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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45296
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2009-7512
v.)	
)	
MATTHEW JOSEPH)	APPELLANT'S BRIEF
ABRAMOWSKI,)	
)	
Defendant-Appellant.)	
<hr/>		

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 GEORGE D. CAREY
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

After the district court dismissed a withheld judgment against Matthew Joseph Abramowski, he requested the district court seal his case. At the hearing on the motion to seal, he also requested the district court expunge his case. The district court indicated it would grant the request for expungement if it had the legal authority, but suggested Mr. Abramowski should file a separate motion to give proper notice to the State. The district court sealed the records of the juvenile proceedings in the case, finding Mr. Abramowski had been unable to secure employment and independent living opportunities.

Mr. Abramowski then filed a motion for expungement under Idaho Court Administrative Rule 32 (Rule 32), and explained his difficulties with finding a job or housing stemmed from his criminal history being a matter of public record. The district court, with a different judge now presiding over the case, denied the motion for expungement. Mr. Abramowski filed a motion to reconsider, and at the hearing on the motion, presented additional information on his inability to secure employment and independent living opportunities because his criminal history was available to the public. The district court denied the motion to reconsider.

On appeal, Mr. Abramowski asserts the district court abused its discretion when it denied his requests for expungement.

Statement of the Facts and Course of Proceedings

At the age of fifteen, Mr. Abramowski liked to write stories, hang out with his friends, and play video games. (*See Presentence Report (hereinafter, PSI), p.4.*) He also practiced the martial art Kajukenbo and enjoyed the times he went to church. (*See PSI, pp.3-4.*)

By the time he was fifteen, Mr. Abramowski also had diagnoses for Asperger's Disorder and Autistic Disorder. (*See* Competency Hearing State's Ex. 1, p.2.)¹ Indeed, Mr. Abramowski has an autism spectrum disorder. (*See* Conf. Docs., pp.778-79.)² However, Mr. Abramowski "is high functioning without any intellectual impairment." (Conf. Docs., p.779.) One evaluator wrote, "[s]ocial, developmental and emotional differences have reportedly been present since early childhood." (Competency Hearing Def. Ex. A, p.2.) Mr. Abramowski's presentence investigator stated that, arguably, he "may always relate to the world as a person younger than his chronological age." (PSI, p.3.)

Mr. Abramowski's mother had homeschooled him from the third grade through the fifth grade. (*See* Competency Hearing Def. Ex. A., p.3; Craig W. Beaver, Ph.D, Mental Evaluation, May 19, 2010 (*hereinafter*, Beaver Mental Evaluation), p.5.)³ Mr. Abramowski and his family then moved to Idaho, and he went into public school. (*See* Beaver Mental Evaluation, p.6.) Mr. Abramowski had been in a special education program for stuttering that provided him a classroom aide, but the school district took him out of the program when he entered high school. (*See* Competency Hearing Def. Ex. A., p.2; Beaver Mental Evaluation, p.6.)

Other students would bully Mr. Abramowski. (*See* Beaver Mental Evaluation, p.5.) His freshman year at high school was no exception. (*See* Competency Hearing Def. Ex. A, p.2.) One of his friends reported almost everyone in Mr. Abramowski's classes would bully him,

¹ State's Exhibit 1 and Defendant's Exhibit A were admitted at a competency hearing held on October 30, 2009. Those exhibits may be found in the 27-page PDF document "Abramowski 45296 ex.pdf".

² The Sealed or Confidential Documents may be found in the 295-page PDF document "Abramowski 45296 conf.pdf". Please note the pagination in the PDF begins with Page 486.

³ The Beaver Mental Evaluation was the subject of Mr. Ambramowski's Motion to Augment, which the Idaho Supreme Court granted. (*See* Order Granting Motion to Augment and to Suspend the Briefing Schedule, Apr. 2, 2018.)

through acts such as stealing his clothes from his locker, pushing down on the bench press bar when he was lifting weights, and embarrassing him. (*See* Competency Hearing Def. Ex. A, p.2.)

Mr. Abramowski had considerable difficulties with communicating his thoughts and feelings. (*See* Beaver Mental Evaluation, p.2.) His parents were unaware of the full extent of the bullying. (*See* Beaver Mental Evaluation, p.6.) At one point, Mr. Abramowski attempted to run away from home. (*See* Competency Hearing Def. Ex. A, p.1.) A few months later in April 2009, about a month after he turned fifteen, he set a fire in his home while his parents were sleeping. (*See* Competency Hearing State's Ex. 1, p.1.) Years later, Mr. Abramowski's counsel explained the incident happened "because he wasn't able to articulate what was happening to him and the breakdown he was going through due to the bullying and what was happening to him when he was going to school. He didn't have the skill set to reach out." (*See* Tr. June 15, 2017, p.10, Ls.3-9.)

The State charged Mr. Abramowski with arson in the first degree, felony, I.C. § 18-802(1). (*See* Sealed R., p.203.)⁴ After Mr. Abramowski pleaded guilty, the district court withheld judgment and placed him on probation for a period of ten years. (*See* Sealed R., pp.203-07; Tr. June 21, 2010, p.69, L.23 – p.70, L.9.) The district court initially placed him under the control of juvenile authorities, with supervision to be transferred to adult authorities by the time he turned twenty-one. (Tr. June 21, 2010, p.70, Ls.2-25.)

Overall, Mr. Abramowski did "extremely well on probation." (Conf. Docs., p.755.) In early 2015, his juvenile probation officer wrote in an update memorandum to the district court that Mr. Abramowski "has been in full compliance with no violations to report." (Conf. Docs.,

⁴ The Sealed Record may be found in the 290-page PDF document "Abramowski 45296 cr seal 2010-2015.pdf". Please note the pagination in the PDF begins with Page 196.

p.755.) Mr. Abramowski attended school, enrolled in an online course at a community college, volunteered with a non-profit organization that worked with people with a diagnosis on the autism spectrum, and actively engaged in ongoing treatment sessions. (*See Conf. Docs.*, p.755.)

Around the same time, Mr. Abramowski's mother wrote a statement to the district court on how much Mr. Abramowski had been through, and on how much he had progressed due to his hard work, treatment providers, support from the autism community, family, and friends, as well as taxpayer funds. (*See Conf. Docs.*, pp.766-769.) She knew that Mr. Abramowski "wishes someday to be able to not be the recipient of those funds, but to be one that is contributing to help others." (*Conf. Docs.*, p.769.)

Later in 2015, after Mr. Abramowski turned twenty-one years old, he requested the district court either terminate probation and dismiss the case, or alternatively, place him on adult unsupervised probation. (*See R.*, p.127; *Sealed R.*, p.475.) The district court appointed Chad Sombke, Ph.D., to examine and report upon the mental condition of Mr. Abramowski. (*R.*, pp.127-30.) Dr. Sombke found Mr. Abramowski could be considered a low risk to the community at large. (*See Conf. Docs.*, p.780.) The district court subsequently converted Mr. Abramowski's supervision from supervised juvenile probation to unsupervised (Court) probation for a period of four years. (*See Sealed R.*, pp.478-81.)

In March 2017, Mr. Abramowski filed a Motion to Dismiss Pursuant to I.C. § 19-2604(1)(b)(i). (*R.*, p.141.) The district court terminated the sentence, set aside the plea of guilty, dismissed the case, and finally discharged Mr. Abramowski. (*R.*, p.144.)

Mr. Abramowski then filed a Motion to Seal, requesting the district court seal his case from the Idaho Criminal Repository pursuant to Idaho Court Administrative Rule 32(i). (*R.*, p.146.) At the hearing on the motion to seal, Mr. Abramowski further requested the district

court “expunge[.]” the case. (*See* Tr. Mar. 29, 2017, p.3, L.23 – p.5, L.7.) He had been having difficulty “with the fact that this information is public on a repository. And to the extent that the Court has the authority to remove that from the repository, that would be a concern” of Mr. Abramowski and his family. (*See* Tr. Mar. 29, 2017, p.4, Ls.3-7.) Mr. Abramowski asserted he had been having trouble finding housing and employment because potential landlords and employers were able to find his charges, which was causing him economic harm. (*See* Tr. Mar. 29, 2017, p.4, Ls.7-12.)

The district court determined the request for expungement was different from what Mr. Abramowski had raised in the motion to seal, and suggested he file a separate motion for expungement to give proper notice to the State. (*See* Tr. Mar. 29, 2017, p.6, L.15 – p.7, L.19.) The district court observed, “I don’t think there will be time for you to do that before I leave the bench, and so that will be something that will be addressed by my successor.” (Tr. Mar. 29, 2017, p.6, L.25 – p.7, L.2.) The district court also stated, “[f]or the record, if I felt that I had legal authority to expunge, I would exercise discretion in this case to grant that. I think that Mr. Abramowski has earned some additional consideration from the Court and, for what it’s worth, I would exercise some discretion with that in mind.” (Tr. Mar. 29, 2017, p.7, Ls.3-9.)

The district court ordered the mental health evaluation records in Mr. Abramowski’s case sealed pursuant to I.C.A.R. 32(g)(17). (*See* R., pp.149-51.) The district court also ordered the records from the juvenile proceedings sealed under I.C.A.R. 32(g)(9). (R., pp.149-50.) The district court found, “extraordinary circumstances exist which justify that such records should be confidential. The extraordinary circumstances consist of limitations which relate to Abramowski’s autism spectrum disorder. Due to these limitations, Abramowski has been unable

to secure employment and independent living opportunities that would not have similar effects on a person without such limitations.” (R., p.150.)

Mr. Abramowski filed a Motion for Expungement, under I.C.A.R. 32(i). (R., pp.154-55.) He asserted he had “autism and psychiatric limitations and significant developmental disabilities. Because of these diagnoses, the Court has already made findings that ‘extraordinary circumstances exist’ that have resulted in ‘inability to secure employment and independent living opportunities.’” (R., p.155.) Mr. Abramowski asserted, “[t]hese findings are also enough to warrant ‘expungement’ of his criminal record under I.C.A.R. 32(i).” (R., p.155.)

In the meantime, the presiding judge retired and Mr. Abramowski’s case was temporarily assigned to a senior judge. (*See* R., p.172.) At the hearing on the motion for expungement before the senior judge, Mr. Abramowski explained that his mother, who was also his legal guardian, was concerned “that with this available to the public record,” he “has had trouble finding a job.” (*See* Tr. June 15, 2017, p.10, Ls.15-25.)⁵ While Mr. Abramowski worked about one hour a week as a public television cameraman, and wanted to work, he was “having difficulty finding employment when people search and do a background check and find this on his record.” (*See* Tr. June 15, 2017, p.10, L.25 – p.11, L.4.) His mother’s concern was that, “when or should she pass away, how will he be able to support himself and care for himself if he has this record, and so, of course, she’s concerned that he be set up to be as independent and stable as he can be in the future and this leaves him unable to find housing and employment and support himself.” (Tr. June 15, 2017, p.11, Ls.5-11.) Mr. Abramowski reminded the district court that the previous judge had already made findings “to support an order of expungement.” (*See* Tr. June 15, 2017, p.11, Ls.12-15.)

Later, the district court issued a Memorandum and Order Concerning Defendant's Motion to Expunge Record. (R., pp.172-74.) The district court wrote that the previous judge "already has granted some expungement relief to the defendant." (R., p.173.) The district court determined, "[i]n a case such as this, involving a type of serious and potentially dangerous criminal act, the public interest predominates over the defendant's privacy interest." (R., p.173.) Thus, the district court denied the motion for expungement. (R., p.173.)

Mr. Abramowski filed a Motion to Reconsider Order Denying Motion to Expunge. (R., p.176.) Attached to the motion to reconsider was a letter from an affordable housing organization, denying Mr. Abramowski's application for an apartment. (*See* R., p.177.) The letter stated, "[t]his decision to decline your application was based on information obtained from previous landlords or references listed on your application for housing and/or credit bureau report or criminal history reports." (R., p.177.)

Mr. Abramowski's mother testified at the hearing on the motion to reconsider. (Tr. July 19, 2017, p.19, Ls.4-25.) She testified Mr. Abramowski lived with his parents, who had full legal guardianship and conservatorship. (Tr. July 19, 2017, p.19, Ls.19-25.) The conservatorship authorized her to look after his finances. (Tr. July 19, 2017, p.20, Ls.1-6.) She testified Mr. Abramowski never had a credit card or any sort of credit history. (Tr. July 19, 2017, p.20, Ls.10-18, p.25, L.25 – p.26, L.3.) She suggested he was on SSI benefits. (*See* Tr. July 19, 2017, p.22, Ls.16-24.) Mr. Abramowski's mother further explained that her son had been hired as a cameraman because his employer would get a tax credit. (*See* Tr. July 19, 2017, p.22, Ls.3-15.)

⁵ Please note the transcript for the June 15, 2017 hearing does not have individual page numbers, although line numbers do appear on the pages.

Mr. Abramowski also had not had any previous landlords, other than his parents, and his mother testified she had not given any information to anyone that would aid them in denying the application. (*See* Tr. July 19, 2017, p.25, Ls.1-9.) Mr. Abramowski's mother testified the references listed in his application were probably two separate people from Mr. Abramowski's church, who were in charge of the departments where he had done volunteer work. (*See* Tr. July 19, 2017, p.25, Ls.14-24.) In her opinion, that left only the criminal history reports as a reason to deny the application. (*See* Tr. July 19, 2017, p.26, Ls.7-9.)

Neil Jarski, Mr. Abramowski's developmental therapist, also testified. (Tr. July 19, 2017, p.7, Ls.6-19.) Mr. Jarski testified Mr. Abramowski had completed four housing applications. (Tr. July 19, 2017, p.13, Ls.14-17.) Mr. Abramowski did get contacted about one application, but it did not work out because the location was in Meridian far from any bus stops, and Mr. Abramowski was going to school in Boise. (*See* Tr. July 19, 2017, p.13, Ls.2-10.)

Additionally, Mr. Jarski testified Mr. Abramowski had been working as a cameraman for about six months, but no more than an hour or two per week. (*See* Tr. July 19, 2017, p.8, L.16 – p.9, L.5.) Before that, he had only done volunteer work. (Tr. July 19, 2017, p.9, Ls.6-11.)

Mr. Jarski testified Mr. Abramowski had filled out lots of job applications, and had also gone through vocational rehabilitation for help getting a permanent job. (Tr. July 19, 2017, p.9, L.15 – p.10, L.7.) Mr. Abramowski had actually gone through vocational rehabilitation twice, where usually participants only went through it once. (Tr. July 19, 2017, p.10, Ls.8-14.) Mr. Jarski estimated Mr. Abramowski had filled out 80 to 90 job applications when he was doing vocational rehabilitation. (Tr. July 19, 2017, p.11, Ls.1-13.) However, Mr. Abramowski only had two callbacks: one with a restaurant which rejected him after an evaluation, and the other with the public television station that hired him. (*See* Tr. July 19, 2017, p.12, Ls.2-10.) On

cross-examination, Mr. Jarski testified they had never been specifically informed on why Mr. Abramowski had been denied. (Tr. July 19, 2017, p.16, Ls.18-20.)

Mr. Abramowski asserted, “it’s the defense’s position that the reason that Matthew has been submitting so many applications for job employment and receiving no callbacks is because of his criminal record and his criminal history.” (Tr. July 19, 2017, p.28, Ls.15-19.) He also asserted, “the only reason that he has been denied housing would then be left to his criminal history and those reports.” (Tr. July 19, 2017, p.28, Ls.23-25.) He requested the district court “further expunge his record, so that when he is putting in for housing and employment and folks go to search his background, this doesn’t come up and then immediately cause him to not be called back in or to get a job or to get housing.” (Tr. July 19, 2017, p.29, Ls.7-11.)

The district court subsequently issued a Memorandum and Order Concerning Defendant’s Motion to Reconsider. (R., pp.182-84.) The district court wrote, “[a]lthough not stated in the memorandum [denying the initial motion for expungement], a primary consideration was the undisputed fact that the defendant actually committed the acts constituting arson in the first degree, even though as a matter of law the charge ultimately was dismissed following successful completion of a period of probation.” (R., p.183.) The district court, after the hearing, had “reviewed the entire written record of this case, which demonstrated that the defendant did well on probation.” (R., p.183.) The district court, “[h]aving considered the additional evidence and argument presented on behalf of the defendant,” still concluded “that the public interest outweighs the defendant’s privacy interest.” (R., p.183.) Thus, the district court denied the motion to reconsider. (R., p.183.)

Mr. Abramowski filed a Notice of Appeal timely from the district court’s Memorandum and Order Concerning Defendant’s Motion to Reconsider. (R., pp.185-87.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Abramowski's requests for expungement?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Abramowski's Requests For Expungement

A. Introduction

Mr. Abramowski asserts the district court abused its discretion when it denied his requests for expungement. The district court, when it denied the initial motion for expungement, and when it denied the motion for reconsideration, did not act consistently with the applicable legal standards. The district court should have found that Mr. Abramowski's interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case would reasonably result—and had already resulted—in economic or financial loss or harm to Mr. Abramowski.

B. Standard Of Review And Applicable Law

An appellate court reviews a district court's order on an Idaho Court Administrative Rule 32(i) motion for expungement for an abuse of discretion. *State v. Turpen*, 147 Idaho 869, 872 (2009). When an appellate court reviews an exercise of discretion, it conducts a multi-tiered inquiry into whether the district court rightly perceived the issue as one of discretion, whether the district court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices, and whether the district court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

A district court deciding a motion for reconsideration applies the same standard of review that the court applied when deciding the original order that is being reconsidered. *Westby v. Schaefer*, 157 Idaho 616, 621 (2014). "If the original order was within the trial court's discretion, then so is the decision to grant or deny the motion to reconsider." *Id.* When an

appellate court reviews a district court's decision to grant or deny a motion for reconsideration, the appellate court uses the same standard of review the district court used in deciding the motion for reconsideration. *Id.*

In *Turpen*, the Idaho Supreme Court held it did not contemplate "expungement" in Idaho included the destruction of public records: "[W]hen we refer to expungement, we mean the issuance of a court order requiring physical or electronic sequestration of such records from public access or inspection. Thus, when we refer to 'expungement' we do so in the narrower sense of 'expungement of record' which is defined as the '[p]rocess by which [a] record of criminal conviction is destroyed or sealed'" *Turpen*, 147 Idaho at 870-71. Considering the previous judge here treated the request to seal the case as a discrete motion, Mr. Abramowski's requests for expungement were for the district court to redact the case materials so they would not show up in a state public records search. (*See* Tr. Mar. 29, 2017, p.4, Ls.3-7; Tr. July 19, 2017, p.29, Ls.5-11.)

The *Turpen* Court held that Rule 32(i) "authorizes the trial court to seal or redact court records on a case-by-case basis. The rule requires the custodian judge to hold a hearing and make a factual finding as to whether the individual's interest in privacy or whether the interest in public disclosure predominates." *Turpen*, 147 Idaho at 871. "If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests." *Id.* (quoting I.C.A.R. 32(i)) (internal quotation marks omitted).

Rule 32(i) currently provides that before a court may enter an order redacting or sealing records, it must also make one or more of the following determinations in writing:

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

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

(C) That the documents or materials contain facts or statements, the dissemination or publication of which may compromise the financial security of, or could 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

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

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

(F) That the documents contain personal data identifiers that should have been redacted pursuant to Rule 2.6 of the Idaho Rules of Civil Procedure, in which case the court shall order that the documents be redacted in a manner consistent with the provisions of that rule.

I.C.A.R. 32(i)(2). “In determining whether to grant a request to seal or redact records, trial courts are expected to apply ‘the traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons.’” *Turpen*, 147 Idaho at 872 (quoting I.C.A.R. 32(i)).

C. The District Court Abused Its Discretion When It Denied Mr. Abramowski’s Initial Motion For Expungement, Because The District Court Did Not Act Consistently With The Applicable Legal Standards

Mr. Abramowski asserts the district court abused its discretion when it denied his initial motion for expungement, because the district court did not act consistently with the applicable legal standards. The district court should have found that Mr. Abramowski’s interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case would reasonably result, and had already resulted, in economic or financial

loss or harm to Mr. Abramowski; namely, his inability to secure employment and independent living opportunities.

Mr. Abramowski's interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case would reasonably result in economic or financial loss or harm to Mr. Abramowski. The previous judge's findings indicated Mr. Abramowski had already suffered economic or financial loss or harm. When the previous judge ordered the records from the juvenile proceedings sealed under I.C.A.R. 32(g)(9),⁶ the judge found "that extraordinary circumstances exist which justify that such records should be confidential. The extraordinary circumstances consist of limitations which relate to Abramowski's autism spectrum disorder. Due to these limitations, Abramowski has been unable to secure employment and independent living opportunities that would not have similar effects on a person without such limitations." (R., p.150.)

At the hearing on the motion for expungement, Mr. Abramowski explained that while he was working about an hour a week as a public television cameraman, he was "having difficulty finding employment when people search and do a background check and find this on his record." (Tr. June 15, 2017, p.10, L.25 – p.11, L.4.) His mother was worried Mr. Abramowski would continue to experience economic losses in the future; she was concerned "that he be set up to be as independent and stable as he can be in the future and that this leaves him unable to find housing and employment and support himself." (Tr. June 15, 2017, p.11, Ls.5-11.)

⁶ I.C.A.R. 32(g)(9) provides that "[c]ourt records of Juvenile Corrections Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult, shall be exempt from disclosure if the court determines upon a written order made in each case that extraordinary circumstances exist which justify that the records should be confidential." I.C.A.R. 32(g)(9)(B)(2).

Mr. Abramowski also indicated the public interest in disclosure did not predominate, asserting at the hearing that “[t]his was a family matter, and I think that it was a culmination of events that are not likely to occur.” (Tr. June 15, 2017, p.11, Ls.18-23.) Mr. Abramowski had explained that the incident originated from his mental breakdown caused by the bullying he was subjected to at school, and his inability to articulate what was happening to him. (See Tr. June 15, 2017, p.9, L.22 – p.10, L.14.) Mr. Abramowski had since graduated from school and was undergoing treatment. (See Tr. June 15, 2017, p.11, Ls.23-24.)

Thus, Mr. Abramowski’s interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case would reasonably result, and had already resulted, in economic or financial loss or harm to Mr. Abramowski. See *Turpen*, 147 Idaho at 871-72; I.C.A.R. 32(i). The district court abused its discretion when it denied Mr. Abramowski’s initial motion for expungement, because the district court did not act consistently with the applicable legal standards. See *Hedger*, 115 Idaho at 600.

D. The District Court Abused Its Discretion When It Denied Mr. Abramowski’s Motion For Reconsideration, Because The District Court Did Not Act Consistently With The Applicable Legal Standards

Mr. Abramowski asserts the district court abused its discretion when it denied his motion for reconsideration, because the district court did not act consistently with the applicable legal standards. In light of the additional evidence presented in support of the motion for reconsideration, the district court should have found that Mr. Abramowski’s interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case had resulted in economic or financial loss or harm to Mr. Abramowski.

The additional evidence presented included information on Mr. Abramowski’s difficulties with finding employment. Although Mr. Abramowski was still working as a

cameraman, his already-meager hours were declining. (*See* Tr. July 19, 2017, p.23, Ls.1-9.) His mother reported that his highest monthly paycheck had only been for \$80.00. (Tr. July 19, 2017, p.23, Ls.7-9.) Mr. Jarski testified Mr. Abramowski had only received two callbacks for job opportunities, even though he had submitted some 80 to 90 job applications and completed vocational rehabilitation twice. (*See* Tr. July 19, 2017, p.9, L.15 – p.12, L.13.)

Mr. Abramowski also presented additional evidence on his inability to secure independent living opportunities. The letter from the housing organization stated that the decision to decline Mr. Abramowski's application for an apartment "was based on information obtained from previous landlords or references listed on your application for housing and/or credit bureau report or criminal history reports." (R., p.178.) However, Mr. Abramowski's mother testified that his only previous landlords were his parents, and she had not provided any information to support a denial; his references were from his church; and he did not have a credit history of which she was aware. (*See* Tr. July 19, 2017, p.20, Ls.7-18, p.24, L.20 – p.26, L.6.) That left Mr. Abramowski's criminal history report as the only reason the housing organization denied his apartment application. (*See* Tr. July 19, 2017, p.26, Ls.7-9.)

Moreover, the district court's full review of the record, undertaken before it ruled on the motion to reconsider, would have shown Mr. Abramowski's privacy interest predominated over the public disclosure interest. The district court verified it had "reviewed the entire written record of this case" following the hearing on the motion to reconsider. (*See* R., p.183.)

The district court's review of the record would have further indicated Mr. Abramowski has, without his expungement request being granted, suffered economic loss. In a 2015 statement to the district court, Ms. Abramowski's mother wrote of her son's progress, aided in part by taxpayer funds. (*See* Conf. Docs., p.769.) She stated, "I know that Matthew wishes

someday to be able to not be the recipient of those funds, but to be one that is contributing to help others.” (Conf. Docs., p.769.) However, Mr. Abramowski has not been able to contribute to society as he wished, seeing as the only job he has been able to secure has paid him, at most, \$80.00 a month. (See Tr. July 19, 2017, p.23, Ls.1-9.) Additionally, Mr. Abramowski’s mother testified Mr. Abramowski received that job because his employer would get a tax credit. (See Tr., July 19, 2017, p.22, Ls.3-15.) Mr. Abramowski would have to find a different job to escape his dependency on taxpayer funds, and the availability of his criminal history to the public has left him unable to do so.

A review of the record would have also suggested Mr. Abramowski presents a low risk to the community, reducing the interest in public disclosure. Dr. Sombke’s 2015 psychological evaluation stated that Mr. Abramowski “does not have a substance use history and his only violent criminal act was his instant offense when he was 14 or 15 years old.” (Conf. Docs., p.779.) According to Dr. Sombke, Mr. Abramowski “has not had any other incidents of engaging in violence and he does not have any probation violations.” (Conf. Docs., p.780.) Dr. Sombke further wrote, “Mr. Abramowski can be considered a low risk to the community at large and he will continue to be a low risk as long as his treatment and supports in the community remain in place.” (Conf. Docs., p.780.)

In sum, based on the additional information provided in support of the motion for reconsideration, and a full review of the record, Mr. Abramowski’s interest in privacy predominated over the interest in public disclosure. The dissemination of the materials related to the case had resulted in economic or financial loss or harm to Mr. Abramowski. See *Turpen*, 147 Idaho at 870-71; I.C.A.R. 32(i). Thus, the district court abused its discretion when it denied

Mr. Abramowski's motion to reconsider, because the district court did not act consistently with the applicable legal standards. *See Hedger*, 115 Idaho at 600.

CONCLUSION

For the above reasons, Mr. Abramowski respectfully requests this this Court vacate the district court's order denying the motion for expungement, as well as the district court's order denying the motion for reconsideration, and remand his case to the district court for further proceedings.

DATED this 17th day of April, 2018.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of April, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MATTHEW JOSEPH ABRAMOWSKI
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BOISE ID 83704

GEORGE D CAREY
DISTRICT COURT JUDGE
E-MAILED BRIEF

NICOLE OWENS
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas