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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45296**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2009-7512**
	)	
MATTHEW JOSEPH ABRAMOWSKI,	)	
	)	
Defendant-Appellant.	)	

BRIEF OF RESPONDENT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Matthew Joseph Abramowski appeals from the district court's orders denying his motion for "expungement" and denying his motion for reconsideration.

Statement Of The Facts And Course Of The Proceedings

In 2009, the state filed a criminal complaint charging then 15-year-old Abramowski with first degree arson for having "willfully and unlawfully" set fire to his parents' home.[1] (R., pp.18-19; see also PSI, pp.1-3.) The magistrate ordered two separate I.C. § 18-211 mental health evaluations for the purpose of determining Abramowski's competency to stand trial. (R., pp.29, 40-41.) A third mental health clinician also evaluated Abramowski and "provided a report." (R., p.58.) The mental health evaluators all apparently agreed Abramowski had a number of age-related and "clinical limitations," including a diagnosis of "Autistic Disorder, High Functioning," but they disagreed about Abramowski's competency to understand the legal proceedings and assist in his own defense. (R., pp.57-58, 60-62; see also Supp. R., pp.2-3 (report of mental evaluation conducted by Dr. Craig W. Beaver on 5/19/10, summarizing findings and opinions of mental health clinicians who reported on Abramowski's competency in 2009).) Following a hearing, the magistrate found Abramowski was competent to stand trial. (R., pp.55-64.)

[1] The complaint indicated Abramowski had been waived into adult court pursuant to the automatic waiver provisions of I.C. §§ 20-508, -509. (See R., p.18.)

The case proceeded to a preliminary hearing, after which Abramowski was bound over to the district court. (R., pp.67-75.) Abramowski ultimately pled guilty to the first degree arson charge, and the district court withheld judgment and placed him on probation for a period of 10 years. (R., pp.112-21; Sealed R., pp.203-09, 223-28.) The order of probation provided that Abramowski would initially be supervised by juvenile probation authorities but that supervision would be transferred to the Idaho Board of Correction at some point on or before Abramowski turned 21. (Sealed R., pp.204, 224.)

Abramowski did well on probation. (Conf. Docs., pp.755, 765.) In March 2015, just before he turned 21, Abramowski filed a motion to terminate probation and dismiss the case or, alternatively, to be placed on unsupervised adult probation. (Conf. Docs., pp.762-64; see also Sealed R., p.482.) The district court granted the alternative request and converted Abramowski's "supervised juvenile probation to unsupervised (Court) probation" for a period of four years. (Sealed R., pp.478-81.)

In March 2017, Abramowski moved to set aside his conviction and dismiss the case pursuant to I.C. § 19-2604(1)(b)(i). (R., p.141.) Finding after a hearing that Abramowski had no adjudicated probation violations and that there was "no longer cause for continuing the period of probation," the district court granted the motion—*i.e.*, it "terminate[d] the sentence, set aside the plea of guilty, dismiss[ed] the case, and finally discharge[d]" Abramowski. (R., pp.143-45.)

After the district court entered its order of dismissal, Abramowski filed a motion to seal the case pursuant to I.C.A.R. 32(i). (R., p.146.) At the outset of the hearing on the motion, the district court indicated it was inclined to enter an order sealing any records of what it deemed to be juvenile proceedings, including "the entirety of the court file from

the date of the order withholding judgment until the date that [the court] placed [Abramowski] on unsupervised probation." (3/29/17 Tr., p.1, L.14 – p.2, L.9.) The court also indicated it would seal other records of a confidential nature, including the "various evaluations by medical and mental health professionals" that were contained in the court file. (3/29/17 Tr., p.2, Ls.8-18.)

When given the opportunity to argue the motion, Abramowski's counsel agreed that the records the court identified should be sealed. (3/29/17 Tr., p.3, Ls.19-22, p.6, Ls.1-4.) She also informed the court that Abramowski and his mother wished to have the case "expunged." (3/29/17 Tr., p.3, L.23 – p.4, L.2.) Counsel explained:

> They're having difficulty, I think, 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 theirs; that [Abramowski] has had, I think, trouble finding housing; he's actually been denied housing because of these criminal charges; he's also had difficulty finding employment, specifically because employers and housing folks are able to get on the Internet and search and find these charges, and that's causing him economic harm.

(3/29/17 Tr., p.4, Ls.3-12.)

After hearing additional argument, the district court declined to entertain the request for "expungement," noting the request was "different than what was in [Abramowski's] motion, which simply asked [the court] to seal the entirety of the file." (3/29/17 Tr., p.6, L.15 – p.7, L.19.) The court invited counsel to file a motion that clearly set forth a request for "expungement" and indicated that, because it was "leav[ing] the bench," any such motion would likely be addressed by a different judge. (3/29/17 Tr., p.6, L.22 – p.7, L.19.) The court did state, "[f]or the record," that "if [it] felt that [it] had legal authority to expunge, [the court] would exercise discretion in this case to grant that"

because, in the court's opinion, "Mr. Abramowski [had] earned some additional consideration from the Court." (3/29/17 Tr., p.7, Ls.3-9.) As to the motion to seal that was actually before it, the court granted the request, at least in part, and entered an order sealing all mental health and psychological evaluations/assessments, as well as all records of "[a]ll proceedings from the original sentencing date of June 21, 2010 until August 11, 2015." (R., pp.149-51; see also 3/29/17 Tr., p.7, L.20 – p.9, L.6.)

On April 25, 2017, Abramowski filed a motion seeking "'expungement' of his criminal record under [I.C.A.R.] 32(i)." (R., pp.154-55.) As the basis for his motion, Abramowski relied on the district court's earlier findings, made in conjunction with its order to seal, that Abramowski's autism spectrum disorder diagnosis and related "limitations" had resulted in an "inability to secure employment and independent living opportunities" and constituted "extraordinary circumstances" justifying the sealing of Abramowski's juvenile and mental health records. (Compare R., pp.149-50 with R., p.155.) "These findings," Abramowski argued, were "also enough to warrant 'expungement' of his criminal record" under Rule 32(i). (R., p.155.)

After Abramowski filed his motion for "expungement," the case was reassigned to a different district court judge. (R., pp.170, 172.) The court held a hearing on the motion, at which Abramowski's counsel presented argument but no evidence. (R., p.171; 6/15/17 Tr.) As she had before, counsel represented that Abramowski was having difficulty finding employment and housing due to the fact that his criminal history is "available to the public and on the record." (6/15/17 Tr., p.10, L.21 – p.12, L.2.) The state opposed the motion, pointing out there was no evidence that Abramowski had actually been financially harmed as a result of having the record of the dismissed arson

conviction available to the public, and arguing disclosure of that record was "in the public safety interest." (6/15/17 Tr., p.12, L.6 – p.13, L.3.)

Following the hearing, the district court entered an order denying the motion for "expungement." (R., pp.172-74.) The court recognized the prior judge's finding that "Abramowski has been unable to secure employment and independent living opportunities" as a result of "limitations which relate to Abramowski's autism spectrum disorder." (R., pp.172-73.) The court also noted the prior judge had "entered an order in March 2017 sealing numerous court records relating to this case" and, thus, had already "granted some expungement relief." (R., pp.172-73.) The court declined to "grant any relief in addition to that already granted by" the prior judge, reasoning: "In 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.)

Abramowski subsequently filed a motion seeking reconsideration of the order denying his motion for "expungement." (R., pp.176-78.) At a hearing on the motion, Abramowski called two witnesses. (R., pp.180-81; 7/19/17 Tr.) The first witness, Neil Jarski, is a developmental therapist who, for the past six or so years, had worked with Abramowski and assisted him with his "daily living skills," including filling out applications for employment and housing. (7/19/17 Tr., p.7, L.8 – p.8, L.11.) Mr. Jarski testified that, for the past six months, Abramowski had been employed as a cameraman at PBS. (7/19/17 Tr., p.8, L.15 – p.9, L.5.) According to Mr. Jarski, Abramowski had been working at PBS "for about an hour or two a week" but, "for the last six weeks, he hasn't had to work at all. They have had no time for him." (7/19/17 Tr., p.8, Ls.23-25.) Mr. Jarski testified that Abramowski had attempted to find other employment and filled out

between 80 and 90 job applications, but only got two callbacks—one from a restaurant where Abramowski worked and was evaluated for a day before being let go, and the other from PBS where he was still employed as a cameraman. (7/19/17 Tr., p.9, L.12 – p.12, L.13.)

Mr. Jarski also testified regarding Abramowski's efforts to finding housing. (7/19/17 Tr., p.12, L.14 – p.13, L.18.) Mr. Jarski testified that Abramowski had applied for subsidized housing at four different apartment complexes, all of which had "a year to three-year wait." (7/19/17 Tr., p.12, Ls.18-25, p.13, Ls.11-16, p.16, L.25 – p.17, L.2.) One of the apartment complexes accepted Abramowski's application but, after viewing the property, Abramowski decided for logistical reasons to not pursue that particular housing option. (7/19/17 Tr., p.13, Ls.2-10, p.16, L.25 – p.17, L.5.)

Mr. Jarski testified that the lack of response Abramowski received from potential employers and landlords was "very untypical" and that other individuals with whom Mr. Jarski had worked, including one or two who also had criminal records, albeit less significant, "[u]sually" got "some response." (7/19/17 Tr., p.14, L.15 – p.16, L.3.) Mr. Jarski admitted, however, that of the 80 to 90 job applications and three unsuccessful housing applications Abramowski had submitted, Abramowski was never given any specific reason why his applications were "denied." (7/19/17 Tr., p.16, L.13 – p.17, L.20.) Abramowski did get a letter from one of the apartment complexes that informed him his application was being rejected based either on "something listed from his landlords, there [sic] references, his credit, [or his] criminal history." (7/19/17 Tr., p.17, Ls.8-18 (punctuation and bracketed material added for ease of readability); see also

Defense Exhibit A.) But there was "nothing specific" in the letter informing Abramowski on which of those bases the rejection decision rested. (7/19/17 Tr., p.17, Ls.8-20.)

The second witness who testified at the hearing on Abramowski's motion to reconsider was Abramowski's mother, Diane Abramowski. (7/19/17 Tr., p.19, Ls.11-15.) Mrs. Abramowski testified that she and her husband "have full legal guardianship and conservatorship" over Abramowski and "look after all of his finances." (7/19/17 Tr., p.19, L.19 – p.20, L.6.) Mrs. Abramowski was familiar with Abramowski's "financial situation" and knew that he had never had a "credit card or any sort of credit history." (7/19/17 Tr., p.20, Ls.7-18.) She testified that, since 2012, Abramowski had been "consistently" filling out job applications. (7/19/17 Tr., p.20, L.24 – p.22, L.2.) She also testified that, although Abramowski was employed, he was not making much money "because the hours just declined." (7/19/17 Tr., p.22, L.16 – p.23, L.9.)

Regarding Abramowski's living situation, Mrs. Abramowski testified that Abramowski had always lived with her but that she "want[ed] him to be able to live independently and have a life where he can get a job someday and be able to be self-supportive, if that's at all possible." (7/19/17 Tr., p.23, Ls.10-16.) Mrs. Abramowski was not personally involved in helping Abramowski look for housing, but she was aware that he filled out several applications and that he received a letter denying one of his housing applications in August 2016. (7/19/17 Tr., p.23, L.20 – p.24, L.22.) The letter, previously referred to by Mr. Jarski, indicated Abramowski's application was being declined "based on information obtained from previous landlords or references listed on [Abramowski's] application for housing and/or credit bureau report or criminal history reports." (Defense Exhibit A; see also 7/19/17 Tr., p.16 – p.26, L.9, p.27, L.24 – p.28,

L.7.) Mrs. Abramowski testified Abramowski had never had any previous landlords, that his references would have been people who worked at organizations at which he volunteered, and that, to her knowledge, he had no credit bureau report. (7/19/17 Tr., p.25, L.1 – p.26, L.6.) According to Mrs. Abramowski, "that [left] only the criminal history reports" as the basis for denying Abramowski's housing application. (7/19/17 Tr., p.26, Ls.7-9.)

At the conclusion of the evidentiary portion of the hearing, Abramowski's counsel argued it was "the defense's position" that the only reason Abramowski's employment and housing applications had been rejected was "because of his criminal record and his criminal history." (7/19/17 Tr., p.28, L.15 – p.29, L.4.) Counsel therefore asked the district court to "further expunge [Abramowski's] 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." (7/19/17 Tr., p.29, Ls.5-11.) The state opposed the request for "further expunge[ment]," arguing the evidence showed that Abramowski was actually working, albeit in a limited capacity, and that there was no evidence showing Abramowski's inability to obtain additional employment or housing was actually due to his criminal history. (7/19/17 Tr., p.29, L.13 – p.30, L.18.) The state also noted the seriousness of Abramowski's offense, stating: "He did light an occupied dwelling on fire. In the police report, he indicated he did that with the intent to kill his family." (7/19/17 Tr., p.30, L.19 – p.31, L.1.) Considering the nature of the offense, the state argued that denial of the motion for further "expungement" was necessary "in the interest of keeping the community safe" and that prospective employers and landlords "need to know that [Abramowski] has at least

been charged with this" and need to be "aware of who they are going to be potentially employing or having live in their facilities." (7/19/17 Tr., p.31, Ls.2-10.)

Following the hearing, the district court entered an order denying Abramowski's motion for reconsideration. (R., pp.182-84.) The court explained that, in denying Abramowski's original motion for "expungement," it had "balanc[ed] the public interest in knowing that the defendant previously had been charged with arson in the first degree with the defendant's privacy interest." (R., pp.182-83.) The court further explained that "a primary consideration" in its decision "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.) After considering "the additional evidence and argument presented" to it and reviewing "the entire written record," the court "still conclude[d] that the public interest outweighs the defendant's privacy interest." (R., p.183.)

Abramowski filed a notice of appeal, timely from both the order denying his motion for "expungement" and the order denying his motion for reconsideration. (R., pp.185-87.)

ISSUE

Abramowski states the issue on appeal as:

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

(Appellant's brief, p.10.)

The state rephrases the issue as:

Has Abramowski failed to show the district court abused its discretion, either in denying his initial motion for "expungement" or in denying his subsequently filed motion for reconsideration?

ARGUMENT

Abramowski Has Failed To Show The District Court Abused Its Discretion In Denying His Requests For Expungement

A. Introduction

The district court denied Abramowski's motion for "expungement" and his subsequently filed motion for reconsideration, finding that the public interest in disclosure predominated over Abramowski's privacy interest. (See R., pp.173, 183.) Abramowski challenges the district court's decisions, arguing with respect to both rulings that the court "did not act consistently with the applicable legal standards" and, therefore, abused its discretion. (Appellant's brief, pp.11-18.) Abramowski's arguments fail. A review of the record and of the district court's rulings shows it perceived the issue as one of discretion, exercised reason, and acted within the boundaries of its discretion and consistently with the legal standards governing Abramowski's motions for expungement and for reconsideration. Abramowski has failed to show any abuse of discretion.

B. Standard Of Review

"Decisions of the district court to grant or deny relief under Idaho Court Administrative Rule (I.C.A.R.) 32 are reviewed for an abuse of discretion." State v. Gurney, 152 Idaho 502, 503, 272 P.3d 474, 475 (2012) (citing State v. Turpen, 147 Idaho 869, 872, 216 P.3d 627, 630 (2009)); accord State v. Allen, 156 Idaho 332, 336, 325 P.3d 673, 677 (Ct. App. 2014); Doe v. State, 153 Idaho 685, 687, 290 P.3d 1277, 1279 (Ct. App. 2012). The denial of a motion for reconsideration is also reviewed for an abuse of discretion. See State v. Montague, 114 Idaho 319, 320, 756 P.2d 1083, 1084 (Ct. App. 1988).

On review of a discretionary decision, the reviewing court will affirm if it appears from the record that the lower court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason." Gurney, 152 Idaho at 503, 272 P.3d at 475 (citations and internal quotation marks and omitted).

C. The District Court Acted Consistently With Applicable Legal Standards And Otherwise Correctly Exercised Its Discretion In Denying Abramowski's Motion For "Expungement"

The public has a First Amendment right to know what goes on in criminal courts. Allen, 156 Idaho at 336, 325 P.3d at 677 (citing Richmond Newspapers, Inc., v. Virginia, 448 U.S. 555, 576 (1980)). The Supreme Court has held that the First Amendment does not just protect expressing ideas and disseminating information, but receiving information and ideas. See Richmond Newspapers, 448 U.S. at 576 (citing Kleindienst v. Mandel, 408 U.S. 753, 762 (1972)). 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)). Criminal proceedings are therefore presumptively open, and "[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." Richmond Newspapers, 448 U.S. at 575-76, 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). The rule "reflects the recognized policy that '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.'" Allen, 156 Idaho at 336, 325 P.3d at 677 (quoting I.C.A.R. 32(a)). However, "[s]triking a balance between the public's constitutional right to access criminal records and the privacy rights of individuals," the rule "exempts from disclosure highly private information such as presentence investigation reports, most unreturned warrants, documents that would identify jurors on a Grand Jury, and jury questionnaires." Id.; see also I.C.A.R. 32(g).

"In very narrow circumstances," court records may be sealed on a case-by-case basis under Rule 32(i). Allen, 156 Idaho at 336, 325 P.3d at 677. The rule does not provide for or contemplate a literal "expungement" (i.e., destruction or obliteration) of court records. State v. Turpen, 147 Idaho 869, 870, 216 P.3d 627, 628 (2009). Thus, when a party requests "expungement" of records pursuant to I.C.A.R. 32(i), the Idaho Supreme Court interprets such request as one for "the issuance of a court order requiring physical or electronic sequestration of such records from public access or inspection." Turpen, 147 Idaho at 870-71, 216 P.3d at 628-29. District courts do not, however, have "unfettered discretion" to "expunge" or "seal case files" under this rule; "rather, a court is only allowed to seal portions of a case file if," after a hearing, "it finds that the petitioner's privacy interests predominate over the public's constitutional right to know." I.C.A.R. 32(i); Allen, 156 Idaho at 336, 325 P.3d at 677; Turpen, 147 Idaho at 871, 216 P.3d at 629. Even where the court does seal or "expunge" records "to protect

predominating privacy interests, it must fashion the least restrictive exemption from disclosure consistent with privacy interests." I.C.A.R. 32(i)(1).

Idaho Court Administrative Rule 32(i)(2) lists a number of bases upon which a court considering a motion to seal or "expunge" may find the moving party has a legitimate privacy interest. Relevant here, the court may grant a motion to seal or "expunge" if it makes the determination, in writing, that the records at issue "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 records. I.C.A.R. 32(i)(2)(C). A finding that disclosure of the records might reasonably result in economic or financial harm to the interested party does not, however, compel the entry of an order sealing or "expunging" those records. A court considering the request for "expungement" must still "determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates." I.C.A.R. 32(i)(1); see also Doe, 153 Idaho at 690, 290 P.3d at 1282 (noting district court had "broad discretion to determine whether Doe's claim of economic harm is so compelling as to outweigh the overarching public interest in disclosure); State v. Collins, 157 Idaho 857, 861-62, 340 P.3d 1173, 1177-78 (Ct. App. 2014) (defendant's assertion of financial loss, while weighing in favor of privacy interest, outweighed by facts favoring interest in public disclosure). "Because the public interest in access to criminal court records is obviously weighty," the Idaho Court of Appeals has "surmise[d] it would be an exceptional circumstance where a custodian judge would find that interest exceeded by a convicted person's assertion of economic harm flowing from the conviction." Doe, 153 Idaho at 690, 290 P.3d 1282.

Application of the foregoing principles to the facts of this case shows the district court properly exercised its discretion in denying Abramowski's motion for "expungement." Abramowski moved for "expungement" of his criminal record on the asserted basis that the availability of that record to the public was causing him financial harm. (R., pp.154-68; 6/15/17 Tr., p.8, L.20 – p.12, L.2, p.13, Ls.5-9.) At the hearing on the motion, Abramowski's counsel represented Abramowski was having a difficult time obtaining employment and housing as a result of his criminal record being "available to the public." (6/15/17 Tr., p.10, L.21 – p.11, L.11.) Counsel also relied on the previous district court judge's finding that Abramowski's limitations related to his autism spectrum disorder had resulted in Abramowski being unable to secure employment and independent living opportunities and constituted "extraordinary circumstances" justifying the sealing of Abramowski's juvenile and mental health records. (6/15/17 Tr., p.11, Ls.11-18; R., pp.149-50.) However, neither Abramowski nor his counsel presented any evidence showing that Abramowski had actually been denied any employment or housing as a result of the public having access to the remaining unsealed records. (See generally 6/15/17 Tr.)

In denying Abramowski's motion, the district court specifically cited I.C.A.R. 32(i) and Turpen, supra. (R., pp.172-73.) The court recognized the prior judge's findings made in relation to its order to seal and also noted that, based upon those findings, Abramowski had already been granted "some expungement relief." (R., pp.172-73.) The court clearly understood its decision whether to grant Abramowski's motion for further "expungement" was discretionary but it declined to do so, finding that, "[i]n a case such as this, involving a type of serious and potentially dangerous criminal act, the public

interest predominates of the defendant's privacy interest." (R., p.173.) Because the record shows the court "determined the applicable rule of law, made findings consistent with that rule, and decided the motion by an exercise of reason," Abramowski cannot show the district court abused its discretion. Gurney, 152 Idaho at 504-05, 272 P.3d at 476-77.

Abramowski argues otherwise. Specifically, he contends "the district court did not act consistently with the applicable legal standards," apparently because it did not find, *as a matter of law*, that "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." (Appellant's brief, pp.13-14.) This argument fails to show an abuse of discretion for at least two reasons.

First, as discussed above, Abramowski did not present *any* evidence in support of his motion for "expungement," much less any evidence showing that "the dissemination of the materials related to the case would reasonably result, and had already resulted, in economic or financial loss or harm." (Appellant's brief, pp.13-14.) Abramowski did cite the prior district court judge's finding that Abramowski had been unable to secure employment and independent living opportunities as a result of limitations related to Abramowski's autism spectrum disorder. (6/15/17 Tr., p.11, Ls.11-18; R., pp.149-50.) However, nothing about that finding actually supported Abramowski's claim that his inability to obtain employment and housing was a result of his criminal record being public, rather than a result of his autism-related "limitations." Because Abramowski

presented no evidence to support his assertion of financial loss resulting from the availability of his criminal record, the district court did not abuse its discretion in concluding the public interest in disclosure predominated over Abramowski's privacy interests.

Second, and perhaps more importantly, even accepting as true Abramowski's assertions that his inability to secure employment and housing was a direct result of his criminal record being public, such did not compel a finding by the district court that "Abramowski's interest in privacy predominated over the interest in public disclosure." (Appellant's brief, p.13.) For purposes of deciding whether to grant a criminal defendant's motion to "expunge" or seal a record pursuant to I.C.A.R. 32(i), the determination whether the defendant's privacy interest or the public interest in disclosure predominates is a "factual determination." Turpen, 147 Idaho at 872, 216 P.3d at 630; see also I.C.A.R. 32(i)(1) ("the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates"). While a defendant's financial loss resulting from public access to his or her criminal record is a legitimate privacy interest, that interest may nevertheless be outweighed by other facts that favor the interest in public disclosure. See, e.g., Collins, 157 Idaho at 861-62, 340 P.3d at 1177-78 (financial loss and dismissal of case weighed in favor of privacy interest, but that interest was outweighed by "significant fact" that defendant admitted to conduct forming the basis for his dismissed lewd conduct charge); Doe, 153 Idaho at 690, 290 P.3d at 1282 (district court had "broad discretion to determine whether Doe's claim of economic harm is so compelling as to outweigh the overarching public interest in disclosure").

The district court in this case considered the facts that weighed in favor of Abramowski's privacy interest, including Abramowski's assertions of economic harm and the fact that the case had been dismissed. (R., pp.172-73.) However, the court also considered the "serious and potentially dangerous" nature of the crime and the "undisputed fact that [Abramowski] committed the acts constituting arson in the first degree." (R., pp.172-73, 183.) Although Abramowski would have liked the court to have given his assertions of economic harm more weight, he has failed show that the court abused its discretion in weighing the competing interests and ultimately concluding the public interest in disclosure predominated. See Collins, 157 Idaho at 861-62, 340 P.3d at 1177-78 (trial court did not abuse its discretion in finding public interest in disclosure predominated over defendant's privacy interest; although dismissal of case and defendant's assertions of financial loss weighed in favor of privacy interest, fact that defendant admitted conduct underlying dismissed lewd conduct charge was "significant fact" weighing in favor of public's interest in disclosure). The district court's order denying Abramowski's motion for "expungement" should be affirmed.

D. The District Court Acted Consistently With Applicable Legal Standards And Otherwise Correctly Exercised Its Discretion In Denying Abramowski's Motion For Reconsideration

After the district court denied his motion for "expungement," Abramowski filed a motion for reconsideration. (R., pp.176-78.) The district court conducted a hearing on the motion, at which Abramowski "presented evidence of the difficulty he has had in obtaining independent housing and regular employment." (R., p.182; see generally 7/19/17 Tr.) After considering the additional evidence and reviewing "the entire written

record," the district court entered an order denying Abramowski's motion for reconsideration because it "still conclude[d] that the public interest outweighs the defendant's privacy interest." (R., pp.182-84.)

Abramowski challenges the court's ruling, arguing as he did with respect to the ruling on his initial motion for "expungement" that the court "did not act consistently with the applicable legal standards." (Appellant's brief, p.15.) Specifically, he contends that, "[i]n 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 material related to the case had resulted in economic or financial loss or harm to Mr. Abramowski." (Appellant's brief, p.15.) Abramowski's argument fails. The additional evidence he cites did not actually demonstrate the economic harm Abramowski suffered was due to the availability of his criminal record to the public. Even assuming it did, the district court was not required under the applicable legal standards to find that Abramowski's privacy interest predominated over the public's interest in having access to the criminal records.

At the hearing on his motion for reconsideration, Abramowski presented evidence demonstrating, generally, that he was having difficulties obtaining meaningful employment and independent housing. (7/19/17 Tr., p.7, L.6 – p.15, L.3, p.19, L.9 – p.26, L.13; Defense Exhibit A.) Although the witnesses on his behalf speculated that Abramowski's difficulties were due to the fact that his criminal record was available to the public, neither witness could definitively testify that Abramowski had been denied employment and housing due to his criminal record. (7/19/17 Tr., p.14, L.15 – p.16, L.3,

p.16, L.13 – p.17, L.20, p.24, L.7 – p.25, L.9; see also Defense Exhibit A (letter denying housing application "based on information obtained from previous landlords *or* references listed on your application for housing *and/or* credit bureau report *or* criminal history reports" (emphases added)).) In fact, the evidence actually showed that, despite the availability of his record on the public repository, Abramowski had secured a job as a cameraman (albeit with extremely sparse hours). (7/19/17 Tr., p.8, L.16 – p.9, L.5, p.11, L.20 – p.12, L.13, p.22, L.16 – p.23, L.9.) One of his applications for housing had also been accepted, but Abramowski ultimately chose to not pursue that housing option. (7/19/17 Tr., p.12, L.14 – p.13, L.16, p.16, L.25 – p.17, L.5.) Because the additional evidence Abramowski presented in support of his motion for reconsideration did not actually support his claim that he had been denied meaningful employment and housing due to the availability of his criminal record, Abramowski cannot show the district court abused its discretion in concluding that the public interest in disclosure still predominated over Abramowski's privacy interest.

Even assuming the additional evidence showed Abramowski's difficulties obtaining regular employment and housing were a direct result of the record of his criminal case being available on the public repository, Abramowski has still failed to demonstrate an abuse of discretion. Once again, Abramowski appears to argue that, once he established the dissemination of his record resulted in economic harm, the district court was required to find, *as a matter of law*, that "Abramowski's interest in privacy predominated over the interest in public disclosure." (Appellant's brief, pp.15, 17.) This argument fails for the reasons already discussed in Section C of this brief (see Section C, pp.17-18), which the state incorporates by reference herein.

Although Abramowski characterizes the court's ruling on his motion to reconsider as being inconsistent with applicable legal standards, he also appears to challenge the court's reasoning. Specifically, he argues that the court failed in its weighing process to adequately consider information in the record that suggests "Abramowski presents a low risk to the community," a fact Abramowski asserts "reduc[es] the interest in public disclosure." (Appellant's brief, p.17 (citing Conf. Docs., pp.779-80 (2015 psychological evaluation in which Dr. Sombke opined that "as long as Abramowski's treatment and supports in the community remain in place," he could be "considered a low risk to the public")).) As Abramowski acknowledges, however, in denying his motion for reconsideration, the district court specifically indicated it had "reviewed the entire written record of this case." (R., p.183.) Having done so, and having received additional evidence and entertained the arguments of counsel, both at the hearing on the original motion for "expungement" and at the hearing on the motion to reconsider, there can be no question the court was aware of Abramowski's assessed risk level. That the court did not find this fact tipped the balance in favor of Abramowski's privacy interest does not show an abuse of discretion. While Abramowski's rehabilitation successes are laudable and earned him an early probation termination and dismissal of the case, the fact remains that Abramowski actually set fire to his home with the stated intent of killing his parents. (See PSI, pp.21-22.) This fact, considered by the district court, is significant and supports the court's determination that the public interest in disclosure predominated over Abramowski's privacy interests. See Collins, 157 Idaho at 861-62, 340 P.3d at 1177-78.

Abramowski has failed to show the district court abused its discretion in denying his motion to reconsider. As it did in relation to the original motion for "expungement," the court perceived its decision as discretionary, applied the correct legal standards, and exercised reason in concluding Abramowski's privacy interest was outweighed by the interest in public disclosure. The court's order denying Abramowski's motion to reconsider should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Abramowski's motion for "expungement" and the order denying Abramowski's motion for reconsideration.

DATED this 11th day of July, 2018.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of July, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT on the attorney listed below by means of iCourt File and Serve:

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