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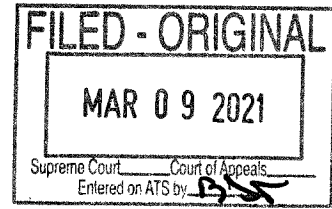
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PLAINTIFF



IN THE SUPREME COURT OF THE STATE OF IDAHO

LANCE A. ROBERTS,

Plaintiff,

v.

STATE OF IDAHO, TETON COUNTY
IDAHO et al,

Defendant.

Case No. 48085-2020

APPELLANT'S BRIEF

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Appeal from the District Court of the Seventh Judicial District for Teton County.

The Honorable Steven Boyce, District Judge presiding.

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STATEMENT OF THE CASE

A. Introduction

B. Statement of Facts and Course of Proceedings

- A. A notice of claim was filed pursuant to title 6 Chapter 9 of the Idaho Code on October 20, 2017 with no response to the same. A verified complaint was filed May 31, 2019. A Motion for Summary Judgment was filed on November 5, 2019. Summary Judgment was granted in favor of Defendants on April 1, 2020 despite the fact Plaintiffs' counsel compelled the Court for additional time. The appeal was filed June 1, 2020 and an Amended Notice on July 24, 2020. A Motion to Reconsider Pursuant to IRCP 60(3) was filed on June 1, 2020 contemporaneously with Notice of Appeal. An Order Denying Motion to Reconsider and an Order Granting Award of Attorney's Fees and Cost was issued on September 1, 202. A Notice of Appeal on the Denial of Reconsideration and Award of Cost and Fees was filed on September 14, 2020.
- B. In Teton County criminal cases CR-98-96, CR-98-128, CR-01-144, CR-05-727, CR-16-47 as well as those turning to civil cases for resolution being CV-17-84, CV-17-133, CV-17-153 and CV-17-154, as set forth in the proceedings. Plaintiff was and still is currently illegally wrongfully convicted and sentenced through the actions of Defendant's, State of Idaho and Teton County Courts under the direction of and pursuant to the requests and actions of the Teton County Prosecutors Office and Billie Siddoway as well as previous employees and prosecutors Chris Lundberg, Bart Birch, Laura Lowry and Nancy Schwartz. Said action were committed willfully, intentionally, deliberately without just cause or legal justification and or with reckless disregard of propriety or legality of said

action and done to harm or unconstitutionally punish Plaintiff financially, emotionally and otherwise or with reckless disregard in connection with said harm.

ISSUES PRESENTED ON APPEAL

1. That the District Court erred as a matter of fact and law by failing to allow the matter to proceed to trial as there are genuine material issues of disputed fact that's never been resolved and further misrepresented and erred by Summary Judgment. Rejected criminal convictions erroneous.
2. General and subject matter jurisdiction of a previous criminal case and tort claim item in complaint case CR-98-96 where in fact a "void" ruling was made allowing Summary Judgment in CV41-19-0124 erroneously.
3. That the District Court erred allowing Summary Judgment prematurely before a final order was issued in the criminal cases that resulted in the bringing of the civil complaint. Twenty-two criminal Motions are still pending ruling that would alter the Summary Judgment in this civil case.
4. The District Court erred by mis-stating current reflective criminal conviction in, case CR-98-128 as a felony conviction when in fact it is not nor has it ever been. Conviction is shown as a 2nd offense misdemeanor but correctly should be a 1st offence misdemeanor.
5. The District Court erred by failing to address case CR-01-144 at all in its ruling when it is a main tort claim item.
6. The District Court erred by mis-stating current conviction history by claiming case CR-05-727 as a felony conviction and that it has been litigated. This case has not been fully vetted nor litigated and reflects erroneously as a felony buy with correct application of law should reflect as a 2nd offense misdemeanor.

7. The District Court erred by mis-stating current conviction in case CR-16-47 as a felony with a persistent violator enhancement. This is not true. With proper state law applied to conviction history and this charge the only proper application results in a 1st offence misdemeanor, not a felony and not persistent.
8. The District Court erred based on law and facts by mis-stating Plaintiff's actual criminal record and further mis-interpreting state law application improperly allowing dismissal of claim when in fact there is a triable issue of heavily material disputed facts still further erred.
9. The District Court erred in dismissal based on the facts of new evidence that shows oral and written admittance of liability by Defendant's in a Motion by Plaintiffs to Reconsider pursuant to I.R.C.P. 60(3). Proving a triable issue under subsection (1) or (3) of Idaho Tort Claim Act.
10. The District Court erred allowing summary dismissal of prosecutor Billie Siddoway when in fact there is admittance of triable malice and intentional tort act in the record by said Defendant. See CV-17-84 P.2 entirety, Response to Petition.
11. The District Court erred based on law and facts by stating a bond was required in this case. This is not true or accurate. Bond is not required in what essentially is a Habeus Corpus lawsuit. Also, bond was filed for on February 6, 2018 but the Motion was never even addressed by the District Court.
12. The District Court erred in its summary ruling that qualified immunity is applicable which simply is untrue. The errors of carrying out pre-established policy and routine prosecution of criminal cases where "admitted" mistakes were made by Defendants

during investigatory phases...not judicial phase which does not offer immunity.

Immunity for 8th Amendment violations is illegal.

13. The District Court erred in its summary dismissal by stating Plaintiff failed to state a claim for which relief could be granted. This also is not true. Idaho Tort Claim Act specifically states liability is unwarranted in “False Imprisonment”, which is a charge like kidnapping for example or being taken against ones will. In Plaintiffs claim he never even references “False Imprisonment”. Plaintiff however does reference wrongful convictions, illegal sentences, improper state law applications and negligence which are in fact claims the state or county and its employees are liable for. Immunity for 8th Amendment violations is illegal.
14. The District Court erred allowing summary dismissal in the fact that Plaintiff was lied to and unaware of his counsel, Mr. Stephen Harts failures to amend Plaintiff’s Complaint and conduct additional discovery of which Mr. Hart took leave to do by order of the Court. However, did none of the above lying to Plaintiff that he had in fact done those things and conducted the final hearing in this matter without his client present at that hearing or amending any documents or conducting any additional discovery. Leaving his client at a very unfair and prejudicial disadvantage as counsel did not represent clients wishes for further amendments and discovery possibly costing client Mr. Roberts his lawsuit and being in jeopardy thereof. Procedural defects of counsel’s filings not known to client offers constitutional protection and should be afforded corrections.

15. The District Court erred in its denial of the Motion to Reconsider pursuant to IRCP 60(b). “Refer to original Motion in record”. And new authorities on appeal hearing pg. 6.12 as well as argument.
16. The District Court erred by allowing or awarding fees and costs as this claim was absolutely not brought frivolously or in bad faith pursued. Authorities and argument set forth in pg. 6.12, 6.13 and 6.14.

ARGUMENT

A. Introduction

B. Argument

A. Defendants make two primary arguments in this case. (1) that Plaintiff fails to state a claim. (2) that Defendants are entitled to immunity. As proven Defendants arguments fail on their merits. Plaintiff has stated claims which proven at trial entitled him to damages against Defendants. Also, there are material and significant disputed issues with regard to Defendants immunity claims that by law and fact entitle him to as there is a triable issue because of disputed material issues and facts based on pre-established policy and the negligence of Defendants to properly administer that policy. Resulting in improper, illegal applications of pre-established policy that violated significant fundamental constitutional rights. As such, Summary Judgment was improper as there is a triable issue.

Material Disputed Facts

B. 1. On April 27, 1998, Mr. Roberts was sentenced to a misdemeanor violation of Idaho Code 18-8004(1)(a) Driving Under the Influence as a minor. Mr. Roberts was under [REDACTED] at the time. See CR-98-96 (Declaration of Billie Siddoway, paragraph 4 “Exhibit A”).

Argument: Contrary, factually and lawfully this case has been amended on June 2, 2017 to a “second offense”, “citation” under subsection (D) of 18-8004 as was the only proper application of law and logical proving every subsequent DUI Improperly charged in form and sentence. Also proving illegal and unconstitutional.

2. On July 9, 1998, Mr. Roberts was sentenced to a second offense misdemeanor violation of Idaho Code 18-8004 (1)(a) Driving Under the Influence. See CR98-128 (Declaration of Billie Siddoway, paragraph 5 “Exhibit B”).

Argument: Contrary, factually and lawfully to Defendants and Courts analysis this case with proper application of law 18-8004 and the amended conviction in CR-98-96. Cannot be a second offense adult DUI but rather is a 1st offense adult DUI as no lawful useable priors exist...nor should or would they ever. The original ruling and memorandum decision in this civil action on appeal CV41-19-0124 stated case CR-98-128 as a felony which is grossly inaccurate and furthers the legality and boldly “Lies” about the actual reflective record. CR-98-128 has always been a misdemeanor even 20 years in the record. It is unconstitutional as a “2nd offense” but proper as a 1st offense but always misdemeanor, never felony.

3. On October 31, 2001, Mr. Roberts was sentence to his first felony DUI violation of 18-8004 (1)(a) Driving Under the Influence as a minor. This was Mr. Roberts first felony violation as an adult. See CR-01-144 and CR98-128 (Declaration of Billie Siddoway, paragraph 6 “Exhibit C”).

Argument: Contrary, factually and lawfully with proper application of state law code 18-8004 and amended conviction in CR-98-96. Case CR-01-144 cannot be a felony but rather is a 2nd offense misdemeanor adult DUI 18-8004(1)(a)/18-8005(1). Also, the ruling in this civil case on appeal CV41-19-0124 the memorandum decision of the Court does not even address the case CR-01-144 at all anywhere but it should have as it’s a main part of tort and complaint.

4. Case CR-05-727 was never filed in complaint although a notice of claim was. Plaintiff counsel took leave for additional time to include this case in amendment but failed to do so much to the anger of Plaintiff. This case CR-05-727 should have been included in complaint but counsel failed his client leaving Plaintiff at disadvantage. The District Courts Memorandum Decision also fails in CV41-19-0124 as it freely reviewed a case not part of the complaint or record in the action therefore it had no general or subject matter jurisdiction. The Court also grossly mis-states and mis-interprets this conviction as a 2nd offence misdemeanor DUI based on the fact only one prior exists in previous five (5) years in CR-01-144. This based factually on the amended conviction of CR-98-96.

5. On June 7, 2016, Mr. Roberts was sentenced to a felony violation of Idaho Code 18-8004(1)(a) Driving Under the Influence and enhanced penalties of Idaho Code 19-2514 a Persistent Violator of section 18-8004(1)(a). See CR-16-47 (Declaration of Billie Siddoway, paragraph 7, "Exhibit D").

Argument: Contrary, factually and lawfully with the amended conviction in case CR-98-96 and the proper application of state law and pre-established policy of a routine prosecution, case CR-16-47 will only support a charge, sentence and conviction of a 1st offense misdemeanor DUI 18-8004 (1)(a)/18-8005(1). Also contrary to Defendants and Courts analysis in this appeal of CV41-19-0124 they state this it's Plaintiffs 3rd felony conviction and that simply is untrue and a further misrepresentation, illegally and unconstitutionally that fact that Mr. Roberts should have NO, NONE, ANY felony violations in his lifetime EVER, relating to any DUI convictions. However, Mr. Roberts has a single felony violation a burglary case CR-99-124. Leaving him with an unrelated, isolated incident of an [REDACTED] boy to-with a single felony conviction in a lifetime.

In summary of material disputed facts that are further erred by the Memorandum decision and Summary Judgment, Plaintiff submits the following in response and authority proving a triable issue exists. “On review the Court construe all fact of record and policy or law in Plaintiffs favor”. As a general rule a trial Court does not make finding of fact when deciding a Motion for Summary Judgment because it cannot weight credibility and must liberally construe all fact in favor of the non-moving party and must draw all reasonable inferences from the facts in favor of the non-moving part. i.e., the Plaintiff. Hilliard v. Murphy Land Co. 158 Idaho 737, 744, 351 P.3d 1195, 1202 (2015) Leaving the fact that the memorandum decision and Summary Judgment was not proper in this case CV41-19-0124 and should be reversed. Also, in Earl v. Cryovac 115 Idaho 1087, 1093, 772 P.2d 725, 731 (1989) it states, “The burden of a Plaintiff when faced with a Motion for Summary Judgment is not to persuade the judge that on an issue will be decided in his favor at trial. Rather he simply must present sufficient materials to show that there is a triable issue”. Of which Plaintiff has in this action.

“Summary Judgment is not proper where any genuine issue of disputed material facts remain unresolved. If the record contains conflicting inferences or reasonable minds might reach different conclusions a Summary Judgment must be denied”. G&M Fars v. Funk Irrigation Co. 119 Idaho 514, 524-25, 808 P.2d 851, 861 (1991). Such is the fact in this instant case CV41-19-0124. Plaintiff has stated a claim upon which relief can be granted. Defendants and the summary ruling challenge the sufficiency of Plaintiffs complaint, stating that Plaintiffs complaint should be an is dismissed because it fails to meet basic pleading standards (memorandum in support of Summary Judgment) pg. 4 and in the Courts (Memorandum decision granting Summary Judgment) the Court

concludes in pg. 6 line 21 to pg. 8 that “there is no genuine issue of material fact”. This issue is still highly and boldly debated due to the amended conviction in case CR-98-96 and how it impacts Plaintiffs criminal record. Defendants cite Hammer v. Ribí 162 Idaho 570, 401 P.3d 148 (2017) in support of their position and the Courts memorandum decision cites Lee v. Lister No CV-OC-2014-13989, 2015 WL 13413370, at number 4 (Idaho Dist. July 24, 2015) in that: “Conclusory assertions unsupported by specific facts are insufficient to raise a genuine issue of material disputed fact precluding Summary Judgment”. In argument of the statements made by the Defendants and Court the Hammer standard and Lee v. Lister both support Plaintiff’s claim. Not the Courts or Defendants. Proof of a triable issue and material disputed facts has been undoubtedly proven by over seven individuals supporting Plaintiffs claim and relief both criminally and civilly over four (4) years with an astounding twenty-five (25) different actions filed in his behalf still awaiting resolution in the criminal matters. (Please take judicial notice of attorneys of records filings and names Stephen Hart, John Stosich, Bart Birch, Doug Knutson.) Mr. Birch whom a former prosecutor in Plaintiffs criminal case CR-05-727 and his admittance of wrongdoing on the record. Please take judicial notice of an amended conviction in case CR-98-96 that clarifies how subsequent cases should have been treated. Please also take judicial notice of the two judges supporting erroneous conviction reliefs for Plaintiff in the criminal matters Gregory Moeller and Jason D. Walker. Please take judicial notice of the facts set forth in Response to Defendants Motion in Opposition of Motion to Reconsider IRCP 60(B) where in Plaintiff in CV41-19-0124 specifically identifies Court hearings and minutes where liability is openly admitted by Defendants and the fact on injustice occurred is supported by Jason D. Walker and Gregory Moeller.

With case CR-98-96 amended conviction and properly applied lawfully pre-established policy and DUI code also applied correctly there are no felony DUI to be had nor was there ever. That is a fact. Plaintiff is in utter disbelief that Defendants and District Court cannot see that and further distort the truth and facts in these cases. Liability is clear and admitted by Defendants.

The Defendants and District claim immunity as a reason for Summary Judgment, as well as Court decision.

Argument #1 No entity, official employee or person at a local, state or federal level is immune from a violation of the United States Constitution which in this case is at the heart of the matter on 8th amendment violation. No policy, law or claim or agreement gives immunity not even a waiver of rights when one's convictions at the hand of authorities proves manifestly unjust. Every person has the constitutional right to have a correct criminal history and this is a right that cannot be waived, nor have any immunities given to Defendants.

Argument #2 Qualified immunity under Idaho Tort Act says NOTHING about constitutional issues or violations because I'm certain the Legislature knew that it cannot be given nor achieved. Immunity can be given for certain things such as a car accident but certainly not an 8th Amendment violation. Especially while carrying out pre-established policy. (Government entities are only entitled to immunity for policy making decisions, i.e., governing decisions, not for operational activities, i.e., activities involving the implementation of existing statutory or regulatory policy) "Jones v. St. Maries" 111 Idaho 733, 727 P.2d 1161 (1986) Which is an applicable in the negligence of carrying out policy that pre-established in a routine prosecution. (A decision on the removal and

disposal of a vehicle under Idaho Statutes was not discretionary as the discretionary function exception does not include functions which involve any element of choice, judgment or ability to make a reasonable decision) “Ranson v. Garden City, 113 Idaho 202, 743 P.2d 70 (1987)”

Argument #3 Whether or not this claim falls under 6-904(1), (3) liability is shown and immunity qualified or not is nonexistent. Immunity is not given during an investigatory phase only judicial phase. Which in this case offers no immunity as ordinary care was not given “Lawton v. City of Pocatello” 126, Idaho 454, 460, 886 P.2d 330, 336 (1994) “In carrying out operational government functions, such as statutory enforcement, immunity is contingent upon the use of due and ordinary care”. Sterling v. Bloom 111 Idaho 211, 230, 723 P.2d 755, 774 (1986)

If it were to fall under 6-904(3), Defendant’s claim immunity for false imprisonment. False imprisonment is a “charge” or a crime like kidnapping as false imprisonment or lying about ones identity. “False imprisonment,” is never mentioned or claimed by Plaintiff anywhere however negligence, wrongful charges, sentences and convictions are and are not offered an immunity claim by Defendants. False imprisonment is not the same as a wrongful charge, sentence or a constitutional violation. In Rees v. State, 143 Idaho 10, 137 P.3d 397 (2006) the Supreme Court implies that section 6-904(1) is broad enough to encompass prosecutorial investigations under ICPA, explaining; If a government employee fails to exercise ordinary care while carrying out the government’s policy, then this exception would not afford immunity” Id., P.20 Defendant failed to exercise ordinary care as in labelling Plaintiff as a persistent violator. Defendants are not afforded immunity as this is not a “false imprisonment” case...it is a

wrongful conviction with illegal sentences and on 8th Amendment violation for cruel and unusual punishment. However, if the Court finds 6-904(3) applies, that Summary Judgment was not proper as there is within the framework laid out, and intentional tort act and triable malice that begs for a trial in this case. Idaho case law says: “malice here means the intentional commission of a wrongful or unlawful act, without legal justification or excuse and with ill will whether or not injury was intended”. Miller v. Idaho State Patrol 150 Idaho, 856, 870, 252 P.3d 1274, 1288 (2011) Defendants charged Mr. Roberts as a persistent violator without any legal excuse or justification and there is no legal reason that the county or state employees enjoy absolute immunity in this situation or scenario especially while blaming the Idaho judiciary (see Motion in Support of Summary Judgment by Defendants) pg. 5. There simply is an admitted wrongdoing and admittance by Defendants but like the old adage of the boy with his hand in the cookie jar...points the blame at his brother. Defendants make a sad argument.

Argument #4 Whether claim falls under (3) or (1), Mrs. Siddoway was not entitled to dismissal as her continued malicious effort to keep Plaintiff admittedly wrongfully convicted (see case CV-17-84 Post Conviction filing pg. 2, where Defendant admits, “facts supporting Roberts claim have been apparent before conviction”. Proving that under 6-904(1) she is not providing ordinary care and/or under (3) she is being malicious by not correcting her own admitted error. Either way she is liable under both subsections and Summary Judgment was not proper and this case is ripe for a trial one way or another. In Nation v. State 144, Idaho 177, 158 P.3d 953 (2007) is states: “Prosecutors are entitled to absolute immunity during the judicial phase.” (Id) However, this does not extend to the investigatory phase as laid out in Broam v. Brogun, 320 F.3d

1023, 1028 (9th Cir. 2003) which states: “A prosecutor does not have absolute immunity if the prosecutor is performing merely an “investigatory” or administrative function, or when they are essentially functioning as a police officer or detective.” Also cited is State v. Herrera 164 Idaho 261, 429 P3.d 149 (2018) the Idaho Supreme Court entertained the possibility that a wrongful sentence enhancement can constitute a vindictive or malicious prosecution. Such is the case in this scenario.

Statement of Issue

The Court in this case relied on a “void” ruling in criminal case CR-98-96 that led to summary dismissal in this case erroneously.

Argument

In the criminal matters a memorandum “opinion” filed on March 5, 2020 the judge “freely” reviewed case CR-98-96 of which he did not have general or subject matter jurisdiction over in the opinion filed in CR-98-128. The original ruling in case CR-98-96 amending the conviction from adult DUI to an Under 21 DUI by Magistrate Jason D. Walker has legal and jurisdictional standing because “No appeal” was taken by the State to give a cause of action or jurisdiction for the district Court Judge to “freely” overturn the Magistrate Judges ruling. This being the fact and a void “opinion” was issued and also the fact no “order” was filed along with the opinion in CR-98-128 or CR-98-96 makes a void ruling and to the point of fact that in this case CV41-19-0124 upon appeal, the original memorandum decision to summary dismiss should also be void as it based its decision erroneously on a void ruling in the criminal cases. Also, to point of fact all criminal matters are still pending appeals process with roughly 22 Motions for relief. Based on presumption this Courts Summary Judgment was improper in as there is no

final resolution in the criminal case that would show what Plaintiffs/Defendants actual criminal conviction history is. Currently it is still erroneous. Logically and legally the criminal matters should be remedied and finalized before a ruling could be issued in this case on appeal... Otherwise there are still material disputed facts that create a triable issue. The cart doesn't go before the horse.

Statement of Issue

Lastly the Court in its memorandum decision sites no bond as a reason to summarily dismiss.

Argument

A bond is not required in type of "Habeus Corpus" action such is the case here. Where Plaintiff is alleging wrongful convictions, illegal sentences and improperly applied legal statutes constitutes a Habeus Corpus type action that does not require a bond. Plaintiff also in fact did file a Motion for bond in the criminal matters that correlate directly to the cases listed in complaint of CV41-19-0124 that would cover and encompass a bond requirement in this action. The Court ignored and has still to this day never addressed Plaintiff Motion for bond filed February 6, 2018. The ruling is CV41-19-0124 is improper because a bond is not a requirement in this scenario and also because bond was asked for on February 2, 2018 but never addressed by the Court. Garren v. Butigan 95 Idaho 355, 509 P.2d 340 (1973).

"The purpose of our code of procedures is to have actions tried upon merits and not to have them dismissed on technicalities". Nobach v. Scott 20 Idaho 558, 561, 119 P.2d 896, 898 (1911) also see Tew v. Manwaring 94 Idaho 50, 52, 480 P.2d 896, 898 (1971) all pleadings shall be so construed as to do substantial justice).

“Pleadings service the purpose of stating the nurture of the action brought so as to put the other party on notice and to declare the relief sought. Unlike common law and code pleading, perfection is not required; imperfections are not fatal. Pleadings serve to frame the issues so that an orderly trial can ensure, and a just resolution be pursued. Lawsuits are a quest for the truth and justice; Trials should be no longer waged in the pleading state.” Clark v. Olsen 110 Idaho 323,328, 715 P.2d 993, 998 (1986) In the cases above as laid put, justice was not served in this case by dismissal based on incorrect analysis, half-truths, failure or technicalities. Worst case scenario should have allowed for amendment to clarify issues. “It is well settled that, in the interest of justice, Courts should favor liberal grants of leave to amend.” Wickstrom v. N. Coll Idaho 111 Idaho 450, 453, 725 P.2d 155, 158 (1986).

Lastly, because of the substantial and substantive issues that have been raised the Court should be very wary of dismissing these matters without carefully considering the material disputed facts and truth in connection with the same. “Caution should be exercised... to ensure that dismissal does not deny the constitutional protection of Habeus Corpus to an individual with legitimate grievance on purely technical grounds.” Freeman v. Dept of Corrections 116 Idaho 935, 783 P.2d 324 (1989) The case CV41-19-0124 and this appeal of it is basically a Habeus Corpus in the form of a lawsuit. Also, as laid out in the Motion to reconsider pursuant to IRCP 60(b). The fact that two judges say there is a definite problem in Plaintiffs conviction history on the record being Supreme Court Justice Gregory Moeller and Magistrate Jason D. Walker. Then Judge Jon Shindurling also pointing at illegalities in and on record (see hearing minutes of November 13, 2019 for cases CR-97-31, CR-98-96, CR-98-128, CR-01-144, CR-05-727, CR-16-47. And CV-

17-84, Cv-17-133, CV-17-153 and CV-17-154; he concurs with Plaintiff yet failed to correct anything. Basically, for three (3) judges to support Plaintiff stance then be denied by Judge Boyce in the suit make a triable issue. If law is law for DUI applications how can we have different opinions of it? That's a big question needing answered as it has destroyed Plaintiffs life and his families. Prosecutorial immunity only exists when digression and enforcement are compliant with state laws and that is absolutely not the case here.

Statement of Issue

The District Courts denial of Motion to Reconsider pursuant to IRCP 60(b) was improper and should be reversed. Also, Summary Judgment was improper.

Argument

Plaintiff should have been notified of his attorney's liberal grant to amend and been afforded the opportunity to amend his complaint as Plaintiffs attorney failed to do. The Court ruling "not amending complaint" as an issue for denial constitutes an abuse of discretion on a liberal grant to amend that Plaintiff was not informed or afforded to do. Also, in granting Summary Judgment it is axiomatic that all facts and inferences arising are construed most favorably towards the party against whom Summary Judgment remains unresolved "And if any genuine issue of material fact remains unresolved" summary judgement is not proper. Nielsen v. Provident Life and Accident Ins. Co., 100 Idaho 223, 596 P.2d 95 (1979).

Un-timeliness was claimed by District Court which is a bold face lie. Plaintiffs Motion was timely, all that's needed is to look at the date of Motion compared to the

Summary Judgment order date. Also, IRCP 60(b) specifies a six (6) month window to file of which Plaintiff met timely by far.

As laid out in original Motion to reconsider Plaintiff believes strongly that the Court abused discretion either by excusable neglect, inadvertence or possible fraud in many area's specifically identified in the IRCP 60(b) Motion. Plaintiffs criminal history is still wrong, unlawful, further erred and begging for a trial.

Statement of Issue

Award of cost and fees based on claim being brought frivolously and pursued in bad faith is untrue and should be reversed.

Argument

As laid out in material disputed facts and judicial notice taken in all the listed criminal and civil cases and testimony and filings of over seven (7) individuals asking in multiple form's relief for the Plaintiff that there is in fact a "triable issue" "attorney fees may not be awarded under 12-121 when there is a legitimate triable issue of fact to be submitted to a jury" Turner v. Willis, 119 Idaho 1023, 812 P.2d 737 (1991) The listed attorneys, ex-prosecutor and two (2) judges stating illegalities in criminal cases prove there is a triable issue in this matter. "If this case is frivolous" as District Court ruled, there should be consequence to the attorney filing the claim and not his client. Seven legal representatives helped breathe life into Plaintiffs claim so it cannot be frivolous or bad faith. Plaintiffs legal arguments were not so plainly fallacious as to be deemed frivolous, nor was there a case not supported by a good faith argument for the extension or modification accordingly, the trial Courts award of attorney's fees was not appropriate; Hans v. Syriga Realty, Inc. 120 Idaho 364, 816 P.2d 320 (1991)

Plaintiff's analysis of his actual criminal record is 100% true and accurate. The Defendant's and District Court analysis is a 100% lie. And misrepresentation. Plaintiff is only being truthful and asking for justice and for equal application and protection under law as laid out in *Wing v. Amalgamated Sugar Co.* 106 Idaho 905, 684 P.2d 307 (Ct. App. 1984); A misperception of law or of one's interest under the law is not, by itself unreasonable conduct; if it were virtually every case controlled by a question of law would entail an attorney fee award against the losing party under §12-121. Rather the question must be whether the position adopted by the losing party was not only incorrect but so fallacious that it could be deemed frivolous, unreasonable or without foundation. Justice has not been served in the criminal cases yet and has been further erred and Plaintiff further punished unconstitutionally by the award of fees and cost in this case as it is not proper. This case is not frivolous or pursued in bad faith. The award was based on one judge's "belief" when there are a magistrate J.D. Walker, your own Supreme Court Justice member Gregory Moeller and ex-prosecutor Bart Birch and Defense attorneys of thirty (30) plus years individually Stephen Hart, Doug Knutson, John Sotsich who disagrees with the "belief" of the District Court.

In closing Plaintiff know opinions and conclusory statement prove nothing but, Plaintiff strongly feels predjudicy and a hint of corruption or protection involved in the decisions against him surrounding this case. Plaintiff would not fight this hard if he thought he were wrong in the slightest degree. Plaintiff's know this case is not frivolous or pursued in bad faith. Plaintiff also absolutely does not think this case would be dismissed if filed at another venue or federally. Plaintiff hopes this Court sees that and stops the

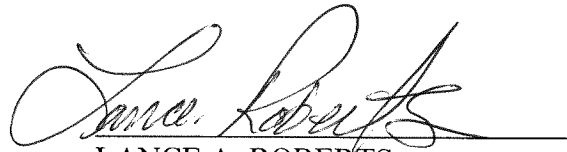
unwarranted compounding damages and further punishment of Plaintiff unconstitutionally.

Conclusion

Therefore, appellant respectfully request that this Court:

1. Reverse the District Court ruling and allow this case to proceed to trial under subsection (1) of Idaho Tort Claim Act for negligence of carrying out pre-established policy and state law, and or under subsection (3) for Triable Malice for continued efforts of Defendants to keep Plaintiff incarcerated illegally and unconstitutionally. Based on original complaint and Motion to reconsider pursuant to i.R.C.P. 60(B).
2. Reverse District Court ruling of Award of attorney fees and cost. Suit was not frivolously brought.
3. Revers denial of Plaintiffs Motion to reconsider and allow case to proceed to trial.

DATED this 3 March 2021


LANCE A. ROBERTS
Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was on this date served upon the person(s) named below in the following manner:

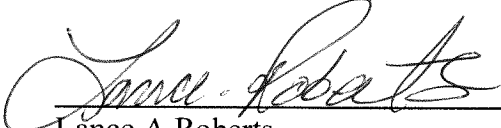
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DATED this 3 March 2021.



Lance A. Roberts