 09:30 AM) Oral Argument - 1 hr. (Both Attorney's)
		HOFFMAN	Notice of Hearing
11/1/2011	MOTN	ZOOK	Motion to Appear at Hearing by Telephone
11/8/2011	ORDR	MITCHELL	Order Granting Motion to Appear by Telephone (Ms Altig)
12/13/2011	BRIE	ZOOK	Supplemental Brief in Support of Affidavit of Dawn A Peck
2/6/2012	DCHH	HAMILTON	Hearing result for Status Conference scheduled on 02/06/2012 09:30 AM: District Court Hearing Held Court Reporter: NONE Number of Transcript Pages for this hearing estimated: Oral Argument - 1 hr. Kootenai County In-Court Clerk to initiate call to all absent attorneys and to Judge Griffin @ (208) 983-2776. Ms. Altig by telephone @ (208) 884-7051.
2/8/2012	FACT	MITCHELL	Findings Of Fact, Conclusions Of Law And Order
	STAT	MITCHELL	Case status changed: Closed pending clerk action
	ORDR	MITCHELL	Order Denying Petition to be Released from Sex Offender Registration Requirements
	CVDI	VIGIL	Civil Disposition entered for: Idaho State Police, Other Party; Bottum, Randall Phillip, Subject. Filing date: 2/8/2012
	FJDE	VIGIL	Findings of Fact and Conclusions of Law
	STAT	VIGIL	Case status changed: Closed
3/12/2012		SREED	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Fred Loats Receipt number: 0010891 Dated: 3/12/2012 Amount: \$101.00 (Check) For: Bottum, Randall Phillip (subject)
	BNDK	SREED	Bond Posted - Cash (Receipt 10892 Dated 3/12/2012 for 100.00)
	STAT	SREED	Case status changed: Closed pending clerk action
	APSC	SREED	Appealed To The Supreme Court
	STAT	SREED	Case status changed: Reopened
3/13/2012	CERT	CLEVELAND	Certificate Of Mailing - 7010 3090 0000 2054 8674 (Clerk's Certificate of Appeal)

Date: 4/9/2012

First Judicial District Court - Kootenai County

User: CLEVELAND

Time: 04:36 PM

ROA Report

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Case: CV-2011-0004814 Current Judge: Michael J. Griffin

In The Matter Of Randall Phillip Bottum

In The Matter Of Randall Phillip Bottum

Date	Code	User	Notice of Lodging Transcript (12 Pages)	Judge
3/28/2012	NLTR	VIGIL	Notice of Lodging Transcript (12 Pages)	Michael J. Griffin



**FREDERICK G. LOATS**  
Attorney at Law  
111 North 2nd Street  
P. O. Box 831  
Coeur d'Alene, ID 83814  
Telephone (208)667-6424  
Fax: (208)664-3644  
ISB No. 2147

STATE OF IDAHO  
COUNTY OF KOOTENAI } 55  
FILED:

2011 JUN 15 PM 1:31

CLERK DISTRICT COURT

REPTIT

**Attorney for Defendant**

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

In re the Matter of )

RANDALL PHILLIP BOTTUM, )

Petitioner. )

Case No. **CN** 2011- **4814**

**PETITION TO BE RELEASED  
FROM SEX OFFENDER  
REGISTRATION REQUIREMENTS**

Fee Category: A  
Filing fee: \$88.00

Pursuant to the provisions of Idaho Code Section 18-8310, Petitioner hereby Petitions the Court for an Order releasing him from the requirement that he register as a sex offender, under Idaho Code Section 18-8301 et seq., and in support of the Petition, states as follows:

1. The Petitioner was placed on probation, pursuant to a suspended sentence, on or about July 29, 1991, and sentenced to a period of local incarceration pursuant to the Order suspending execution of Judgment and Sentence, in State of Idaho v. Randall Phillip Bottum, Kootenai County Case No. CR 1991-0070055, and more that 10 years have elapsed since the Petitioner finished

**PETITION TO BE RELEASED FROM SEX OFFENDER  
REGISTRATION REQUIREMENTS 1**

**Assigned to Judge Caldwell**

**0001**

serving the period of incarceration imposed, and was placed on probation. A certified copy of the Order Suspended Execution of Judgment and Sentence is attached hereto as Exhibit A.

2. Petitioner successfully completed and was discharged from probation Case No. CR 91-0070055 on June 14, 1994. A copy of the letter filed by his probation officer filed with the Court, documenting his successful completion of the recommended sex offender treatment program, as well as exemplary performance on probation, is attached hereto as Exhibit B.

3. Based upon his successful completion of probation and eligibility for relief under Idaho Code Section 19-2604, the Defendant's guilty plea was set aside and the charge was dismissed. A certified copy of that Order of Dismissal is attached hereto as Exhibit C.

4. The Petitioner successfully completed all the terms and conditions of his probation, including any sex offender treatment or counseling ordered therein. Since being discharged from probation the Petitioner's record has been limited to traffic infractions and violations. A copy of the Petitioner's criminal history since being discharged from probation is attached hereto as Exhibit D.

5. The Petitioner does not have a criminal charge pending nor is the Petitioner under criminal investigation for any violent crime or crime identified in Idaho Code Section 18-8304, or for any crime. The Petitioner is not a risk to re-offend, and poses no danger to society.

6. The Petitioner has been eligible to Petition for release from registration as a sex offender, since November, 2001.

Wherefore, Petitioner prays for relief as follows:

1. That the Court set a hearing for considering this Petition in accordance with Idaho Code Section 18-8310(2);

2. That the Court enter an Order exempting and releasing the Petitioner from the reporting and registrations requirements of the Sexual Offender Registration Act, Idaho Code Section 18-8301 et seq;

3. That the Court enter an Order that any information regarding the Petitioner be expunged from the central registry;

4. For such other and further relief as the Court deems just.

Dated this 13 day of June, 2011.

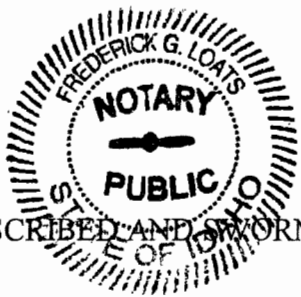
  
**FREDERICK G. LOATS**  
*Attorney for Petitioner*

STATE OF IDAHO )  
(ss.  
County of Kootenai )

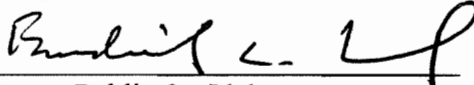
Randall Phillip Bottum, being first duly sworn, upon his oath deposes and says:

I am the Petitioner named in the above entitled Petition. I have read the same and the statements set forth therein are true and accurate, to be best of my knowledge and belief.

  
**RANDALL PHILLIP BOTTUM**



SUBSCRIBED AND SWORN TO before me this 13 day of June, 2011.

  
Notary Public for Idaho  
Residing at: Coeur d'Alene  
Commission expires: 10/12/27

CERTIFICATE OF SERVICE

I hereby certify that on the **15** day of June, 2011, a true and correct copy of the foregoing was served upon the Kootenai County Prosecutor, by fax to 446-1833, and a true and correct copy was served upon the Idaho Central Sex Offender Registry, Criminal Law Division, Idaho State Police, 700 W. Stratford Dr., Meridian, ID 83642, by mail, postage pre-paid.

  
FREDERICK G. LOATS  
*Attorney for Defendant*

ORIGINAL

WILLIAM J DOUGLAS  
Prosecuting Attorney  
315 W. Garden C-9000  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-2536

STATE OF IDAHO }  
COUNTY OF KOOTENAI }  
FILED 8-21-91 }  
# 200 }  
CLERK DISTRICT }  
*[Signature]* }  
DEPUTY }  
DEPUTY

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

STATE OF IDAHO,  
  
Plaintiff,  
  
vs.  
  
RANDALL PHILLIP BOTTUM,  
dob:  
SSN:  
  
Defendant.

Case No. F91-7005  
ORDER SUSPENDING  
JUDGMENT & SENTENCE

On the 29th day of July, 1991, before the Honorable GARY  
M. HAMAN, District Judge, personally appeared LANSING L.  
HAYNES, Chief Criminal Deputy Prosecuting Attorney for Kootenai  
County, Idaho; and the defendant with his attorney, ROLAND  
WATSON, this being the time fixed for pronouncing judgment in  
this matter.

IT IS ADJUDGED that the defendant has been convicted upon a  
plea of guilty to the offense of LEWD CONDUCT WITH A MINOR  
UNDER SIXTEEN, a Felony, Idaho Code Section 18-1508, as  
charged in the Information on file herein; and the Court having  
asked whether the defendant had any legal cause to show why  
judgment should not be pronounced against him, and no sufficient  
cause to the contrary having been shown or appearing to the  
Court;

IT IS FURTHER ADJUDGED that the defendant is guilty as charged; that the offense for which the defendant is adjudged guilty herein was committed on or between the months of November, 1990 and January, 1991.

IT IS FURTHER ADJUDGED that the defendant be sentenced pursuant to Idaho Code Section 19-2513 to the custody of the Idaho State Board of Corrections, to be held and incarcerated by said Board in a suitable place for a period of ten (10) years as follows:

For a fixed and determinate period of two (2) years followed by an indeterminate period of eight (8) years.

IT IS FURTHER ADJUDGED that the Court will suspend the execution of said sentence and the defendant is placed on supervised probation for a period of five (5) years under the following terms and conditions:

1. That you commit no violations of any law of the United States of America, or of any state, county, city or other political subdivision thereof, during the period of probation;
2. That you comply with all rules, regulations and requirements of the Idaho Department of Corrections, during the period of supervised probation;
3. That you submit to searches of your person, personal property, automobiles, and residence without a search warrant at the request of your probation officer;
4. That you submit your blood, breath or urine to analysis at your own expense at the request of your probation officer or any law enforcement officer;

5. That you shall make every effort to obtain and maintain full-time employment or be enrolled in a full-time educational program;

6. That you attend and complete such substance abuse counseling as your probation officer may designate;

7. That you attend and complete such mental health counseling as your probation officer may designate;

8. That you attend and complete such sexual abuse treatment or counseling as your probation officer may designate;

9. That you pay counselling fees for your victim.

10. That you reimburse the Court for expenses involved in your prosecution in the amount of \$500.00;

11. That you submit to polygraph examinations at your own expense if requested to do so by your probation officer;

12. That you not enter into establishments wherein the primary source of income is derived through the dispensing of alcoholic beverages during the period of your probation.

13. That you not associate with any individual prohibited by your probation officer <sup>or</sup> of Tom Hearn.

IT IS FURTHER ORDERED that you be, and hereby are, assessed and ordered to pay costs in the following amounts:

That pursuant to Idaho Code Section 31-3201A(b) you shall pay Court costs in the amount of \$42.50;

These costs and expenses shall be paid through the Clerk of the Court, 324 W. Garden, Coeur d'Alene, Idaho 83814, in the form of a certified check, cash or money order. Half of all

costs shall be paid within six (6) months, with the entire amount to be paid within one (1) year.

IT IS FURTHER ORDERED that you serve 120 days in the Kootenai County Jail with work release and counselling release privileges; you are to report to jail on July 30, 1991 at 6:00 p.m.

IT IS FURTHER ORDERED that, if you fail to comply with the terms and conditions set forth hereinabove during said period, then, in such event, you shall be forthwith apprehended and brought before this Court for imposition of judgment and sentence pronounced herein.

ENTERED this 29 day of July, 1991.

*[Signature]*  
GARY M. HAMAN  
District Judge

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE.

SEALED ON THIS 29 DAY OF July 1991  
CLIFFORD T. HAYES, CLERK OF THE DISTRICT COURT BY [Signature]  
Deputy



I hereby certify that on the 21 day of Aug 19 91  
a true copy of the foregoing was sent to: S. Ct.,  
Proc., Issuing  
Araby P. Watson, 10, Box 1086, Coe, ID 83814  
by: [Signature] Deputy Clerk





# STATE OF IDAHO

CECIL D. ANDRUS  
GOVERNOR

Department of Correction  
Field and Community Services

JAMES C. SPALDING  
DIRECTOR

June 8, 1994

Honorable Gary M. Haman  
Judge, First Judicial District  
Kootenai County Courthouse  
Coeur d'Alene, Idaho 83814

CASE END SUMMARY REPORT

Dear Judge Haman:

RE: BOTTUM, Randall Phillip  
Case No: CR91-70055

On 7/29/91, Mr. Bottum appeared in Court and was placed on five years supervised probation for the crime of Lewd Conduct With a Minor Under 16. He was also ordered to serve 120 days local incarceration, with work and counseling release, pay reimbursement and court costs in the amount of \$542.50, and complete specialized sex offender treatment.

While on probation, Mr. Bottum has been fully cooperative and has complied with all terms and conditions of his probation. He successfully graduated from Mr. Thomas Hearn's sex offender treatment program at North Idaho Treatment Associates in 11/93. Since his graduation, he has attended one sex offender group per month as an aftercare/support group. He is also currently involved in family counseling with his wife and children at North Idaho Treatment Associates. In addition to this, the subject has maintained his sobriety and has also successfully completed substance abuse treatment at the Port of Hope. He also attends AA on a regular basis and all urine samples collected from the subject have tested negative for drugs.

At this point, Mr. Bottum poses a significantly lower risk to the community and has received the maximum benefit from supervised probation. He has paid his court obligation in full and continues to maintain full-time employment at Coeur d'Alene Building Supply. Mr. Bottum's plan for the future includes continuing to work in Coeur d'Alene and also residing with his wife and children at Wolf Lodge. To my knowledge, Mr. Bottum has been crime free while on supervised probation.

DISTRICT ONE • P.O. BOX 2148 COEUR d'ALENE, IDAHO 83816-2148 • (208) 769-1444


**EQUAL OPPORTUNITY EMPLOYER**

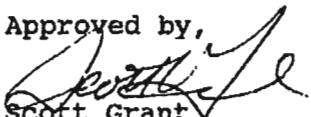
0009

CASE END SUMMARY REPORT  
Honorable Gary M. Haman  
RE: BOTTUM, Randall Phillip  
Page 2

As the subject has paid his financial obligation to the Court, has completed sex offender treatment, and has abided by the terms and conditions of his probation, it is respectfully recommended that he be discharged from further supervised probation.

Respectfully submitted,

  
Kevin Gentry  
Field and Community Services  
P.O. Box 2148  
Coeur d'Alene, Idaho 83816-2148  
(208) 769-1444

Approved by,  
  
Scott Grant  
Section Supervisor

cp

c Prosecuting Attorney  
File

0010

**FREDERICK G. LOATS**  
 Attorney at Law  
 2005 Ironwood Parkway, Ste 210  
 P. O. Box 831  
 Coeur d'Alene, Idaho 83814  
 Telephone: (208)667-6424  
 Fax: (208) 664-3644  
 JSB No. 2147

STATE OF IDAHO } ss  
 COUNTY OF KOOTENAI }  
 FILED: 3/1/11  
 AT 10:07 O'CLOCK P.M.  
 CLERK, DISTRICT COURT  
*[Signature]*  
 DEPUTY

**Attorney for Defendant**

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

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-91-70055
	)	
vs.	)	
	)	<b>ORDER TO DISMISS</b>
RANDALL P. BOTTUM,	)	
	)	
Defendant.	)	

Based upon the Defendant's Motion and Affidavit of Compliance filed herein, and good cause appearing,

IT IS HEREBY ORDERED that Defendant's previously entered plea of guilty is hereby set aside and the above entitled action is hereby dismissed, pursuant to the provisions of Idaho Code § 19-2604.

DATED this 23<sup>rd</sup> day of February, 2011.

*[Signature]*  
 \_\_\_\_\_  
 District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of July, 2011, a true and correct copy of the foregoing was mailed postage prepaid addressed to:

Frederick G. Loats, Attorney at Law, by fax 664-3644  
Kootenai County Prosecuting Attorney by fax 446-1883  
100C-208-327-7445

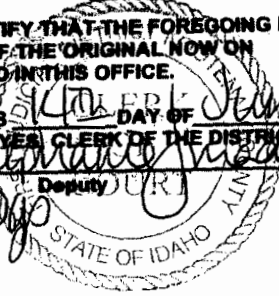
*[Handwritten Signature]*  
Deputy Clerk of the Court  
#599

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI }

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL NOW ON FILE OR RECORD IN THIS OFFICE.

SEALED ON THIS 14th DAY OF July 2011  
CLIFFORD T. HAYES, CLERK OF THE DISTRICT COURT BY *[Signature]*  
Deputy

1-2 of 2 pgs



ORDER TO DISMISS - 2

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-2006-0020008** Magistrate Judge: **To Be Assigned** Amount due: **\$0.00** Closed

Charges: Violation Date	Charge	Citation	Disposition
09/07/2006	I49-1232 Insurance-fail To Provide Proof Of Insurance Arresting Officer: STERLING, A., CDA	87328	Finding: Clerk Error Duplicate Entry Disposition date: 09/25/2006 Fines/fees: \$0.00
09/07/2006	I49-673(3) Safety Restraint- Operator +18/Occupant -18 Arresting Officer: STERLING, A., CDA	87328	Finding: Clerk Error Duplicate Errot Disposition date: 09/25/2006 Fines/fees: \$0.00

Register of actions:

- 09/11/2006 New Case Filed
- 09/29/2006 Order Setting Aside Default Judgment
- 10/01/2006 Case status changed (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-2006-0011723** Magistrate Judge: **To Be Assigned** Amount due: **\$0.00** Closed

Charges: Violation Date	Charge	Citation	Disposition
05/31/2006	I49-673 Safety Restraint-Fail To Use Arresting Officer: Burke 2806, Paul, ISP	1174990	Finding: Guilty Disposition date: 06/22/2006 Fines/fees: \$10.00

Register of actions:

- 06/02/2006 New Case Filed
- 06/22/2006 Notice of Default Judgment - Failure to Appear - Charge # 1, Safety Restraint-Fail To Use Step 1, Failure to Appear - Charge # 1, Safety Restraint-Fail To Use  
Appearance date: 7/6/2006
- 06/22/2006 Case status changed: Closed pending clerk action
- 06/26/2006 Case status changed (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-2004-0022296** Magistrate Judge: **To Be Assigned** Amount due: **\$0.00** Closed

Charges: Violation Date	Charge	Citation	Disposition
09/30/2004	I49-654(2) Exceeding the Posted Speed Limit (1-19 MPH) Arresting Officer: ANDERSEN, ERIK, PFPD	61291	Finding: Guilty Disposition date: 10/08/2004 Fines/fees: \$53.00

Register of actions:

10/04/2004 New Case Filed  
 10/08/2004 Guilty Plea Or Admission Of Guilt - GT (I49-654(2) Exceeding the Posted Speed Limit (1-19 MPH))  
 10/08/2004 Sentenced To Pay Fine (I49-654(2) Exceeding the Posted Speed Limit (1-19 MPH))  
 10/08/2004 Case status changed: closed pending clerk action  
 10/12/2004 Case status changed (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: CR-2003-0014658      Magistrate Judge: **To Be Assigned**      Amount due: **\$0.00**      **Closed**

Charges:	Violation Date	Charge	Citation	Disposition
	07/03/2003	I49-1801 Vehicles-abandoned Vehicles Prohibited Arresting Officer: Burke 3183, Rachel, ISP	1007201	Finding: Guilty Disposition date: 07/25/2003 Fines/fees: \$170.50

Register of actions:  
 of Date

07/14/2003 New Case Filed  
 07/14/2003 Affidavit Of Probable Cause  
 07/14/2003 Order Finding Probable Cause  
 07/25/2003 Guilty Plea Or Admission Of Guilt - GT (I49-1801 Vehicles-abandoned Vehicles Prohibited)  
 07/25/2003 Sentenced To Pay Fine (I49-1801 Vehicles-abandoned Vehicles Prohibited)  
 07/25/2003 Case status changed: closed pending clerk action  
 07/28/2003 Case status changed (batch process)  
 10/08/2004 Purged

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: CR-2003-0008655      Magistrate Judge: **To Be Assigned**      Amount due: **\$0.00**      **Closed**

Charges:	Violation Date	Charge	Citation	Disposition
	04/23/2003	I49-654(1) Speed-basic Rule Arresting Officer: Dalton Officer,, DGPD	82690	Finding: Guilty Disposition date: 05/12/2003 Fines/fees: \$53.00
	04/23/2003	I49-673 Safety Restraint-fail To Use Arresting Officer: Dalton Officer,, DGPD	82690	Finding: Guilty Disposition date: 05/12/2003 Fines/fees: \$5.00

Register of actions:  
 of Date

04/25/2003 New Case Filed  
 Notice of Default Judgment - Step 1, Failure to Appear - Charge # 1, Speed-basic  
 05/12/2003 Rule, Step 1, Failure to Appear - Charge # 2, Safety Restraint-fail To Use  
 Appearance date: 05/27/2003  
 05/12/2003 Case status changed: Closed pending clerk action  
 05/19/2003 Case status changed (batch process)  
 08/04/2003 Case status changed (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-2002-0011540** Magistrate Judge: **To Be Assigned** Amount due: **\$0.00** Closed

Charges:	Violation Date	Charge	Citation	Disposition
	06/20/2002	I49-654(1) Speed-basic Rule Arresting Officer: KITCHEN, BRIAN, ISP	806348	Finding: Guilty Disposition date: 07/05/2002 Fines/fees: \$53.00

Register of actions:

- 06/21/2002 New Case Filed
- 07/05/2002 Guilty Plea Or Admission Of Guilt (I49-654(1) Speed-basic Rule)
- 07/05/2002 Case status changed: closed pending clerk action
- 07/08/2002 Case status changed (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-2001-0023399** Magistrate Judge: **To Be Assigned** Amount due: **\$0.00** Closed

Charges:	Violation Date	Charge	Citation	Disposition
	12/29/2001	I49-1232 Insurance-fail To Provide Proof Of Insurance Arresting Officer: Hunt (Chapman) K2346, Alana, KCSO	76796	Finding: Dismissed By Court Disposition date: 01/03/2002 Fines/fees: \$0.00

Register of actions:

- 12/29/2001 New Case Filed
- 01/03/2002 Proof of Insurance Provided
- 01/03/2002 Dismissed by Court (I49-1232 Insurance-fail To Provide Proof Of Insurance)
- 01/03/2002 Case status changed: closed pending clerk action
- 01/07/2002 Case status changed (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-1995-0014927** Magistrate Judge: **To Be Assigned** Amount due: **\$0.00** Closed

Charges:	Violation Date	Charge	Citation	Disposition
	09/06/1995	I49-654(1) Speed-basic Rule Arresting Officer: KNIGHT, P., PFPD	33776	Finding: Guilty Disposition date: 09/21/1995 Fines/fees: \$47.00

Register of actions:

- 09/06/1995 New Case Filed

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**  
 To Be Assigned Amount

Case: CR-1993-0097001 Magistrate Judge: Assigned due: \$0.00 Closed

Charges: Violation Date	Charge	Citation	Disposition
06/29/1993	149-654(1) Speed-basic Rule Arresting Officer: Kline K2334, Don, KCSO	33701	Finding: Guilty Disposition date: 07/15/1993 Fines/fees: \$43.00

Register of actions:  
Date  
06/29/1993 New Case Filed

**State of Idaho vs. Randall Phillip Bottum**  
No hearings scheduled

Case: CR-1991-0070055 District Judge: Robert B. Burton Amount due: \$0.00 Closed

Charges: Violation Date	Charge	Citation	Disposition
02/08/1991	118-1508 Lewd Conduct With Child Under 16 Arresting Officer: GREENSIDES, J., CDA		Finding: Guilty Disposition date: 07/29/1991 Fines/fees: \$546.50 Jail: 4 months Det Penitentiary: 2 years Indet Penitentiary: 8 years Probation: 5 years

Register of actions:  
Date

- 02/08/1991 New Case Filed/tape # 14905
- 02/08/1991 Summons Issued
- 02/08/1991 Hearing Scheduled - Felony Summons (02/20/1991) Don L. Swanstrom
- 02/15/1991 Summons Returned/served
- 02/20/1991 Failure To Appear For Hearing Or Trial - Felony Summons
- 02/20/1991 Appearance Through Attorney
- 02/20/1991 Request For Discovery
- 02/21/1991 Change Assigned Judge
- 02/21/1991 Hearing Scheduled - Prelim Hearing (03/12/1991) Peter J. Hutchinson
- 02/21/1991 Response To Discovery
- 02/21/1991 Request For Discovery
- 03/01/1991 Subpoena Returned/served To Beaty Bottum
- 03/01/1991 Subpoena Returned/served To Regan Bottum
- 03/11/1991 Waiver Of Prelim Hrg & Req 4 Scheduled Arr
- 03/12/1991 Hearing Waived - Prelim Hearing
- 03/12/1991 Preliminary Hearing Waived (bound Over)
- 03/12/1991 Transfer In (from Idaho Court Or County)
- 03/12/1991 Hearing Scheduled - Law Day (04/08/1991) Gary M. Haman
- 03/13/1991 Subpoena Returned-served/jim Greensides
- 03/14/1991 Information
- 04/08/1991 Arraignment / First Appearance - Law Day
- 04/09/1991 Hearing Scheduled - Pretrial Conf (07/05/1991) Gary M. Haman
- 04/09/1991 Jury Trial Scheduled (07/08/1991) Gary M. Haman
- 05/03/1991 Order Entering Plea Of Not Guilty
- 06/07/1991 Notice Of Hearing
- 06/07/1991 Hearing Scheduled - Plea Change (06/17/1991) Gary M. Haman

0016



- 06/17/1991 Change Plea To Guilty Before H/t - Plea Change
- 06/17/1991 Hearing Vacated - Pretrial Conf
- 06/17/1991 Hearing Vacated - Jury Trial
- 07/10/1991 Order Allowing Change Of Plea
- 07/17/1991 Presentence Investigation Report
- 07/29/1991 Hearing Held
- 07/29/1991 Judgment
- 07/29/1991 Sentenced To Incarceration
- 07/29/1991 Probation Ordered
- 07/29/1991 Sentenced To Fine And Incarceration
- 08/06/1991 Agreement Of Supervision/id Dept Of Correctio
- 08/21/1991 Order Suspending Judgment And Sentence
- 10/08/1991 Affidavit And Recommendation For Commutation Of Sentence For Good Behavior
- 11/04/1991 Order For Commutation Of Sentence
- 06/08/1994 Petition For Discharge
- 06/14/1994 Order For Discharge
- 06/14/1994 Discharged From Probation
- 09/04/2001 Purgd
- 11/20/2006 Administrative assignment of Judge (batch process)

**State of Idaho vs. Randall Phillip Bottum**  
**No hearings scheduled**

Case: **CR-1990-0079316**      Magistrate Judge: **To Be Assigned**      Amount due: **\$0.00**      **Closed**

Charges:	Violation Date	Charge	Citation	Disposition
	05/10/1990	161-807 RULE 19 Puc-motor Carrier Safety Violations	916307	Finding: Guilty Disposition date: 05/18/1990 Fines/fees: \$70.00
		Arresting Officer: Wright, Tom, ISP		

Register of actions:  
 Date  
 05/10/1990 New Case Filed

Connection: Public

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED:

2011 JUN 24 AM 9:45

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CLERK OF DISTRICT COURT  
*[Signature]*  
DEPUTY

In re the Matter of )  
RANDALL PHILLIP BOTTUM, )  
Petitioner )

Case No. CV2011-4814

IDAHO STATE POLICE,  
BUREAU OF CRIMINAL  
IDENTIFICATION,  
NOTICE AND AFFIDAVIT  
OF INELIGIBILITY OF  
RELEASE FROM SEX  
OFFENDER REGISTRY

STATE OF IDAHO )  
County of Ada ) ss.

Dawn A. Peck, being first duly sworn upon her oath deposes and says as follows:

1. I am over eighteen (18) years of age and competent to testify;
2. I make this affidavit based on my personal knowledge;
3. I am employed by the Idaho State Police, Bureau of Criminal Identification ("BCI"), as Bureau Manager;
4. My duties as the Bureau Manager for the BCI include being a custodian of the records for the Idaho Sex Offender Registry, which is housed and maintained by the BCI;
5. As a public office of a public agency, the BCI maintains records, reports, statements, and data compilations in various forms that set forth its regularly conducted and regularly recorded

IDAHO STATE POLICE, BUREAU OF CRIMINAL IDENTIFICATION, NOTICE AND AFFIDAVIT OF INELIGIBILITY OF RELEASE FROM SEX OFFENDER REGISTRY- 1

activities, and matters observed pursuant to a duty imposed by law and as to which there is a duty to report pursuant to Idaho Code § 18-8301, *et. seq.*;

6. I have reviewed the Sex Offender Registry records for Randall Phillip Bottum and find that he was convicted of Idaho Code § 18-1508 Lewd Conduct with Minor Child Under 16 and because of that conviction is required to register as a sex offender in the state of Idaho;

7. Randall Phillip Bottum's conviction of Idaho Code § 18-1508 Lewd Conduct with Minor Child Under 16 (and against a minor below the age of thirteen years at the time of the commission of the offense) is defined as an Aggravated Offense pursuant to Idaho Code § 18-8303. Therefore, he is not eligible for relief from the Idaho sex offender registration requirements, pursuant to Idaho Code § 18-8310.

8. Further your affiant sayeth naught.

DATED this 21<sup>st</sup> of June 2011.

*Dawn A. Peck*

Dawn A. Peck

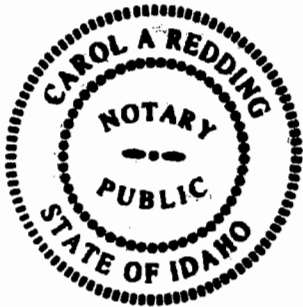
SUBSCRIBED AND SWORN TO before me this 21<sup>st</sup> day of June, 2011.

*Carol A. Redding*

Notary Public for Idaho

Residing at Ada County

Commission expires 2.18.2016



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing IDAHO STATE POLICE, BUREAU OF CRIMINAL IDENTIFICATION, NOTICE AND AFFIDAVIT OF INELIGIBILITY OF RELEASE FROM SEX OFFENDER REGISTRY was served on the following on this 21st day of June 2011 by the following method:

Barry McHugh

KOOTENAI COUNTY PROSECUTING ATTORNEY

501 Government Way

Coeur d'Alene, ID 83814

U.S. First Class Mail, Postage Prepaid

U.S. Certified Mail, Postage Prepaid

Federal Express

Hand Delivery

Facsimile

Electronic Mail

Frederick G. Loats

111 North 2<sup>nd</sup> Street

P.O. Box 831

Coeur d'Alene, ID 83814

U.S. First Class Mail, Postage Prepaid

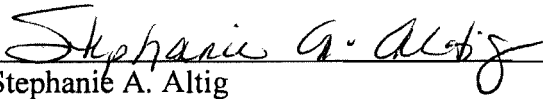
U.S. Certified Mail, Postage Prepaid

Federal Express

Hand Delivery

Facsimile

Electronic Mail

  
Stephanie A. Altig

FILED 7/29/11

AT 11:10 O'Clock A M  
CLERK OF DISTRICT COURT

*[Signature]*  
Deputy

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

In re the Matter of )  
RANDALL PHILLIP BOTTUM, )  
*Petitioner,* )  
\_\_\_\_\_ )

Case No. **CV 2011 4814**

**MEMORANDUM DECISION AND  
ORDER ON PETITION FOR  
RELEASE FROM SEX OFFENDER  
REGISTRATION REQUIREMENTS**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court on the Petition to be Released From Sex Offender Registration Requirements filed by Randall Phillip Bottum, (Bottum) petitioner, on June 15, 2011. A hearing was requested in that petition. Petition to be Released From Sex Offender Registration Requirements, p. 2, ¶ 1.

On July 29, 1991, Bottum was convicted of the felony crime Lewd Conduct With a Minor Under Sixteen, a violation of Idaho Code § 18-1508. On that date, Judge Gary M. Haman sentenced Bottum to two years fixed followed by eight years indeterminate for a total sentence of ten years, and placed Bottom on probation for five years. Petition, Exhibit A. He successfully completed his probation, and on February 23, 2011, Judge Patrick Luster (who replaced Judge Haman following his retirement) dismissed the case, upon Bottum's petition, pursuant to I.C. § 19-2604. *Id.*, Exhibit C.

Bottum's Petition to be Released From Sex Offender Registration Requirements was initially errantly assigned to a magistrate, and reassigned to the undersigned

district judge.

On June 24, 2011, the Idaho State Police Bureau of Criminal Identification Central Sex Offender Registry (Bureau), through its counsel the Attorney General of the State of Idaho, filed: Notice of Appearance for Limited Purpose and for Filing the Affidavit of Dawn A. Peck; and Idaho State Police, Bureau of Criminal Identification, Notice and Affidavit of Ineligibility From Sex Offender Registry. The Bureau contends Bottum is not eligible under Idaho Code § 18-8310(1) for the relief he seeks in his petition because Bottom was convicted of Lewd Conduct with Minor Child Under the Age of Sixteen Years, a violation of Idaho Code § 18-1508, which qualifies as an "Aggravated Offense", as defined in Idaho Code § 18-8303(1). Notice of Appearance for Limited Purpose and for Filing the Affidavit of Dawn A. Peck, p. 2.

## II. ANALYSIS

Idaho Code § 18-8310(1) provides: "Registration under this act [the Sexual Offender Registration Notification and Community Right-to-Know Act, I.C. § 19-8301 to § 18-8328] is for life; however, any offender, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the offender was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the offender shall be exempted from the duty to register as a sexual offender." Bottum meets the time requirement. However, Lewd Conduct with Minor Child Under the Age of Sixteen Years, a violation of Idaho Code § 18-1508, is specifically listed as an "Aggravated Offense", as currently defined in Idaho Code § 18-8303(1).

The Bureau in this case adds: "Randall Phillip Bottum's victim was a minor below the age of thirteen years at the time of the commission of the offense." Notice of

Appearance for Limited Purpose and for Filing the Affidavit of Dawn A. Peck, p. 2; Idaho State Police, Bureau of Criminal Identification, Notice and Affidavit of Ineligibility From Sex Offender Registry (the Affidavit of Dawn Peck), p. 2, ¶¶ 6, 7. The Court is not clear as to the significance of the detail that Bottum's victim was under the age of thirteen. Presently, Idaho Code § 18-8303(1) defines any violation of Idaho Code § 18-1508 (which in turn requires as an element of the crime that the victim be under the age of sixteen), as an Aggravated Offense. In the past, Idaho Code § 18-8303(1) limited its included Aggravated Offenses as "lewd conduct, when the victim is less than twelve (12) years of age." Thus, under the old statute, under thirteen would not be sufficient, the victim would have to have been under the age of twelve.

In any event, Bottum's petition is filed in 2011, and this Court finds the current statutory language is what is pertinent. The present statutory language defines *any* violation of Idaho Code § 18-1508 as an "Aggravated Offense", not capable of being taken off the sex offender registry.

A hearing is discretionary with the Court under Idaho Code § 18-8310: "The district court may grant a hearing if it finds that the petition is sufficient." This Court specifically finds Bottum's petition is not sufficient, due to the fact that he has been convicted of Lewd Conduct with Minor Child Under the Age of Sixteen Years, a violation of Idaho Code § 18-1508, and under the present statutory language, specifically, Idaho Code § 18-8303(1), that offense is not one in for which a petition to be exempted from the duty to register as a sexual offender may be made. Thus, the Court exercises its discretion and decides no hearing would provide any relevant information.

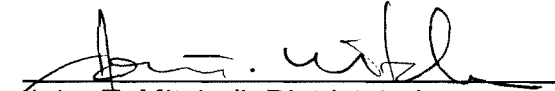
### **III. CONCLUSION AND ORDER.**

For the reasons stated above, petitioner's requested relief must be denied.

IT IS HEREBY ORDERED petitioner Randall Phillip Bottum's requested relief is **0023**

DENIED, and his petition is DISMISSED without hearing.


Entered this 29<sup>th</sup> day of July, 2011.

  
John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the 29 day of July, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>		<u>Lawyer</u>	<u>Fax #</u>
Fred Loats	208 664-3644 ✓		Stephanie A. Altig	208 884-7228 ✓

#8829   
Jeanne Clausen, Deputy Clerk





issued its Order. Due to the filing of petitioner's Memorandum in Support of Petition, this court file returned to the undersigned's office about August 1, 2011, however, due to the Court's schedule the undersigned was unable to review the Memorandum in Support of Petition until August 10, 2011.

The July 29, 2011, Order in its entirety reads:

This matter is before the Court on the Petition to be Released From Sex Offender Registration Requirements filed by Randall Phillip Bottum, (Bottum) petitioner, on June 15, 2011. A hearing was requested in that petition. Petition to be Released From Sex Offender Registration Requirements, p. 2, ¶ 1.

On July 29, 1991, Bottum was convicted of the felony crime Lewd Conduct With a Minor Under Sixteen, a violation of Idaho Code § 18-1508. On that date, Judge Gary M. Haman sentenced Bottum to two years fixed followed by eight years indeterminate for a total sentence of ten years, and placed Bottum on probation for five years. Petition, Exhibit A. He successfully completed his probation, and on February 23, 2011, Judge Patrick Luster (who replaced Judge Haman following his retirement) dismissed the case, upon Bottum's petition, pursuant to I.C. § 19-2604. *Id.*, Exhibit C.

Bottum's Petition to be Released From Sex Offender Registration Requirements was initially errantly assigned to a magistrate, and reassigned to the undersigned district judge.

On June 24, 2011, the Idaho State Police Bureau of Criminal Identification Central Sex Offender Registry (Bureau), through its counsel the Attorney General of the State of Idaho, filed: Notice of Appearance for Limited Purpose and for Filing the Affidavit of Dawn A. Peck; and Idaho State Police, Bureau of Criminal Identification, Notice and Affidavit of Ineligibility From Sex Offender Registry. The Bureau contends Bottum is not eligible under Idaho Code § 18-8310(1) for the relief he seeks in his petition because Bottum was convicted of Lewd Conduct with Minor Child Under the Age of Sixteen Years, a violation of Idaho Code § 18-1508, which qualifies as an "Aggravated Offense", as defined in Idaho Code § 18-8303(1). Notice of Appearance for Limited Purpose and for Filing the Affidavit of Dawn A. Peck, p. 2.

## II. ANALYSIS

Idaho Code § 18-8310(1) provides: "Registration under this act [the Sexual Offender Registration Notification and Community Right-to-Know Act, I.C. § 19-8301 to § 18-8328] is for life; however, any offender, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the offender was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the offender shall be exempted from

the duty to register as a sexual offender." Bottum meets the time requirement. However, Lewd Conduct with Minor Child Under the Age of Sixteen Years, a violation of Idaho Code § 18-1508, is specifically listed as an "Aggravated Offense", as currently defined in Idaho Code § 18-8303(1).

The Bureau in this case adds: "Randall Phillip Bottum's victim was a minor below the age of thirteen years at the time of the commission of the offense." Notice of Appearance for Limited Purpose and for Filing the Affidavit of Dawn A. Peck, p. 2; Idaho State Police, Bureau of Criminal Identification, Notice and Affidavit of Ineligibility From Sex Offender Registry (the Affidavit of Dawn Peck), p. 2, ¶¶ 6, 7. The Court is not clear as to the significance of the detail that Bottum's victim was under the age of thirteen. Presently, Idaho Code § 18-8303(1) defines any violation of Idaho Code § 18-1508 (which in turn requires as an element of the crime that the victim be under the age of sixteen), as an Aggravated Offense. In the past, Idaho Code § 18-8303(1) limited its included Aggravated Offenses as "lewd conduct, when the victim is less than twelve (12) years of age." Thus, under the old statute, under thirteen would not be sufficient, the victim would have to have been under the age of twelve.

In any event, Bottum's petition is filed in 2011, and this Court finds the current statutory language is what is pertinent. The present statutory language defines *any* violation of Idaho Code § 18-1508 as an "Aggravated Offense", not capable of being taken off the sex offender registry.

A hearing is discretionary with the Court under Idaho Code § 18-8310: "The district court may grant a hearing if it finds that the petition is sufficient." This Court specifically finds Bottum's petition is not sufficient, due to the fact that he has been convicted of Lewd Conduct with Minor Child Under the Age of Sixteen Years, a violation of Idaho Code § 18-1508, and under the present statutory language, specifically, Idaho Code § 18-8303(1), that offense is not one in for which a petition to be exempted from the duty to register as a sexual offender may be made. Thus, the Court exercises its discretion and decides no hearing would provide any relevant information.

### **III. CONCLUSION AND ORDER.**

For the reasons stated above, petitioner's requested relief must be denied.

IT IS HEREBY ORDERED petitioner Randall Phillip Bottum's requested relief is DENIED, and his petition is DISMISSED without hearing.

Memorandum Decision and Order on Petition for Release from Sex Offender  
Registration Requirements, pp. 1-4.

## **II. ANALYSIS.**

The Deputy Attorney General in her pleading filed June 24, 2011, only discussed

the *current* language of Idaho Code § 18-8303(1), and did not discuss prior iterations of that statute.

The petitioner's Memorandum in Support of Petition, filed just after the above Opinion was filed, discusses the legislative history of the "Sex Offender Registration Act" which was repealed in 1998 and followed by the "Sexual Offender Registration Notification and Community Right-to-Know Act." Petitioner's Memorandum in Support of Petition also discussed retroactivity of the various statutes.

The Deputy Attorney General in her pleading filed June 24, 2011, did not discuss the history of the various statutes, nor did it discuss retroactivity. Since the issue of retroactivity was not raised in the petition, and since the Court did not have petitioner's Memorandum in Support of Petition at the time it issued its Order, and since the issue of retroactivity was not raised by the Deputy Attorney General, this Court did not address the issue of retroactivity.

Accordingly, this Court now finds it was error for it to dismiss petitioner's petition and deny the relief requested by petitioner, without a hearing.

### **III. ORDER.**

IT IS HEREBY ORDERED the Memorandum Decision and Order on Petition for Release From Sex Offender Registration Requirements entered on July 29, 2011, is RESCINDED and is of no effect.

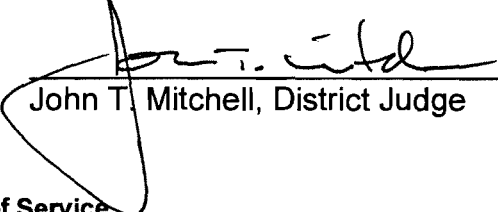
IT IS FURTHER ORDERED that the Deputy Attorney General and/or the Kootenai County Prosecuting Attorney (I.C. § 18-8310) file any response memorandum to the petitioner's Memorandum in Support of Petition no later than August 31, 2011.

IT IS FURTHER ORDERED that the petitioner file any reply memorandum to the Deputy Attorney General's and/or Kootenai County Prosecuting Attorney's response memorandum, no later than September 14, 2011.

0028

IT IS FURTHER ORDERED that oral argument on the petition will be held on October 11, 2011, at 2:00 p.m., more than sixty days from the current date, pursuant to I.C. § 18-8310. Any counsel may participate in this hearing telephonically by making arrangement with the Court's Deputy Clerk of Court.

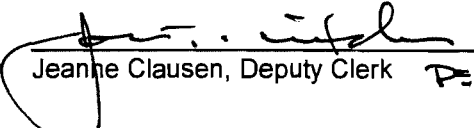
Entered this 10<sup>th</sup> day of August, 2011.

  
John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of August, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
Fred Loats	208 664-3644	Stephanie A. Altig, Dep. AG	208 884-7228
Barry McHugh, Kootenai Co. Pros. Atty.	208 446-1833		

  
Jeanne Clausen, Deputy Clerk Post. Judge

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

2011 AUG 29 AM 11:19

CLERK DISTRICT COURT

*Obiazok*  
DEPUTY

STEPHANIE A. ALTIG  
Lead Deputy Attorney General  
Idaho State Police  
700 S. Stratford Drive  
Meridian, Idaho 83642  
Telephone: (208) 884-7050  
Facsimile: (208) 884-7228  
Idaho State Bar No. 4620

Counsel for the Idaho State Police  
Bureau of Criminal Identification  
Central Sex Offender Registry

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

In re the Matter of	) Case No. CV-2011-4814
	)
RANDALL PHILLIP BOTTUM,	) RESPONSE TO PETITION AND
	) TO MEMORANDUM IN
Petitioner.	) SUPPORT OF PETITION
	)
	)

The Idaho State Police, Bureau of Criminal Identification, Central Sex Offender Registry (hereafter "SOR"), by and through its counsel, Stephanie A. Altig, Deputy Attorney General, hereby submits its Response to Petition and to Memorandum in Support of Petition. This Response was invited by the Court's Memorandum Decision and Order Rescinding Memorandum Decision and Order Entered July 29, 2011, Denying Petition for Release from Sex Offender Registration Requirements; and Order Setting Briefing Schedule and Oral Argument, entered August 10, 2011.

## I. INTRODUCTION.

Petitioner asserts that application of the 2001 and subsequent amendments to IDAHO CODE § 18-8301(1) (definition of “aggravated offense”) and IDAHO CODE § 18-8310(1) (precluding offender convicted of an aggravated offense from relief from sex offender registration requirements) in his case amount to retroactive application of those amendments in violation of IDAHO CODE § 73-101, which states “[n]o part of these compiled laws is retroactive, unless expressly so declared.” In support, Petitioner cites to footnote 1 from *Overman v. Overman*, 102 Idaho 235, 237 (1980), and *Unity Light & Power Co. v. City of Burley*, 92 Idaho 499, 504 (1968), cited for the proposition that “...unless a contrary intention clearly appears therein, a statute will not be given retrospective effect.” The SOR does not quarrel with this most basic interpretation of IDAHO CODE § 73-101, but knows that it does not apply in that way to Petitioner’s request to be relieved from Idaho’s sex offender registration requirements.

## II. ARGUMENT AND ANALYSIS.

The Idaho Supreme Court has consistently noted “that where a statute is procedural or merely ‘draws upon facts antecedent to its enactment’ it will be held to be prospective in nature.” *Stuart v. State*, 149 Idaho 35, 43, 232 P.3d 813, 821 (2010), citing *Bryant v. City of Blackfoot*, 137 Idaho 307, 313, 48 P.3d 636, 642 (2002).

In *Stuart*, the Court examined the application of IDAHO CODE § 19-2719, which although it “included language making it applicable to convictions prior to the statute’s enactment, but it was not, itself, ‘retroactive’ in any substantive sense.” *Stuart*, 149 Idaho at 43, 232 P.3d at 821. The Court continued:

Because I.C. § 19-2719 applies to post-conviction relief actions rather than the underlying criminal actions, its application is prospective – operating

on all post-conviction petitions submitted after the effective date of the statute. See, e.g. *Esquivel v. State*, 128 Idaho 390, 392, 913 P.2d 1160, 1162 (1996) (applying the reduced one-year statute of limitations in non-capital post-conviction proceedings prospectively from the date of enactment and finding no violation of I.C. § 73-101).

*Stuart*, 149 Idaho at 43, 232 P.3d at 821.

Petitioner here is in a position identical to *Stuart*. The relevant amendments began to apply upon their enactment to registered sex offenders who attempted after their enactment, prospectively, to be released from sex offender registration requirements. Therefore, they are not retroactive and do not run afoul of IDAHO CODE § 73-101.

There is another reason that the relevant amendments are not retroactive. “[I]n the absence of an express declaration of legislative intent, a statute, which is remedial or procedural in nature, and which does not create, enlarge, diminish, or destroy contractual or vested rights, is generally held not to be retroactive, even though it was enacted subsequent to the events to which it applies. *Wheeler v. Idaho Dept. of Health and Welfare*, 147 Idaho 257, 262, 207 P.3d 988, 993 (2009), citing *Gailey v. Jerome County*, 113 Idaho 430, 432, 745 P.2d 1051, 1054.

Idaho’s sex offender registration laws and their subsequent amendments did not and do not apply retroactively to Petitioner because he has never had a contractual or vested right to petition the court for release from the sexual offender registration requirements. Ten years had not elapsed from the date he was placed on probation (on July 29, 1991) before the sex offender registration laws were amended in 2001 and became effective on July 1, 2001. See I.C. § 18-8310(1); *Esquivel v. State*, 128 Idaho 390, 913 P.2d 1160 (1996) (holding application of amended version of I.C. § 19-4902, which reduced the time to file a post-conviction petition from five years to one year, was



proper, and not retroactive); *Bryant v. City of Blackfoot*, 137 Idaho 307, 313, 48 P.3d 636, 642 (2002) (“A statute is not made retroactive merely because it draws upon facts antecedent to its enactment. . . . Changes in procedural laws are held applicable to existing causes of action because the effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future.”); *University of Utah Hospital v. Pence*, 104 Idaho 172, 657 P.2d 459 (1982) (same).

The relevant amendments to Idaho’s sex offender registration laws relate to the procedures to be followed in the future from their enactment in determining whether a registered sex offender is eligible for release from registration under IDAHO CODE § 18-8310. As an aggravated offender, Petitioner is not eligible for such release.

As further compelling evidence that the application of Idaho’s sex offender registration laws are not retroactive is an Idaho Supreme Court case that examined the issue of retroactivity under *Ex Post Facto* clause analysis. In *Ray v. State*, 133 Idaho 96, 98-99, 982 P.2d 931, 933-934 (1999), the Idaho Supreme Court considered Ray’s post-conviction claim that his guilty plea to sex abuse of a minor under sixteen was involuntary due to trial counsel’s failure to inform him, before his plea, that he would be required to register as a sex offender. Ray argued on appeal that “the sex offender requirement [was] a direct consequence of his guilty plea and thus, the district judge, by failing to notify him of the requirement, violated Idaho Criminal Rule (I.C.R.) 11(c) and his guilty plea [was] thus invalid.” *Id.* at 99, 982 P.2d at 934. The Idaho Supreme Court disagreed; it found the “purpose of Idaho’s registration statute is not punitive, but remedial.” *Id.* at 100, 982 P.2d at 935. *See, Wheeler*, 147 Idaho at 262, 207 P.3d at 993

(a statute, which is remedial or procedural in nature...is generally held not to be retroactive, even though it was enacted subsequent to the events to which it applies).

The Court concluded that the statute "provides an essential regulatory purpose that assists law enforcement and parents in protecting children and communities." *Id.* at 101, 982 P.2d at 936. Accordingly, the Court held that "sex offender registration is a collateral, not direct, consequence of pleading guilty." *Id.*; *State v. Joslin*, 145 Idaho 75, 86, 175 P.3d 764, 775 (2007) (sex offender registration requirement is not cruel and unusual punishment under the state constitution because "[t]he requirement that sexual offenders register does not impose punishment").

Four years after *Ray*, the United States Supreme Court similarly held that Alaska's sex offender registration requirements were not punishment. In *Smith v. Doe I*, 538 U.S. 84, 92-93 (2003), the Supreme Court considered whether the Alaska Sex Offender Registration Act, which is similar to Idaho's, violated the *Ex Post Facto* Clause of the United States Constitution. The Supreme Court held it did not.

Similar to the 2001 amendment of Idaho's sex offender registration laws, after Alaska's sex offender registration act was first enacted (in 1994), it was subsequently amended (in 1998) to make its registration provisions continue for life (instead of fifteen years) for sex offenders convicted of an "aggravated sex offense." 1998 Alaska Sess. Laws Ch. 106 (codified in Alaska Stat. § 12.63.020(a)(1)). With regard to Alaska's lifetime registration requirement for aggravated offenses, the Supreme Court opined:

The [Ninth Circuit] Court of Appeals was incorrect to conclude that the Act's registration obligations were retributive because "the length of the reporting requirement appears to be measured by the extent of the wrongdoing, not by the extent of the risk posed." 259 F.3d, at 90. The Act, it is true, differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single non aggravated

offense. Alaska Stat. § 12.63.020(a)(1) (2000). The broad categories, however, and the corresponding length of the reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective.

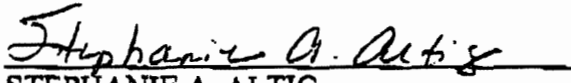
*Doe I*, 538 U.S. at 104.

III. CONCLUSION.

Based on the foregoing, the Court should conclude that the 2001 and subsequent relevant amendments to IDAHO CODE §§ 18-8383(1) and 18-8310(1) are not retroactive and deny Petitioner's request to be released from Idaho sex offender registration requirements accordingly.

Dated this 29<sup>th</sup> day of August 2011.

OFFICE OF THE ATTORNEY GENERAL  
STATE OF IDAHO

  
STEPHANIE A. ALTIG  
LEAD DEPUTY ATTORNEY GENERAL  
IDAHO STATE POLICE  
BUREAU OF CRIMINAL IDENTIFICATION  
IDAHO CENTRAL SEX OFFENDER REGISTRY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing RESPONSE TO PETITION AND TO MEMORANDUM IN SUPPORT OF PETITION was served on the following on this 29<sup>th</sup> day of August 2011 by the following method:

Barry McHugh  
KOOTENAI COUNTY PROSECUTING ATTORNEY  
501 Government Way  
Coeur d'Alene, ID 83814

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

Frederick G. Loats  
111 North 2<sup>nd</sup> Street  
P.O. Box 831  
Coeur d'Alene, ID 83814

- U.S. First Class Mail, Postage Prepaid
- U.S. Certified Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

*Stephanie A. Altig*  
Stephanie A. Altig

STATE OF IDAHO } ss  
 COUNTY OF KOOTENAI }  
 FILED: 2/8/12  
 AT 1:28 O'CLOCK PM  
 CLERK, DISTRICT COURT  
Dawn Mitchell  
 DEPUTY

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

In re the Matter of:	)	CASE NO. 2011-4814
	)	
RANDALL PHILLIP BOTTOM,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
Petitioner.	)	

The petitioner was convicted of Lewd Conduct with a Minor, a felony, in violation of Idaho Code § 18-1508, in Kootenai County Case #CR 1991-70055. Mr. Bottom pled guilty to the charge and was sentenced on July 29, 1991. The sentence was suspended and Mr. Bottom was placed on probation. He was discharged from probation on June 14, 1994. Pursuant to Idaho Code § 19-2604 the petitioner's plea of guilty was set aside and case #CR 1991-70055 dismissed on March 1, 2011.

When Mr. Bottom pled guilty and was sentenced there was no statutory requirement that he register as a sex offender. While he was on probation the legislature passed statutes requiring that certain persons, including those with criminal records similar to Mr. Bottom's, register as sex offenders.

Registration as a sex offender is for life, however, pursuant to Idaho Code § 18-8310 certain individuals may petition the court after 10 years from their release from prison or probation to waive their requirement to continue to register as a sex offender.

Originally, the crime Mr. Bottom pled guilty to was one of those crimes that a person could petition the court to waive the requirement of life-time registration as

a sex offender. Subsequently, the statute was amended to include Lewd Conduct with a Minor in the definition of an "aggravated offense". After that amendment a person with Mr. Bottom's criminal record could never have his requirement to register as a sex offender waived.

Mr. Bottom argues that the statutes do not apply to his case. Idaho Code § 73-101 provides that "(n)o part of these compiled laws is retroactive, unless expressly so declared."

Idaho Code § 18-8304(d) provides in pertinent part that a person who "pleads guilty to ... a crime covered in this chapter prior to July 1, 1993, and, as a result of the offense ... is under probation ... on or after July 1, 1993" is not eligible to have their requirement to register for life as a sex offender waived. A violation of Idaho Code § 18-1508 is one of the crimes covered in that chapter.

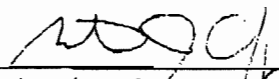
Idaho Code § 18-8310 expressly applies to crimes that occurred prior to its enactment. Mr. Bottom did plead guilty to Lewd Conduct with a Minor prior to July 1, 1993, and was on probation after July 1, 1993.

The Idaho Supreme Court has determined that the sex offender registration statutes are not "ex post facto" laws because they are regulatory and not punitive, State of Idaho v. Daniel Johnson, 2011 Opinion No. 130, filed December 8, 2011.

Therefore, even though Mr. Bottom could have applied to have his sex offender registration requirement waived prior to 2009, even though Mr. Bottom's guilty plea has been set aside and his case dismissed, and even though Mr. Bottom appears to be a person who meets all of the requirements for one who could have his sex offender registration requirement waived, Idaho Code § 18-8310(d) prevents Mr. Bottom from having his sex offender registration requirement waived.

Therefore, Mr. Bottom's petition must be denied.

Dated this 27 day of February, 2012.

  
\_\_\_\_\_  
Michael J. Griffin  
District Court Judge

Faxed: Fred Loats  
664-3644

Stephanie Altis  
(208) 884-7090 2/8/12  
dem

FINDINGS AND CONCLUSIONS-2

0038

STATE OF IDAHO }  
COUNTY OF KOOTENAI } ss  
FILED: 2/18/12  
AT 1:29 O'CLOCK P.M.  
CLERK, DISTRICT COURT  
*Deur Mitchell*  
DEPUTY

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

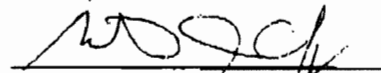
In re the Mater of:	)	CASE NO. 2011-4814
	)	
RANDALL PHILLIP BOTTOM,	)	ORDER DENYING PETITION
	)	TO BE RELEASED FROM SEX
Petitioner.	)	OFFENDER REGISTRATION
	)	REQUIREMENTS

For the reasons set forth in the court's Findings and Conclusions dated the 2<sup>nd</sup> day of February, 2012, Randall Bottom's petition to be released from sex offender registration requirements is Denied.

**NOTICE OF RIGHT TO APPEAL**

To the defendant: you are hereby notified that you have the right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of this written order.

Dated this 2<sup>nd</sup> day of February, 2012.

  
Michael J. Griffin  
District Court Judge

Faxed: Fred Loats  
664-3644

Stephanie Altig  
(208) 884-7090

2/18/12  
*Deur*

0039

**FREDERICK G. LOATS**  
Attorney at Law  
2005 Ironwood Parkway-Suite 210  
P. O. Box 831  
Coeur d'Alene, ID 83814  
Telephone (208)667-6424  
Fax: (208)664-3644  
ISB No. 2147

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
10891  
2012 MAR 12 PM 1:09

CLERK DISTRICT COURT  
*Kusan Reed*  
DEPUTY

**Attorney for Petitioner-Appellant**

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

In re the Matter of )  
 )  
RANDALL PHILLIP BOTTUM, )  
 )  
Petitioner-Appellant. )  
 )  
 )  
 )  
 )  
 )

Case No. CV 2011-0004814  
**NOTICE OF APPEAL**  
Fee Category: L.4  
Filing Fee: \$101.00

TO: THE IDAHO STATE POLICE BUREAU OF CRIMINAL IDENTIFICATION  
CENTRAL SEX OFFENDER REGISTRY, and its attorney, LAWRENCE G. WASDEN,  
ATTORNEY GENERAL, P.O. BOX 83720, BOISE, ID 83720-0010 and STEPHANIE A. ALTIG,  
LEAD DEPUTY ATTORNEY GENERAL, IDAHO STATE POLICE, 700 S. STRATFORD  
DRIVE, MERIDIAN, IDAHO 83642, and BARRY McHUGH, KOOTENAI COUNTY  
PROSECUTING ATTORNEY, P.O. BOX 9000, COEUR D'ALENE, ID 83816-9000, and THE  
CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant Randall Phillip Bottum appeals against the above named



respondent to the Idaho Supreme Court from the final Order Denying Petition to be Released from Sex Offender Registration Requirements, entered in the above entitled action on the 8<sup>th</sup> day of February, 2012, the Honorable Michael J. Griffin, presiding, by assignment.

2. That the party has a right to appeal to the Idaho Supreme Court, and the Order described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(1), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

That the trial Court erred in determining that the Petitioner was not eligible for release from registration requirements under the Sex Offender Registration Act, due to the prohibition contained in Idaho Code Section 73-101 against retroactive application of legislation that has amended that act, the application of which renders the appellant ineligible for relief from registration requirements.

4. Has an order been entered sealing all or any portion of the record? No.

5. (a) Is a reporter's transcript requested? Yes.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in hard copy:

oral argument conducted on February 6, 2012.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

No additional documents requested in addition to those automatically included.

7. The appellant requests the following documents, charts or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court.

None.

8. I certify:

(a) That a copy of the Notice of Appeal will be served on each reporter of whom a transcript has been requested as named below at the address set out below:

Keith Evans, Reporter for Judge Griffin, Idaho County Courthouse, 320 West Main Street, Grangeville, ID 83530, by fax: (208) 983-2376.

(b)(1). That the estimated fee for preparation of the reporter's transcript has been paid.

(c)(1). That the sum of \$100 has been paid to the Clerk of the Court for preparation of the Clerk's Record, and the balance of any such cost will be paid when received.

(d)(1). That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

Dated this 12 day of March, 2011.

  
FREDERICK G. LOATS  
*Attorney for Petitioner-Appellant*

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IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED: 3/28/2012  
AT 2:54 O'CLOCK P M  
CLERK DISTRICT COURT  
DEPUTY

RANDALL PHILLIP BOTTUM, )  
Plaintiff, )  
vs. )  
IDAHO STATE POLICE, )  
Defendant. )  
\_\_\_\_\_ )

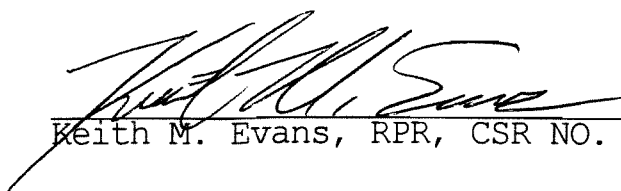
) DC NO. CV39772-2012  
) DOCKET NO. 2011-4814

NOTICE OF LODGING

Notice is hereby given that the above-entitled appeal was filed electronically/hard copies with the District Court Clerk Kootenai County on Tuesday, March 27th, 2012, consisting of 12 pages. The transcript included the following hearing(s):

Oral Argument of February 6th, 2012.

Dated this 27th day of March, 2012.

  
Keith M. Evans, RPR, CSR NO. 655

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF RANDALL )  
PHILLIP BOTTUM )  
 )  
RANDALL PHILLIP BOTTUM )  
 )  
Petitioner-Appellant, )  
 )  
V. )  
 )  
IDAHO STATE POLICE, BUREAU OF )  
CRIMINAL IDENTIFICATION CENTRAL )  
SEX OFFENDER REGISTRY, )  
Respondent )  
\_\_\_\_\_ )

SUPREME COURT  
CASE NO. 39772-2012

I, Clifford T. Hayes, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

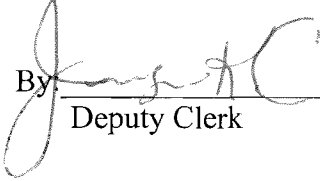
I further certify that no exhibits were offered in this case.

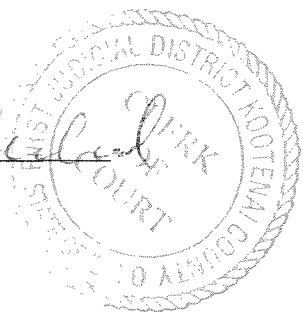
I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record was complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 16th day of April 2012.

I do further certify that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 16th day April 2012.

CLIFFORD T. HAYES  
Clerk of the District Court

By:   
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF RANDALL )  
PHILLIP BOTTUM )  
 )  
RANDALL PHILLIP BOTTUM )  
 )  
 )  
Petitioner-Appellant, )  
 )  
V. )  
 )  
IDAHO STATE POLICE, BUREAU OF )  
CRIMINAL IDENTIFICATION CENTRAL )  
SEX OFFENDER REGISTRY, )  
Respondent )  
\_\_\_\_\_ )

SUPREME COURT  
CASE NO. 39772-2012

CLERK'S CERTIFICATE OF SERVICE

I, Clifford T. Hayes, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to each of the Attorneys of record in this cause as follows:

FREDERICK G. LOATS  
PO Box 831  
Coeur d'Alene, ID 83814

STEPHANIE A. ALTIG  
Deputy Attorney General  
PO Box 700  
Meridan, ID 83680-0700

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 16th day of April 2012.

Clifford T. Hayes  
Clerk of District Court

By: \_\_\_\_\_

