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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 48789-2021
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR14-20-11316
v.	)	
	)	
KEIA TAJUANA BLANCHARD,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**

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**HONORABLE DAVIS F. VANDERVELDE**  
District Judge

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

**BEN P. MCGREEVY**  
Deputy State Appellate Public Defender  
I.S.B. #8712  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR  
DEFENDANT-APPELLANT**

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

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

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## STATEMENT OF THE CASE

### Nature of the Case

Mindful of the applicable authorities, Keia Tajuana Blanchard asserts that the district court erred when it dismissed her appeal from the magistrate court for untimeliness.

### Statement of the Facts and Course of Proceedings

The State charged Ms. Blanchard with misdemeanor possession of marijuana and use or possession with intent to use of drug paraphernalia. (R., p.5.) Ms. Blanchard pleaded guilty to use or possession with intent to use drug paraphernalia, and the magistrate court dismissed the possession of marijuana charge on the State's motion. (R., pp.9-10.) On August 31, 2020, the magistrate court issued a Judgment that imposed a fine of \$200.00 on Ms. Blanchard. (R., p.10.)

On February 8, 2021, Ms. Blanchard filed a Notice of Appeal from the Judgment to the district court. (R., pp.11-14.) The Notice of Appeal stated, "We recognize that this appeal is not timely. However, it is being filed at the behest of the Appellant." (R., p.11.) The preliminary statement of the issues contained the following: (1) "The Appellant strayed into Idaho only to use the restroom at mile marker one which was closed. Therefore, she had to continue into Canyon County"; (2) "The Appellant's contraband is legal and was legally possessed where she lives, in Washington"; (3) "The Appellant had a co-defendant whose case was dismissed for the self-same charges in another courtroom"; and (4) "The Prosecutor forced Appellant to plead guilty by telling her the maximum penalty." (R., p.12.)

The district court assigned to the appeal issued a Conditional Dismissal. (R., pp.17-19.) The district court wrote, "Pursuant to Idaho Rule of Civil Procedure 83(b)(1)(A), an appeal must be filed within forty-two days of the filing of the judgment. Failure to file a notice of appeal within the time limits prescribed by the rules deprives the appellate court of jurisdiction over the

appeal.” (R., p.17 (citing I.R.C.P. 83(m); *State v. Payan*, 128 Idaho 866, 867 (Ct. App. 1996)).) The district court then stated, “The judgment in this case was filed in August 31, 2020, making the last day to file an appeal October 12, 2020. However, a notice of appeal was not filed until February 8, 2021, 162 days after the filing of the judgment and well beyond the forty-two-day jurisdictional limit.” (R., p.17.) Thus, the district court gave Ms. Blanchard seven days to show good cause for why the case should not be dismissed as untimely, and stated that failure to do so would result in dismissal. (R., p.18.)

Ms. Blanchard filed a Motion Showing Good Cause. (R., pp.20-22.) She asserted that she “was cited in Canyon County on June 24, 2020, along with her companion, Kevin Johnson,” in a separate Canyon County case. (*See R.*, p.20.) Ms. Blanchard asserted that, while her case “was adjudicated on August 28, 2020, her companion’s case was not adjudicated until February 8, 2021 when the State moved to dismiss the case without explanation.” (R., p.20.) She asserted, “This brought rise to the claim that the parties were treated differently, and thus [Ms. Blanchard’s] appeal.” (R., p.20.) Accordingly, Ms. Blanchard requested that the district court allow the appeal to move forward. (R., p.21.)

At the hearing on the order to show cause regarding the appeal, Ms. Blanchard’s counsel told the district court, “Your Honor, our main concern is that Ms. Blanchard feels that she was treated differently from the State. I’ll stand on the pleadings.” (Tr., p.4, Ls.15-17.) The district court asked defense counsel, “Is there any authority that you can cite to that says waiting on another case would be basis for a tolling of any appellate time?” (Tr., p.4, Ls.20-22.) Counsel replied, “No, Judge.” (Tr., p.4, L.23.) The State did not offer any argument. (Tr., p.5, Ls.1-3.) The district court advised the parties that it would take the matter under advisement and issue a written decision. (Tr., p.5, Ls.4-7.)

The district court subsequently issued an Order Dismissing Appeal. (R., pp.24-26.) The district court stated, “an appeal must be filed within forty-two days of the filing of the judgment. Absent some recognized basis for tolling this time, the failure to file a notice of appeal within the limits prescribed by the rules deprives the appellate court of jurisdiction over the appeal.” (R., pp.24-25 (citing I.R.C.P. 83(m); *Payan*, 128 Idaho at 867).) The district court ruled that Ms. Blanchard’s “Notice of Appeal was over one hundred sixty days late,” and she “has failed to present any authority indicating the time within which to file an appeal was tolled.” (R., p.25.) Thus, the district court dismissed the appeal. (R., p.25.)

Ms. Blanchard filed a Notice of Appeal timely from the Order Dismissing Appeal to the Idaho Supreme Court. (R., pp.27-30.)

ISSUE

Did the district court err in dismissing Ms. Blanchard's appeal for untimeliness?

## ARGUMENT

### The District Court Erred In Dismissing Ms. Blanchard's Appeal For Untimeliness

Mindful of the applicable authorities, Ms. Blanchard asserts that the district court erred in dismissing her appeal from the magistrate court for untimeliness.

On review of a decision rendered by a district court sitting in its intermediate, appellate capacity, the Idaho Supreme Court reviews the magistrate court record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *State v. Korn*, 148 Idaho 413, 414-15 (2009). If those findings are so supported and the conclusions follow therefrom, and if the district court affirmed the magistrate's decision, then the Supreme Court will affirm the district court's decision as a matter of procedure. *Id.* at 415.

The Idaho Criminal Rules provide that, for filing an appeal from the magistrate court to the district court, generally, "The notice of appeal must be filed within 42 days from the date file stamped by the clerk of the court on the judgment or order being appealed." I.C.R. 54(b)(1)(A).<sup>1</sup> As for suspending this requirement, "The time to file the appeal is terminated by the filing of a motion within 14 days of the entry of judgment, which, if granted, could affect the judgment or sentence in the action." I.C.R. 54(b)(1)(B).

Under Rule 54, "The failure to file a notice of appeal . . . with the district court within the time limits set out in this rule is jurisdictional and will cause automatic dismissal of the appeal. This dismissal may be pursuant to a motion by any party, or on the district court's initiative." I.C.R. 54(m). Put otherwise, if an appeal to a district court is not filed timely, the district court

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<sup>1</sup> Instead of Rule 54, the district court throughout cited to the corresponding rule from the Idaho Rules of Civil Procedure, I.R.C.P. 83. (*See R.*, pp.17-18, 24-25.)

will not have jurisdiction to consider the appeal. *See Shelton v. Shelton*, 148 Idaho 560, 565 (2009) (dismissing an appeal as untimely filed under I.R.C.P. 83).

Here, mindful of the above applicable authorities, Ms. Blanchard asserts that the district court erred in dismissing her appeal from the magistrate court for untimeliness. In her Notice of Appeal to the district court, Ms. Blanchard recognized “that this appeal is not timely.” (R., p.11.) Ms. Blanchard also did not provide the district court with any authority for why the time to file a notice of appeal should be tolled in her case. (*See Tr.*, p.4, Ls.19-23.) However, as she asserted before the district court, while her “case was adjudicated on August 28, 2020, her companion’s case was not adjudicated until February 8, 2021 when the State moved to dismiss the case without explanation.” (*See R.*, p.20.) Thus, the State treated Ms. Blanchard and her companion differently. (*See R.*, p.20; *Tr.*, p.4, Ls.15-17.) The district court therefore erred in dismissing Ms. Blanchard’s appeal from the magistrate court for untimeliness.

#### CONCLUSION

For the above reasons, Ms. Blanchard respectfully requests that this Court vacate the district court’s Order Dismissing Appeal, and remand the case to the district court for the appeal to proceed on the merits.

DATED this 24<sup>th</sup> day of August, 2021.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24<sup>th</sup> day of August, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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

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

BPM/eas