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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48049-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2003-529
v.)	
)	
TYLER SHAWN CLAPP,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

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

**HONORABLE MELISSA MOODY
District Judge**

**ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555**

**BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL.....	3
ARGUMENT.....	4
The District Court Abused Its Discretion By Denying Mr. Clapp’s Motion To Dismiss His Conviction Under I.C. § 19-2604.....	4
A. Standard Of Review.....	4
B. Because Mr. Clapp Was Not Found In Violation Of The Terms Of His Probation, The District Court Should Have Granted His Motion For Relief Under I.C. § 19-2604	4
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	5

TABLE OF AUTHORITIES

Cases

Lunneborg v. My Fun Life, 163 Idaho 856 (2018).....4

State v. Gonzalez, 165 Idaho 95 (2019)4

State v. Mowrey, 134 Idaho 751 (2000)4

Statutes

I.C. § 19-2604..... 1, 3, 4, 5

STATEMENT OF THE CASE

Nature of the Case

Tyler Clapp appeals contending the district court abused its discretion by denying his motion to dismiss his conviction under I.C. § 19-2604(1)(b)(i).

Statement of the Facts and Course of Proceedings

In 2003, Mr. Clapp pled guilty to DUI. (Supp. R., p.23.)¹ The district court imposed a unified sentence of five years and retained jurisdiction for the first 180 days.² (Supp. R., p.45.) When his sentence in an unrelated probation case was ordered into execution, Mr. Clapp moved to modify his sentence in this case, but the district court denied that motion. (Supp. R., pp.48-49, 54-56.)

Subsequently, in 2019, Mr. Clapp filed a motion to dismiss his conviction in this case under I.C. § 19-2604(1)(b)(i). (R., p.9 (Mr. Clapp's *pro se* motion to dismiss); R., p.14 (motion to dismiss filed by defense counsel).) Mr. Clapp asserted he was subsequently discharged from probation in this case in May 2008 without a violation being found. (R., pp.9, 14.) In support of that motion, he presented his Offender History documenting his performance on probation between February 21, 2006, and July 24, 2008. (*See generally* R., pp.16-40.) Defense counsel asserted he was still attempting to get the notes of Mr. Clapp's Offender History from 2003 to February 21, 2006, and would supplement with that information when he received it. (R., p.14.)

¹ The Supreme Court ordered the record on appeal be augmented with the record prepared in Mr. Clapp's direct appeal from the original judgment of conviction. For clarity, citations to "R." refer to the limited record prepared for this appeal and citations to "Supp. R." refer to the record prepared in the prior appeal (Docket Number 29908). For ease of reference, citations to "Supp. R." use the electronic page numbers, rather than the Bates page stamp numbers.

² Mr. Clapp also pled to possession of a concealed weapon and the district court sentenced him to time served on that offense. (Supp. R., pp.23, 46.)

However, five days after defense counsel filed his version of the motion to dismiss, the district court denied his motion. (R., p.41.) The district court found there was no good cause to grant the requested relief solely because, after Mr. Clapp had been discharged from probation, he had subsequently been convicted on two other DUI charges.³ (R., p.41.) Mr. Clapp filed a notice of appeal timely from the order denying his motion to dismiss. (R., p.43.)

³ There was no information about Mr. Clapp's subsequent criminal record in the record for this case. As such, it appears the district court was implicitly taking judicial notice of the judgments of conviction in CR-FE-2010-7316 (entered Aug. 9, 2010) and CR01-18-32652 (entered Jan. 3, 2020).

ISSUE

Whether the district court abused its discretion by denying Mr. Clapp's motion to dismiss his conviction under I.C. § 19-2604.

ARGUMENT

The District Court Abused Its Discretion By Denying Mr. Clapp's Motion To Dismiss His Conviction Under I.C. § 19-2604

A. Standard Of Review

The decision of whether to grant relief under I.C. § 19-2604(1) is submitted to the district court's discretion. *State v. Mowrey*, 134 Idaho 751, 753 (2000). The district court abuses its discretion when: (1) it fails to recognize the issue as one of discretion; (2) it acts beyond the outer bounds of its discretion; (3) it acts inconsistently with the applicable legal standards, or (4) it reaches its decision without exercising reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018).

B. Because Mr. Clapp Was Not Found In Violation Of The Terms Of His Probation, The District Court Should Have Granted His Motion For Relief Under I.C. § 19-2604

Mr. Clapp specifically requested the district court dismiss his conviction under I.C. § 19-2604(1)(b)(i). (R., p.14.) That code section provides, in relevant part:

(b) Upon application of the defendant and upon satisfactory showing that:

(i) 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 any probation that may have been imposed; . . .

the court, if convinced by the showing made . . . that there is good cause for granting the requested relief, may . . . set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant

I.C. § 19-2604(1). Subsection (2) of I.C. § 19-2604 applies to persons who had their sentences suspended after a period of retained jurisdiction, but that subsection does not allow for dismissal of the conviction. *See* I.C. § 19-2604(2).

Mindful of the Idaho Supreme Court's decision in *State v. Gonzalez*, 165 Idaho 95, 99-100 (2019), and the fact that, because the district court initially retained jurisdiction in his case,

he does not qualify for relief under subsection (1), Mr. Clapp maintains that the district court erred by denying his motion to dismiss his conviction under I.C. § 19-2604(1)(b)(i).

CONCLUSION

Mr. Clapp respectfully requests this Court vacate the order denying his motion for relief under I.C. § 19-2604 and remand this case for further proceedings.

DATED this 17th day of December, 2020.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

BRD/eas