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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DILLON GRANT GIBSON,

Defendant,

and

JUDY LUIS, individually,

Surety/Real Party in Interest-
Appellant.

Supreme Court Case No. 45449

APPELLANT'S BRIEF

Appeal from the District Court of the
Seventh Judicial District for Bingham County
Honorable Bruce L. Pickett, District Court presiding

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STATEMENT OF THE CASE

A. NATURE OF THE CASE

This appeal centers on the applicable sections of the Idaho Bail Act, IDAHO CODE § 19-2901 *et seq.*, and I.C.R. 46(i)-(j) (2016 version)¹ regarding the revocation and exoneration of cash bond monies upon the remanding of a defendant to the custody of the county sheriff after violating the conditions of his release on bail.

This matter comes from a criminal case, *State v. Dillon Grant Gibson*, Bingham County Case No. CR-2016-4577, and a \$50,000.00 cash bond (in addition to a property bond in the amount of \$190,000.00) paid by surety/real party in interest/appellant Judy Luis (hereinafter “Appellant”) on behalf of her son, Dillon Grant Gibson, to satisfy the bail amount set by the Magistrate Court which allowed him to be released on bail pending the outcome of the above case.

Once Mr. Gibson violated the conditions of his release on bail in December 2016, several failures by the District Court and Magistrate Court occurred leading to Mr. Gibson being remanded back to the custody of the Bingham County Sheriff’s Office until he was sentenced on January 10, 2017, but did not lead to the revocation, exoneration, or return of the cash bond money or property bond paid by Appellant as should have happened.

Because of the failures of the District Court and Magistrate Court discussed below, the cash bond money and property bond paid by Appellant was still deposited with the District Court when Mr. Gibson was sentenced. Although the property bond was properly exonerated after Mr.

¹ See Appendix for the version of I.C.R. 46(i)-(j), amended and effective February 25, 2016, which was in effect at the time of Mr. Gibson’s alleged violation of the conditions of his release on bail in December 2016, and subsequent incarceration until sentencing. A new version of I.C.R. 46 was adopted on February 22, 2017, and effective July 1, 2017.

Gibson was sentenced, the \$50,000.00 cash bond money remained with the District Court for use pursuant to IDAHO CODE § 19-2908.

B. COURSE OF PROCEEDINGS AND DISPOSITION

Dillon Grant Gibson was arrested on June 14, 2016, on charges which included vehicular manslaughter. *See R*, pp. 12-13. On July 21, 2016, the Magistrate Court, Honorable James H. Barrett presiding, set bail for Mr. Gibson at \$240,000.00. *See R*, pp. 126, 132. Also, on July 21, 2017, Appellant deposited with the District Court a Property Bond in the amount of \$190,000.00 and \$50,000.00 cash bond in the form of a check from Mr. Gibson's attorney's office, Blaser, Oleson & Lloyd, Chartered. *See R*, pp. 115-122. Mr. Gibson was released on bail and given certain conditions to follow while out on bail. *See R*, pp. 123-125.

Mr. Gibson admitted to violating the conditions of his release on December 7-8, 2016. *See R*, pp. 184-188 (in Appendix). On December 13, 2016, the District Court, by the Honorable Bruce L. Pickett, signed an Order Revoking Release, *R*, pp. 189-190 (in Appendix), and a Bench Warrant for Mr. Gibson's arrest on December 13, 2016. *See R*, pp. 191, 193 (both in Appendix); *see also* the Statement of Facts, *infra*, regarding the Bench Warrant.

On December 14, 2016, Mr. Gibson was brought, without his attorney of record (*see R*, pp. 43-46, 192, 269) before the Magistrate Court, Honorable James H. Barrett presiding, pursuant to the Bench Warrant and was subsequently remanded to the custody of the Bingham County Sheriff's Office. *See Tr*, pp. 3-5 (in Appendix), *and R*, pp. 192 (in Appendix). Mr. Gibson's bail amount of \$240,000.00 was not revoked, exonerated, or returned to Appellant while he remained

in the custody of the Bingham County Sheriff's Office until his sentencing hearing on January 10, 2017.

The District Court, Honorable Bruce L. Pickett presiding, sentenced Mr. Gibson and he was remanded to the custody of the Idaho Department of Corrections to begin serving his sentence. *See* Tr, pp. 7-33, specifically pp. 30-31, *and* R, pp. 220-223. The District Court exonerated the Property Bond which was returned to Appellant on January 12, 2017, *see* R, p. 9; however, the \$50,000.00 cash bond amount was not exonerated. *See* Tr, p. 33 (in Appendix), *and* R, pp. 221-222.

A Motion for Release of Bond Money was filed on May 31, 2017, to secure the release of the \$50,000.00 cash bond amount back to Appellant. R, pp. 260-261. After briefing on the matter was requested by the District Court, Honorable Bruce L. Pickett presiding (*see* Tr, pp. 34-39, *and* R, pp. 266-267), a hearing on the Motion was held on August 8, 2017, and the District Court denied the Motion. *See* Tr, pp. 40-52, *and* R, pp. 276-279 (both in Appendix).

A Notice of Appeal was timely filed by Appellant on September 15, 2017. R, pp. 284-295.

C. STATEMENT OF FACTS

1. On or about June 14, 2016, defendant Dillon Grant Gibson was arrested in connection with an incident where he drove his vehicle into the residence of William Kay Hong. As a result of this incident, Mr. Hong was killed and on June 15, 2016, Mr. Gibson was charged with vehicular manslaughter and leaving the scene of an injury accident. *See* R, pp. 12-13.

2. On June 15, 2016, a Request for Bond in the amount of \$500,000.00 was filed by the Bingham County Prosecuting Attorney. R, p. 18.
3. Mr. Gibson was placed in the custody of the Bingham County Sheriff's Office and bail was set at \$500,000.00 by the Magistrate Court, Honorable Scott H. Hansen presiding. See R, p. 14.
4. Mr. Gibson remained in the custody of the Bingham County Sheriff's Office and bail remained at \$500,000.00 until July 21, 2016. See R, pp. 37, 57, and 67.
5. At the July 21, 2016, preliminary hearing, bail for Mr. Gibson was reduced to the amount of \$240,000.00 by the Magistrate Court, Honorable James H. Barrett presiding. See R, pp. 126, 132.
6. The \$240,000.00 bond amount was paid on July 21, 2016, by Appellant in the form of a Property Bond in the amount of \$190,000.00 (R, pp. 116-122) and a cash bond in the amount of \$50,000.00 in the form of a check from Mr. Gibson's attorney's office, Blaser, Oleson & Lloyd, Chartered. R, p. 115.
7. An Order for Release was issued on July 21, 2016, and Mr. Gibson was released on the posted bond with conditions to adhere to while out on bail, including not to "possess nor consume any alcoholic beverages", "shall not possess or consume any illegal drugs", and "to report to pretrial services and submit to any testing as directed." See R, pp. 125, 132.
8. On October 25, 2016, Mr. Gibson changed his plea to guilty on the charge of vehicular manslaughter. The District Court, Honorable Bruce L. Pickett presiding, scheduled sentencing for January 10, 2017, and Mr. Gibson was again released on his own recognizance while still being required "to report to Pretrial Services and be subject to testing for the use of alcohol and/or drugs." See R, pp. 168-176, 180-183.

9. On December 12, 2016, Mr. Gibson admitted to Pretrial Services that on or about December 7-8, 2016, he used alcohol and methamphetamine, thus violating the conditions of his release on bail. *See R*, pp. 186-188.

10. On December 13, 2017, a Motion to Revoke Release was filed by the Bingham County Prosecuting Attorney asking the District Court “to revoke the defendant’s release on bond”. *R*, pp. 184-185.

11. On December 13, 2016, the District Court, by the Honorable Bruce L. Pickett, signed and filed an Order Revoking Release in which it ordered ‘that the defendant’s release be revoked and a warrant be issued for his arrest.’ *R*, pp. 189-190.

12. A Bench Warrant was also signed by Judge Pickett on December 13, 2016, in which the he put in the space entitled “Bond Amount” the handwritten words “\$100,000 in addition to previous bond”, then signed underneath this statement. *R*, p. 191.

13. This version of the Bench Warrant found at *R*, p. 191 (hereinafter “Bench Warrant 1”), has stamped in the bottom right corner “COPY”. It is unknown when or why Judge Pickett inserted the handwritten words and his signature on Bench Warrant 1. As will be argued below, the \$100,000.00 amount and the handwritten words by Judge Pickett more than likely were a cause of the confusion which led to the \$240,000.00 in bail paid by Appellant on Mr. Gibson’s behalf not being properly revoked on December 14, 2016, when Mr. Gibson was remanded to the custody of the Bingham County Sheriff’s Office until his sentencing hearing on January 10, 2017.

14. The Blackfoot Police Department received a copy of the Bench Warrant to go and arrest Mr. Gibson; however, the copy of the Bench Warrant the Blackfoot Police Department returned and

filed with the District Court did not have the handwritten words “in addition to previous bond” or Judge Pickett’s signature next to the space entitled “Bond Amount”. *See* R, p. 193.

15. This version of the Bench Warrant found at R, p. 193 (hereinafter “Bench Warrant 2”), has stamped in the bottom right corner “ORIGINAL”. Only the bond amount of \$100,000.00 is found on the line titled “Bond Amount”. The handwritten wording “in addition to previous bond” and Judge Pickett’s signature under these words do not appear on Bench Warrant 2. There is also a Post-It Note on Bench Warrant 2 with the words, “Sent. 1-10-17 @ 2:00 Pickett”.

16. Officer W. Wheatley of the Blackfoot Police Department filled out the information regarding the service of Bench Warrant 2 and arresting Mr. Gibson on December 13, 2016. *See* Bench Warrant 2, R, p. 193.

17. On December 14, 2016, Mr. Gibson appeared *pro se*, even though he had counsel on this matter (*see* R, pp. 43-46, 269) before the Magistrate Court, Honorable James H. Barrett, Jr. presiding, regarding the Bench Warrant. R, p. 192.

18. The Magistrate Court, Honorable James H. Barrett presiding, advised Mr. Gibson:

- a. that the underlying bond amount of \$240,000.00 was not being forfeited;
- b. that the \$100,000.00 bond amount on the Bench Warrant was “on top of that” bond amount of \$240,000.00 already posted by Appellant on Mr. Gibson’s behalf;
- c. that “there’s a \$100,000 bond in - - on top of the other”, again, referring to the \$240,000.00 bond already posted on his behalf; and
- d. “there’s a new bond.”

See Tr, pp. 3-4; *see also* R, p. 192.

19. After the December 14, 2016, hearing Mr. Gibson was remanded to the custody of the Bingham County Sheriff’s Office. R, p. 192.

20. There was no finding by the Magistrate Court at the December 14, 2016, hearing that Mr. Gibson had willfully violated the conditions of his release on bail. *See* Tr, pp. 3-5; *see also* R, p. 192.

21. The existing bond amount of \$240,000.00 paid by Appellant was not revoked, exonerated, or returned to Appellant after the December 14, 2016, hearing with the Magistrate Court. *See* Tr, pp. 3-5; *see also* R, p. 192.

22. Mr. Gibson remained in the custody of the Bingham County Sheriff's Office until his sentencing hearing on January 10, 2017. R, p. 216.

23. On January 10, 2017, Mr. Gibson was sentenced by the District Court, Honorable Bruce L. Pickett presiding, on the vehicular manslaughter charge based upon his guilty plea in October 2016. *See* Tr, pp. 7-33; *and* R, pp. 220-223 (in Appendix).

24. The issue of the bond money paid by Appellant on Mr. Gibson's behalf was hardly discussed at the January 10, 2017, sentencing hearing. *See* Tr, pp. 8, 33; *see also* R, pp. 221-222.

25. At the January 10, 2017, sentencing hearing the Bingham County Prosecutor advised the District Court:

As the Court indicated earlier here today, there was a – there was a bond posted in this matter. A property bond in addition to cash bond. And he was released to be within the community. And that bond was not revoked, but his release was revoked, based upon his failures within the Pretrial Services program.

Tr, pp. 18-19.

26. The District Court said at the January 10, 2017, sentencing hearing that it “does want to exonerate the bond, both the property and the cash bond that's placed in this case” (*see* Tr, p. 33);

however, in language at the end of the January 12, 2017, Judgment of Conviction / Order of Commitment, the District Court states, “IT IS HEREBY ORDERED that the property bond is hereby EXONERATED, and that any cash bond posted is hereby retained in the custody of Bingham County pending the resolution of the Plaintiff’s Motion for Restitution, minus the conversion as to applied to fines, fees and/or costs.” *See R*, pp. 221-222.

27. The \$190,000.00 property bond amount was exonerated by the District Court and returned to Appellant on January 12, 2017. *See R*, p. 9 (no actual document is filed by or with the District Court, just an entry onto the Record of Actions for the case that the property bond was exonerated).

28. The \$50,000.00 cash bond amount was not exonerated by the District Court.

29. On May 31, 2017, a Motion for Release of Bond Money was filed by Mr. Gibson’s attorney of record to secure the release of the \$50,000.00 cash bond amount paid by Appellant on Mr. Gibson’s behalf. *R*, pp. 260-261.

30. On July 6, 2017, the District Court, Honorable Bruce L. Pickett presiding, held a hearing on the Motion for Release of Bond Money and noted that there was no objection filed by the State of Idaho (*i.e.*, Bingham County Prosecuting Attorney) to this motion. *Tr*, p. 24.

31. The Bingham County Prosecuting Attorney made an objection on the record to the extent that IDAHO CODE § 19-2908 holds cash bond monies for payment of fines, fees, and restitution awarded against a defendant. *See Tr*, pp. 34-35.

32. The District Court continued the hearing on the Motion for Release of Bond Money and requested briefing from the parties on this issue, recognizing that since Appellant paid the \$50,000.00 cash bond amount for Mr. Gibson and stating, “And with this amount of money,

\$50,000.00 I don't want to take it away from the defendant's mother, at least, without having a realistic – without me taking a realistic look at it with some pleading and argument submitted by both sides in writing.” *See* Tr, p. 37; *see also* R, p. 266.

33. A Brief in Support of Motion for Release of Bond Money was filed on July 27, 2017 by defendant Dillon Grant Gibson's attorney of record providing arguments why the \$50,000.00 cash bond amount should be released under the circumstances of this case. R, pp. 268-275 (in Appendix).

34. The State of Idaho (*i.e.*, Bingham County Prosecuting Attorney) did not file any briefing requested by the District Court opposing the Motion for Release of Bond Money. *See* Tr, p. 40.

35. At the August 8, 2017, hearing the District Court, Honorable Bruce L. Pickett presiding, heard oral argument from the parties, including an oral objection by the State. *See* Tr, pp. 41-47.

36. After hearing oral argument, the District Court issued the following oral findings and decisions:

- a. That it had reviewed IDAHO CODE §§ 19-2908 and 19-2919 (Tr, p. 48);
- b. That “it's a balancing test between Idaho Code 19-2919 and what happened at the magistrate level when Mr. Gibson was picked up” (*Id.*);
- c. “[T]hat the facts as set out concerning this case are accurate” (*Id.*);
- d. “That [Appellant] posted bond with a property bond and a cash bond in this case of \$50,000” (*Id.*);
- e. “The Court issued a bench warrant in the amount of \$100,000 for failure to abide by the terms of his release” (*Id.*);
- f. Mr. Gibson was advised by Judge Barrett at the December 14, 2016, hearing that the \$100,000 was in addition to the previously posted bond amounts (*see* Tr, p. 49);
- g. “That would make the total bail then set at \$340,000. So the property bond plus the \$50,000 plus the additional \$100,000” (*Id.*);
- h. That the December 14, 2016, hearing before the Magistrate Court was a bail revocation hearing (*Id.*);
- i. “[T]hat Judge Barrett chose not to revoke the bail at that time” (*Id.*);

- j. “The Court, as indicated, chose not to revoke the bail, but added the additional terms of posting \$100,000. Then Mr. Gibson was sentenced” (Tr, p. 50);
- k. That IDAHO CODE § 19-2908 controls regarding cash bond monies deposited with the Court after a defendant is sentenced (*Id.*);
- l. That IDAHO CODE § 19-2908 applies in this matter (*Id.*);
- m. “[T]hat the money is on deposit at the time of the judgment, and as such, the Court will direct the clerk of the court to apply the money as directed by 19-2908” (*Id.*);
- n. “I think the facts are pretty clear. There’s not really a dispute of facts. The facts have been laid out very straightforward” (Tr, p. 51); and
- o. “There was not a request to release the bond money or for – by [Appellant] to ask for that bond money back when Mr. Gibson was taken into custody.

“But the question remains, should the court – should the magistrate court have gone forth with that bond, thus allowing [Appellant] to act on that, and if it had, would the money not have been on deposit at the time of judgment.” (*Id.*).

- 37. The District Court denied the Motion for Release of Bond Money on August 8, 2017. R, pp. 276, 278.
- 38. Appellant formally appeared in this matter on September 11, 2017, R, pp. 280-281.
- 39. A Notice of Appeal was timely filed by Appellant on September 15, 2017. R, pp. 284-295.

ISSUES PRESENTED ON APPEAL

The following items are presented for this Court’s review and determination on appeal:

- A. Whether the District Court Erred by Not Including Language in the December 13, 2016, Bench Warrant Directing that Defendant Dillon Grant Gibson be Arrested and Brought Before the Court for a Bail Revocation Hearing Pursuant to IDAHO CODE § 19-2919(1) and I.C.R. 46(i)(1) (2016 version).
- B. Whether the District Court Erred in Resetting Defendant Dillon Grant Gibson’s Bail by an Additional \$100,000.00 (as found in Bench Warrant 1) Within the Language of the December 13, 2016, Bench Warrant Rather Than After a Bail Revocation Hearing pursuant to IDAHO CODE § 19-2919(1)-(2) and I.C.R. 46(i)(2), (j) (2016 version).

- C. Whether the District Court Erred by Not Exonerating the Previous Bail Amount Posted on Behalf of Defendant Dillon Grant Gibson Pursuant to IDAHO CODE § 19-2912 When It Increased the Bail Amount by an Additional \$100,000.00 in the December 13, 2016, Bench Warrant.
- D. Whether the District Court and/or Magistrate Court Erred at the December 14, 2016, Hearing by Not Revoking Defendant Dillon Grant Gibson's Bail and Exonerating the Bail when Defendant was Remanded and Recommitted to the Custody of the Bingham County Sheriff's Office Pursuant to IDAHO CODE §§ 19-2919(1), 19-2922(6), and I.C.R. 46(i)(2) (2016 version).
- E. Whether the District Court, at the August 8, 2017, Hearing on the Motion for Release of Bond Money, Erred in Finding that the December 14, 2016, Hearing Before the Magistrate Court was a Bail Revocation Hearing Pursuant to IDAHO CODE § 19-2919(1) and I.C.R. 46(i)(1) (2016 version).
- F. Whether the Magistrate Court or the District Court Erred by Not Preparing and Filing an Order Revoking Bail Pursuant to IDAHO CODE §§ 19-2919(2), 19-2921, and I.C.R. 46(j) (2016 version) When Defendant Dillon Grant Gibson was Remanded and Recommitted to the Custody of the Bingham County Sheriff's Office on December 14, 2016.
- G. Whether the District Court Erred in Denying the Motion for Release of Bond Money.
- H. Whether Appellant is Entitled to Receive the Cash Bond Amount of \$50,000.00 She Paid on Behalf of Defendant Dillon Grant Gibson.
- I. Whether Appellant is Entitled to Her Reasonable Attorney's Fees Related to the Appeal.

ATTORNEY'S FEES ON APPEAL

Appellant seeks her reasonable attorney's fees related to this appeal pursuant to IDAHO CODE § 12-117 and I.A.R. 35(a)(5) and 41(a). Based upon the arguments made in Section J, *infra*, Appellant should be awarded her reasonable attorney's fees pursuant to § 12-117(1) as the prevailing party in this appeal and because the State of Idaho (*i.e.*, Bingham County Prosecuting Attorney) acted without a reasonable basis in fact or law when it opposed the Motion for Release of Bond Money. Appellant also seeks her reasonable costs on appeal pursuant to I.A.R. 40.

ARGUMENT

This appeal deals with several statutes in the Idaho Bail Act, IDAHO CODE § 19-2901 *et seq.*, the provisions of I.C.R. 46(i)-(j) (2016 version), and what is required of a Court when a defendant who has been released on bail subsequently violates the conditions of his release. Each of the applicable statutes and rules will be discussed below.

Errors occurred by the Magistrate Court at the December 14, 2016, hearing, and by the District Court when issuing the Bench Warrant on December 13, 2016, at the January 10, 2017, sentencing hearing, and at the August 8, 2017, hearing on the Motion for Release of Bond Money regarding the bond monies, specifically the \$50,000.00 cash bond amount, posted by Appellant on behalf of her son, Dillon Grant Gibson, once he was arrested for allegedly violating the conditions of his release on bail. These errors, because the applicable statutes and rules were not followed, led to the bond monies still being with the District Court when Mr. Gibson was sentenced on January 10, 2017.

Had the applicable statutes and rules been properly followed by the District and Magistrate Courts, the subject bond monies, specifically the \$50,000.00 cash bond amount, would have been revoked, exonerated, and returned to Appellant on or around December 14, 2016, after Mr. Gibson was remanded to the custody of the Bingham County Sheriff's Office for violation of his release on bail. The subject bond monies, specifically the \$50,000.00 cash bond amount at issue in this appeal, would have never been in the District Court's possession at the time of sentencing. IDAHO CODE § 19-2908 would not have been discussed as applicable in this matter because there would

have been no cash bond monies deposited with the District Court to begin paying the fees, fines, costs, and restitution ordered against Mr. Gibson.

Based upon the above facts and the arguments made below, the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money should be reversed and remanded back to the District Court with instructions to revoke and exonerate the \$50,000.00 cash bond monies posted by Appellant in this matter pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version), and to return said monies back to Appellant as should have been done on December 14, 2016.

A. Standard of Review on Appeal.

The interpretation of the statutes and rules at issue in this appeal is very important as they direct the courts regarding the bond monies that are paid on behalf of a defendant charged with criminal acts. These statutes and rules also direct the courts as to what may or must be done when a defendant violates the conditions of his release on bail and what is to become on those bond monies after such a violation.

“The interpretation of a statute is a question of law that the Supreme Court reviews *de novo*.” Statutory interpretation begins with the statute's plain language. That language “is to be given its plain, obvious and rational meaning.” If that language is clear and unambiguous, “the Court need merely apply the statute without engaging in any statutory construction.”

Bright v. Maznik, 162 Idaho 311, 314-315, 396 P.3d 1193, 1196-1197 (2017) (internal citations omitted).

The objective of statutory interpretation is to give effect to legislative intent. Statutory interpretation begins with the literal words of the statute, and this language should be given its plain, obvious and rational meaning. If the statutory

language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction. This is because [t]he asserted purpose for enacting the legislation cannot modify its plain meaning.

Idaho Youth Ranch, Inc. v. Ada Cty. Bd. of Equalization, 157 Idaho 180, 184, 335 P.3d 25, 29 (2014) (internal citations and quotations omitted).

The Idaho Bail Act, IDAHO CODE §§ 19-2901 *et seq.*, enacted in 2009, and the 2016 version of I.C.R. 46, contain the applicable statutes and rules regarding the setting of bail and what to do when a defendant violates the conditions of his release while out on bail as in this matter. There are no cases cited within the bound version of the Idaho Code that hold any section of the Idaho Bail Act to be ambiguous in their language or requiring further interpretation by the Supreme Court of Idaho or Idaho Court of Appeals.

Appellant contends that the statutes in the Idaho Bail Act, IDAHO CODE §§ 19-2901 *et seq.*, are unambiguous in their language regarding what is to take place when a defendant is brought before a Court after violating the conditions of his release while out on bail. The provisions of these statutes should not be construed by this Court in any manner other than what the actual words state and “be given [their] plain, obvious and rational meaning.” *Bright, supra*.

Because the Magistrate Court and District Court in this matter did not follow the plain, obvious, and rational meaning of the applicable statutes in the Idaho Bail Act and did not follow the proper procedure set forth in I.C.R. 46(i)-(j), the subject bond monies were not revoked and exonerated as they should have been when Mr. Gibson was arrested for allegedly violating the conditions of his release on bail and remanded to the custody of the Bingham County Sheriff’s

Office in mid-December 2016. As will be shown below, errors occurred which led to those bond monies remaining with the District Court when Mr. Gibson was sentenced in January 2017; which then led to the possible application of IDAHO CODE §§ 19-2908 to hold the cash bond amount of \$50,000.00.

The District Court's Order Denying Defendant's Motion for Release of Bond Money should be reversed and remanded as requested above so that the \$50,000.00 cash bond amount is properly exonerated and returned to Appellant.

B. Whether the District Court Erred by Not Including Language in the December 13, 2016, Bench Warrant Directing that Defendant Dillon Grant Gibson be Arrested and Brought Before the Court for a Bail Revocation Hearing Pursuant to IDAHO CODE § 19-2919(1) and I.C.R. 46(i)(1) (2016 version).

When Mr. Gibson admitted to using alcohol and drugs, the Bingham County Prosecuting Attorney filed a Motion to Revoke Release and supporting Affidavit (R, pp. 184-188), and the District Court signed the Order Revoking Release. R, pp. 189-190. The District Court then issued the Bench Warrant to have Mr. Gibson arrested and "bring him/her before this Court." *See* R, pp. 191, 193.

1. What the Statute and Rule Say.

IDAHO CODE § 19-2919(1) states in pertinent part (brackets and emphasis added):

Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may [1] issue a bench warrant directing that the defendant be arrested *and brought before the court for a bail revocation hearing*, or [2] the court may order the defendant to appear before the court at a time certain.

I.C.R. 46(i)(1) (2016 version), “Revocation of Bail”, states (brackets and emphasis added):

Upon a verified application alleging that the defendant has willfully violated conditions of the defendant’s release on bail, other than failure to appear, the court may issue a warrant [1] directing that the defendant be arrested *and brought before the court for hearing*, or [2] the court may order the defendant to appear before the court at a time certain.

Following the above statute and rule, when it is alleged that a defendant has willfully violated the conditions of his release on bail, a Court has two (2) options: 1) it may issue a Bench Warrant “directing that the defendant [a] be arrested *and* [b] brought before the court for a bail revocation hearing” (emphasis added); *or* 2) it may “order the defendant to appear before the court at a time certain.” *See* IDAHO CODE § 19-2919(1) (brackets and emphasis added).

2. What the District Court Did.

In this matter the District Court chose “option 1” when it issued the Bench Warrant on December 13, 2016. R, pp. 191, 193. Nowhere in the Record is there any document from the District Court choosing “option 2” by ordering Mr. Gibson “to appear before the court at a time certain” to answer for his alleged violation of the conditions of his release on bail. *See* IDAHO CODE § 19-2919(1), *see also* I.C.R. 46(i)(1) (2016 version).

3. What the District Court Should Have Done to Conform to the Statute and Rule.

By choosing “option 1” the District Court needed to include language in the Bench Warrant that directed the arresting officer to arrest Mr. Gibson and have him “brought before the court for a bail revocation hearing” The language “bring him/her before this Court” (R, pp. 191, 193) does not conform to the statute and rule because it does not specify that a bail revocation

hearing is going to be had, or what will happen, when Mr. Gibson is before “this Court” after being arrested pursuant to the Bench Warrant.

The District Court erred when issuing the Bench Warrant because it did not contain language that Mr. Gibson be “brought before the court for a bail revocation hearing” pursuant to IDAHO CODE § 19-2919(1) and I.C.R. 46(i)(1) (2016 version). There is only language in the Bench Warrant is that Mr. Gibson be arrested and that the arresting officer “bring him/her before this Court.” *See* R, pp. 191, 193. The omission in the Bench Warrant of language regarding the bail revocation hearing started the ball rolling for other errors to occur in this matter that led to the \$50,000.00 cash bond amount remaining with the District Court when Mr. Gibson was sentenced on January 10, 2017.

C. Whether the District Court Erred in Resetting Defendant Dillon Grant Gibson’s Bail by an Additional \$100,000.00 (as found in Bench Warrant 1) Within the Language of the December 13, 2016, Bench Warrant Rather Than After a Bail Revocation Hearing pursuant to IDAHO CODE § 19-2919(1)-(2) and I.C.R. 46(i)(2), (j) (2016 version).

The District Court included a bond amount on the Bench Warrant of \$100,000.00. *See* R, pp. 191, 193. On Bench Warrant 1 the District Court placed the words about its signature, “in addition to previous bond”. R, p. 191. These words and the additional signature by the District Court is not found on Bench Warrant 2. R, p. 193. Reading Bench Warrant 1 it appears that the District Court meant to set a new bail amount for Mr. Gibson to \$340,000.00 after his arrest for allegedly violating the conditions of his release on bail.

1. What the Statute and Rules Say.

IDAHO CODE § 19-2919(1)-(2) states in pertinent part (brackets and emphasis added):

(1) . . . *At the bail revocation hearing*, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may [1] revoke the bail *and* [2] remand the defendant to the custody of the sheriff. *At any time thereafter*, the court [3] *may reset bail in the same or a new amount* and impose conditions of release.

(2) *In its order revoking bail*, the court shall recite generally the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. *The court may reset bail in the same or a new amount* and impose any appropriate conditions of release.

I.C.R. 46(i)(2) (2016 version) states (brackets and emphasis added):

Upon a bail revocation hearing, at which the defendant shall appear if the defendant can be found, if the court finds that there has been a willful breach of conditions of bail, and if the defendant is present before the court, it may [1] revoke the bail *and* [2] remand the bailed person to the custody of the sheriff, *and* [3] may *at any time thereafter reconsider the issue of bail and may set new bail* and impose other or additional conditions of release.

I.C.R. 46(j) (2016 version), “Re-Admittance to Bail”, states (emphasis added):

After the *order of recommitment* of a defendant the court *may again determine the amount of bail and order that the defendant be admitted to bail in the sum determined* and released upon such conditions and prohibitions as the court determines in its discretion.

Following the above statute and rules a Court needs to do the following when a defendant has allegedly violated the conditions of his release on bail and arrested pursuant to a Bench Warrant. First, have a bail revocation hearing *and* find that a defendant willfully violated the conditions of his release on bail. Second, once a Court holds the bail revocation hearing and finds the willful violation, then it may: 1) revoke the bail *and* 2) remand the defendant to the custody of

the sheriff. *See* IDAHO CODE § 19-2919(1). Although not specifically stated in the statute or rules, the converse is true as well—a Court may decide to 1) *not* revoke the bail, and 2) *not* remand the defendant to the custody of the sheriff. A Court could simply let the defendant back out into society on the original bail amount and on the previously-imposed conditions of his release.

It is either one or the other. If bail is revoked at the bail revocation hearing, then the defendant must also be remanded to the custody of the sheriff. If bail is not revoked, then the defendant cannot be remanded and must be released on the previously-posted bail. What a Court decides at the bail revocation hearing regarding whether or not to revoke bail also decides whether or not the defendant is remanded to the custody of the sheriff.

Third, at any time *after* the bail revocation hearing where the bail is revoked and the defendant is remanded to the custody of the sheriff, “the court may reset bail in the same or a new amount”. *See* IDAHO CODE § 19-2919(1)-(2), *see also* I.C.R. 46(i)(2) (2016 version). Fourth, a Court must issue an Order Revoking Bail in which “the court shall recite generally the facts upon which revocation of bail is founded *and* order that the defendant be recommitted to the custody of the sheriff”. *See* IDAHO CODE § 19-2919(2) (emphasis added).

2. What the District Court and Magistrate Court Did and Did Not Do.

First, the District Court set bail for \$100,000.00 “in addition to previous bond” in the Bench Warrant on December 13, 2016, prior to Mr. Gibson being arrested and being brought before the Court for a bail revocation hearing as discussed above. *See* R, p. 191.

Second, neither the District Court nor the Magistrate Court held a bail revocation hearing to find “that [Mr. Gibson] willfully violated a condition of release” as required by § 19-2919(1).

The District Court did not see Mr. Gibson until his sentencing hearing on January 10, 2017. The Magistrate Court saw Mr. Gibson on December 14, 2016, after he was arrested pursuant to the Bench Warrant. *See* R, p. 192, *see also* Tr, pp. 3-5. Contrary to the District Court’s ruling at the August 8, 2017, hearing on the Motion for Release of Bond Money, the Magistrate Court did not hold a bail revocation hearing with Mr. Gibson on December 14, 2016 (*see* Tr, p. 49, *see also* the arguments in Section F, *infra*).

Third, the District Court did not “reset the bail” (*see* § 19-2919(1)) *after* the bail revocation hearing—for there was no bail revocation hearing; the new bail amount appears to have been set *before* Mr. Gibson was arrested pursuant to the Bench Warrant because the “new bail amount” of \$340,000.00 was within the wording of the Bench Warrant itself. *See* R, p. 191, *see also* R, p. 192 and Tr, pp. 3-4. The “new bail amount” was not reset or reconsidered “at any time thereafter” (the bail revocation hearing) pursuant to § 19-2919(1) and I.C.R. 46(i)(2) and (j) (2016 version).

Fourth, neither the District Court nor the Magistrate Court issued or filed an Order Revoking Bail pursuant to § 19-2919(2) or an Order of Recommitment as so named in I.C.R. 46(j). Because there is no Order Revoking Bail or Order of Recommitment there is no general recitation required by § 19-2919(2) of “the facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff”, or any resetting of bail after this Order was issued.

3. What the District Court and Magistrate Court Should Have Done to Conform to the Statute and Rules.

Everything done in this matter by the District Court on December 13, 2016, with the writings on Bench Warrant 1, as well as what was done by the Magistrate Court at the December 14, 2016, hearing was contrary to the required actions in IDAHO CODE § 19-2919(1)-(2) and I.C.R. 46(i)(2), (j) (2016 version) when resetting the bail amount to \$340,000.00.

What the District Court and Magistrate Court should have done was first, hold a bail revocation hearing to find whether “the defendant willfully violated a condition of release” as required by § 19-2919(1). If the District Court wanted to assign the Magistrate Court to hold the bail revocation hearing in its stead to make this finding, there should not be an issue with that. However, as argued above and in Section F, *infra*, there was no bail revocation hearing and no such finding made.

The language of the Bench Warrant cannot constitute a finding “that the defendant willfully violated a condition of release” (*Id.*) because the language states (emphasis added), “whereas it is now *appearing* that the defendant has violated certain conditions of his/her release and there is *sufficient probable cause to believe* that the defendant is in violation of the order of this Court”. This language is not a “finding” as required by § 19-2919(1) and I.C.R. 46(i)(2) (2016 version), especially because it is not at a bail revocation hearing and because it is made in the Bench Warrant prior to Mr. Gibson’s arrest for apparent violations of conditions of his release on bail.

Second, the District Court, or the Magistrate Court under the District Court's direction, at the bail revocation hearing needed to either revoke Mr. Gibson's bail and remand him to the custody of the Bingham County Sheriff's Office, or not revoke bail and not remand him to custody of the sheriff as discussed above. Mr. Gibson was only remanded to custody, however, the posted bail amount of \$240,000.00 was not revoked, exonerated, and returned to Appellant after his remand to custody.

Third, the District Court, or the Magistrate Court under the District Court's direction, should have issued and filed an Order Revoking Bail with a recitation of "facts upon which revocation of bail is founded and order that the defendant be recommitted to the custody of the sheriff" pursuant to § 19-2919(2).

Fourth, the District Court's resetting Mr. Gibson's bail amount to \$340,000.00 as it appears to do in Bench Warrant 1 should have been done after the bail revocation hearing and not before he was arrested.

The above actions were not taken by the District Court or the Magistrate Court. Because of these errors, starting with the District Court resetting the bail amount in Bench Warrant 1 and not after a bail revocation hearing where the bail was revoked and Mr. Gibson was remanded to custody of the Bingham County Sheriff's Office, the posted bail amount of \$240,000.00 remained with the District Court until Mr. Gibson was sentenced on January 10, 2017.

The posted bail amount should not have been with the District Court in January 2017, but revoked, exonerated, and returned to Appellant on December 14, 2016.

D. Whether the District Court Erred by Not Exonerating the Previous Bail Amount Posted on Behalf of Defendant Dillon Grant Gibson Pursuant to IDAHO CODE § 19-2912 When It Increased the Bail Amount by an Additional \$100,000.00 in the December 13, 2016, Bench Warrant.

The District Court increased the amount of bail by \$100,000.00 in Bench Warrant 1. R, p. 191. The previous bail amount of \$240,000.00 was not revoked or exonerated after Mr. Gibson's arrest and remand to the custody of the Bingham County Sheriff's Office.

1. What the Statute Says.

IDAHO CODE § 19-2912 states (emphasis added):

After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. If the amount is increased, the court shall order the defendant to be committed to the actual custody of the sheriff until bail is posted in the increased amount. *Any previous bail posted in the case shall be exonerated by the court.* If the defendant applies for a reduction of the amount of bail, notice of the application shall be served upon the attorney for the state and the person posting bail within five (5) business days.

2. What the District Court Did and Did Not Do.

The District Court increased the bail amount from \$240,000.00 to \$340,000.00 through Bench Warrant 1. R, p. 191. The first sentence of § 19-2912 appears to have been followed by the District Court with the increase in bail being set forth in the Bench Warrant; although, as discussed in Section C, *supra*, the manner in which the bail amount was increase does not conform to the requirements of IDAHO CODE § 19-2919(2) or I.C.R. 46(i)(2), (j) (2016 version) when one is brought in for allegedly willfully violating the conditions of release while on bail. At the December 14, 2016, hearing before the Magistrate Court, the increased bail amount was confirmed to Mr. Gibson. R, p. 192; Tr, pp. 3-4.

Mr. Gibson was “committed to the actual custody of the sheriff” as required by the second sentence of § 19-2912, R, p. 192, however, the posted bail amount was not exonerated as required by the third sentence of § 19-2912.

3. What the District Court Should Have Done to Conform to the Statute.

Upon the District Court increasing the bail amount by an additional \$100,000.00 and committing Mr. Gibson to the custody of the Bingham County Sheriff’s Office, the District Court or Magistrate Court under the direction of the District Court should have exonerated the \$240,000.00 bail amount previously posted. This was not done and the bond monies remained with the District Court until Mr. Gibson’s sentencing on January 10, 2017.

Courts do not hold onto monies that are only a partial bond payment. There is no “installment payment plan” to a Court to have a defendant released on bail once the full amount is finally paid. One stays in custody until the full bail amount is paid in a one-time payment.

Here, the posted bail of \$240,000.00 should have been exonerated and Mr. Gibson would have remained in custody until he came up with the increased bail amount of \$340,000.00. Instead, the District Court held the money until sentencing, including the \$50,000.00 cash bond amount at issue in this appeal. This is an error by the District Court and the \$50,000.00 cash bond monies should now be exonerated and returned to Appellant as it should have been done in December 2016.

E. Whether the District Court and/or Magistrate Court Erred at the December 14, 2016, Hearing by Not Revoking Defendant Dillon Grant Gibson’s Bail and Exonerating the Bail when Defendant was Remanded and Recommitted to the Custody of the Bingham County Sheriff’s Office Pursuant to IDAHO CODE §§ 19-2919(1), 19-2922(6), and I.C.R. 46(i)(2) (2016 version).

Once remanded to the custody of the Bingham County Sheriff’s Office, the previously-posted bail amount should have been revoked and exonerated as discussed above. It was not and this was error by the District Court and Magistrate Court.

1. What the Statutes and Rule Say.

IDAHO CODE § 19-2919(1) states in pertinent part (emphasis added), “At the bail revocation hearing, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, *the court may revoke the bail and remand the defendant to the custody of the sheriff.*”

IDAHO CODE § 19-2922 states in pertinent part (emphasis added), “The court *shall order the bail exonerated* in the following circumstances: . . . (6) The court has revoked bail *and has ordered that the defendant be recommitted.*”

I.C.R. 46(i)(2) (2016 version) states in pertinent part (emphasis added):

Upon a bail revocation hearing, at which the defendant shall appear if the defendant can be found, if the court finds that there has been a willful breach of conditions of bail, and if the defendant is present before the court, *it may revoke the bail and remand the bailed person to the custody of the sheriff . . .*

2. What the District Court and Magistrate Court Did and Did Not Do.

With regard to § 19-2919(1) and I.C.R. 46(i)(2) (2016 version), the discussion of what the District Court and Magistrate Court did and did not do is found in Section C, *supra*. With regard

to § 19-2922(6), the District Court or the Magistrate Court recommitted Mr. Gibson to the custody of the Bingham County Sheriff's Office, but did not revoke the bail as required.

Also discussed in Sections C and D, *supra*, if one released on bail is remanded back to the custody of the sheriff, then the previously-posted bail must be exonerated. Following § 19-2922(6), as well as the other statutes discussed above, this did not happen and the District Court held the \$240,000.00 until sentencing a month after Mr. Gibson was remanded back to custody.

3. What the District Court and Magistrate Court Should Have Done to Conform to the Statutes and Rule.

As discussed above, the bail monies, including the \$50,000.00 cash bond amount, the District Court or Magistrate Court should have been revoked, exonerated, and returned to Appellant on December 14, 2016. It was error of the District Court to keep these monies while Mr. Gibson sat in the Bingham County Jail until his sentencing on January 10, 2017. The \$50,000.00 cash bond amount currently held by the District Court time should be exonerated and returned to Appellant.

F. Whether the District Court, at the August 8, 2017, Hearing on the Motion for Release of Bond Money, Erred in Finding that the December 14, 2016, Hearing Before the Magistrate Court was a Bail Revocation Hearing Pursuant to IDAHO CODE § 19-2919(1) and I.C.R. 46(i)(1) (2016 version).

At the August 8, 2017, hearing the District Court held that the December 14, 2016, hearing before the Magistrate Court was a bail revocation hearing. *See* Tr, p. 49. As discussed below, this holding was error as the proceeding before the Magistrate Court on December 14, 2016, cannot be considered a bail revocation hearing.

1. What the Statute and Rule Say.

IDAHO CODE § 19-2919(1) states in pertinent part (emphasis added):

Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may issue a bench warrant directing that the defendant be arrested *and brought before the court for a bail revocation hearing*, or the court may order the defendant to appear before the court at a time certain. *At the bail revocation hearing*, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may revoke the bail *and* remand the defendant to the custody of the sheriff.

I.C.R. 46(i)(1) (2016 version) states in pertinent part (emphasis added):

Upon a verified application alleging that the defendant has willfully violated conditions of the defendant's release on bail, other than failure to appear, the court may issue a warrant directing that the defendant be arrested *and brought before the court for hearing*, or the court may order the defendant to appear before the court at a time certain.

As discussed at length in Section C, *supra*, a Court may either 1) issue a bench warrant directing that a) the defendant be arrested *and* b) brought before the court *for a bail revocation hearing, or* 2) a court may order the defendant to appear before the court at a time certain. Then, at the bail revocation hearing, if a willful violation is found “the court may revoke the bail *and* remand the defendant to the custody of the sheriff.”

2. What the District Court and Magistrate Court Did and Did Not Do.

The District Court in this matter chose “option 1” when it issued the Bench Warrant directing that Mr. Gibson be arrested “and bring him/her before this Court.” R, pp. 191, 193. However, the Bench Warrant did not “direct[] that the defendant be . . . brought before the court for a bail revocation hearing” as required by § 19-2919(1).

Therefore, there was no direction from the District Court as to what needed to be done once Mr. Gibson was arrested pursuant to the Bench Warrant with regard to bail; therefore, no bail revocation hearing was held.

The Magistrate Judge advised Mr. Gibson on December 14, 2016:

- a. that the underlying bond amount of \$240,000.00 was not being forfeited;
- b. that the \$100,000.00 bond amount on the Bench Warrant was “on top of that” bond amount of \$240,000.00 already posted by Appellant on Mr. Gibson’s behalf;
- c. that “there’s a \$100,000 bond in - - on top of the other”, again, referring the \$240,000.00 bond already posted on his behalf; and
- d. “there’s a new bond.”

See Tr, pp. 3-4; *see also* R, p. 192. There was no finding by the Magistrate Court that Mr. Gibson “willfully violated a condition of release” (§ 19-2919(1)). Mr. Gibson was kept in custody (R, p. 192) after his arrest on the Bench Warrant and being told that the \$240,000.00 bail amount was being increased by \$100,000.00 and that it was not being forfeited. *See* Tr, pp. 3-4; *see also* R, p. 192. The \$240,000.00 bail was not revoked and exonerated by either the Magistrate Court or the District Court as required by §§ 19-2919(1) or 19-2922(6) when Mr. Gibson was remanded to the custody of the sheriff.

3. What the District Court and Magistrate Court Should Have Done to Conform to the Statute and Rule.

First, the District Court’s Bench Warrant should have had language in it to arrest Mr. Gibson *and* for him to be “brought before the Court for a bail revocation hearing” pursuant to § 19-2919(1). This would have given the Magistrate Court the direction necessary to hold a bail revocation hearing with the required findings and actions of § 19-2919(1).

Second, the Magistrate Court should have seen that the Bench Warrant was for Mr. Gibson's apparent violation of conditions of his release on bail, *see* R, pp. 191, 193; and that certain findings were required by § 19-2919(1) which would allow the Magistrate Court to remand Mr. Gibson to custody of the Bingham County Sheriff's Office, *e.g.*, that Mr. Gibson willfully violated a condition of release and that he was present before the Magistrate Court. In order to remand Mr. Gibson to custody as was done the Magistrate Court needed to also revoke the posted bail pursuant to § 19-2919(1) and as discussed in Section C, *supra*.

Nothing about the Bench Warrant from the District Court or the December 14, 2016, proceedings before the Magistrate Court meet the requirements of a bail revocation hearing pursuant to IDAHO CODE § 19-2919(1). Therefore, no bail revocation hearing was held on December 14, 2016, or at any time between then and the January 10, 2017, sentencing hearing.

The District Court's holding that the December 14, 2016, hearing before the Magistrate Court was a bail revocation hearing was error. This holding by the District Court and its subsequent denial of the Motion for Release of Bond Money (R, pp. 278-279; *see also* Tr, pp. 49-50) should be reversed.

G. Whether the Magistrate Court or the District Court Erred by Not Preparing and Filing an Order Revoking Bail Pursuant to IDAHO CODE §§ 19-2919(2), 19-2921, and I.C.R. 46(j) (2016 version) When Defendant Dillon Grant Gibson was Remanded and Recommitted to the Custody of the Bingham County Sheriff's Office on December 14, 2016.

Most likely because the District Court and/or the Magistrate Court did not hold a bail revocation hearing and did not revoke Mr. Gibson's bail in December 2016, there is no Order Revoking Bail. As discussed above, bail should have been revoked after Mr. Gibson was

remanded to the custody of the Bingham County Sheriff's Office on December 14, 2016. Further, as discussed in Section F, *supra*, there was no bail revocation hearing from which an Order Revoking Bail would have resulted and subsequently prepared and filed.

1. What the Statutes and Rule Say.

IDAHO CODE § 19-2919(2) states (brackets and emphasis added):

In its order revoking bail, the court *shall* [1] recite generally the facts upon which revocation of bail is founded *and* [2] order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. The court may reset bail in the same or a new amount and impose any appropriate conditions of release.

IDAHO CODE § 19-2921 states (brackets and emphasis added):

In its order revoking bail, the court *shall* [1] recite generally the facts upon which revocation of bail is founded *and* [2] order that the defendant be recommitted to the custody of the sheriff of the county where the action is pending to be detained until legally released. If the offense is bailable, the court shall fix bail in a new amount and impose any appropriate conditions of release.

The first sentence of each of the above statutes is identical—they require an Order Revoking Bail in which a Court 1) generally recites “the facts upon which revocation of bail is founded”, and 2) “order[s] that the defendant be recommitted to the custody of the sheriff”.

I.C.R. 46(j) (2016 version) states (emphasis added), “After the *order of recommitment* of a defendant the court may again determine the amount of bail and order that the defendant be admitted to bail in the sum determined and released upon such conditions and prohibitions as the court determines in its discretion.”

2. What the Magistrate Court and District Court Did Not Do.

First and foremost, there was no bail revocation hearing from which an Order Revoking Bail would result. Had the Magistrate Court held a bail revocation hearing as required by the second sentence of § 19-2919(1), then an “Order Revoking Bail” might have been prepared and filed. However, since there was no bail revocation hearing, such an Order did not follow.

Second, neither the Magistrate Court after the December 14, 2016, hearing nor the District Court issued anything—oral or written—that can be construed as an “Order Revoking Bail” required by §§ 19-2919(2) and 19-2921. Nothing in the Record is identified as an “Order Revoking Bail”. Nothing in the Transcript of the December 14, 2016, hearing with the Magistrate Court and Mr. Gibson can be interpreted as an oral “Order Revoking Bail”. *See* Tr, pp. 3-5. All that is discussed is that the District Court increased the bail amount by \$100,000.00 and that the existing bail was not being forfeited. *Id.*

Third, there is no general recitation of “the facts upon which revocation is founded” anywhere in the Record. The December 14, 2016, Minute Entry, R, p. 192, states “The Defendant was appearing on a warrant for failure to comply with release conditions. Court advised Defendant of the warrant and he stated he understood. Court continued counsel.” This is not a general recitation of “the facts upon which revocation is founded” required by the above statutes. Further, the transcript has nothing in it regarding any “facts upon which revocation is founded”. Tr, pp. 3-5.

As stated above, this is all most likely because what occurred on December 14, 2016, was not a bail revocation hearing.

Additionally, there is no oral or written “order that the defendant be recommitted to the custody of the sheriff” as required by these statutes. The December 14, 2016, Minute Entry, R, p. 192, states that “Defendant was remanded to the custody of the Bingham County Sheriff’s Department”, but this is not an order committing Mr. Gibson.

What happened in this case is that Mr. Gibson was arrested on the Bench Warrant on December 13, 2016 (R, p. 193), and taken to the Bingham County Jail until he was brought before the Magistrate Court on December 14, 2016, for the hearing memorialized by the Minute Entry at R, p. 192, and Tr, pp. 3-5. Mr. Gibson was never ordered to be recommitted; he just stayed there after the hearing.

Fourth, since there was no Order Revoking Bail, there was no order revoking Mr. Gibson’s bail after he was remanded to custody of the Bingham County Sheriff’s Office. The bail monies, including the \$50,000.00 cash bond amount, stayed with the District Court instead of being exonerated and returned to Appellant as required by the applicable statutes and rules discussed above.

3. What the District Court or Magistrate Court Should Have Done to Conform to the Statutes and Rule.

First, the District Court or Magistrate Court under the District Court’s direction should have held a bail revocation hearing pursuant to § 19-2919(1). Second, the District Court or Magistrate Court under the District Court’s direction should have issued and filed an Order Revoking Bail conforming to the requirements of §§ 19-2919(2) and 19-2921. Instead, all that

was done was to keep Mr. Gibson in jail after his December 13, 2016, arrest until the January 10, 2017, sentencing hearing. *See* Tr, pp. 4-5; R, p. 192.

To not issue an Order Revoking Bail in this matter was error.

H. Whether the District Court Erred in Denying the Motion for Release of Bond Money.

After hearing receiving the July 27, 2017, Brief in Support of Motion for Release of Bond Money, R, pp. 268-275, and hearing oral argument on August 8, 2017, Tr, pp. 41-47, the District Court issued the following oral findings and decisions (*see also* Fact No. 36, pp. 9-10, *supra*):

- That “it’s a balancing test between Idaho Code 19-2919 and what happened at the magistrate level when Mr. Gibson was picked up” (Tr, p. 48);
- That the December 14, 2016, hearing before the Magistrate Court was a bail revocation hearing (*see* Tr, p. 49);
- “[T]hat Judge Barrett chose not to revoke the bail at that time” (*Id.*);
- “The Court, as indicated, chose not to revoke the bail, but added the additional terms of posting \$100,000. Then Mr. Gibson was sentenced” (Tr, p. 50);
- That IDAHO CODE § 19-2908 controls regarding cash bond monies deposited with the Court after a defendant is sentenced (*see Id.*);
- That IDAHO CODE § 19-2908 applies in this matter (*see Id.*); and
- “There was not a request to release the bond money or for – by [Appellant] to ask for that bond money back when Mr. Gibson was taken into custody.

“But the question remains, should the court – should the magistrate court have gone forth with that bond, thus allowing [Appellant] to act on that, and if it had, would the money not have been on deposit at the time of judgment.” Tr, p. 51.

The District Court then orally denied the Motion for Release of Bond Money and issued its Order Denying Defendant’s Motion for Release of Bond Money. *See* Tr, p. 50; R, pp. 276, 278.

Each of the above findings will be addressed to show that the District Court erred in denying the Motion for Release of Bond Money and not returning the subject \$50,000.00 cash bond amount to Appellant.

1. No “Balancing Test” was Explained by the District Court; and None Exists Regarding Bail.

The District Court did not cite to any applicable statute, rule, or case law that supports its oral finding that “it’s a balancing test between Idaho Code 19-2919 and what happened at the magistrate level when Mr. Gibson was picked up” (Tr, p. 48). As discussed above, once a Court decides to remand a defendant to the custody of the sheriff, whether for violation of conditions for release on bail or other conditions allowed by the Idaho Bail Act, the posted bail shall be exonerated. There is no “balancing test” allowed by the statutes. If one is remanded to custody, then bail shall be exonerated. IDAHO CODE § 19-2922(6).

Appellant could find no case law on this issue of a “balancing test” regarding bail in Idaho. Appellant asserts that there is no “balancing test” and that this finding by the District Court was error.

2. The December 14, 2016, Hearing with the Magistrate Court was Not a Bail Revocation Hearing.

As discussed in Section F, *supra*, the December 14, 2016, hearing before the Magistrate Court was not a bail revocation hearing. Therefore, this finding and holding by the District Court was error.

3. Choosing Not to Revoke Bail was Error.

Again, there is no “choice” to revoke bail if a Court remands a defendant back to the custody of the sheriff after violating the conditions of his release on bail. Bail shall be revoked and exonerated. *See* IDAHO CODE §§ 19-2919, 19-2922(6).

4. IDAHO CODE § 19-2908 Does Not Apply in this Matter.

As discussed above, because the \$50,000.00 cash bond amount should have been revoked and exonerated on December 14, 2016, these monies should have never been with the District Court at the time of Mr. Gibson's sentencing on January 10, 2017. Therefore, § 19-2908 does not apply because there is no cash bond amount to apply to fees, fines, costs, and restitution pursuant to this section.

Had Mr. Gibson not violated the conditions of his release and remained free on bail until his sentencing on January 10, 2017, then the cash bond amount would have been properly held by the District Court and applied pursuant to § 19-2908. This is not the case in this matter based on the above arguments. It was error for the District Court to find and hold that § 19-2908 applied in this matter and to deny the Motion for Release of Bond Money.

5. Appellant is Not Required to "Ask" for the Bond Money Back After Mr. Gibson was Remanded to Custody of the Bingham County Sheriff.

The District Court cited no statute, rule, or case law which required Appellant "to ask for that bond money back when Mr. Gibson was taken into custody." Tr, p. 51. Because the applicable statutes and rules require revocation and exonerated of bail monies when a defendant has been remanded to custody of the sheriff after violating the conditions of his release on bail, there is no need or requirement for the defendant, or the person who posted bond on behalf of the defendant, to "ask for that bond money back". The bond monies posted for a defendant are revoked and exonerated by requirement of the applicable statutes after the defendant is remanded

to custody of the sheriff. The monies are returned to the person who posted them pursuant to the statutes. It does not need to be “asked for”.

It was error for the District Court to find that Appellant had to ask for the bond money that should have been returned to her in December 2016, after Mr. Gibson was remanded to custody of the Bingham County Sheriff’s Office. The bond monies, including the \$50,000.00 cash bond amount, should have been returned to Appellant after it was exonerated under the statutes.

The District Court erred when it made the above findings and denied the Motion for Release of Bond Money on August 8, 2017. Upon seeing the several errors and failure to properly revoke the bail monies required by the applicable statutes and rules after Mr. Gibson was arrested and remanded to the sheriff pursuant to the Bench Warrant, the District Court should have granted the Motion, exonerated the \$50,000.00 cash bond amount currently held by the District Court, and returned it to Appellant. Instead, the District Court denied the Motion and kept the cash bond amount pending this appeal.

In light of the above discussion, the District Court’s August 8, 2017, oral findings and decisions and the District Court’s August 9, 2017, Order Denying Defendant’s Motion for Release of Bond Money (R, pp. 278-279) should be reversed and the cash bond amount at issue should be exonerated and returned to Appellant.

I. Whether Appellant is Entitled to Receive the Cash Bond Amount of \$50,000.00 She Paid on Behalf of Defendant Dillon Grant Gibson.

Following all of the above arguments made in the preceding Sections, the District Court and the Magistrate Court erred by not revoking and exonerating the bond monies posted on Mr.

Gibson's behalf on December 14, 2016. These monies remained with the District Court until Mr. Gibson was sentenced on January 10, 2017. The property bond amount was properly exonerated on January 12, 2017 (R, p. 9), but the \$50,000.00 cash bond amount remains with the District Court pending the outcome of this appeal.

Based upon the above, Appellant is entitled to receive the cash bond amount paid by her on behalf of Mr. Gibson pursuant to the applicable statutes of the Idaho Bail act, including but not limited to IDAHO CODE § 19-2919, and I.C.R. 46 (2016 version).

J. Whether Appellant is Entitled to Her Reasonable Attorney's Fees Related to the Appeal.

Appellant seeks her reasonable attorney's fees related to this appeal pursuant to IDAHO CODE § 12-117 and I.A.R. 35(a)(5) and 41(a). Based upon the above arguments, Appellant should be awarded her reasonable attorney's fees pursuant to § 12-117(1) as the prevailing party in this appeal and because the State of Idaho (*i.e.*, Bingham County Prosecuting Attorney) acted without a reasonable basis in fact or law when it opposed the Motion for Release of Bond Money.

The Bingham County Prosecuting Attorney saw the above-discussed errors committed by the District Court and Magistrate Court as briefed and argued by Appellant's attorney of record in the Motion for Release of Bond Money (*see* R, pp. 268-275, Tr, pp. 41-44, 46-47). No briefing was submitted by the Prosecuting Attorney's Office that the District Court requested to support its arguments made at the August 8, 2017, hearing. *See* Tr, pp. 37, 39, 40, and 44; *see also* R, p. 266.

The Prosecuting Attorney should have then advised the District Court that it did not oppose the Motion for Release of Bond Money because of the above errors which occurred after Mr. Gibson was arrested for allegedly violating the conditions of his release on bail and was remanded

to the custody of the Bingham County Sheriff's Office in December 2016. Instead, the Bingham County Prosecuting Attorney made inaccurate and frivolous arguments to the District Court contrary to what is required by the above-discussed statutes in the Idaho Bail Act and the Idaho Criminal Rules regarding the revoking and exonerating of bail posted for a defendant.

The Prosecuting cites no authority which makes it a discretionary call by a Court regarding whether to hold bail monies once a defendant has been found to have willfully violated the conditions of his release on bail and remanded to custody of the sheriff (*see* Tr, pp. 44-46). In fact, the Prosecuting Attorney misstates what a Court "may do" with regard to bail under the applicable statutes by not going into detail that once a Court finds there has been a willful violation of release conditions and decides to remand the defendant to custody of the sheriff. *Id.* Once the decision is made to remand the defendant the bail posted on his behalf *shall* be exonerated. *See* IDAHO CODE § 19-2922(6); *see also* discussion in Sections C and D, *supra*. The Prosecuting Attorney did not advise the District Court of this as it should have.

There is no discretionary authority with a Court, as argued by the Bingham County Prosecuting Attorney, regarding the revocation and exonerating of bond monies when it is found that a defendant willfully violated the conditions of his release on bail and is remanded to the custody of the sheriff. If the defendant is remanded, then the bail money shall be revoked and exonerated. The discretionary call by a Court may be whether or not to remand the defendant, but once that decision is made the statutes and rules require that the bail monies be revoked/exonerated by the Court.

Based upon the above, Appellant should be awarded her reasonable attorney's fees as the prevailing party on appeal and because the State of Idaho (*i.e.*, Bingham County Prosecuting Attorney) acted without a reasonable basis in fact or law when it opposed the Motion for Release of Bond Money and argued its position to the District Court on August 8, 2017. Appellant also seeks her reasonable costs on appeal pursuant to I.A.R. 40 as the prevailing party in this appeal.

CONCLUSION

Several errors occurred by both the District Court and Magistrate Court on December 13-14, 2016, with regard to the bond monies posted on Dillon Grant Gibson's behalf when he was arrested for allegedly violating the conditions of his release on bail. These errors came as a result of the District Court and Magistrate Court not following the provisions and requirements of the applicable statutes under the Idaho Bail Act and the applicable parts of I.C.R. 46 (2016 version). Because of these errors, the subject bond monies posted by surety/real party in interest/appellant Judy Luis were not revoked and exonerated after Mr. Gibson was remanded to the custody of the Bingham County Sheriff's Office; and these monies remained with the District Court until Mr. Gibson was sentenced on January 10, 2017.

Based upon the above, Appellant respectfully requests that this Court reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter back to the District Court with instructions: 1) to revoke and exonerate the \$50,000.00 cash bond amount posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on December 14, 2016.

Appellant also respectfully requests that this Court award her reasonable attorney's fees and costs related to this appeal.

DATED this 12th day of February 2018.

BLASER, OLESON & LLOYD, CHARTERED

/s/ Michael A. Pope

By: _____
STEPHEN J. BLASER
MICHAEL A. POPE
Attorneys for Surety/Real Party in
Interest/Appellant Judy Luis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February 2018, a true and correct copy of the foregoing **APPELLANT’S BRIEF** was served by the method indicated below and addressed to each of the following:

<p>Cleve B. Colson BINGHAM COUNTY PROSECUTING ATTORNEY 501 N. Maple, #302 Blackfoot, ID 83221-1700</p> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF IDAHO Attention: Criminal Law Division 700 West Jefferson Street, Suite 210 P.O. Box 83720 Boise, ID 83720-0010</p> <p>Dillon Grant Gibson 83099 SAWC #32 125 North 8th West St. Anthony, ID 83445</p>	<p>Designated Courthouse Box Electronic Mail: ccolson@co.bingham.id.us</p> <p>United States Mail Electronic Mail: ecf@ag.idaho.gov</p> <p>United States Mail</p>
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/s/ Michael A. Pope

MICHAEL A. POPE