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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 45260
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR-2016-7215
	)	
NICHOLAS BRIAN SUNSERI,	)	
	)	
Defendant-Appellant.	)	
	)	

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**BRIEF OF RESPONDENT**

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APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI

---

HONORABLE CYNTHIA K.C. MEYER  
District Judge

---

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## STATEMENT OF THE CASE

### Nature of the Case

Nicholas Brian Sunseri appeals from the intermediate appellate opinion affirming the judgment entered upon his guilty plea to misdemeanor domestic battery in the presence of a child. On appeal he argues the district court erred when it affirmed the magistrate's denial of his motion to withdraw his guilty plea. Sunseri has failed to show any basis for reversal because he failed below to demonstrate a just reason to withdraw his properly entered guilty plea.

### Statement of Facts and Course of Proceedings

Sunseri lived with his girlfriend, Heather Abraham, and their 10-year-old daughter. (R., pp. 8-12, 21-27.) Sunseri threw Ms. Abraham up against a wall, against a cupboard, on the ground in a closet, and then pinned her down and smashed her face with his hand. (Id.) Ms. Abraham bit and scratched Sunseri when she tried to get away from him. (Id.) When Ms. Abraham tried to use the cordless phone to call for help, Sunseri ripped the phone's base from the wall. (Id.)

Eventually Ms. Abraham was able to flee with her daughter to the neighbor's house for help. (Id.) Sunseri admitted to the police that he had probably injured Ms. Abraham's head when he threw her down onto the ground in the closet. (Id.) The police also interviewed Kathi Wiggins, a roommate, who said Ms. Abraham and Sunseri were fighting and she saw Sunseri standing over Ms. Abraham who was on the floor in the closet. (Id.) The police also observed injuries on Ms. Abraham. (Id.) She had red marks on both sides of her neck, blood blister on her right thumb, and a bump on her forehead.

(Id.) The police also observed bite marks and scratches on Sunseri. (Id.) The bite mark on his forearm appeared to be consistent with defensive injuries and with Ms. Abraham's report. (Id.) Sunseri's account of what happened was inconsistent. (Id.)

The state charged Sunseri with misdemeanor domestic battery in the presence of a child and interference with a 911 call. (R., pp. 14-15.) At the arraignment, the state presented Sunseri with a written plea offer to resolve the case. (R., pp. 30-33.) Sunseri accepted and Sunseri pled guilty to misdemeanor domestic battery in the presence of a child; in exchange the state dismissed the interference with a 911 call charge and agreed to Sunseri's release from jail. (Id.)

Before sentencing, Sunseri filed an affidavit and a motion to withdraw his guilty plea on the ground that he was not informed about the federal statute, 18 U.S.C. § 922, which would criminalize his future possession of firearms. (R., pp. 38-48.) The magistrate held a hearing and took the matter under advisement. (R., pp. 105-107.)

At a later hearing, the magistrate entered its decision on the record and denied Sunseri's motion to withdraw his guilty plea. (R., pp. 108, 111-112.) The magistrate found that Sunseri had not demonstrated a just reason to withdraw his guilty plea. (7/21/16<sup>1</sup> Tr., p. 6, L. 6 – p. 9, L. 15.) The primary reason offered by Sunseri to withdraw his guilty plea was his assertion that he should have been advised that possessing a firearm after his conviction for domestic battery would subject him to federal charges. (Id.) "The parties [did] not dispute that otherwise the defendant appears to have been properly advised of his rights under [Idaho Criminal] Rule 11." (Id.) The magistrate held

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<sup>1</sup> It appears as though the transcript of the July 21, 2016 hearing is mislabeled as July 21, 2017. (See R., p. 108.)

that a court is required to advise the defendant of the direct consequences of his guilty plea but not required to advise the defendant of collateral consequences. (Id.) The magistrate found “that Idaho Criminal Rule 11(c) and its provisions were met.” (7/21/16 Tr., p. 8, Ls. 11-13.) The magistrate entered judgment and Sunseri timely appealed to the district court. (R., pp. 135-138.) The district court stayed the execution of sentence pending the outcome of the appeal. (R., pp. 144-145.)

Following oral argument, (R., pp. 206-208), the district court affirmed. (R., pp. 209-223). The court found that Sunseri’s guilty plea was knowingly, voluntarily and intelligently made. (Id.) The district court also determined that Sunseri had not provided a just reason to withdraw his guilty plea and affirmed the magistrate’s determination that the federal law prohibiting Sunseri from possessing firearms was a collateral, and not a direct, consequence of his guilty plea. (Id.) Sunseri timely appealed. (R., pp. 224-227.)



## ISSUE

Sunseri does not explicitly state the issue on appeal. Generally, Sunseri summarizes the issue on appeal as whether the district court erred when it affirmed the magistrate's denial of his motion to withdraw his guilty plea because he was not informed, before pleading guilty, that he would lose the rights to possess firearms under federal law.

(See Appellant's brief, pp. 11-13.)

The state rephrases the issue as:

Has Sunseri failed to show the district court erred in affirming the magistrate's denial of Sunseri's motion to withdraw his guilty plea, because Sunseri failed to present a just reason to withdraw a guilty plea?

## ARGUMENT

### Sunseri Has Failed To Show The District Court Erred When It Affirmed The Magistrate's Denial Of His Motion To Withdraw His Guilty Plea

#### A. Introduction

The magistrate found that the operation of 18 U.S.C. § 922, which prohibits convicted domestic abusers from possessing firearms, is a collateral, not a direct, consequence of Sunseri's guilty plea to domestic battery in the presence of a child and, as such, Sunseri's claim that he was not advised of this collateral consequence did not constitute a just reason to withdraw his plea. (See 7/21/16 Tr., p. 6, L. 6 – p. 9, L. 15.) The district court affirmed, also finding that the operation of this federal statute constituted a collateral consequence of Sunseri's plea. (See R., pp. 209-222.) On appeal to this Court, Sunseri again argues that the federal firearm prohibition constitutes a just reason to withdraw his guilty plea. (See Appellant's brief, pp. 11-24.) Sunseri's argument is without support in the law.

Not being advised of a collateral consequence of a guilty plea does not constitute a just reason to withdraw that guilty plea. Using the three part-test set forth by Idaho law, it is clear that the federal firearm ban is a collateral consequence. Further, other states have held that the operation of 18 U.S.C. § 922 is not a direct consequence of a guilty plea. Because the magistrate court was not required to inform Sunseri regarding collateral consequences of his guilty plea, Sunseri's lack of awareness regarding this collateral consequence does not constitute a just reason to withdraw his plea. Sunseri has failed to show the district court erred when it affirmed the magistrate's findings of fact and

conclusions of law. This Court should affirm the district court's intermediate appellate decision.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court “directly review[s] the district court’s decision.” State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court “examine[s] the magistrate 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.” Id. “If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate’s decision, [the appellate court] affirm[s] the district court’s decision as a matter of procedure.” Id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

C. The District Court Properly Affirmed The Decision Of The Magistrate Court

Sunseri agreed to the written plea offer from the state. (R., pp. 30-33.) Sunseri pled guilty to misdemeanor domestic battery in the presence of a child and the state dismissed the interference with a 911 call charge. (Id.) Prior to sentencing Sunseri moved to withdraw his guilty plea. (R., pp. 38-48.) Sunseri argued that he should be allowed to withdraw his guilty plea because he was not advised that the federal statute, 18 U.S.C. § 922, would criminalize his future possession of firearms and ammunition. (See id.) After a hearing, the magistrate denied Sunseri’s motion to withdraw his guilty plea. (R., pp. 105-108, 111-112.)

The magistrate found that Sunseri had not demonstrated a just reason to withdraw his guilty plea. (7/21/16 Tr., p. 6, L. 6 – p. 9, L. 15.) The magistrate held that court is required to advise the defendant of the direct consequences of his guilty plea but not required to advise the defendant of collateral consequences. (Id.) The court further held that firearm prohibition is a collateral consequence; therefore, Sunseri’s lack of knowledge regarding a collateral consequence is not a just reason to withdraw his guilty plea. (See id.)

A warning about the effect of a guilty plea to domestic battery in the presence of a child and its effect on his gun rights is a collateral consequence. The state sentencing judge has no control over what happens by virtue of a separate sovereign or agency. The sentencing judge cannot anticipate all consequences a guilty plea may have on a defendant; therefore, under the current state of the law, only consequences that are direct and in the control of the sentencing judge are required to be given.

(7/21/16 Tr., p. 7, Ls. 9-18.)

The district court affirmed the decision of the magistrate. (R., pp. 209-223.) The district court also determined that Sunseri’s guilty plea was entered voluntarily, knowingly and intelligently. (Id.) The district court correctly found that a court is not required to advise a defendant of collateral consequences when a defendant enters a guilty plea. (Id.) The district court applied Idaho law to determine whether the federal firearm prohibition was a collateral or direct consequence of the guilty plea. (See id. (citing State v. Heredia, 144 Idaho 95, 97, 156 P.3d 1193, 1195 (2007).) The district court agreed with the magistrate and found that loss of firearm rights was a collateral consequence and thus there was no requirement that Sunseri be advised of it prior to his guilty plea. (See id.) The district court thus affirmed the magistrate’s finding that Sunseri lacked a just reason to withdraw his guilty plea. (Id.)

On appeal Sunseri argues that the district court erred when it affirmed the magistrate's decision that he failed to provide a just reason to withdraw his guilty plea. (See Appellant's brief, pp. 13-24.) Sunseri argues that his discovery, after he pled guilty, that his potential future possession of firearms and ammunition would be criminalized by a federal statute, amounts to just reason to withdraw his guilty plea. (See id.) Contrary to Sunseri's argument on appeal, the district court properly applied the law and affirmed the magistrate's decision. A defendant not being aware of a collateral consequence of a guilty plea does not constitute a just reason to withdraw that guilty plea.

When a defendant pleads guilty, he or she waives certain constitutional rights, including the privilege against self-incrimination, the right to a jury trial and the right of confrontation. State v. Carrasco, 117 Idaho 295, 297, 787 P.2d 281, 283 (1990). This waiver will be upheld if the entire record demonstrates the waiver was made voluntarily, knowingly and intelligently. Id. at 298, 787 P.2d at 284. "Accordingly, the determination that a plea is entered voluntarily, knowingly and intelligently involves a three-part inquiry: (1) whether the defendant's plea was voluntary in the sense that he understood the nature of the charges and was not coerced; (2) whether the defendant knowingly and intelligently waived his rights to a jury trial, to confront his accusers, and to refrain from incriminating himself; and (3) whether the defendant understood the consequences of pleading guilty." State v. Dopp, 124 Idaho 481, 485, 861 P.2d 51, 55 (1993) (citations omitted). "On appeal, Idaho law requires that voluntariness of the guilty plea and waiver must be reasonably inferred from the record as a whole." Id. (citations omitted).

When accepting a guilty plea the trial court must follow the minimum requirements set forth in Idaho Criminal Rule 11(c). Hayes v. State, 146 Idaho 353, 355,

195 P.3d 712, 714 (Ct. App. 2008). “If the record indicates that the trial court followed the requirements of I.C.R. 11(c), this is a prima facie showing that the plea is voluntary and knowing.” Id. “One of the requirements of the rule is that the defendant be informed of any direct consequences of the plea which may apply, I.C.R. 11(c)(2), including the possibility of restitution[.]” Id. (citing State v. Banuelos, 124 Idaho 569, 573, 861 P.2d 1234, 1238 (Ct. App. 1993)).

Sunseri acknowledges the magistrate complied with Idaho Criminal Rule 11(c) requirements. (See Appellant’s brief, pp. 13-19; see also 7/21/16 Tr., p. 6, Ls. 18-20 (“The parties do not dispute that otherwise the defendant appears to have been properly advised of his rights under Rule 11.”).) Sunseri argues, however, that the magistrate’s failure to inform him of the federal firearm ban constitutes a just reason to withdraw his guilty plea. (See Appellant’s brief, pp. 13-19.) Sunseri’s argument fails.

“Withdrawal of a presentence guilty plea is not an automatic right, and the defendant has the burden of proving that the plea should be allowed to be withdrawn.” State v. Dopp, 124 Idaho 481, 485, 861 P.2d 51, 55 (1993) (citations omitted). “The withdrawal of guilty pleas is governed by I.C.R. 33(c).” Id. Idaho Criminal Rule 33(c) states that:

**(c) Withdrawal of Plea of Guilty.** A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court may set aside the judgment of conviction after sentence and may permit the defendant to withdraw a plea of guilty.

I.C.R. 33(c).

Idaho cases applying I.C.R. 33(c) to presentence motions to withdraw a guilty plea set out a two-part test. Dopp, 124 Idaho at 485, 861 P.2d at 55. “First, defendants

seeking to withdraw a guilty plea before sentencing must show a just reason for withdrawing the plea, and second, “[o]nce the defendant has met this burden, the state may avoid the granting of the motion by demonstrating that prejudice would result from withdrawal of the plea.” Id. (citing State v. Hawkins, 117 Idaho 285, 289, 787 P.2d 271, 275 (1990); State v. Ballard, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1988); United States v. Carden, 599 F.2d 1320 (4th Cir.1979)). “The defendant’s failure to present and support a plausible reason will dictate against granting withdrawal, even absent prejudice to the prosecution.” Id. (citations omitted).

A trial court is required to inform the defendant of any direct consequences of his guilty plea. See Hayes, 146 Idaho at 355, 195 P.3d at 714 (Ct. App. 2008); see also I.C.R. 11(c)(2). The trial court is not required to inform a defendant of consequences that are collateral or indirect. State v. Huffman, 137 Idaho 886, 887, 55 P.3d 879, 880 (Ct. App. 2002). “A consequence is direct if it presents ‘a definite, immediate and largely automatic effect on the defendant’s range of punishment.’” Id. (citing State v. Miller, 134 Idaho 458, 460, 4 P.3d 570, 572 (Ct. App. 2000)). The Idaho Supreme Court has discussed three factors to determine whether a consequence is direct or collateral. State v. Heredia, 144 Idaho 95, 98, 156 P.3d 1193, 1196 (2007) (citing Ray v. State, 133 Idaho 96, 99-101, 982 P.2d 931, 934-936 (1999), abrogated on other grounds by Icanovic v. State, 159 Idaho 524, 526, 363 P.3d 365, 367 (2015)). The three factors are, “(1) the defendant’s power to prevent the consequence; (2) the punitive or remedial nature of the consequence; and (3) the amount of control the sentencing judge has over imposing the consequence.” Id. (citation omitted). All three of the factors show that the federal firearm ban of 18 U.S.C. § 922 is a collateral consequence of Sunseri’s plea.

First, “[t]he ‘power to prevent’ analysis infers that where a possible consequence is within the defendant’s power to prevent, such as persistent violator status, it is collateral to a guilty plea.” Id. (citing Ray, 133 Idaho at 99, 982 P.2d at 934.) Here it is within Sunseri’s power to prevent the consequences of the federal statute. If Sunseri refrains from committing the prohibited act (much like a persistent violator refraining from committing additional crimes), then Sunseri will avoid the consequences of the federal statute.

Second, the federal statute is remedial in nature as it is designed to prevent future violence by convicted domestic abusers. See 18 U.S.C. § 922(9). There is no punishment under the federal statute unless and until the defendant possesses a prohibited firearm or ammunition. See id. The statute is remedial in nature.

Third, “[t]he ‘amount of control’ discussion by the Court infers that where a judge has no control over a consequence, such as mandatory registration on the sex offender watch list, it is collateral to a guilty plea.” Heredia, 144 Idaho at 98, 156 P.3d at 1196 (citing Ray, 133 Idaho at 101, 982 P.2d at 936). “These factors indicate that a direct consequence is involved where a judge has a large amount of control over the consequence and the defendant had no power to prevent its occurrence.” Id. Here, there is no question that the magistrate had no control over the operation of the federal statute. All three of the factors show that the federal firearm prohibition is a collateral consequence of Sunseri’s guilty plea.

The district court was correct to affirm the magistrate and hold that the federal statute criminalizing the possession of firearms is a collateral consequence of Sunseri’s guilty plea. (See R., pp. 209-222.) The Idaho Supreme Court noted, when determining



that sex offender registration was a collateral consequence of a guilty plea, that losing the right to carry firearms is also a collateral consequence. See Ray, 133 Idaho at 101, 982 P.2d at 936.

Moreover, we note that as a part of our analysis we take into account the fact that sex offender registration is a consequence of conviction over which the district judge has no direct control. Rather, like losing the right to vote, to carry firearms and to be bonded, sex offender registration is something that indirectly results from the fact of having a felony or sexual abuse conviction on one's record. As such, the indirect nature of registration takes it out of the direct consequences aspect of I.C.R. 11(c).

Id.

Sunseri argues that the potential consequence of the federal firearms prohibition is akin to the federal laws requiring deportation for certain crimes. (See Appellant's brief, pp. 17-19 (citing United States v. Delgados-Ramos, 635 F.3d 1237 (9th Cir. 2011); see also pp. 22-23.) This analogy is incorrect. After a guilty plea, the deportation "punishment" happens without any control by the defendant. The defendant will be deported regardless of their actions. In contrast – much like a potential habitual offender punishment, where the consequence only occurs if a convicted felon commits an additional crime – whether the defendant is punished under 18 U.S.C. § 922 is entirely dependent on whether the defendant takes an action (possesses an illegal firearm). Further, the holding in Delgados-Ramos does not help Sunseri. In Delgados-Ramos, the Ninth Circuit analyzed the United States Supreme Court's holding in Padilla v. Kentucky, 559 U.S. 356 (2010), and determined that the district court did not err when it failed to advise the defendant of the immigration consequences of his guilty plea. Delgados-Ramos, 635 F.3d at 1241. The deportation consequence is also distinguishable from the

federal firearms consequence because, in Idaho, a court must advise a defendant of deportation consequences before the defendant pleads guilty. See I.C.R. 11(d)(1).

**(d) Other Advisories on Acceptance of Plea.** The district judge must, prior to entry of a guilty plea or the making of factual admissions during a plea discussion, inform the defendant of the following:

(1) The court must inform all defendants that, if a defendant is not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship.

I.C.R. 11(d)(1). Sunseri is unable to cite to any law that equates the federal firearm prohibition of 18 U.S.C. § 922 with deportation consequences. (See Appellant’s brief, pp. 16-20.)

Other states are in accord and hold that the federal firearms prohibition is a collateral consequence of a guilty plea. See State v. Kosina, 595 N.W.2d 464 (Wis. Ct. App. 1999); State v. Rodriguez, 590 N.W.2d 823, 825 (Minn. Ct. App. 1999); State v. Liefert, 43 P.3d 329 (Mont. 2002). In Kosina, the Wisconsin Court of Appeals held that the operation of 18 U.S.C. § 922 was not a direct consequence of Kosina’s guilty plea because it does not have a “direct, immediate and automatic *effect on the range of Kosina’s* punishment for disorderly conduct.” Kosina, 595 N.W.2d at 467-468 (emphasis original). Further, the Wisconsin trial court does not participate in whether the federal statute applies. Id. Thus, Wisconsin held that federal law was not a direct consequence of Kosina’s guilty plea. See id.

The Minnesota Court of Appeals also held that the firearm prohibition of 18 U.S.C. § 922 was a collateral consequence of a guilty plea. Rodriguez, 590 N.W.2d at

824-825. The Minnesota Court was guided by other courts that have held the prohibition on firearms is a collateral consequence. See id.

We are guided by other states that have considered this issue. The Iowa Supreme Court has held that prohibition of firearm possession is a clear collateral consequence of a third-degree theft conviction. *Saadiq v. State*, 387 N.W.2d 315, 325 (Iowa 1986). Likewise, the Washington Court of Appeals has held that the loss of the right to possess a gun is only a collateral consequence of a guilty plea for a felony charge. *State v. Ness (In re Application for Relief from Personal Restraint of Ness)*, 70 Wash. App. 817, 855 P.2d 1191, 1195 (1993), *review denied* 123 Wash.2d 1009, 869 P.2d 1085 (1994). Other states have similarly observed that the loss of the right to possess a firearm is a collateral consequence of a guilty plea for a felony charge. *See, e.g., Polk v. State*, 405 So.2d 758, 762 (Fla. Dist. Ct. App. 1981) (holding district court need not advise defendant of all collateral consequences of pleading guilty, including loss of right to possess firearm); *People v. Ford*, 86 N.Y.2d 397, 633 N.Y.S.2d 270, 657 N.E.2d 265, 268 (1995) (noting loss of right to possess firearm is collateral consequence of pleading guilty); *Commonwealth v. Frometa*, 520 Pa. 552, 555 A.2d 92, 93 n. 1 (1989) (observing loss of right to own firearm is collateral consequence of pleading guilty).

Id. Montana is also in accord, holding that the federal prohibition on firearms is a collateral consequence because the defendant has the discretion whether he violates the federal law and the state has no control over whether he violates the federal law. Liefert, 43 P.3d at 335-336.

Turning to this case, Liefert had discretionary control over whether he would be in violation of federal law upon entry of his guilty plea. He would be in violation of federal law if he chose to possess a weapon; he would not be in violation of federal law if he made the opposite choice. Further, Liefert's federal prosecution is under the control of a different sovereign entity. Therefore, we hold that the consequence of a potential federal firearms prosecution under 18 U.S.C. § 922 is a collateral consequence because the consequence is not an automatic, definite, or immediate consequence of a state guilty plea and because the consequence is under the control of the federal government.

Id. (citations omitted).

Sunseri has failed to show that the collateral consequence of the federal firearm statute constitute a just reason to withdraw his guilty plea and has failed to show the district court erred when it upheld the magistrate's determination that Sunseri failed to provide a just reason to withdraw his guilty plea. Sunseri has failed to meet his burden.

Even if he met his burden, the state may avoid the granting of the motion by demonstrating that prejudice would result from withdrawal of the plea. See Dopp, 124 Idaho at 485, 861 P.2d at 55. Here, the state argued that it would suffer prejudice because there is a victim who has an “emotional entanglement with the defendant” and it would be difficult for the victim to give testimony due to the delay. (See R., p. 163.<sup>2</sup>) The magistrate did not reach the issue of prejudice because Sunseri failed to demonstrate a just reason to withdraw his plea. (7/21/16 Tr., p. 8, Ls. 5-8.) The district court likewise did not address the issue of prejudice because Sunseri failed to provide a just reason. (See R., pp. 209-222.) Neither of the lower courts erred. Because Sunseri failed to provide a just reason for withdrawal of his plea, the lower courts were not required to determine prejudice. The state did argue prejudice, however, and in the event this Court finds Sunseri provided a just reason, it should affirm the denial of Sunseri's motion on the basis of the prejudice argued by the state.

Sunseri also makes an argument under a “hypothetical post-conviction analysis.” (See Appellant's brief, pp. 20-22.) It is not clear how a “hypothetical post-conviction

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<sup>2</sup> The state's brief before the district court cites to 7/8/16 Tr., p. 6, Ls. 10-13. (R., p. 163.) However, the 7/8/16 transcript appears to be missing pages 5-8. (See generally 7/8/16 Tr.) When there is an incomplete record, the missing transcript must be deemed to support the action of the trial court. See, e.g., State v. McConnell, 125 Idaho 907, 909, 876 P.2d 605, 607 (Ct. App. 1994) (citations omitted).

analysis” has any bearing on this direct appeal. However, Sunseri appears to argue that his guilty plea to domestic battery in the presence of a child violated his constitutional due process rights because his guilty plea deprived him of his Second Amendment rights. (See id.) This argument is without merit. Sunseri appears to be conflating the federal law, 18 U.S.C. § 922, with Sunseri’s guilty plea to a violation of Idaho Code § 18-918(4). There is nothing in Idaho Code § 18-918(4) that implicates Sunseri’s Second Amendment rights. Any loss of Second Amendment rights stems from 18 U.S.C. § 922 – not from any state statute. Sunseri’s constitutional grievance is not with the state, but with the federal statute. The two are separate and the state has no control over the federal statute. As explained by the Minnesota Court of Appeals:

The federal government’s decision to prosecute for felon in possession is independent of anything a state court does. The federal government is under no duty to bring the charge, but may use its discretion. The state court judge here had no input as to what decision the federal government might make down the road.

Rodriguez, 590 N.W.2d at 825.

A magistrate failing to advise a defendant of a collateral consequence of a guilty plea does not constitute just reason to withdraw that guilty plea. Sunseri failed to show a just reason to withdraw his guilty plea. The magistrate’s findings and conclusions are supported and the district court properly affirmed the magistrate’s decision, thus this court should properly affirm the district court’s decision.

CONCLUSION

The state respectfully requests this Court affirm the decision of the district court.

DATED this 6th day of February, 2018.

/s/ Ted S. Tollefson \_\_\_\_\_  
TED S. TOLLEFSON  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 6th day of February, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

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/s/ Ted S. Tollefson \_\_\_\_\_  
TED S. TOLLEFSON  
Deputy Attorney General

TST/dd