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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 40696
Plaintiff-Respondent,)	
)	Bonner Co. Case No.
vs.)	CR-2009-5187
)	
LONNIE LEE ALLEN,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

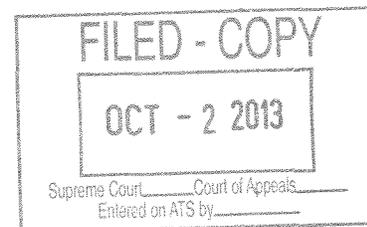
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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUES.....	3
ARGUMENT	4
I. The District Court Did Not Abuse Its Discretion By Denying Allen’s Motion To Dismiss Or Reduce His Felony Conviction To A Misdemeanor.....	4
A. Introduction	4
B. Standard Of Review.....	4
C. Allen Was Ineligible For Relief Under Idaho Code § 19-2604, And The District Court Correctly Determined That Dismissing Or Reducing Allen’s Felony Conviction Was Incompatible With The Public Interest	4
1. Because Allen Violated His Probation, The District Court Lacked Legal Authority To Grant Allen Relief Under Idaho Code § 19-2604(1)(a)	5
2. Because Granting Allen Relief Under Idaho Code § 19-2604 Was Not Compatible With The Public Interest, The District Court Did Not Abuse Its Discretion By Denying Allen’s Motion	6
II. Allen Has Failed To Establish An Abuse Of The District Court’s Discretion In Denying His Motion To Seal His Criminal Record.....	9

A.	Introduction	9
B.	Standard Of Review.....	9
C.	The District Court Properly Exercised Its Discretion In Determining That The Public's Interest In Disclosure Predominated Over Any Of Allen's Purported Privacy Interests In Sealing His Criminal File.....	9
	CONCLUSION	14
	CERTIFICATE OF SERVICE.....	15

TABLE OF AUTHORITIES

CASES

PAGE

Branzburg v. Hayes, 408 U.S. 665 (1972).....10

First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978)..... 10

Kleindienst v. Mandel, 408 U.S. 753 (1972) 10

North Carolina v. Alford, 400 U.S. 25 (1970) 1

Richmond Newspapers, Inc., v. Virginia, 448 U.S. 555 (1980)..... 10

State v. Dieter, 153 Idaho 730, 291 P.3d 413 (2012)7

State v. Guess, 154 Idaho 521, 300 P.3d 53 (2013)..... 8

State v. Gurney, 152 Idaho 502, 272 P.3d 474 (2012) 12

State v. Hagerman Water Rights Owners, Inc., 130 Idaho 718,
947 P.2d 391 (1997)7

State v. Hardwick, 150 Idaho 580, 249 P.3d 379 (2011)4

State v. Perry, 139 Idaho 520, 81 P.3d 1230 (2003)8

State v. Turpen, 147 Idaho 869, 216 P.3d 627 (2009).....9

STATUTES

I.C. § 19-2604..... passim

RULES

I.C.A.R. 32 10, 11, 12, 14

STATEMENT OF THE CASE

Nature Of The Case

Lonnie L. Allen appeals from the district court's denial of his motion to dismiss or reduce his felony conviction to a misdemeanor and the denial of his motion to seal his criminal case file, arguing that the court abused its discretion in both.

Statement Of The Facts And Course Of The Proceedings

Allen argued with his girlfriend, A.N.A., over drinks. (8/25/2009 Bennett Report, pp.2-4 (appended to PSI).) The argument eventually escalated to the point where he grabbed her, pulled her across him into his car, and drove her away from town. (Id.) While driving, Allen violently and repeatedly battered A.N.A., causing her a concussion, a spinal injury, and visible neck contusions, and threatened to post a sex video of A.N.A. online. (Id., pp.1-3.) After a failed attempt to call 911, A.N.A. fled from Allen on foot and, while he pursued her, they were spotted by an Idaho State Trooper. (Id.; see also 8/26/2009 Yount Report, p.8 (appended to PSI).)

The state charged Allen with attempted strangulation and second degree kidnapping. (R., pp.81-82.) Pursuant to a plea agreement, Allen entered an Alford¹ plea to attempted strangulation and the state dismissed the kidnapping charge. (R., pp.116-32; see also R., p.115.) On January 13, 2010, the district court entered judgment against Allen, imposing a suspended sentence of three years with one year fixed and placing Allen on probation for three years. (R., pp.144-48.)

On September 9, 2010, the state alleged that Allen had violated his probation by lying on two polygraph examinations, consuming alcohol, and frequenting a bar. (R.,

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

pp.156-57.) Allen admitted that he violated his probation by consuming alcohol, and the state dismissed the other violations. (See R. pp.177-78, 187.) The district court found that Allen violated his probation, but continued his probation, ordering that he serve eight days in the county jail. (R., pp.187-88.)

On December 2, 2011, Allen filed motions to terminate his probation early, to set aside his probation violation, and to reduce or dismiss his felony conviction under Idaho Code § 19-2604. (R., pp.190-95.) The district court denied the motions but allowed Allen's probation to be converted to an unsupervised probation. (R., pp.200-01.) Later, Allen filed a motion to terminate his unsupervised probation early and renewed his motions to set aside his probation violation and reduce his felony conviction. (See R., p.206-07, 209.) The district court granted Allen's motion for early termination but required him to submit additional briefing in support of the renewed motions. (R., pp.212-13.) After receiving the supplemental briefing, finding that a reduction of Allen's felony conviction was not compatible with the public interest, the district court denied both motions. (R., pp.250-58.) Allen filed a motion for reconsideration and a separate motion to seal his criminal file. (R., pp.259-78.) After a hearing, the district court denied both motions. (R., pp.282-92.) Allen filed a timely notice of appeal. (R., pp.293-95.)

ISSUES

Allen states the issues on appeal as:

1. Was the decision to deny Mr. Allen's Idaho Code § 19-2604 motion due to it not being compatible with public interest despite his substantial compliance with probation an abuse of discretion?
2. Was the decision to deny Mr. Allen's motion to seal a case file that contains highly intimate material about multiple parties and has caused financial hardship to Mr. Allen an abuse of discretion?

(Appellant's brief, pp.6-7.)

The state rephrases the issues as:

1. Has Allen failed to show that the district court abused its discretion by denying his request to dismiss or reduce his felony conviction where Allen was ineligible for relief under Idaho Code § 19-2604(1)(a) due to his adjudicated probation violation, and where the district court found that, in any case, such a reduction was not compatible with the public interest?
2. Has Allen failed to show that the district court abused its discretion by denying his request to seal his criminal case file where it determined that the public interest in disclosure predominated over Allen's difficulty in obtaining employment?

ARGUMENT

I.

The District Court Did Not Abuse Its Discretion By Denying Allen's Motion To Dismiss Or Reduce His Felony Conviction To A Misdemeanor

A. Introduction

After a period of probation, Allen filed a motion to dismiss or reduce his felony conviction pursuant to Idaho Code § 19-2604. (R., pp.194-95; 215-24.) The district court determined that, under the circumstances of this case, a dismissal or reduction of Allen's felony conviction was not compatible with the public interest, and so denied the motion. (R., pp.250-58.) On appeal, Allen argues that the district court abused its discretion by denying his motion to dismiss or reduce his felony conviction. (Appellant's brief, pp.7-13.) Allen's argument fails on two independent bases: First, application of the correct legal standards to the facts of this case shows that the district court lacked authority to grant Allen's motion. Second, even assuming, *arguendo*, that the district court could legally grant relief, Allen has still failed to show an abuse of discretion.

B. Standard Of Review

The determination of whether to grant relief under Idaho Code § 19-2604 rests within the discretion of the district court. State v. Hardwick, 150 Idaho 580, 581, 249 P.3d 379, 380 (2011).

C. Allen Was Ineligible For Relief Under Idaho Code § 19-2604, And The District Court Correctly Determined That Dismissing Or Reducing Allen's Felony Conviction Was Incompatible With The Public Interest

Whether to dismiss or reduce a felony conviction is governed by Idaho Code § 19-2604 which provides, in pertinent part,

(1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that:

(a) 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 made that there is no longer cause for continuing the period of probation, *and if it be compatible with the public interest*, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant or may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction....

I.C. § 19-2604(1)(a) (emphasis added).

1. Because Allen Violated His Probation, The District Court Lacked Legal Authority To Grant Allen Relief Under Idaho Code § 19-2604(1)(a)

As a threshold matter, under Idaho Code § 19-2604 as it existed when Allen sought relief, a district court was only permitted to dismiss or amend a felony conviction to a misdemeanor upon a showing that "[t]he 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." I.C. § 19-2604(1)(a). In this case, the district court found, and Allen admitted, that Allen violated his probation. (See R., pp.184-85, 187.) Under the plain language of the statute, Allen was therefore not eligible for a dismissal or reduction of his felony conviction. The district court did not have legal authority to grant Allen a dismissal or reduction of his felony conviction, and the district court cannot be said to have abused its discretion by denying relief which the district court lacked legal authority to grant.

2. Because Granting Allen Relief Under Idaho Code § 19-2604 Was Not Compatible With The Public Interest, The District Court Did Not Abuse Its Discretion By Denying Allen's Motion

Though the district court lacked legal authority to grant Allen's motion, it still reached the merits of that motion and determined that granting Allen's motion to dismiss or reduce his felony conviction was not compatible with the public interest and so denied the motion on that basis. (R., pp.256-58.) In determining that the requested dismissal or reduction was not compatible with the public interest, the district court considered the goals of rehabilitation and protection of society. (Id.) Ultimately, it concluded that "the severity of the underlying crime and the method of its accomplishment militate[d] against either the dismissal of the judgment of conviction or a reduction to a misdemeanor." (R., pp.256-58.)

The district court's determination is supported by the record. In the instant offense, Allen went out for drinks with a girlfriend, A.N.A. (8/25/2009 Bennett Report, pp.2, 4.) During an ensuing argument, Allen stole A.N.A.'s phone. (Id.) When A.N.A. later confronted Allen in the parking lot, Allen grabbed her by the front of her shirt and dragged her across him into his car. (Id., p.3.) As Allen drove A.N.A. away from town, he yelled at her and battered her, grabbing her by her hair and her throat. (Id.) Allen also threatened to post a sex tape of A.N.A. online. (Id., p.1.) When they arrived at the location where they were later found by police, Allen demanded that A.N.A. exit the car. (Id., p.3.) Fearing for her life, she refused. (Id.) Allen grabbed A.N.A. by her throat in a strangulation hold. (Id., pp.3-4.) He then removed the keys from the ignition, took A.N.A.'s purse, and left to put the purse by the train tracks. (Id.) A.N.A. attempted to call 911 on Allen's phone, but before she could complete the call Allen returned and

slammed her against the passenger side of the car. (Id., p.3.) A.N.A., with nothing to lose, then exited the vehicle and fled on foot where she was spotted by Trooper Yount, with Allen chasing her from behind. (Id., pp.1, 3; see also 8/26/2009 Yount Report, p.8.)

Allen disputes the district court's determination that relief under Idaho Code § 19-2604 would be incompatible with the public interest, arguing that "[n]ot granting Idaho Code § 19-2604 relief continues the convicted criminal label, decreases the ability to be successful, and may cause an individual to lose out on educational and employment opportunities." (Appellant's brief, pp.8-10.) Allen asserts that this will cause criminals to recidivate, placing a burden on the public. (Id., pp.9-10.) This argument is unavailing. "[P]ublic interest refers to that [in] which the public or the community at large has an interest." State v. Dieter, 153 Idaho 730, 735, 291 P.3d 413, 418 (2012). "It is not enough that the action results in benefits to the public; it must be pursued with the purpose of benefiting the public." Id. (quoting State v. Hagerman Water Rights Owners, Inc., 130 Idaho 718, 726, 947 P.2d 391, 399 (1997)). Whether continuing Allen's label as a criminal convict causes him to forfeit educational or employment opportunities is a private, not public, interest, even if it might provide some tangential benefit to the public.

Even assuming, *arguendo*, that allowing Allen a dismissal of his felony conviction could be compatible with the public interest, his argument is still unavailing. The public interest benefits more from the protection of society, as found by the district court, and "continu[ing] the convicted criminal label" on a violent felon increases that protection. Furthermore, "[a]lthough there are applicable legal standards that must be met before the relief could be granted, a defendant is not entitled to the relief even if those standards are met. When those standards are met, the court still has the discretion to

deny the relief.” State v. Guess, 154 Idaho 521, ___, 300 P.3d 53, 60-61 (2013). Of course, because Allen violated his probation (see R., pp.184-85, 187), he failed to meet the legal standards allowing for relief to be granted. However, even had Allen met the standards to allow relief, the district court would still have the discretion to deny Allen’s motion. Allen has failed to show an abuse of the district court’s discretion.

Allen also argues that, because his version of the crime differs substantially from the victim’s (and official) version of the crime, the district court’s conclusion that the crime itself militated against granting a dismissal or reduction is erroneous. (Appellant’s brief, pp.10-13.) The power to assess the credibility of witnesses is the sole province of the trier of fact, and appellate courts will not usurp that authority. See State v. Perry, 139 Idaho 520, 525, 81 P.3d 1230, 1235 (2003). The trier of fact, in this case the district court, determined that Allen’s version of the crime “was not credible.”² (R., p.257.) That ends the inquiry.

Finally, Allen argues that the district court abused its discretion by not adequately addressing his arguments. (Appellant’s brief, pp.7, 13.) Allen never specifically

² The district court’s determination that Allen’s story was not credible is thoroughly supported by the record. Throughout his interviews with police, Allen displayed a certain economy with the truth. Allen claimed to have never touched A.N.A. on her neck or head despite A.N.A. having suffered a concussion, a spinal injury, and visible neck contusions. (8/25/2009 Bennett Report, pp.3-5.) He claimed that A.N.A. had been driving his vehicle, which was untenable; the driver’s seat was set near the back and A.N.A. is less than five feet tall, whereas Allen is six feet tall. (8/26/2009 Yount Report, p.9.) Allen’s license was expired, which likely motivated his lie. (Id.) Allen initially claimed that A.N.A. had dropped her purse on the train tracks. (8/25/2009 Bennett Report, p.2.) Later Allen confessed that he, in fact, put A.N.A.’s purse by the train tracks. (Id., p.4.) Confronted with the sex tapes in the trunk of his car, Allen claimed to have made 12 tapes with only four or five different girls. (Id., p.5.) In fact, officers found 25 tapes with at least 21 different women. (Id.)

identifies which arguments, if any, the court failed to “adequately address,” and this naked assertion is belied by the record. (See R., pp.288-90.)

Allen has failed to show that the district court abused its discretion by denying his motion to dismiss or reduce his felony conviction pursuant to Idaho Code § 19-2604. The district court’s order, denying Allen relief, should be affirmed.

II.

Allen Has Failed To Establish An Abuse Of The District Court’s Discretion In Denying His Motion To Seal His Criminal Record

A. Introduction

Allen asserts that the district court abused its discretion by denying his motion to seal his criminal record. (Appellant’s brief, pp.13-18.) Application of the correct legal standards to the facts of this case, however, shows that the district court correctly recognized its discretion and exercised that discretion appropriately. Allen has failed to establish an abuse of the district court’s discretion.

B. Standard Of Review

Decisions by the district court to grant or deny relief under Idaho Court Administrative Rule 32 are reviewed for an abuse of discretion. State v. Turpen, 147 Idaho 869, 872, 216 P.3d 627, 630 (2009).

C. The District Court Properly Exercised Its Discretion In Determining That The Public’s Interest In Disclosure Predominated Over Any Of Allen’s Purported Privacy Interests In Sealing His Criminal File

Criminal judgments cannot be sealed absent the clearest showing of an overriding personal privacy interest without infringing on the public’s constitutional right

to information. As explained by the United States Supreme Court, in the context of criminal trials, the public has a right, protected by the First Amendment, to know what goes on in its courts. Richmond Newspapers, Inc., v. Virginia, 448 U.S. 555, 576 (1980). The Supreme Court has long held that the First Amendment does not just protect expressing ideas and disseminating information, but *receiving* information and ideas. See Id. (citing Kleindienst v. Mandel, 408 U.S. 753, 762 (1972)); see also Branzburg v. Hayes, 408 U.S. 665, 681 (1972) (right to publish implies a right to gather information). Indeed, “the First Amendment goes beyond protection of the press and the self expression of individuals to *prohibit* government from limiting the stock of information from which members of the public may draw.” Richmond Newspapers, 448 U.S. at 575-76 (quoting First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978)) (emphasis added). Criminal proceedings are, and have been since time immemorial, presumptively open. Id. at 564-74. Therefore, “[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public.” Id. at 581.

Consistent with the public’s constitutional right to know what transpires in criminal proceedings, the Idaho Supreme Court, “pursuant to [its] authority to control access to court records,” promulgated Idaho Court Administrative Rule 32. I.C.A.R. 32(a). At the beginning of Rule 32, the Idaho Supreme Court clearly laid out its statement of policy:

The public has a right to examine and copy the judicial department’s declarations of law and public policy and to examine and copy the records of all proceedings open to the public. This rule provides for access in a manner that:

- (1) Promotes accessibility to court records;
- (2) Supports the role of the judiciary;

- (3) Promotes governmental accountability;
- (4) Contributes to public safety;
- (5) Minimizes the risk of injury to individuals;
- (6) Protects individual privacy rights and interests;
- (7) Protects proprietary business information;
- (8) Minimizes reluctance to use the court system;
- (9) Makes the most effective use of court and clerk of court staff;
- (10) Provides excellent customer service; and
- (11) Avoids unduly burdening the ongoing business of the judiciary.

In the event of any conflict this rule shall prevail over any other rule on the issue of access to judicial records.

Id.

Striking a balance between the public's constitutional right to access criminal records and the privacy interests of individuals, Rule 32 exempts from disclosure highly private information, such as PSIs, most unreturned warrants, documents that would identify jurors on a Grand Jury, and jury questionnaires. I.C.A.R. 32(g). Duly entered criminal judgments, however, are not exempted from disclosure under Rule 32.

In very narrow circumstances, court records may also be sealed under Rule 32(i). The rule does not allow the district court unfettered discretion to seal case files; rather, a court is only allowed to seal portions of a case file after it finds that the petitioner's privacy interests predominate over the public's constitutional right to know. I.C.A.R. 32(i). Even then, "[i]f the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exemption from disclosure consistent with privacy interests." Id. Accordingly, before a district court may seal any portion of a case file, it must first determine in writing:

(1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or

(2) That the documents or materials contain facts or statements that the court finds might be libelous, or

(3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or

(4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or

(5) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial.

Id.

Rule 32(i) “requires that the district court ‘hold a hearing on the motion’ and ‘determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates.’” State v. Gurney, 152 Idaho 502, 504, 272 P.3d 474, 476 (2012) (quoting I.C.A.R. 32(i)). The district court does not abuse its discretion by denying a motion to seal a criminal record after it determines that the public’s interest in disclosure of the criminal proceedings predominates over the petitioner’s asserted privacy interest. Id. at 504-05, 272 P.3d at 476-77.

Allen moved the district court to seal his criminal file under Idaho Court Administrative Rule 32(i), claiming that he suffered economic harm because his felony conviction made it more difficult for him to obtain employment, that the file contained private third-party information, and characterizing some statements contained in the record as “libelous.” (R., pp.274-78.) The district court, as required by Rule 32(i), held a hearing on Allen’s motion. (Tr., pp.37-49.) At that hearing, Allen only provided testimony regarding his economic interest. (Tr., p.39, L.20 – p.45, L.2.) Allen, however,

never testified that his economic interests were harmed by having a public record of his felony conviction, but rather by the felony conviction itself. (See Tr., p.41, L.14 – p.52, L.1 (testifying that he could not obtain employment with government contractors due to his felony conviction).) Allen’s evidence, therefore, did not support his motion to seal his criminal case file. Absent a dismissal or reduction of his felony conviction, for which Allen was not eligible (see Arg. I(C)(1), *supra*), Allen would still be required to disclose to employers that he was a convicted felon, regardless of whether his file was sealed. Thus, even if Allen’s economic interests were affected by his felony conviction, those interests were not affected due to any legitimate privacy concerns.

Denying Allen’s motion, the district court correctly noted:

While [Allen] believes his disclosure to prospective employers that he is a convicted felon hurts his chances for employment, whether or not the court record is sealed has not been shown to adversely affect his employment capabilities. Thus it appears that the major impediment to employment is the conviction itself.

The district court therefore concluded that “the public interest in disclosure outweighs Mr. Allen’s interest in privacy.” (R., pp.290-91.) The district court properly exercised its discretion, and Allen has failed to show any abuse of that discretion.

On appeal, Allen asserts that the district court abused its discretion, accusing the district court of focusing on his economic harm and, allegedly, failing to consider Allen’s arguments below that his file contained private third-party information and that the file contained libelous information. (Appellant’s brief, pp.16-18.) As to the alleged privacy interests of third parties, Allen has failed to cite any authority that would give him standing to assert a third party’s privacy interests in sealing his criminal case file. Moreover, even if Allen could assert a third party’s interests, he has failed to show how

sealing the record of his criminal conviction for attempted strangulation in any way protects the privacy interests of third parties. As to the allegedly libelous information, Allen has failed to make any showing, either below or on appeal, that there is any libelous information in his criminal case file. Indeed, at the hearing, Allen only produced evidence in regard to his economic interests. (See Tr., p.39, L.20 – p.45, L.2.) That the district court focused its order on the sole aspect of Allen’s argument for which he had produced evidence is unremarkable. Allen has failed to show that the district court abused its discretion in denying his motion to seal his criminal case file.

As recognized by Rule 32, the public’s constitutional right to access criminal records “[c]ontributes to public safety” and “[m]inimizes the risk of injury to individuals.” See I.C.A.R. 32(a). The district court did not abuse its discretion by denying Allen’s motion to seal the record of his criminal conviction after it correctly determined that Allen’s privacy interests did not predominate over the public’s interest in disclosure. The district court’s order, denying Allen’s motion to seal, should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court’s order denying Allen’s motions to dismiss or reduce his felony conviction to a misdemeanor and to seal his criminal case file.

DATED this 2nd day of October, 2013.

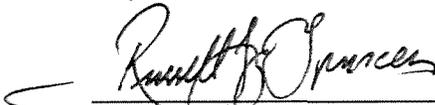


RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of October, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by placing two copies in the United States mail, postage prepaid, addressed to:

GARY I. AMENDOLA
Amendola, Andersen & Doty, PLLC
702 N. 4th Street
Coeur d'Alene, ID 83814



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm