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State v. Osborn Clerk's Record Dckt. 46389

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IN THE SUPREME COURT OF THE STATE OF IDAHO

State of Idaho

vs.

Christopher Neal Osborn

Supreme Court Case No. 46389-2018

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District,
in and for the County of Kootenai

HONORABLE CYNTHIA K.C. MEYER (District)

Lawrence Wasden
Attorney General
Attorney for Appellant
Boise, Idaho

Jay Logsdon
Kootenai Co Deputy Public Defender
Attorney for Respondent
Boise, Idaho

CASE SUMMARY
CASE NO. CR-2016-21670

State of Idaho
 vs.
 Christopher Neal Osborn

§
§
§
§
§
§

Location: **Kootenai County Magistrate Court**
 Judicial Officer: **Peterson, Clark A.**
 Filed on: **11/14/2016**
 Appear by: **01/20/2017**
 Case Number History:
 Appellate Case Number: **46389-2018**

CASE INFORMATION

Offense	Citation	Statute	Deg	Date	Case Type:
Jurisdiction: Coeur d'Alene City Police Department					
1. No Contact Order Violation	C2505478	118-920	MIS	11/14/2016	Criminal
TCN: ID2800098766					
2. No Contact Order Violation	C2505478	118-920	MIS	11/14/2016	
TCN: ID2800098766					

Warrants

Bench Warrant - Osborn, Christopher Neal (Judicial Officer: Peterson (DV Court), Clark A)
 07/03/2017 Warrant Returned Served
 02/16/2017 Outstanding Bench Warrant/Det Order
 Fine: \$0
 Bond: \$0
 Notes: 07/03/2017 Failure to Comply With Conditions of Probation

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number: CR-2016-21670
 Court: Kootenai County Magistrate Court
 Date Assigned: 08/09/2018
 Judicial Officer: Peterson, Clark A.

PARTY INFORMATION

State	State of Idaho	Lead Attorneys
		Coeur d' Alene Prosecutor
Defendant	Osborn, Christopher Neal	Logsdon, Jay Weston <i>Retained</i> 208-446-1700(W)










DATE

EVENTS & ORDERS OF THE COURT








INDEX

11/14/2016	Hearing Scheduled Party: Defendant Osborn, Christopher Neal <i>Hearing Scheduled (Arraignment/First Appearance 11/14/2016 01:00 PM)</i>	
11/14/2016	Arraignment Party: Defendant Osborn, Christopher Neal <i>Hearing result for Arraignment/First Appearance scheduled on 11/14/2016 01:00 PM: Arraignment / First Appearance</i>	
11/14/2016	A Plea is entered for Charge: Party: Defendant Osborn, Christopher Neal <i>A Plea is entered for charge: - NG (118-920 No Contact Order Violation)</i>	

CASE SUMMARY
CASE NO. CR-2016-21670

- 11/14/2016 A Plea is entered for Charge:*
 Party: Defendant Osborn, Christopher Neal
A Plea is entered for charge: - NG (118-920 No Contact Order Violation)
- 11/14/2016 **Arraignment (1:00 PM)** (Judicial Officer: Caldwell, Robert)
*Hearing result for Arraignment/First Appearance scheduled on 11/14/2016 01:00 PM:
 Arraignment / First Appearance*
- 11/14/2016  New Case - Criminal
- Misdemeanor - CdAPD cite #C2505478
- 11/14/2016  Affidavit of Probable Cause
Affidavit Of Probable Cause
- 11/14/2016  Probable Cause Order
- Caldwell
- 11/14/2016 **Plea**
 2. No Contact Order Violation
 Not Guilty
 TCN: ID2800098766 :
- 11/14/2016  Waiver
of Appearance
- 11/14/2016  Court Minutes
First Appearance - Caldwell
- 11/16/2016 Change Assigned Judge: Administrative
 Party: Defendant Osborn, Christopher Neal
Administrative assignment of Judge
- 11/17/2016 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Pre-Trial Conference 01/20/2017 10:30 AM)
- 11/17/2016 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Jury Trial Scheduled 02/06/2017 08:30 AM) 2/6-2/10
- 11/17/2016 ROA - Converted Event
 Party: Defendant Osborn, Christopher Neal
Speedy Trial Limit Satisfied
- 11/17/2016  Notice of Hearing
Pre-Trial Conference and Trial
- 11/18/2016  Order Appointing Public Defender
- Stow
- 11/23/2016  Notice-Appear of Attorney/Plea-Not Guilty/Request Jury Trial
 Party: Defendant Osborn, Christopher Neal
Notice of Appearance, Plea of Not Guilty & Demand For Jury Trial
- 11/23/2016  Request for Discovery
 Party: Defendant Osborn, Christopher Neal
Defendant's Request For Discovery

CASE SUMMARY
CASE NO. CR-2016-21670

- 11/29/2016  Request for Discovery & Alibi Demand
 Party: Defendant Osborn, Christopher Neal
Plaintiff's Request for Discovery & Demand For Written Notice of Intent to Offer Defense of Alibi
- 11/29/2016  Response to Request for Discovery
 Party: Defendant Osborn, Christopher Neal
Plaintiff's Response To Discovery
- 12/02/2016  Response to Request for Discovery
 Party: Defendant Osborn, Christopher Neal
Defendant's Response To Discovery
- 12/07/2016  Motion
for Recognizance Release or Reduction of Bond
- 12/13/2016 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Bond Hearing 12/14/2016 10:30 AM)
- 12/13/2016  Notice of Hearing
Motion for Recognizance Release or Reduction of Bond
- 12/13/2016  Motion
To Shorten Time
- 12/14/2016 **Hearing Scheduled (10:30 AM)** (Judicial Officer: Peterson (DV Court), Clark A)
Hearing result for Bond Hearing scheduled on 12/14/2016 10:30 AM: Hearing Held
- 12/14/2016  Court Minutes
- Bond Hearing/Review Hearing - Peterson
- 12/15/2016 Hearing Held
 Party: Defendant Osborn, Christopher Neal
Hearing result for Bond Hearing scheduled on 12/14/2016 10:30 AM: Hearing Held
- 01/20/2017 Disposition with Hearing
 Party: Defendant Osborn, Christopher Neal
Hearing result for Pre-Trial Conference scheduled on 01/20/2017 10:30 AM: Disposition With Hearing
- 01/20/2017 A Plea is entered for Charge:*
 Party: Defendant Osborn, Christopher Neal
A Plea is entered for charge: - GT (118-920) No Contact Order Violation)
- 01/20/2017 Probation Ordered
 Party: Defendant Osborn, Christopher Neal
Probation Ordered (118-920 No Contact Order Violation) Probation term: 2 years. (Supervised)
- 01/20/2017 Sentenced to Pay Fine
 Party: Defendant Osborn, Christopher Neal
Sentenced To Pay Fine (118-920 No Contact Order Violation)
- 01/20/2017 Sentenced to Incarceration
 Party: Defendant Osborn, Christopher Neal
Sentenced To Incarceration (118-920 No Contact Order Violation) Confinement terms: Jail: 365 days. Suspended jail: 278 days. Credited time: 67 days. Discretionary: 20 days.
- 01/20/2017 Probation Ordered
 Party: Defendant Osborn, Christopher Neal


CASE SUMMARY
CASE NO. CR-2016-21670

*Probation Ordered (118-920 No Contact Order Violation) Probation term: 2 years.
 (Supervised)*


- 01/20/2017 **Sentenced to Pay Fine**
 Party: Defendant Osborn, Christopher Neal
Sentenced To Pay Fine (118-920 No Contact Order Violation)


- 01/20/2017 **Sentenced to Incarceration**
 Party: Defendant Osborn, Christopher Neal
Sentenced To Incarceration (118-920 No Contact Order Violation) Confinement terms: Jail: 365 days. Suspended jail: 278 days. Credited time: 67 days. Discretionary: 20 days.

- 01/20/2017 **Status Changed**
 Party: Defendant Osborn, Christopher Neal
Case status changed: closed pending clerk action

- 01/20/2017  **Judgment**
 Party: Defendant Osborn, Christopher Neal
Judgment

- 01/20/2017 **Pre-trial Conference (10:30 AM)** (Judicial Officer: Peterson, Clark A.)
Hearing result for Pre-Trial Conference scheduled on 01/20/2017 10:30 AM: Disposition With Hearing


- 01/20/2017  **Acknowledgment of Rights**

- 01/20/2017  **Supervised Probation Ordered**
 - Walsh
 Charges: 1


- 01/20/2017 **Plea**
 1. No Contact Order Violation
 Guilty
 TCN: ID2800098766 :


- 01/20/2017 **Disposition**
 1. No Contact Order Violation
 Guilty
 TCN: ID2800098766 :

- 01/20/2017 **Disposition**
 2. No Contact Order Violation
 Guilty
 TCN: ID2800098766 :

- 01/20/2017  **Court Minutes**
 - Pretrial Conference - Walsh

- 01/23/2017 **Hearing Vacated**
 Party: Defendant Osborn, Christopher Neal
Hearing result for Jury Trial Scheduled scheduled on 02/06/2017 08:30 AM: Hearing Vacated 2/6-2/10

- 02/01/2017  **Affidavit**
 Of Probation Violation


- 02/01/2017  **Motion**
 To Revoke Defendant's Probation And For Issuance Of A Bench Warrant

KOOTENAI COUNTY MAGISTRATE COURT

CASE SUMMARY

CASE NO. CR-2016-21670

02/06/2017 **CANCELED Jury Trial (8:30 AM)** (Judicial Officer: Peterson, Clark A.)
Vacated
2/6-2/10 Hearing result for Jury Trial Scheduled scheduled on 02/06/2017 08:30 AM: Hearing
Vacated

02/16/2017  **Warrant/Det Order Issued - Bench**
Party: Defendant Osborn, Christopher Neal
Warrant Issued - Bench Bond amount: No Bond Failure to Comply With Conditions of
Probation Defendant: Osborn, Christopher Neal


02/16/2017 **Status Changed**
Party: Defendant Osborn, Christopher Neal
Case status changed: Inactive

04/10/2017 **ROA - Converted Event**
Party: Defendant Osborn, Christopher Neal
******ACCOUNT IS IN COLLECTIONS***** - Step 2, Failure to Pay Fines*
and Fees - Charge # 1, No Contact Order Violation

04/10/2017 **ROA - Converted Event**
Party: Defendant Osborn, Christopher Neal
******ACCOUNT IS IN COLLECTIONS***** - Step 2, Failure to Pay Fines*
and Fees - Charge # 2, No Contact Order Violation

07/03/2017 **Hearing Scheduled**
Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Arrest/First Appearance 07/03/2017 01:00 PM)


07/03/2017 **Hearing Scheduled**
Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Probation Review 07/24/2017 03:00 PM)


07/03/2017  **Warrant Returned - Served**
Party: Defendant Osborn, Christopher Neal
Warrant Returned Failure to Comply With Conditions of Probation Defendant: Osborn,
Christopher Neal

07/03/2017 **Status Changed**
Party: Defendant Osborn, Christopher Neal
Case status changed: Pending

07/03/2017 **Hearing Held**
Party: Defendant Osborn, Christopher Neal
Hearing result for Arrest/First Appearance scheduled on 07/03/2017 01:00 PM:
Hearing Held

07/03/2017 **Arrest (1:00 PM)** (Judicial Officer: McGee, Daniel J.)
Hearing result for Arrest/First Appearance scheduled on 07/03/2017 01:00 PM:
Hearing Held

07/03/2017  **Court Minutes**
- First Appearance - McGee


07/07/2017  **Motion**
Party: Defendant Osborn, Christopher Neal
Amended Motion To Revoke Defendant's Probation

07/10/2017 **Continued**
Party: Defendant Osborn, Christopher Neal
Hearing result for Probation Review scheduled on 07/24/2017 03:00 PM: Continued


07/10/2017

CASE SUMMARY
CASE NO. CR-2016-21670

Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Probation Violation 08/01/2017 03:00 PM)

07/10/2017  Notice of Hearing
Probation Violation


07/24/2017 **Probation Review Hearing (3:00 PM)** (Judicial Officer: Peterson (DV Court), Clark A)
Hearing result for Probation Review scheduled on 07/24/2017 03:00 PM: Continued


07/24/2017  Notice
Attorney Assignment Change


08/01/2017 Hearing Held
 Party: Defendant Osborn, Christopher Neal
Hearing result for Probation Violation scheduled on 08/01/2017 03:00 PM: Hearing Held

08/01/2017 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Evidentiary Hearing 10/17/2017 03:00 PM)


08/01/2017 **Probation Violation Hearing (3:00 PM)** (Judicial Officer: Peterson (DV Court), Clark A)
Hearing result for Probation Violation scheduled on 08/01/2017 03:00 PM: Hearing Held


08/01/2017  Notice of Hearing
Evidentiary

08/01/2017  Court Minutes
Probation Violation - Peterson

08/09/2017  Motion
To Release Defendant On Own Recognizance Or To Reduce Bond


08/17/2017 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
Hearing Scheduled (Bond Hearing 09/22/2017 03:00 PM)

08/18/2017  Notice of Hearing
Motion for Recognizance Release or Reduction of Bond

09/19/2017  Evaluation/Assessment Filed
 Party: Defendant Osborn, Christopher Neal
Domestic Violence Evaluation with Mental Health Component

09/22/2017 Motion Denied
 Party: Defendant Osborn, Christopher Neal
Hearing result for Bond Hearing scheduled on 09/22/2017 03:00 PM: Motion Denied



09/22/2017 **Hearing Scheduled (3:00 PM)** (Judicial Officer: Peterson, Clark A.)
Hearing result for Bond Hearing scheduled on 09/22/2017 03:00 PM: Motion Denied

09/22/2017  Court Minutes
Bond Hearing - Peterson










10/17/2017 Disposition with Hearing
 Party: Defendant Osborn, Christopher Neal
Hearing result for Evidentiary Hearing scheduled on 10/17/2017 03:00 PM: Disposition With Hearing

10/17/2017 Sentenced Modified

















CASE SUMMARY
CASE NO. CR-2016-21670

- Party: Defendant Osborn, Christopher Neal
Sentenced Modified Sentence modified on 10/17/2017. (118-920 No Contact Order Violation)
- 10/17/2017 Sentenced Modified
 Party: Defendant Osborn, Christopher Neal
Sentenced Modified Sentence modified on 10/17/2017. (118-920 No Contact Order Violation)
- 10/17/2017 Sentenced to Incarceration
 Party: Defendant Osborn, Christopher Neal
Sentenced To Incarceration (Probation Violation) - 730 days jail; 240 days CTS
- 10/17/2017 **Evidentiary Hearing (3:00 PM)** (Judicial Officer: Peterson (DV Court), Clark A)
Hearing result for Evidentiary Hearing scheduled on 10/17/2017 03:00 PM: Disposition With Hearing
- 10/17/2017  **Order**
After Hearing On Probation Violation/ Contempt - Peterson
- 10/17/2017 **Sentence** (Judicial Officer: Peterson (DV Court), Clark A)
 1. No Contact Order Violation
 Misdemeanor Sentence
 Confinement
 Type: County Jail
 Facility: Kootenai County Public Safety Bldg.
 Term: 365 Days
 Suspended: 278 Days
 Discretionary: 20 Days
 Effective Date: 01/20/2017
 Concurrent with case
 Details: Count 2
 Credit Term: 67 Days
 Comment: ORPV 10/17/17 - 730 days jail; 240 days CTS
 Condition - Adult:
 1. Supervised Probation PRIOR TO 7/1/18, ORPV 10/17/17 - Probation Terminated ,
 2Y 0M 0D, 01/20/2017 - 01/20/2019, Closed 10/17/2017
 Comment (Order to stay pending the remittur of the appear- Order to Stay Sentence
 signed 08/24/2018 #101)
- 10/17/2017 **Sentence** (Judicial Officer: Peterson (DV Court), Clark A)
 2. No Contact Order Violation
 Misdemeanor Sentence
 Confinement
 Type: County Jail
 Facility: Kootenai County Public Safety Bldg.
 Term: 365 Days
 Suspended: 278 Days
 Discretionary: 20 Days
 Effective Date: 01/20/2017
 Concurrent with case
 Details: Count 1
 Credit Term: 67 Days
 Comment: ORPV 10/17/2017 - 730 days jail; 240 days CTS
 Condition - Adult:
 1. Supervised Probation PRIOR TO 7/1/18, 2Y 0M 0D, 01/20/2017 - 01/20/2019,
 Active 01/20/2017
 Comment (Order to stay pending the remittur of the appear- Order to Stay Sentence
 signed 08/24/2018 #101)
- 10/17/2017  **Court Minutes**
Evidentiary Hearing & Motion - Peterson
- 10/23/2017 Status Changed
 Party: Defendant Osborn, Christopher Neal
Case status changed: closed pending clerk action

CASE SUMMARY
CASE NO. CR-2016-21670
















- 10/27/2017  Motion
For Credit For Time Served
- 10/31/2017  Notice
Of Objection To Defendant's Motion For Credit For Time Served
- 11/09/2017  Reply
to State's Objection for Credit for Time Served
- 11/13/2017 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
*Hearing Scheduled (Motion 11/27/2017 01:30 PM) Credit time served
 PD - 10 min*
- 11/22/2017 Continued
 Party: Defendant Osborn, Christopher Neal
*Hearing result for Motion scheduled on 11/27/2017 01:30 PM: Continued Credit time served
 PD - 10 min*
- 11/22/2017 Hearing Scheduled
 Party: Defendant Osborn, Christopher Neal
*Hearing Scheduled (Motion 12/04/2017 03:30 PM) Credit time served
 PD - 10 min*
- 11/27/2017 **Motion Hearing (1:30 PM) (Judicial Officer: Peterson, Clark A.)**
*Credit time served
 PD - 10 min Hearing result for Motion scheduled on 11/27/2017 01:30 PM: Continued*
- 11/27/2017  Notice of Hearing
- Motion Credit Time Served
- 12/04/2017 Hearing Held
 Party: Defendant Osborn, Christopher Neal
*Hearing result for Motion scheduled on 12/04/2017 03:30 PM: Hearing Held Credit time
 served
 PD - 10 min*
- 12/04/2017 **Motion Hearing (3:30 PM) (Judicial Officer: Peterson, Clark A.)**
*Credit time served
 PD - 10 min Hearing result for Motion scheduled on 12/04/2017 03:30 PM: Hearing Held*
- 12/04/2017  Court Minutes
- Motion - Peterson
- 01/09/2018  Order
Denying Rule 35 Motion - Peterson
- 01/11/2018  Appeal Filed in District Court
- 01/12/2018 Change Assigned Judge: Administrative
 Party: Defendant Osborn, Christopher Neal
Administrative assignment of Judge
- 02/13/2018  Transcript Lodged
on Appeal
- 02/13/2018  Notice
of Lodging Transcript on Appeal

CASE SUMMARY
CASE NO. CR-2016-21670






- 02/16/2018  Notice
of Settling Transcript on Appeal and Briefing Schedule
- 02/26/2018  Receipt
of Transcript
- 02/26/2018  Notice
Attorney Assignment Change
- 04/06/2018  Brief Filed
Appellant's Opening Brief
- 04/20/2018  Brief Filed
Errata re: Appellant's Opening
- 05/07/2018  Notice
of Attorney Assignment Change
- 05/14/2018  Brief Filed
of Respondent
- 05/17/2018  Motion
Second Motion Requesting Order for Credit for Time Served and Clarify Current Sentence
- 05/17/2018  Brief Filed
Appellant's Reply
- 05/31/2018  Receipt
of Transcript - CdAPA
- 06/06/2018 Scanned
- 06/07/2018  Notice of Hearing
- 06/18/2018 **Motion for Rule 35 (9:00 AM) (Judicial Officer: Peterson, Clark A.)**
PD - 10 min
- 06/18/2018  Court Minutes
- Rule 35 - Peterson
- 06/22/2018  Order Granting / Denying Credit for Time Served
- Peterson
- 06/26/2018  Affidavit
For Good Time
- 06/28/2018  **CANCELED Oral Argument (3:00 PM) (Judicial Officer: Meyer, Cynthia K.C.)**
Vacated
- 07/02/2018  Order
for Good Time - Peterson
- 07/11/2018  **Oral Argument (3:00 PM) (Judicial Officer: Meyer, Cynthia K.C.)**
- 07/11/2018  Court Minutes

CASE SUMMARY
CASE NO. CR-2016-21670

- Oral Argument - Meyer

- 08/09/2018  Order
Memorandum Decision and Order On De:ndant's Appeal of Denial of Rule 35 Motion - Meyer
- 08/09/2018  Motion
to Correct Order for Credit for Time Served
- 08/15/2018  Amended
Motion to Correct Order for Credit
- 08/16/2018  Amended
Second Motion to Correct Order for Credit for Time Served
- 08/16/2018  Notice of Hearing
Amended Motion
- 08/16/2018  Motion
to Shorten Time
- 08/17/2018 **Motion Hearing (9:00 AM) (Judicial Officer: Meyer, Cynthia K.C.)**
correcting credit for time served and good time
- 08/17/2018  Court Minutes
- Motion Credit Time Served - Meyer; court reporter Diane Bolan
- 08/17/2018  Motion
Second Amended Motion to Correct Order
- 08/17/2018  Notice of Hearing
2nd Motion to Correct Order
- 08/17/2018  Motion
to Shorten Time
- 08/20/2018 **Motion Hearing (2:00 PM) (Judicial Officer: Peterson, Clark A.)**
Mr. Logsdon
- 08/20/2018  Court Minutes
- Motion - Peterson
- 08/21/2018  Motion
for Stay of Sentence
- 08/22/2018  Notice of Hearing
Motion for Stay of Sentence
- 08/22/2018  Motion
to Shorten Time
- 08/23/2018  Materials in Support
of Motion for Stay
- 08/24/2018 **Motion Hearing (8:00 AM) (Judicial Officer: Simpson, Benjamin R.)**
Logsdon-stay of execution of sentence

CASE SUMMARY
CASE NO. CR-2016-21670

08/24/2018	 Court Minutes - Motion for Stay - Simpson
08/24/2018	 Order to Stay Sentence - Simpson
09/12/2018	 Appeal Filed in District Court Notice of Appeal
09/27/2018	 Supreme Court Document Filed-Misc - Clerk's Record Due
10/04/2018	 Clerk's Certificate of Appeal
11/17/2018	Scanned Scanned for Appeal
12/18/2018	Original Record(s) on Appeal Served or Transferred - Served Attorneys via Mail (AG & SAPD)
12/27/2018	Original Record(s) on Appeal Served or Transferred - Served KCPD/Logsdon via I/O Mail
01/24/2019	Original Record(s) on Appeal Served or Transferred - Send to SC
01/28/2019	Case Summary

DATE	FINANCIAL INFORMATION	
	Defendant Osborn, Christopher Neal	
	Total Charges	600.00
	Total Payments and Credits	0.00
	Balance Due as of 1/28/2019	600.00

CITY OF COEUR D'ALENE CITATION

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:

County: **KOOTENAI** State: **ID** Citation #: **C2505478**
DR#: **16C37015**

VIOLATOR

Last Name: **OSBORN** MI: **NEAL**
First Name: **CHRISTOPHER**
Hm. Address: **2710 N 10TH PL** Hm. Phone: **636-352-3936**
City: **COEUR D'ALENE** State: **ID** Zip: **83815**
Height: **6'00"** Weight: **230** Sex: **M** Race: **W** Eyes: **GRN** Hair: **BRO**
Lic. Expires:
Operator: **N**
Bus. Name:
Bus. Addr.:
Bus. Phone:
Juvenile: **N** CDL: **N** Class:

REGISTRATION

Yr. Veh: Veh. Lic#: State:
Make: Model:
Color: Style:
VIN:

LOCATION

Upon a Public Street or Highway or Other Location Namely:
2710 N. 10TH PL

Hwy: Mp:

VIOLATIONS

Did unlawfully commit the following Offense(s) on: **11/14/2016, 00:09**
Infraction Citation: **N** Misdemeanor Citation: **Y** Care: **N**
GWR 26001+: **N** 16+ Persons: **N** Hazmat: **N**
Accident: **N** Companion Citation: **N**
Posted Speed: Observed Speed:
To Wit:
No Contact Order-violation Of

18-920

To Wit:
No Contact Order-violation Of

18-920

Witnessing Officer:
Serial# Addr.:
Dept.:

SIGNATURE

hereby certify service upon the defendant personally on 11/14/2016, 00:52

Officer: *[Signature]*

Officer name: **J.PROCTOR**
Officer ID: **K89**

COURT INFORMATION

KOOTENAI
324 W GARDEN AVE.
COEUR D'ALENE, ID 83814-1972
208-446-1170
XXXX BOOKED AT PSB XXXX

Contact the Court no later than 12/05/2016. This IS NOT the time for you to appear before a judge. It is however the time by which YOU MUST contact the Clerk of the District Court regarding your citation.

CR - 2016 - 21670
NCRM
New Case - Criminal
735824



CR16-21670

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO,

2016 NOV 14 AM 10:28

IN AND FOR THE COUNTY OF KOOTENAI

THE STATE OF IDAHO)
Plaintiff,)
vs.)
Christopher N. Osborn)
Defendant,)
[REDACTED])
[REDACTED])
[REDACTED])
State: MO)

COURT CASE #:)
DEPARTMENT REPORT #:16C37015)
PROBABLE CAUSE DECLARATION IN SUPPORT)
OF WARRANTLESS ARREST AND/OR)
REFUSAL/FAILURE OF EVIDENTIARY TEST AND)
ORDER FINDING PROBABLE CAUSE)

CLERK DISTRICT COURT
Cindy Kelly
DEPUTY

CR 16-21670

I, J. Proctor K89, the undersigned, hereby declare and/or otherwise state that the following is true and correct:

- I am a peace officer employed by the Coeur d'Alene Police Department.
- The above named defendant was arrested on the 14 day of November, 2016 at the time of 0009 hours for the offense(s) [list offense(s) and code] 18-920 NCO Violation x 2 and/or (check any applicable boxes below)

- Driving under the influence of alcohol, drugs or other intoxicating substances, Idaho Code 18-8004.
- Second DUI offense in the last ten (10) years, prior offense date and location:
- Two or more DUI offenses in the last ten (10) years, prior offense dates and locations:
- Driving without privileges, Idaho Code 18-8001.
- Possession of controlled substance, Idaho Code 37-2732 felony misdemeanor
- Possession of paraphernalia, Idaho Code 37-2734A.
- Reckless driving, Idaho Code 49-1401.
- Domestic battery, Idaho Code 18-918.

3. Location of Occurrence: 2710 N. 10th Pl, Kootenai County, Idaho.

- The above named defendant was identified as: Chris Osborn
 - Military ID State ID Card Student ID Card Driver's License Credit Cards
 - Paperwork found Verbal ID by defendant
 - Witness: identified defendant.
 - Other:

- Actual physical control established by: Observation by declarant Observation by Officer
 Admission of Defendant to: , Statement of Witness:
 Other:

This is an arrest initiated by a private citizen. The basis for the request for the issuance of a Complaint is set forth in the police report attached and incorporated herein. The information and statements provided to me by , the complaining party, are true and correct to the best of my knowledge.

- I believe that there is probable cause that the above described offense(s) was (were) committed by the defendant based on the following facts:

CR-2016-21670
AFPC
Affidavit of Probable Cause
735820



OFFICER: J. Proctor K89

SUSPECT(S) or DESCRIPTION(S):

Chris P. Osborn 10/26/1974

M - 18-920 - Violation of NCO - C2505478 - Booked at PSB

M - 18-920 - Violation of NCO - C3505478 - Booked at PSB

CASE SUMMARY:

On November 13, 2016 I responded to 2710 N. 10th Pl. to a report of a DVA Violation. Sarah Bauer called and stated Chris Osborn was at the location violating an NCO between he and Terry Lemieux. I contacted Terry who eventually said Chris had been at the house earlier today and was there now. We located Chris in the garage. Chris was taken into custody and transported to PSB.

NARRATIVE:

On November 13, 2016 at approximately 2330 hours, I responded to 2710 N. 10th Pl to a reported of a DVA Violation. Call notes indicated Terry Lemieux had a No Contact Order with Chris Osborn. The RP, Sarah Bauer, stated Chris was on scene and inside the residence at the time of the call. It was reported Sarah could hear Chris screaming at Terry. Chris is known to carry a knife and was reported to be mentally unstable.

When I arrived, I noticed a silver vehicle idling outside of the residence. As I approached, I noticed a female sitting in the driver seat. I stopped to see if she was the RP. She stated she was. I spoke with Sarah and learned the following; Sarah lives at the residence with Terry. Sarah said she could hear Terry and Chris yelling in the upstairs bedroom. Terry asked Sarah to call the police. Sarah came outside to make the phone call because she did not want Chris to know she was calling. Sarah told me Chris was upstairs, in the bedroom, with Terry. When asked how she knew Chris was in the house she said she heard his voice.

Sarah said Terry told her Chris was at the house earlier today, Chris told Terry to send him to jail, but if she did he would murder her when he got out. Sarah said Chris was also taking things apart in the home because he thought they were hiding cameras in them. Sarah said before exiting the house to make the phone call, she heard a door slam and Terry scream.

I have had previous contacts with Chris and Terry. The last contact, Chris claimed Terry hit him with a coffee table ornament and urinated on his leg. I knew of the volatile relationship the two shared.

By this time, Ofc Sterling, Ofc Clanin, and Ofc Wilcox all showed up. I informed the other officers of the situation. I also explained the layout of the home as I had been inside it before. I verified the NCO was still active through Sgt. Lowry. We all approached the home from the south side.

As I approached the home, prior to knocking on the door, I heard shuffling in

the garage. I could also see light through a crack at the top of the garage. I began to knock on the front door. No one answered. After a few minutes of knocking, I noticed the light inside the garage had been turned off.

Eventually, a female I recognized to be Terry answered the door. Terry stated Chris was not at the home and she had been in her room. Terry stated Chris was there earlier, but was not there now. Terry walked back inside the house to retrieve shoes and a coat.

When Terry came back I asked her to secure the dogs. Ofc Sterling had his K9 partner, Halo, with him and I did not want to dogs to interfere with each other. Terry took the dogs inside the secure them inside the residence.

Terry came back a third time. This time Terry attempted to get me to come to her and was whispering. There was a 20 foot hallway from where I was standing to the door Terry was at. Terry continued to whisper, but I was unable to hear her. I asked Terry to come closer to me so I could hear her. When she came closer, her facial expression was panic stricken. Terry stated she was scared. Terry said Chris told her he was going to kill her. I asked Terry to retrieve keys so we did not have to force entry, and cause any damage, to her door. Terry gave me her keys.

Ofc Sterling and I entered the hallway. I tried all the keys Terry gave me and was unsuccessful at opening the door. Ofc Sterling had the idea to pop the lock by sticking a card in the door jam. Ofc Sterling was able to open the door. See Ofc Sterling's supplemental report for the use of his K9.

Chris followed commands and exited the garage. I took Chris into custody. Chris stated the only reason why he was at the house was to get some items from the garage. I transported Chris to PSB.

At PSB, I read Chris his Miranda Warning. Chris said he understood them and agreed to speak with me. The following is a summary of what I learned; Chris and Terry have a NCO because of an incident where Chris sprayed Terry with WD40. Chris denied the report of being inside the home. Chris said he did not go inside the residence, and said he did not see Terry. When I told Chris what was being reported, he became more upset. I told Chris he was being charged with two counts of violating the NCO. Chris became even more upset.

Ofc Sterling spoke with Sarah, and Terry, and received more information about the visits Chris made. See his supplemental report for further detail.

I placed a copy of Eticket C2505478 on Chris's property. Chris was booked for the above mentioned charges.

Video uploaded to Viper.

CASE EVIDENCE:

BODY CAM IN-CAR VIDEO PHOTOS AUDIO
 UPLOADED TO VIPER UPLOAD TO VIPER LATER

A. Sterling K-72

Report # 16C37015

No Detective Assigned.

NARRATIVE:

On 11-13-16 at approximately 2338 hours, I responded to 2710 N 10th Place to assist Ofc Proctor with DVA violation call. The RP Sarah Bauer told dispatch her roommate Terry Lemieux has a CPOR against Chris Osborne. Chris is Terry's boyfriend. Sarah said Chris was currently on scene and she heard Terry screaming. Sarah said Chris carries a knife and hatchet at all times. She also heard Chris tell Terry when he gets out of jail he is going to come back to the residence and kill Terry.

Upon my arrival, I made contact with Ofc Proctor. I told him to get Terry out of the house and secure any pets that may be inside the residence. Officers on scene advised me they could hear noises inside the garage. We made the decision to clear the garage first. Terry provided Ofc Proctor with a bag full of keys. Ofc Proctor was able to get the dead bolt unlocked. I used a plastic card to slip the lock on the garage man door. I opened the door and gave K9 announcements warning Chris if he didn't surrender, I would send a police dog in to search the garage and he would be bit. I could hear a male's voice saying he was in the garage. I told Chris to walk out towards my voice. Chris surrendered peacefully and was taken into custody without incident. Chris later told me he gave himself up because he didn't want to get bit by the dog.

I remained on scene and spoke to the victim Terry Lemieux. Terry was visibly upset and crying. Terry said she is afraid of Chris and what he might do to her. Terry said Chris showed up just before Sarah called. Chris told Terry he didn't have any money and needed a place to stay. Terry told him he couldn't stay at the residence and he needed to leave. She said Chris just walked into her residence uninvited. Chris told Terry he needed to get some of his property from the garage to pawn so he could get a hotel room.

Sarah mentioned Chris actually came to their residence earlier in the day, at approximately 1400 hours. Sarah told Chris if he didn't leave she was going to call the police. Chris said he wasn't going to leave until he finished his beer and got his "stuff." Terry told Chris he had to leave because they don't get along. Sarah and Terry both heard Chris say he was going to murder Terry. Sarah said Chris is constantly threatening to kill Terry if he doesn't get his way. Terry is afraid Chris will carry out his threats. Chris's demeanor is always aggressive with Terry and he often times aggresses her when they are talking. This behavior frightens Terry. While Chris was inside the residence, he took Terry's dentures, keys and credit card. Terry told Chris she knew he took her dentures. Chris eventually returned them by throwing them one at a time up the stairs to Terry. Terry said she has tried to secure her house to keep Chris from entering but he always finds a way to get inside. Chris eventually left the residence but returned a second time.

Terry said the second time Chris came to her residence, he entered the residence again. Chris entered Terry's bedroom where she was working on some crafts. Chris didn't announce his presence until he shined a flashlight in Terry's eyes causing her to scream. Terry told him several times to stop shining the light in her eyes. Terry reached out to grab the light away from Chris and he became aggressive stating try and get it away. Terry screamed for Sarah to call the police. Chris told Terry he needed a place to stay and he wasn't able to get money for a hotel room. Sarah called the police and Chris disappeared. When we arrived Terry said she didn't know if Chris left or if he was hiding in the

residence. That is when we arrived and found Chris hiding in the garage.

Evidence in Viper:
Viewu

DUI DECISION PTS (check applicable boxes and give supporting comments)

- Odor of alcoholic beverage:
- Admitted consumption of alcohol:
- Slurred Speech:
- Impaired Memory:
- Glass/Bloodshot eyes:
- Gaze Nystagmus:
- Walk & Turn:
- One Leg Stand:
- Other:
- Drugs Suspected:
- Drug Recognition Evaluation Performed:
- Accident Involved:
- Injuries:

Prior to testing, defendant was substantially informed of the consequences of refusal and failure of the test as required by Sections 18-8002 and 18-8002A, Idaho Code.

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was (were) performed in compliance with Sections 18-8003 and 18-8004(4) Idaho Code and the standards and methods adopted by the Idaho State Police.

BAC tested by _____ using: Intoxilyzer 5000 LIFELOC FC20 Alco Sensor Instrument
Serial # of instrument _____ Other: _____
Name of person administering BAC test: _____ Date Certification expires: _____

BAC result:

Blood and/or Urine Test results pending: Yes No

Defendant refused test as follows:

NOTE: THE NAME OF THE DECLARANT AND THE DATES MUST BE TYPED BELOW FOR ELECTRONIC SUBMISSION TO THE COURT. THIS FORM SHOULD THEN BE PRINTED, SIGNED AND SUBMITTED WITH THE REST OF THE COMPLAINT PAPERWORK.

"I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing declarations and any attached reports and/or documents are true and correct."

DATE: 11/14/2016 SIGNED: _____

(Name and signature of Declarant)

PRINTED NAME: J. Proctor K89 _____

ORDER FINDING PROBABLE CAUSE

The defendant, Chris Osborn, having been arrested without a warrant for the offense(s) of 18-920 Violation of NCO x 2, and the Court having examined the declaration of J. Proctor K89 and A. Sterling K72, the Court finds probable cause for believing that said crime(s) has (have) been

PRE-BOOKING INFORMATION SHEET
KOOTENAI COUNTY PUBLIC SAFETY BUILDING

Booking # _____
 Name ID # _____ Date 11/14/14

Accepted by: <u>KC</u>
Agency Report # <u>16C37015</u>
BAC <u>1</u>
Warrant Check _____
Prob. Check _____
Prob. Officer _____
Locker # <u>507</u>
Location _____
Hold For: _____
For DUI Charge: _____
Was Call Requested _____
Was Call Made _____

ARRESTEE:

Name OSBORN CHRISTOPHER NEAL
Last First Middle

AKA _____
 Address 2710 N. 10TH PL

City CDA ST ID Zip 83815

Home Phone (636) 352-3936

City/State of Birth St. Louis, MO

Employer SELF

State MO Occupation CONTRACTOR Work Phone # _____

PHYSICAL DESCRIPTION:

Height 6'00" Weight 230 Sex M Hair BRO Eyes GRN
 Race W Glasses N Contacts N Facial Hair SHAVED
 Scars, Marks, Tattoo's NO NEW

Clothing Description BLACK JACKET, BLACK TSHIRT, BLUE JEANS

ARRESTING OFFICER INFORMATION:

Date / Time of Arrest 11/14/14 1 0009 Location 2710 N. 10TH PL. Dist 83
 Arresting Officer J. Proctor # 859 Agency CDAPD Arrival at PSB 0020

CHARGES AND BAIL: ARREST TYPE: **ON-VIEW** **WARRANT** **CITIZEN** **OTHER**

M/F	Code	Charges	Bail	Sentence	Warrant or Case #
1. M	18-920	VIOLATION OF NCO			
2. M	18-920	VIOLATION OF NCO			
3.					
4.					
5.					
6.					

Is the arresting officer aware of any mental or physical conditions this inmate may have which might affect his/her safety or ability to be held without special attention by jail staff? No, Yes (Explain) _____

Did the arrestee arrive with prescription medication? No, Yes

VEHICLE INFORMATION:

Vehicle Lic. _____ ST _____ YR _____ Make _____ Model _____ Body _____ Color(s) 1
 Vehicle Disposition _____

CITIZEN ARREST:

I hereby arrest the above named suspect on the charge(s) indicated and request a peace officer to take him/her into custody. I will appear as directed and sign a complaint against the person I have arrested.

Arresting Persons Name		Address		Phone #	
Race		Sex		DOB	
Employer		Phone #			
Officer	ID #	Approved By	ID #	Date	

VICTIM'S RIGHTS INFORMATION:

Name:	Code	Mult. Victims	Address:	Phone:
<u>TERRY LENOIRUX</u>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>2710 N. 10TH PL.</u>	<u>717-357-5340</u>
Occupation:	Race/Sex	Age	DOB	Business Address:
<u>US BANK CMA</u>	<u>W/F</u>	<u>53</u>	<u>4/19/53</u>	<u>3700 N. SELTREE</u>
				Bus. Phone:
				<u>666-7530</u>



Coeur d'Alene Police

Report for Incident 16C37015

Nature: DVA VIOLATION
Location: 83

Address: 2710 N 10TH PL
COEUR D'ALENE ID 83815

Offense Codes: NC

Received By: J.NIXON

How Received: 9

Agency: CDA

Responding Officers: J.PROCTOR, KO.WILCOX, T.CLANIN, A.STERLING

Responsible Officer: J.PROCTOR

Disposition: ACT 11/13/16

When Reported: 23:38:17 11/13/16

Occurred Between: 23:37:08 11/13/16 and 23:37:13 11/13/16

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

Complainant: 380113

Last: BAUER

First: SARAH

Mid: LOUISE

██████████

██████████

Address: 2710 N 10TH PL

Race: W

Sex: F

Phone: (208)625-0579

City: COEUR D'ALENE, ID 83814

Offense Codes

Reported: NC Not Classified

Observed:

Additional Offense: NC Not Classified

Circumstances

Responding Officers:

Unit :

J.PROCTOR

K89

KO.WILCOX

K58

T.CLANIN

K86

A.STERLING

K72

Responsible Officer: J.PROCTOR

Agency: CDA

Received By: J.NIXON

Last Radio Log: **:*.**.**. **/**/**

How Received: 9 911 Line

Clearance: 1 ARREST REPORT TAKEN

When Reported: 23:38:17 11/13/16

Disposition: ACT Date: 11/13/16

Judicial Status:

Occurred between: 23:37:08 11/13/16

Misc Entry:

and: 23:37:13 11/13/16

Modus Operandi:

Description :

Method :

LT

LOCATION TYPE

LT20

RESIDENCE/HOME

D	DRUGS/LIQUOR	D33
VR	VICTIM: RELATIONSHIP	VR-BG
		BOY/GIRLFRIEND
WT	WEAPONS / TOOLS USED	WT99 NONE
VI	VICTIM: INJURIES	VI-N NONE

Involvements

Date	Type	Description	Relationship
11/14/16	Law Incident	K9 USAGE 16C37017	RELATED INCIDENT
11/14/16	Name	LEMIEUX, TERRY ADLENE	VICTIM
11/14/16	Name	BAUER, SARAH LOUISE	WITNESS
11/14/16	Name	OSBORN, CHRISTOPHER NEAL	OFFENDER
11/13/16	Name	BAUER, SARAH LOUISE	Complainant
11/13/16	Cad Call	23:38:17 11/13/16 DVA VIOLATION	Initiating Call

Narrative

OFFICER: J. Proctor K89

SUSPECT(S) or DESCRIPTION(S):

Chris P. Osborn 10/26/1974

M - 18-920 - Violation of NCO - C2505478 - Booked at PSB

M - 18-920 - Violation of NCO - C3505478 - Booked at PSB

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By this time, Ofc Sterling, Ofc Clanin, and Ofc Wilcox all showed up. I informed the other officers of the situation. I also explained the layout of the home as I had been inside it before. I verified the NCO was still active through Sgt. Lowry. We all approached the home from the south side.

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Ofc Sterling spoke with Sarah, and Terry, and received more information about the visits Chris made. See his supplemental report for further detail.

I placed a copy of Eticket C2505478 on Chris's property. Chris was booked for the above mentioned charges.

Video uploaded to Viper.

CASE EVIDENCE:

BODY CAM IN-CAR VIDEO PHOTOS AUDIO
 UPLOADED TO VIPER UPLOAD TO VIPER LATER

Supplement

A. Sterling K-72

Report # 16C37015

No Detective Assigned.

NARRATIVE:

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I remained on scene and spoke to the victim Terry Lemieux. Terry was visibly upset and crying. Terry said she is afraid of Chris and what he might do to her. Terry said Chris showed up just before Sarah called. Chris told Terry he didn't have any money and needed a place to stay. Terry told him he couldn't stay at the residence and he needed to leave. She said Chris just walked into her residence uninvited. Chris told Terry he needed to get some of his property from the garage to pawn so he could get a hotel room.

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police. Chris told Terry he needed a place to stay and he wasn't able to get money for a hotel room. Sarah called the police and Chris disappeared. When we arrived Terry said she didn't know if Chris left or if he was hiding in the residence. That is when we arrived and found Chris hiding in the garage.

Evidence in Viper:
Viewu

Name Involvements:

OFFENDER : 436211

Last: OSBORN

██████████ ██████████

Race: W **Sex:** M

First: CHRISTOPHER

██████████ ██████████

Phone: (636)352-3936

Mid: NEAL

Address: 2710 N 10TH PL

City: COEUR D'ALENE, ID 83815

VICTIM : 198112

Last: LEMIEUX

██████████ ██████████

Race: W **Sex:** F

First: TERRY

██████████ ██████████

Phone: (717)357-5340

Mid: ADLENE

Address: 2710 N 10TH PL

City: COEUR D'ALENE, ID 83815

Complainant : 380113

Last: BAUER

██████████ ██████████

Race: W **Sex:** F

First: SARAH

██████████ ██████████

Phone: (208)625-0579

Mid: LOUISE

Address: 2710 N 10TH PL

City: COEUR D'ALENE, ID 83814

Oct. 3, 2016 4:37PM
Oct. 3, 2016 4:27AM

Mitchell, Haynes, Friedlander, Pete

No. 2925 P. 1
No. 2177 P. 2

State of Idaho)
County of Kootenai) ss
ORDER

State of Idaho)
County of Kootenai) ss
RETURN OF SERVICE

Filed _____
At _____ o'clock _____ M.
CLERK OF THE COURT

Filed _____
At _____ o'clock _____ M.
CLERK OF THE COURT

FIRST JUDICIAL DISTRICT, STATE OF IDAHO
KOOTENAI COUNTY DISTRICT COURT

BY: _____
Deputy

BY: _____
Deputy

STATE OF IDAHO
Plaintiff

Case No. 16-19409

vs. Osborn Christopher
Defendant

Citation No. _____

Arresting Agency COA

NO CONTACT ORDER

Defendant, having been charged with violating Idaho Code Section(s):

- 18-818 Domestic Assault or Domestic Battery
- 16-7905 Stalking
- 18-901 Assault
- 18-903 Battery
- 39-8312 Violation of a Protection Order
- 18-905 Aggravated Assault
- 18-907 Aggravated Battery
- 18-823 Attempted Strangulation
- Other: _____

against the PROTECTED PERSON(S) Terry Lemieux

THE COURT, having jurisdiction, and having provided the Defendant with notice of his/her opportunity to be heard, either previously or herein, **ORDERS THE DEFENDANT TO HAVE NO DIRECT OR INDIRECT CONTACT WITH THE PROTECTED PERSON(S) unless through an attorney.** You may not harass, follow, contact, attempt to contact, communicate with (in any form or by any means including another person), or knowingly go or remain within 300 feet of the protected person's person, property, residence, workplace or school. This order is issued under Idaho Code 18-920, Idaho Criminal Rule 46.2 and First District Administrative Order H2005-DW.1

IF THIS ORDER REQUIRES YOU TO LEAVE A RESIDENCE SHARED WITH THE PROTECTED PERSON(S), you must contact an appropriate law enforcement agency for an officer to accompany you while you remove any necessary personal belongings, including any tools required for your work. If disputed, the officer will make a preliminary determination as to what are necessary personal belongings; and in addition, may restrict or reschedule the time spent on the premises.

VIOLATION OF THIS ORDER IS A SEPARATE CRIME UNDER Idaho Code 18-920 for which bail will be set by a judge; it is subject to a penalty of up to one year in jail and up to a \$1,000 fine. THIS ORDER CAN ONLY BE MODIFIED BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON 10-3-2017 OR UNTIL THIS CASE IS DISMISSED.

If a DOMESTIC VIOLENCE (CIVIL) PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT (Title 39, Chapter 63 of the Idaho Code), the most restrictive of any conflicting provisions between the orders will control; however, entry or dismissal of another order shall not result in dismissal of this order.

NOTICE TO PROTECTED PERSON(S) OF RIGHT TO A HEARING: As a protected person(s), you have the right to a hearing before a Judge on the continuation of this Order within a reasonable time of its issuance. To request that hearing, and TO AVOID GIVING UP THIS RIGHT you must contact the Clerk of Court, Kootenai County Courthouse, 324 W. Garden Ave., Coeur d'Alene, ID 83814. Phone Number 208-446-1170.

The Clerk of the Court shall give written notification to the sheriff's office in the county of issuance IMMEDIATELY and this order shall be entered into the Idaho Law Enforcement Telecommunications System.

10-3-16
Date of Order

[Signature]
JUDGE No. 330

10/3/16
Date of Service on Defendant

I acknowledge having read and received this order.
[Signature]
DEFENDANT

[] Ordered / Served in open court

Faxed to: Jail Booking 208-446-1407 for service on defendant prior to release from custody (KCSO must return defendant's signed copy to court & forward a copy signed by defendant to arresting agency & KCSO Records)
 Agency _____ (Court ONLY sends copy to agency if faxing NCO after 5 pm)

Interoffice to: Prosecutor; KCPA Cd'A PA PFPA Rathdrum PA Public Defender

Mailed to: Protected Person(s) _____

Defense Attorney _____

Deputy Clerk

Date

10-3-2016

committed, or in the alternative _____, and that the defendant committed said crime(s), and that the defendant may be required to post bail prior to being released.

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2016 NOV 14 PM 12:12

DATED: This _____ day of _____, 20____. TIME: _____

[Handwritten signature]

(Name and signature of Judge for First Judicial District of the State of Idaho)

CLERK DISTRICT COURT
Cindy O'Reilly
DEPUTY

11-14-16

12:05 pm

CR 16-21670

CR-2016-21670
PCOR
Probable Cause Order
735819



Description	CR 2016-21670 Osborn, Christopher 20161114 First Appearance Judge Caldwell Clerk April Legard Def Rights	
Date	11/14/2016	Location 1K-COURTROOM6
Time	Speaker	Note
03:11:35 PM	Judge Caldwell	Calls Case Defendant Present In Custody Via Video
03:11:41 PM	Def	Understands Rights
03:11:43 PM	J	Violation NCO x2 Reviews Charges/Penalties
03:12:04 PM	PA	CDA PA Via Waiver Guilty Plea Both Charges 365/305 days jail - 60 days actual 500 Fine 2 yrs supervised probation NCO Remain Through Probation 365 days jail - CTS - Consecutive 1000/1000 Fine 2 yrs supervised probation NCO Remain Through Probation Reviews Defendant History NG - Offer Revoked Recommends 10k Bond
03:14:57 PM	Def	NG
03:14:59 PM	J	NG/PTC/JT
03:15:13 PM	Def	Will Apply for PD
03:15:40 PM		Reviews History - Work - Residence - Family - Will Appear for Court - Request Bond Reduction - Needs to Work
03:17:26 PM	J	10k Bond Set
03:18:01 PM	End	

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CR - 2016 - 21670
CMIN
Court Minutes
735818



MUST BE COMPLETED
TO BE CONSIDERED

Filed 11-18-16 AT 11:00 A.M.
CLERK OF THE DISTRICT COURT

BY [Signature] DEPUTY

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

APPLICATION FOR: CHRISTOPHER OSBORN
 DEFENDANT JUVENILE CHILD PARENT

CASE NO. CR 16-21670

BY _____
PARENT or GUARDIAN OF MINOR
DOB _____

FINANCIAL STATEMENT AND ORDER

NOTE: If this application is being made on behalf of a minor, please answer the following questions as they apply to his/her parents or legal guardian. Include information for you and your spouse.

I, the above named defendant (or the parent(s) on behalf of a minor), being first duly sworn on oath, depose and say in support of my request for court appointed counsel:

My current mailing address is: 2812 N 15th St, COB, ID 83814
Street or P.O. Box City State Zip Code

My current telephone number or message phone is: (636) 352-3936

Crimes Charged: Violating a no contact order

I request the Court appoint counsel at county expense; and I agree to reimburse the county for the cost of said defense, in the sum and upon the terms as the Court may order.

BELOW IS A TRUE AND CORRECT STATEMENT OF MY FINANCIAL CONDITION:

1. EMPLOYMENT:

A. Employed: ~~yes~~ no B. Spouse Employed: ~~yes~~ no
C. If not employed, of self-employed, last date of employment _____
D. My employer is: _____
Address: _____

2. HOUSEHOLD INCOME MONTHLY (Include income of spouse):

Wages before deductions \$ ~~602.00~~ 0 Other income: (Specify: Child Support, S.S., V.S., A.D.C.,
Less Deductions \$ _____ Food Stamps, Etc.)
Net Monthly Wages \$ _____ \$ 0

3. HOUSEHOLD EXPENSES MONTHLY:

Rent or Mortgage Payment	\$ <u>602.00</u>	Child Care	\$ <u>0</u>
Utilities	\$ <u>0</u>	Recreation	\$ <u>0</u>
Clothing	\$ <u>0</u>	Medical	\$ <u>0</u>
Transportation	\$ <u>0</u>	Insurance	\$ <u>0</u>
School	\$ <u>0</u>	Other (Specify)	\$ <u>"</u>
Food	\$ <u>0</u>		

CR-2016-21670
ORPD
Order Appointing Public Defender
735804



P.D.

3. HOUSEHOLD EXPENSES MONTHLY: (cont.)

DEBTS: Creditor	<u>0</u>	Total \$	<u>0</u>	\$	<u>0</u>	per mo
Creditor	<u>0</u>	Total \$	<u>0</u>	\$	<u>0</u>	per mo
Creditor	<u>0</u>	Total \$	<u>0</u>	\$	<u>0</u>	per mo

4. ASSETS:

A. I (we) have cash on hand or in banks \$ 0

B. I (we) own personal property valued at \$ 0

C. I (we) own vehicle(s) valued at \$ 0

D. I (we) own real property valued at \$ 0

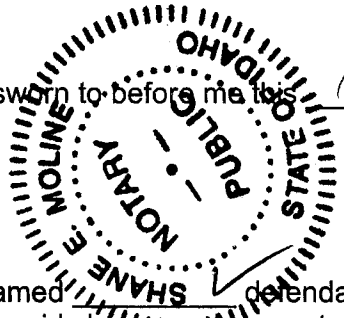
E. I (we) own stocks, bonds, securities, or interest therein \$ 0

5. THE FOLLOWING ALSO AFFECTS MY FINANCIAL CONDITION (Specify): _____

6. DEPENDENTS: 1 self 0 spouse 0 children _____ other (specify) _____

(number)
[Signature]
APPLICANT

Subscribed and sworn to before me this 17 day of Nov, 2016.



[Signature]
NOTARY PUBLIC/CLERK/JUDGE

The above named 1 defendant 0 parent 0 guardian appeared before the court on the aforesaid charge and requested the aid of counsel. The court having considered the foregoing, and having personally examined the applicant; **ORDERS** **DENIES** the appointment of the service of counsel.

THE APPLICANT MAY BE ORDERED TO PAY REIMBURSEMENT FOR THE COST OF APPOINTED COUNSEL AT THE CONCLUSION OF THE CASE.

ENTERED this 18th day of Nov., 2016.

Custody Status: In Out

[Signature]
JUDGE

Copies to:
 Prosecuting Attorney CDA PA Email
 Public Defender Email

Bond \$ 10,000

11-18-16 [Signature]
Date Deputy Clerk

2091

ORIGINAL

Jason D. Lambert, Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 9517

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2016 DEC -7 AM 9: 52

CLERK DISTRICT COURT
[Signature] TK
DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-16-0021670
	)	Misd
V.)	
	)	MOTION FOR RECOGNIZANCE
CHRISTOPHER NEAL OSBORN,	)	RELEASE OR REDUCTION OF BOND
)	
)	
Defendant.)	

COMES NOW, the above named defendant, by and through his attorney, Jason D Lambert, Deputy Public Defender, and hereby moves the Court for its Order releasing the defendant on his own recognizance or reducing the bond in this matter.

This motion is made pursuant to the 8th and 14th amendments of the U.S. Constitution; Article I, §§ 6 and 13 of the Idaho Constitution; and I.C.R. 46.

This motion is made on the grounds that defendant has ties to the community and is not a flight risk, and the bond as set violates the defendant's rights to due process and to be free from excessive bond and cruel and unusual punishment as guaranteed by the U.S. and Idaho Constitutions.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

**MOTION FOR RECOGNIZANCE RELEASE
OR REDUCTION OF BOND**

CR - 2016 - 21670
MOTN
Motion
735793

Page 1



DATED this 6 day of December, 2016.

THE LAW OFFICE OF THE PUBLIC
DEFENDER OF KOOTENAI COUNTY

BY:


JASON D LAMBERT
DEPUTY PUBLIC DEFENDER

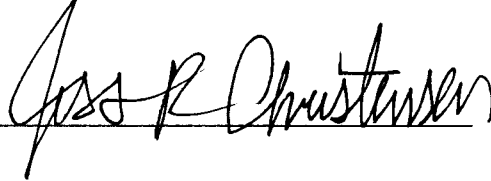
CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 7 day of December, 2016, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail



2099

ORIGINAL

Jason D. Lambert, Deputy Public Defender
The Law Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 9517

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED:

2016 DEC 13 PM 2:55

CLERK DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,)		
	)	CASE NUMBER	CR-16-0021670
Plaintiff,	)		Misd
)		
V.	)	MOTION TO SHORTEN TIME	
)		
CHRISTOPHER NEAL OSBORN,)		
)		
Defendant.)		

COMES NOW, the above named defendant, by and through his attorney, Jason D Lambert, Deputy Public Defender, and hereby moves the Court for an Order to Shorten Time. This motion is made on the grounds that the hearing is scheduled for tomorrow.

DATED this 13 day of December, 2016.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: *[Signature]*

JASON D LAMBERT
DEPUTY PUBLIC DEFENDER

MOTION TO SHORTEN TIME

CR-2016-21670
MOTN
Motion
735777



Page 1

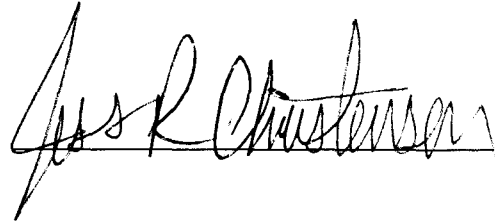
CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 13 day of December, 2016, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail


A handwritten signature in black ink, appearing to read "J. R. Christensen", written over a horizontal line.

Description	CR 2016-21670 Osborn, Christopher 20161214 Bond Hearing CR 2016-19408 Osborn, Christopher 20161214 Review Hearing Judge Peterson Clerk Cassie Poole	
Date	12/14/2016	Location 1K-COURTROOM7
Time	Speaker	Note
<u>10:50:17 AM</u>	Judge Peterson	Defendant present in custody with Mr. Szott, Ms. Tinkey for the city 21670 there is a request for his release looks like 10k bond was set by Judge Caldwell.
<u>10:51:53 AM</u>		He has no bond warrant on 16-19408 alleging new offense the 2 nco violations.
<u>10:52:04 AM</u>	Szott, Paul	We were just appointed would like to enter denials on OSC Move to vacate bond hearing in 16-21670
<u>10:53:02 AM</u>		Client understands allegations of probation violation
<u>10:53:07 AM</u>	Judge Peterson	Enter denials set for evidentiary hearing 1/25 9 am
<u>10:54:37 AM</u>	End	

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CR - 2016 - 21670
CMIN
Court Minutes
735770



Description		CR 2016-21670 Osborn, Christopher 20170120 Pretrial Conference Judge Walsh Clerk Wanda Butler	
Date		1/20/2017	Location 1K-CRT4
Time		Speaker	Note
11:06:45 AM	J	Osborn, Christopher	CR-2016-21670 CMIN Court Minutes 735761 
11:06:50 AM		CR 16-21670	
11:06:53 AM		DF present in custody with Mr. Lambert Ms. Paul for state.	
11:07:01 AM		DF to plea guilty to both NCO violations.	
11:07:09 AM	PA	365/320 jail 15 UJT 2 years supervised probation asking the probation terms be concurrent and all other terms be consecutive.	
11:07:42 AM	DA	That is the agreement - he has 67 days CTS in this matter.	
11:08:11 AM	DF	Yes plea to both NCO violations.	
11:08:19 AM		That is the agreement.	
11:08:26 AM		I understand rights and give up with plea.	
11:09:16 AM	PA	Citation - both occurred on 11/13 one in the day time and the other later in the night.	
11:09:44 AM	DF	I plea guilty to violation of NCO	
11:09:54 AM		I plea guilty to violation of NCO later that day.	
11:10:02 AM	J	Accept your guilty pleas.	
11:10:09 AM	PA	This case causes state's concern. Protected person roommate called and reported they were present at the house and she had concerns about it.	
11:10:38 AM		Continues to review facts of case. When law enforcement arrived after talking for a while with victim, she had a panic look on her face and whispered to law enforcement that DF was there threatening to kill her. Conduct is concerning in this case.	
11:11:54 AM		Reviews bench calendar.	
11:12:53 AM	DA	Heavily negotiated - includes resolution of PV matter as well.	
11:13:12 AM		Here to take responsibility. He wants to get out of the area once he's out of custody.	
11:13:27 AM		Ask to follow recs, appropriate and meets goals of sentencing.	
11:13:40 AM	DF	I have a job offer in St. Louis Missouri. Relationship is over. Accept responsibility. Put this behind me.	
11:14:12 AM		Understand that supervised probation would need to be transferred.	

<u>11:14:23 AM</u>	J	Reviews case....concerning conduct.
<u>11:15:04 AM</u>		Fines consecutive jail consecutive probation concurrent
<u>11:15:14 AM</u>		\$300 fine in both cases PIF 30 days or payment plan.
<u>11:15:24 AM</u>		365 jail in each matter, CTS 67 days in both cases and setting aside 20 days of Discretionary jail. Suspending 278 days in each matter.
<u>11:15:59 AM</u>	DF	Understand UJT and accept it.
<u>11:16:08 AM</u>	J	Ordering 2 year supervised probation in each charge concurrent. Reviews terms. Sign probation addendum.
<u>11:17:08 AM</u>		Order DV eval and any TX recs.
<u>11:17:24 AM</u>		Ordering do not threaten or assault, etc, any victim's or witnesses.
<u>11:19:15 AM</u>	DF	Understand terms and accept them.
<u>11:19:15 AM</u>	end	

Produced by FTR Gold™
www.fortherecord.com

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO V
CHRISTOPHER NEAL OSBORN
2710 N 10TH PL
COEUR D'ALENE, ID 83815

CR - 2016 - 21670
JDMT
Judgment
735715



JUDGMENT FILED 1/20/17 AT 1118A .m.

CLERK OF THE DISTRICT COURT

BY Wanda Butler, DEPUTY BOND:

AGENCY: COEUR D'ALENE PD
CASE # CR-2016-0021670 CITATION # C2505478
CHARGE: I18-920 NO CONTACT ORDER VIOLATION
AMENDED:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Dismissed - States Motion
- Judgment—Not Guilty
- Judgment on Trial—Guilty
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment. Fines 6-secature

Fine / Penalty \$ 300 which includes costs, and probation fee if applicable. Suspended \$ _____

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service* _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Community Service* in lieu of jail **Must sign up within 7 days***

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution and/or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 278 days, Credit 67 days, Discretionary Jail 20 days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum. Jail consecutive

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR 2 YEAR(S) ON THE FOLLOWING CONDITIONS: probation concurrent

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a _____, and file proof of _____, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Other _____

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN
THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: Def. IC Def. Atty. PD / Pros. CDA Date 1-20-2017 Judge# 328

[] workrelease@kcgov.us [] AMP via email: kcmp@kcgov.us [] Dr. Serv. fax 208-334-8739 [] Other _____

[] KCSO RECORDS (fax 446-1307) [] Agency _____ Date 1/20/17 Deputy Clerk Wanda Butler

emailed 1/23/17

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO V
CHRISTOPHER NEAL OSBORN
2710 N 10TH PL
COEUR D'ALENE, ID 83815

CR-2016-21670
JDMT
Judgment
735706



JUDGMENT
FILED 1-20-17 AT 11:18A.m.

CLERK OF THE DISTRICT COURT

BY [Signature], DEPUTY
BOND:

MO
AGENCY: COEUR D'ALENE PD
CASE # CR-2016-0021670 CITATION # C2505478
CHARGE: I18-920 NO CONTACT ORDER VIOLATION
AMENDED:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Dismissed - States Motion
- Judgment—Not Guilty
- Judgment on Trial—Guilty
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment. Fines consecutive

Fine / Penalty \$ 300 which includes costs, and probation fee if applicable. Suspended \$ _____

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service* _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Community Service* in lieu of jail **Must sign up within 7 days*.**

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution and/or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 278 days, Credit 67 days, Discretionary Jail 20 days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum. Jail consecutive

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR 2 YEAR(S) ON THE FOLLOWING CONDITIONS: probation concurrent

Supervised - See Addendum

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a _____, and file proof of _____, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Other _____

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN
THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: Def. IC Def. Atty. PD [] Pros. COA [] Comm. Serv. [] Jail [] warrants@kcgov.us [] workrelease@kcgov.us [] AMP via email: kcmp@kcgov.us [] Dr. Serv. fax 208-334-8739 [] Other RE: NCO

[] KCSO RECORDS (fax 446-1307) [] Agency _____ Date 1/20/17 Deputy Clerk Wanda Butler

emailed 1/23/17

FIRST JUDICIAL DISTRICT, STATE OF IDAHO
 COUNTY OF KOOTENAI
 SUPERVISED PROBATION ORDER
 (Addendum)

STATE OF IDAHO } SS
 COUNTY OF KOOTENAI }
 FILED: 1/20/17
 AT 11:18 O'CLOCK A.M.
 CLERK, DISTRICT COURT
 DEPUTY

STATE OF IDAHO V. Christopher Osborn

CASE #: CR- 16-21670

IT IS FURTHER ORDERED:

Discretionary Jail Time (DJT), in the amount of 20 days are ordered, to be used by the Probation Office as a sanction for behavior that violates the terms of probation. The Probation Office may impose up to two (2) consecutive days of discretionary jail time without a hearing or the prior approval of the Court.

DEFENDANT SHALL REPORT to the Kootenai County Adult Misdemeanor Probation Office @ 501 Government Way (PO Box 9000) Coeur d'Alene, Id. 83816-9000, (446-1985), WITHIN THREE (3) BUSINESS DAYS of today's date, in reference to this order. The following is also ordered:

THE DEFENDANT SHALL:

Fully cooperate, comply and be courteous with the Probation Office; be completely honest and forthright, and follow any and all reasonable terms and conditions that the probation office may impose, including but not limited to:

- Pay probation supervision fees as allowed by statute and set by the Sliding Scale Fee Schedule and Financial Eligibility Form approved by Administrative Order dated April 26, 2012, not to exceed \$75.00 per month. This fee does not include any additional costs or fees for drug testing, drug/alcohol/mental health treatment, and costs associated with SCRAM monitoring or GPS tracking.
- Not evade supervision, and notify the probation office immediately of any change of address.
- Notify the Probation Office within 24 hours of any law enforcement contact.
- Maintain verifiable, sustained and gainful employment, or participate in a vocational/educational program aimed at enhancing personal/community adjustment. A search for employment, if applicable, will be sought in full earnest.
- Submit readily to searches of his/her person, personal effects, vehicle, residence and/or any accessible property without a warrant, pursuant to probation supervision, at the request of the Probation Office or Law Enforcement.
- Abstain from using any alcoholic beverages.
- Not use or possess any illegal drug, not abuse any drug, and readily submit to testing for the presence of drugs or alcohol, as requested by the Probation Office or Law Enforcement. Test samples shall not be altered in any way.
- Not be present in an establishment where the primary business is the sale of alcohol (except for valid employment purposes) and/or other places prohibited by the Probation Office.
- Not associate with other persons on probation/parole or those who engage in unlawful activity.
- Not violate any federal, state or local laws, greater than a traffic infraction.

Additionally, the defendant shall complete a certified/approved:

- Drug/Alcohol Evaluation; -DUI Evaluation; -Domestic Violence Evaluation; -Mental Health Evaluation;
- Sexual Offender Evaluation; -Other Evaluation _____

and satisfactorily participate in and complete the recommended and approved treatment in a manner and schedule set by the Probation Office.

-Not threaten, assault, intimidate, harass, or otherwise bother any victims or witnesses associated with this matter and not initiate any contact directly or indirectly with any such party until further order of court or probation.

Other: follow treatment VCS.

CR-2016-21670
 SPROB
 Supervised Probation Ordered
 735747



I, THE DEFENDANT, UNDERSTAND THAT ALL SUSPENDED PENALTIES (JAIL/FINES), ARE SUBJECT TO COMPLIANCE WITH ALL PROBATION TERMS, AND DO COMPLETELY ACCEPT THE TERMS OF THIS ORDER AND PROBATION.

Signed: [Signature] (Defendant) Oral Agreement (Defendant)

DATED THIS 17th DAY OF Jan., 2017. JUDGE: [Signature] #338

Distribution: AMP Fax 446-1990 Prosecutor CDA Defendant [Signature] Defense Attorney PD
 Interoffice amp@mail 1:51 pm 1/20/17

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE
P.O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 2-1-17
AT 2:43 O'CLOCK P M
CLERK, DISTRICT COURT
DEPUTY
ps

STATE OF IDAHO,

Plaintiff,

vs.

Christopher Neal Osborn,

Defendant.

Judge: Clark A Peterson
Case No. CR-16-21670
Date Submitted: January 30, 2017
Assigned Prosecutor: CDAPA

AFFIDAVIT OF PROBATION VIOLATION

-- WARRANT REQUEST --

Affiant, being first duly sworn, deposes and says:

1. I am a Misdemeanor Probation Officer for Kootenai County. I have reviewed the file/records in this case.
2. An Order or Judgment was entered in this case on January 20, 2017 requiring the above named defendant to comply with conditions of probation, including:

1. **The defendant shall report to the probation department within three business days of sentencing or release from incarceration.**

Narrative: The defendant was ordered to report to the Kootenai County Adult Misdemeanor Probation Department within 3 business days of release from custody. The defendant was released from jail on January 25, 2017 and has failed to report as ordered.

The defendant's whereabouts are currently unknown and it appears he is evading supervision, I am therefore requesting a bench warrant be issued.

Recommendation: A specific recommendation on this matter will be presented by the probation office upon a finding of violation, so that the most current information may be presented to the court.

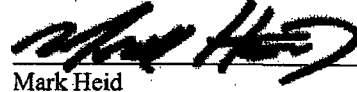
IT IS RECOMMENDED THAT A BENCH WARRANT BE ISSUED ON THIS MATTER WITH A LATER SETTING FOR AN ORDER TO SHOW CAUSE HEARING.

CR-2016-21670
AFFD
Affidavit
735704



"I certify (or declare) under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct."

Monday, January 30th, 2017)
Date)



Mark Heid
Probation Officer

Distribution: Original-Court, Copies-File and CDAPA

Attachments:

COEUR D'ALENE CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323
FAX: (208) 769-2326

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2017 FEB -1 PM 2:43

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE CLERK DISTRICT COURT
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI
[Handwritten signature]
PB

STATE OF IDAHO,)
Plaintiff,)
vs.)
CHRISTOPHER NEAL OSBORN,)
2710 N 10TH PL)
CDA, ID 83815)
[Redacted])
Defendant.)

CASE NO. CRM-16-021670
MOTION TO REVOKE
DEFENDANT'S PROBATION
AND FOR ISSUANCE OF
A BENCH WARRANT

CR-2016-21670
MOTN
Motion
735698



COMES NOW, the Office of the Coeur d'Alene City Attorney - Criminal Division and respectfully moves the Court for an order directing the Defendant to appear before the Court for probation revocation proceedings, pursuant to Idaho Code § 19-2601, et seq. In support of this motion, the State presents the following:

On January 20, 2017, the Court entered a judgment requiring the Defendant to comply with conditions of probation or sentence, including:

- 1. **The defendant shall report to the probation department within three business days of sentencing or release from incarceration. See judgment.**

The Defendant failed to comply with those terms and conditions as shown by the attached affidavit of Probation Officer Mark Heid, dated January 30, 2017. The affidavit states:

- 1. *The defendant was ordered to report to the Kootenai County Adult Misdemeanor Probation Department within 3 business days of release from custody. The defendant was released from jail on January 25, 2017 and has failed to report as ordered. The defendant's whereabouts are currently unknown and it appears he is evading supervision, I am therefore requesting a bench warrant be issued.*

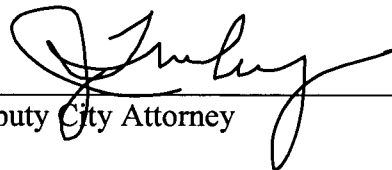
The files and records of this case show that the Defendant had personal knowledge of the judgment.

WHEREFORE, the State requests proceedings according to law to revoke the Defendant's probation, and that the Court impose the suspended sentence.

Further the State requests the Court immediately issue a bench warrant for the Defendant's arrest.

DATED this 1st day of February, 2017

BY:


Deputy City Attorney

Description	CR 2017-11560 Osborn, Christopher 20170703 First Appearance Arraignment CR 2017-11559 Osborn, Christopher 20170703 First Appearance Arraignment CR 2016-19408 Osborn, Christopher 20170703 First Appearance Arraignment CR 2016-21670 Osborn, Christopher 20170703 First Appearance Arraignment CR 2017-10403 Osborn, Christopher 20170703 First Appearance Arraignment Judge McGee Clerk Alyssa Schertz Def Rights		
Date	7/3/2017	Location	1K-CRT6
Time	Speaker	Note	
05:59:21 PM	Judge McGee	Calls Case Defendant Present In Custody Via Video	
05:59:42 PM	J	Missing PC Asks PD if there is any	
06:01:02 PM	CR 2016-19408		
06:01:12 PM	J	Rev Warrant Rev PV Allegations Refer back to Judge Peterson Atty: Mr. Lambert	
06:01:59 PM	CR 2016-21670		
06:02:26 PM	J	No Bond Rev Warrant Next Hearing: 07/24/2017 3pm Atty: Mr. Lambert	
06:03:01 PM	CR 2017-11560		
06:03:06 PM	J	Rev Citation for Battery Asks def regarding counsel There is no PC- he is not being held on this case	
06:03:54 PM	Def	"Sure"	
06:03:57 PM	J	Appoint Public Defender	
06:04:10 PM	CR 2017-11559		
06:04:16 PM	J	Reviews Charges/Penalties 2nd Degree Kidnapping Obstructing Officer	

CR - 2016 - 21670
 CMIN
 Court Minutes
 735682



		Appoint Public Defender Order to Consolidate Charges Set PH w/in 14 days
<u>06:05:42 PM</u>	CR 2017-10403	
<u>06:05:46 PM</u>	J	Seperate NCO Violation Bond set \$15K
<u>06:06:56 PM</u>	J	Req to have def removed due to mouthing off Set PH w/in 14 days Appoint Public Defender
<u>06:07:59 PM</u>	CR 2017-11559	
<u>06:08:04 PM</u>	J	Req Bond \$100K Rev def criminal history Bond set \$100K
<u>06:11:07 PM</u>	END	

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COEUR D'ALENE CITY ATTORNEY'S OFFICE
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STATE OF IDAHO)
COUNTY OF KOOTENAI)
FILED:

2017 JUL -7 PM 2:47

CLERK DISTRICT COURT
DEPUTY
M

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

STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
CHRISTOPHER NEAL OSBORN,)
TRANSIENT)
)
)
)
)
)
)
)
Defendant.)
)
)
)

CASE NO. CRM-16-021670
**AMENDED MOTION TO REVOKE
DEFENDANT'S PROBATION**

CR-2016-21670
MOTN
Motion
735678



Amended to Add the Addendum to OSC dated January 30, 2017.

COMES NOW, the Office of the Coeur d'Alene City Attorney - Criminal Division and respectfully moves the Court for an order directing the Defendant to appear before the Court for probation revocation proceedings, pursuant to Idaho Code § 19-2601, et seq. In support of this motion, the State presents the following:

On January 20, 2017, the Court entered a judgment requiring the Defendant to comply with conditions of probation or sentence, including:

- 1. The defendant shall report to the probation department within three business days of sentencing or release from incarceration. See judgment.**

The Defendant failed to comply with those terms and conditions as shown by the attached affidavit of Probation Officer Mark Heid, dated January 30, 2017. The affidavit states:

- 1. The defendant was ordered to report to the Kootenai County Adult Misdemeanor Probation Department within 3 business days of release from custody. The defendant was released from jail on January 25, 2017 and has failed to report as ordered.*

The defendant's whereabouts are currently unknown and it appears he is evading supervision, I am therefore requesting a bench warrant be issued.

On January 20, 2017, the Court entered a judgment requiring the Defendant to comply with conditions of probation or sentence, including:

1. **The defendant shall not commit any similar offenses or law violations.** See judgment.

The Defendant failed to comply with those terms and conditions as shown by the attached affidavit of Probation Officer Steven Johnson, dated July 5, 2017. The affidavit states:

1. *According to Coeur d'Alene Police Report #17C25792, the defendant was arrested on 06/30/17 for new charges of 18-4503 Kidnapping, 18-920 Violation of a No Contact Order, and 18-705 Resisting/Obstructing an Officer. Judge McGee found probable cause on 07/03/17 and the new charges were assigned to Kootenai County, case number CR-17-11559. Please see attached police report.*

The files and records of this case show that the Defendant had personal knowledge of the judgment.

WHEREFORE, the State requests proceedings according to law to revoke the Defendant's probation, and that the Court impose the suspended sentence.

DATED this 6th day of July, 2017

BY:


Deputy City Attorney

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE
P.O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO,

Plaintiff,

vs.

Christopher Neal Osborn,

Defendant.

Judge: Clark A Peterson

Case No. CR-16-21670

Date Submitted: July 5, 2017

Assigned Prosecutor: CDAPA

AFFIDAVIT OF PROBATION VIOLATION

Affiant, being first duly sworn, deposes and says:

ADDENDUM TO OSC DATED 1/30/2017

OSC set for 7/24/17 at 3pm.

1. I am a Misdemeanor Probation Officer for Kootenai County. I have reviewed the file/records in this case.
2. An Order or Judgment was entered in this case on January 20, 2017 requiring the above named defendant to comply with conditions of probation, including:
 1. **The defendant shall not commit any similar offenses or law violations.**

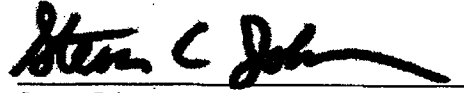
Narrative: According to Coeur d'Alene Police Report #17C25792, the defendant was arrested on 06/30/17 for new charges of 18-4503 Kidnapping, 18-920 Violation of a No Contact Order, and 18-705 Resisting/Obstructing an Officer. Judge McGee found probable cause on 07/03/17 and the new charges were assigned to Kootenai County, case number CR-17-11559. Please see attached police report.

Recommendation: A specific recommendation on this matter will be presented by the probation office upon a finding of violation, so that the most current information may be presented to the court.

IT IS RECOMMENDED THAT THIS MATTER BE SET FOR AN ORDER TO SHOW CAUSE HEARING.

"I certify (or declare) under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct."

Wednesday, July 5th, 2017)
Date)


Steven Johnson
Probation Officer

Distribution: Original-Court, Copies-File and CDPA

Attachments: Police Report# 17C25792

Spillman Data Systems, Inc.

Report for Incident 17C25792

Nature: KIDNAPPING
Location: 83

Address: 2710 N 10TH PL;OPS2
COEUR D'ALENE ID 83814

Offense Codes: KIDN, NCOV, WARR

Received By: J.WADSWORTH

How Received: T

Agency: CDA

Responding Officers: C.ZIEGLER, J.WIEDEBUSH, A.CAIAFA, D.ODELL, J.Guthrie, D.KELLEY, B.MCCORMICK,
G.WESSEL, A.KNISLEY, S.YOUNGMAN, N.KNOLL, E.TURRELL, J.Beamesderfer, M.TODD

Responsible Officer: C.ZIEGLER

Disposition: CAA 06/30/17

When Reported: 10:10:10 06/30/17

Occurred Between: 10:05:22 06/30/17 and 10:05:22 06/30/17

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

Complainant: 162612

Last: VANGUILDER

First: CHARLES

Mid: CECIL

■■■■

Dr ■■■■

Address: 2620 N 10TH PL

Race: W

Sex: M

Phone: (208)784-3941

City: COEUR D'ALENE, ID 83815

Offense Codes

Reported: NC Not Classified

Observed: KIDN Kidnapping

Additional Offense: KIDN Kidnapping

Additional Offense: NCOV No Contact Order Violation

Additional Offense: WARR WARRANT SERVICE

Circumstances

VIPR VIPR EVIDENCE STORAGE - CDAPD

Responding Officers:

Unit :

C.ZIEGLER

K96

J.WIEDEBUSH

K84

A.CAIAFA

K48

D.ODELL

K30

J.Guthrie

K43

D.KELLEY

K76

B.MCCORMICK

K6

G.WESSEL

K21

A.KNISLEY

K82

S.YOUNGMAN

K111

Printed on: 07/03/17 Printed by: 657

N.KNOLL	K66
E.TURRELL	K60
J.Beamesderfer	K252
M.TODD	K19

Responsible Officer: C.ZIEGLER
Received By: J.WADSWORTH
How Received: T Telephone
When Reported: 10:10:10 06/30/17
Judicial Status:
Misc Entry:

Agency: CDA
Last Radio Log: **:*:* **/**/**
Clearance: 1 ARREST REPORT TAKEN
Disposition: CAA Date: 06/30/17
Occurred between: 10:05:22 06/30/17
and: 10:05:22 06/30/17

Modus Operandi:	Description :	Method :
LT	LOCATION TYPE	LT20 RESIDENCE/HOME
D	DRUGS/LIQUOR	D99
VR	VICTIM: RELATIONSHIP	VR-BG BOY/GIRLFRIEND
VI	VICTIM: INJURIES	VI-N NONE
WT	WEAPONS / TOOLS USED	WT99 NONE

Involvements

Date	Type	Description	Relationship
------	------	-------------	--------------

Narrative

OFFICER: C.ZIEGLER K96

SUSPECT(S) or DESCRIPTION(S):

Christopher N. Osborn [REDACTED]

Terry A. Lemieux [REDACTED]

{M or F, criminal code, charges per suspect and related citation numbers}

-Christopher N. Osborn

I.C. 18-4503 Kidnapping (2nd Degree) [Felony]

I.C. 18-920(3) Violation of a No Contact Order (4th Offense) [Felony]

I.C. 18-705 Resisting/Obstructing an Officer [Misdemeanor]

Charged on citation C2506183

-Terry A. Lemieux

I.C. 18-705 Resisting/Obstructing an Officer [Misdemeanor]

Charged on citation C3040162

 WEAPON INVOLVED (describe): DOMESTIC VIOLENCE RELATED MEDICAL TRANSPORTATION SHELTER PAMPHLET OFFERED INJURIES (describe): MEDICAL ATTENTION INVOLVED: ON SCENE TRANSPORTED SELF-SOUGHT MEDICAL RELEASE OBTAINED

CASE SUMMARY: A concerned neighbor called in Christopher N. Osborn was at 2710 N. 10th Pl. staying with Terry A. Lemieux in violation of their No Contact Order. Additionally, Christopher had several felony and misdemeanor warrants. Christopher walked outside just as officers arrived. Upon noticing them, he fled back into the residence. Officers quickly surrounded the house and attempted to call Christopher out. Two occupants exited the residence, determined to be Terry's daughter and a family friend, and they advised Christopher was still inside with Terry. Officers made entry due to the exigent circumstance Christopher was possibly holding Terry hostage. Christopher was found hiding under a mattress in the bedroom and taken into custody. Terry was located hiding in the attic.

NARRATIVE: On 06/30/17 at approximately 1015 hours, I responded to the listed location in reference to a welfare check. Charles C. Vanguilder called Dispatch to request a welfare check of his neighbor, Terry A. Lemieux. Charles stated Terry had a history of domestic issues with a male (later identified as Christopher N. Osborn), and that male was currently at the house with her. He also believed Terry had a "protection order" against the male, and she had told him the male (Christopher) was never to be at the residence again. He expressed concern for Terry's safety.

Dispatch confirmed Christopher had three warrants for his arrest: A felony arrest warrant for I.C. 18-920(3) Violation of an NCO in reference to Terry, and

two misdemeanor bench warrants for I.C. 20-222 Probation Violations. They also confirmed a No Contact Order was currently in NCIC listing Terry as the protected person and Christopher as the defendant.

I later confirmed the NCO in Viper. It ordered the defendant (Christopher) to have no direct or indirect contact with the protected person (Terry) unless through an attorney. It further prohibited harassment, following, contacting, attempting to contact, communicating with, or knowingly going or remaining within 300 feet of the protected person's person, property, residence, workplace, or school. The order would remain in effect until 10/03/17 and was issued on 10/03/16.

I made myself familiar with Christopher's physical appearance, approximate height, and approximate weight, while en route to the residence.

Upon my arrival I positioned myself on the north side of the garage as it and the main door of the house faced westward towards N. 10th Pl. I caught a brief glimpse of a female in the backyard, but my view was obstructed by a wooden fence. Ofc. J. Wiedebush arrived on scene and approached the residence on foot from the south. As he was walking directly in front of the house, I heard the front door begin to open. From my position I watched Christopher walk several steps from the front garage door before he noticed Ofc. Wiedebush. He made an excited utterance of "oh shit" and fled directly back into the residence. I yelled his name, commanding him to stop and show his hands, but he did not comply.

Ofc. Wiedebush took up position in front of the house as I immediately ran to the back of the residence. I took up an elevated position overlooking the backyard. Between Ofc. Wiedebush and I, we had complete visual coverage of the entire yard surrounding the house.

I advised Dispatch of the current situation, and additional officers began to respond. I knew it was highly unlikely Christopher was able to run through the entire house, out the back door, and jump a fence, before I was able to clear half the distance outside and gain position to cover the backyard, but a perimeter was formed by responding officers in the event he did run.

Within minutes a younger female exited the house, identified as Terry's daughter (Nicole Ad'Lynn Lemieux). She first advised Christopher ran out the back door, but confirmed he was last seen in the house with her mother and a second male named James W. Nutting (aka: Jimmy). James was apparently a friend of Terry's.

At approximately 1050 hours I began to make announcements into the residence instructing Christopher, Terry, and James to exit the residence immediately. I specifically announced that Christopher as under arrest, and commanded he come out of the residence with his hands empty and visible. Only James complied, exiting the residence as instructed. He believed Christopher had entered the attic, and confirmed Terry was last seen inside.

(Announcements throughout the remainder of the incident, and until Christopher and Terry were located.)

Medical personnel were called to stage near the scene based on growing concerns Christopher may have injured Terry or was holding her against her will, as both James and Nicole's stories placed Terry inside the residence with Christopher.

Several more attempts to gain Christopher's compliance were made, to include feinting entry into the back door using a battering ram, breaking the south

facing window screen to gain observation of the bottom floor living room, and announcing CS gas would be deployed inside the house. The bottom floor of the residence was cleared of either party in the process. These tactics were met with silence from upstairs.

Sgt. D. O'Dell made the decision to proceed up a narrow staircase and onto the second floor in what is typically considered a "fatal front" due to the ease at which a suspect can fire on advancing officers, scoring multiple casualties in the cramped space. This decision was made due to previously mentioned concerns for Terry's safety.

Upon clearing the upstairs bedroom Ofc. J. Guthrie and Ofc. G. Wessel located Christopher hiding under a mattress. See their supplemental reports for further. Ofc. Wessel later located Terry hiding in the crawl space of the attic, which his supplemental report will include. I took Christopher into custody on his warrants.

As Terry had yet to be located as I walked Christopher to my car, I tried to ascertain her location from him. He refused to cooperate, only telling me he did not know. I read him his Miranda Rights while in my car, which he confirmed he understood. In speaking about Terry's location, he confirmed he knew an NCO existed from "the state" in which he believed Terry objected too. Furthermore he knew he had at least one misdemeanor warrant having made an excited utterance before questioning of, "All this for a misdemeanor."

I transported Christopher to the KCPSB without incident where he was transferred into the custody of the detention deputies. While completing his pre-booking information sheet, Ofc. Wiedebush called to inform me he determined Christopher committed a violation of I.C. 18-4503 Second Degree Kidnapping. Christopher's only statement concerning this new charge was that he did not know where Terry went upon running back into the house. See Ofc. Wiedebush's supplemental report for further detailing his interview with Terry.

I also charged Christopher with a violation of I.C. 18-920(3) Violation of a No Contact Order (4th Offense) and I.C. 18-705 Resisting/Obstructing an Officer due to his admission of knowingly staying with Terry in her house while subject to the order, and running from Ofc. Wiedebush and I upon our approach which led to an approximate one and half hour standoff involving over one dozen officers.

I later uploaded my Viewu video to Viper.

CASE EVIDENCE:

BODY CAM IN-CAR VIDEO PHOTOS AUDIO
 UPLOADED TO VIPER UPLOAD TO VIPER LATER

Note - Videos associated with this incident contain protected personal information.

Supplement

G.Wessel K21

17c25792

NARRATIVE:

I responded to 2710 N 10th Pl to assist Patrol with a welfare check involving a male with a warrant at the home of a female, with whom he had a protection order.

Upon arrival, I assisted in holding the perimeter outside of the house. All information known to me was aired over the radio. It was aired the male suspect had exited a 2nd story window and fled the residence on a previous call.

One male resident exited the residence after PA calls were made. It was reported his name was Jim and he was not one of the parties from the order. He gave information Suspect Chris Osborn and Victim Terry were still inside. It was also reported the occupants had gone to hiding, possibly in the attic.

We continued to make announcements to the inside of the residence by various methods and locations. Dispatch had no good phone numbers for people inside the residence. I was becoming increasingly concerned about the welfare of the female victim. I used my sledge hammer to breach the back door of the residence. I gave verbal commands into the open doorway. I did not receive any response. Another team breached the front door, and we cleared the main floor of the residence.

We stationed at the base of the stairs and continued with commands, as well as introduced the patrol K9's presence. With no response, we continued to push into the upstairs of the residence. My area of responsibility was the first doorway, which was immediately at the top of the stairs to the right. I noticed the door was not completely closed. I cleared the room with another officer. I noticed a bed in the center of the room. The mattress had a large crown in the center as if someone was hiding between the mattress and box spring. I removed the mattress and revealed a male hiding underneath. This male was ultimately determined to be Christopher. During the search of his person, officers removed a wallet and a small amount of cash. At his request, I collected these items handed them to the arresting officer.

I was stilled fearful for the female victim who had not been found. Christopher told me he did not know where Terry was. He did say she was alive. We performed a secondary search of all living areas, but did not locate the female. Officers discovered a shoe print, and other evidence indicating someone had stood on the upstairs bathroom sink to access the attic.

The attic access cover was removed. Commands continued including warnings about the K9 being sent into the attic, requests for her to call out if she was injured, and statements identifying ourselves. We heard no response. We fashioned a mirror, and VIEVU camera on a pole to view the attic with no visible results. We were not able to see the entire space with these tactics. I felt the likelihood the female was still hiding, and unwilling or unable to respond was high.

I quickly looked into the attic clearing the immediate area. I pulled myself up farther and could see disturbed insulation, but no people. I pulled myself the rest of the way into the attic. I saw a small portion of skin, and a black piece of cloth. I could see some slight movement. I began calling out for Terry. The person did not move. I moved farther into the attic while calling out. The

person finally started moving and a female, later identified as Terry emerged from under the insulation. She was hesitant to come to me, and was stating she was scared and didn't understand why she was being arrested. While I did not complete the subsequent interview, it was very apparent she could hear our lawful commands to her.

I assisted with getting Terry out of the attic. I cleaned up the rest of my equipment. I also collected a phone and set of keys for Jim. This re-entry into the residence was at Jim's request.

I did not assist with any follow up interviews. My videos were uploaded to VIPER.

G.Wessel K21

Supplement

SUPPLEMENTAL REPORT
DETECTIVE ASSIGNEDNONE

On 06/30/2017 I responded to 2620 N 10th Place to assist Ofc. Ziegler with a possible no contact order violation and wanted subject.

Upon arrival, I observed Ofc. Ziegler standing on the north side of the garage. As I was walking to the residence, I saw a male exit the residence, look at me and immediately turn and run back inside. I heard Ofc. Ziegler verbally address the male, telling him to stop. The male had brown hair and was wearing a grey shirt. Based on booking photographs, the male appeared to be Christopher Osborn, the male we were looking for.

A perimeter was formed around the residence. It was clear that nobody was able to leave the residence as we quickly had it surrounded on all sides.

Several minutes later, a female later identified as Nicole Lemieux emerged from the residence. Nicole stated she is the daughter of Terry Lemieux. She told me Osborn is inside the residence along with his mother and another male later identified as James Nutting.

Nicole said she was in the living room working on the computer. Osborn was working on packing some of the belongings he had at the residence. Her mother, Terry, was working in the kitchen and backyard. She observed Osborn quickly run inside from the front door, saying that the police were there. Osborn went to the back of the house where Terry was. They both then went upstairs together. Nicole was not sure who went first. Nicole told me that she knows her mother is very afraid of Osborn and is also afraid of going to jail.

Officers on scene were using verbal commands and the public address system on our a patrol vehicle to attempt to communicate with Terry and Osborn. Numerous instructions were given for them to surrender peacefully and come outside. This was met with no cooperation from them.

A male, later identified as Nutting, emerged from the residence. Nutting was very cooperative and not real aware of what was going on. He stated he had been in his upstairs bedroom. He was aware that Osborn and Terry were at the residence. He stated that they do not get along. He believed Osborn had arrived at the residence sometime during the nighttime hours last night. The last he had seen either one is when Terry poked her head into his room saying the police were there. Nutting told her to, "Get the fuck out." Nutting passed on that someone was in the attic of the house. He then heard police calling out his name and came outside like he was instructed.

During the investigation, it was determined that we were going to make entry into the residence. We had information to believe that Terry was afraid of Osborn and was possibly being held against her will. Numerous officers entered the residence. Osborn was located in a upstairs bedroom and taken into custody.

The upstairs bathroom door was locked from the inside. We believed Terry was either in the bathroom or in the attic. We had been giving numerous commands for Terry to surrender. This was met with no cooperation. I breached the bathroom door by kicking it open. Nobody was located inside the bathroom.

There was evidence that someone had accessed the attic through the crawl space

above the sink in the bathroom. I removed the attic access panel. Numerous more commands were given to Terry ordering her out of the attic. This was met with no cooperation from Terry.

Detective Wessel was able to eventually look into the attic and locate Terry. She was removed from the attic without incident.

In speaking with Terry, she stated she was in the back yard when Osborn came running in from the front. He grabbed her by the hair and asked if she called the police. She then said Osborn was pushing her upstairs. She did not feel like she could leave and was in fear. Terry said she was able to get into the bathroom and lock the door.

Terry said while she was inside the bathroom, Osborn would attempt to get in by picking the lock. I did notice damage to the door knob. I asked why Osborn didn't force the door open. She said that he wouldn't do that because we would have heard it. Terry said Osborn would talk through the door to her saying things like he was going to kill her. Terry continued to express that she was very afraid of Osborn.

Terry said she then climbed up into the attic to get further away from Osborn as she believed that he would not go up there. She buried herself in the insulation. I asked her if she heard the police calling out to her. She said she did but she was afraid of going to jail as she did not understand why we were saying that. She also said she did not want to come out of the attic as she was very afraid of Osborn and was not aware of where he was. She said she was so terrified that he would get her if she came out.

Terry appeared to be extremely afraid of Osborn and would not willingly offer much information as she was afraid of the ramifications. It appears that she is a victim of physical and mental abuse and is truly afraid.

I spoke with Terry about her not coming out when the police were giving her lawful orders at the opening of the attic. She stated she did hear us but was afraid of Osborn and that he might get her. At that point of the incident, it was clear that the police were within feet of her and she should have been safe.

Terry obstructed our efforts to end this incident quickly and safely. Terry placed officers in danger for having us enter into an area unfamiliar to us to remove her. Based on this, I completed E-Ticket C3040162 charging Terry with Obstructing, I.C. 18-705. She was cited and released on this charge.

Ofc. J. Wiedebush, K84

Supplement

J. Guthrie K43

On June 30, 2017, I responded to 2710 N 10th Pl for a reported Welfare Check involving a wanted person, Christopher Osborn.

Upon my arrival on the scene, I took a spot on the perimeter. I was on the East side of the residence in the backyard of the adjacent house.

Announcements were made for all individuals inside the house to exit. Christopher and a female, who there is an active NCO against remained inside the residence.

After ample time was given the house was entered. I was part of the team that entered and secured the house.

In the upstairs bedroom, Det Wessel and I pulled up a mattress and discovered a male, Christopher, hiding between a mattress and box spring. Christopher was laying face down on his stomach. Christopher complied with the command to show his hands. I got on Christopher's back and Ofc Ziegler and I placed him into handcuffs. Ofc Ziegler took him into custody.

I helped search the scene for the female.

The female was eventually located.

I then cleared the scene.

On scene my VieVu was damaged and unable to record. Any video I have of the incident will be uploaded.

J. Guthrie K43

Description	CR 2016-21670 Osborn, Christopher 20170801 Probation Violation CR 2016-19408 Osborn, Christopher 20170801 Probation Violation Judge Peterson Clerk Cassie Poole	
Date	8/1/2017	Location 1K-CRT7
Time	Speaker	Note
03:33:44 PM	Judge Peterson	Defendant present in custody with Ms. Freund, Ms. Paul for the state, Mr. Severance for probation Identical probation violation allegations in both cases
03:34:24 PM	Osborn, Christopher	Have seen motions to revoke probation - no I haven't seen them
03:34:37 PM	Judge Peterson	Review allegations of probation violation - failed to report to probation, additionally you were arrested on new charges.
03:35:31 PM	Osborn, Christopher	Understand allegations
03:35:40 PM	Freund, Claire	This case and the new cases are both assigned to Mr. Logsdon his notes state he isn't aware of the hasn't had a chance to talk to Mr. Osborn about new charges he has asked that I ask for continuance so these cases can be set together
03:36:12 PM	Judge Peterson	Can enter denials and set for evidentiary hearing
03:36:18 PM	Freund, Claire	That would work
03:36:23 PM	Judge Peterson	10/17 3 pm
03:37:54 PM	Osborn, Christopher	10/17 is kind of far out is there closer date
03:38:02 PM	Judge Peterson	No
03:38:38 PM	End	

Cassie Poole

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CR - 2016 - 21670
CMIN
Court Minutes
735657



Jay Logsdon, Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: *CSM*
2017 AUG -9 AM 10:15

CLERK DISTRICT COURT
Christopher Neal Osborn
DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-16-0021670
	)	Misd
V.)	
	)	MOTION FOR RECOGNIZANCE
CHRISTOPHER NEAL OSBORN,	)	RELEASE OR REDUCTION OF BOND
)	
)	
Defendant.)	

COMES NOW, the above named defendant, by and through his attorney, Jay Logsdon, Deputy Public Defender, and hereby moves the Court for its Order releasing the defendant on his own recognizance or reducing the bond in this matter.

This motion is made pursuant to the 8th and 14th amendments of the U.S. Constitution; Article I, §§ 6 and 13 of the Idaho Constitution; and I.C.R. 46.

This motion is made on the grounds that defendant has ties to the community and is not a flight risk, and the bond as set violates the defendant's rights to due process and to be free from excessive bond and cruel and unusual punishment as guaranteed by the U.S. and Idaho Constitutions.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

**MOTION FOR RECOGNIZANCE RELEASE
OR REDUCTION OF BOND**

CR-2016-21670
MOTN
Motion
735644



DATED this 9 day of August, 2017.

THE LAW OFFICE OF THE PUBLIC DEFENDER OF KOOTENAI COUNTY

BY: 
JAY LOGSDON
DEPUTY PUBLIC DEFENDER

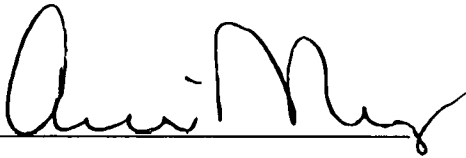
CERTIFICATE OF DELIVERY


I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 9 day of August, 2017, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail



Description		CR 2016-21670 Osborn, Christopher 20170922 Bond Hearing CR 2016-19408 Osborn, Christopher 20170922 Bond Hearing Judge Peterson Clerk Sally Lunnen
Date	9/22/2017	Location 1K-CRT7 
Time	Speaker	Note
<u>03:17:39 PM</u>	Judge Peterson	Calls Case Defendant Present Out of Custody DA Present-Mr. Naftz CDAPA Present-Mr. Gowey
<u>03:17:55 PM</u>		Here on release motion?
<u>03:18:00 PM</u>	DA	That is correct.
<u>03:18:11 PM</u>	J	I see an eval in file, what is going on?
<u>03:18:20 PM</u>	DA	Def has sentencing before judge mitchell coming up, he would still be in custody on the felony case, He has been accepted into Good samaritan, Req OR in these 2 matters if he is released on the 12th in his felony case. I don't believe there is a resolution
<u>03:19:51 PM</u>	PA	I would oppose that request. I was not aware of the particulars based on what had been filed, One case is an NCO violation he got while in custody we have evidence that there has been a number of calls to the person protected by NCO, concerned about further law violations if def is released. Ms. Tinkey thinks the only way to keep the Victim safe is to keep def in custody.
<u>03:21:30 PM</u>	J	Rev history of 2 cases before us, he was arrested on new charges which are before Judge Mitchell
<u>03:22:34 PM</u>	DA	That is correct.
<u>03:22:59 PM</u>	J	Rev allegations of PV, and new law violations. Denies motion for release, evidentiary hearing set for 10/17/2017, see you then.
<u>03:24:12 PM</u>	DA	NCO hearing 10/2
<u>03:24:53 PM</u>	J	that is correct
<u>03:24:56 PM</u>	End	

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Description		
CR 2016-21670 Osborn, Christopher 20171017 Evidentiary Hearing CR 2016-19408 Osborn, Christopher 20171017 Evidentiary Hearing CR 2017-11560 Osborn, Christopher 20171017 Motion Judge Peterson Clerk Cassie Poole		
<i>Cassie Poole</i>		
Date	10/17/2017	Location
		1K-CRT7
Time	Speaker	Note
<u>03:43:33 PM</u>	Judge Peterson	Defendant present in custody with Mr. Reuter, Ms. Tinkey for the city, Mr. Johnson for probation
<u>03:44:01 PM</u>	Reuter, Dennis	Mr. Osborn will admit violating terms of probation by committing subsequent criminal offense violation of nco filed as a felony in CR 17-11359 he has been sentenced on that to 5 years in prison all fixed and a rider with 5k fine.
<u>03:44:34 PM</u>		He is going on a rider.
<u>03:44:44 PM</u>		No stipulated rec's.
<u>03:44:56 PM</u>	Judge Peterson	Review allegations of probation violation. Felony case alleged is 11559.
<u>03:46:20 PM</u>	Reuter, Dennis	He will admit both allegations.
<u>03:46:37 PM</u>	Osborn, Christopher	Understand allegations Have had enough time to talk to Mr. Reuter Understand rights give up when admit
<u>03:46:54 PM</u>		No promises/threats
<u>03:47:00 PM</u>		Admit allegations of probation violation - both allegations - admissions in both cases
<u>03:47:13 PM</u>	Judge Peterson	Accept admissions knowingly and voluntarily entered with assistance of counsel
<u>03:47:18 PM</u>		Find knowingly and willfully in violation of probation
<u>03:47:28 PM</u>	Johnson, Steven	I really have nothing to update court on the defendant never checked in with probation.
<u>03:47:44 PM</u>	Tinkey, Jennifer	In this case am going to ask for all time to be imposed and asking to run consecutive with the felony he was just sentenced on. By my count has 490 days left to serve. 16 days left on 19408.
<u>03:48:28 PM</u>		Original 180 days in 19408 with 175 suspended he got 53 days credit at first pv hearing been in custody since 7/3/817 so 106 days credit. 159 total credit 164 total credit. Concurrent with other 2 charges
<u>03:49:46 PM</u>		16-21670 there were 2 counts violation of nco court imposed consecutive sentences on those.

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<u>03:50:22 PM</u>	Judge Peterson	730 total days
<u>03:50:28 PM</u>	Tinkey, Jennifer	278 plus 20 ujt imposed on each case had 67 credit at time of sentencing. He has served 106 days subsequent.
<u>03:51:07 PM</u>	Judge Peterson	730 with 67 plus 67 plus 106 with credit total left 490
<u>03:51:53 PM</u>	Tinkey, Jennifer	Only way victim will be safe in states opinion is if he is in custody. He also won't obey the courts orders. Review case history. He never reported to probation so a couple days later there was another pv filed for not reporting to probation. He was eventually arrested on felony violation of nco and kidnapping charge. The state also has a battery before the court today allegations of battery on Terry.
<u>03:58:12 PM</u>		Battery that he was charged with which is before the court victim stated she is very afraid of the defendant would not talk much about incident.
<u>03:58:45 PM</u>		When look back at criminal record think has 8 felony convictions. It is out of a variety of states. Prior felonies in Missouri, Florida, Idaho. Washington conviction for assault 4 domestic violence in Washington. Prior domestic battery reduced to disturbing the peace in 2008.
<u>04:00:33 PM</u>		This smacks of someone who doesn't care. He has completely terrorized the victim and has shown he will not leave her alone. Ask impose previously suspended sentence and run consecutive to felony.
<u>04:01:07 PM</u>	Reuter, Dennis	Judge Mitchell has sentenced Chris to prison for 5 years all fixed he gave him the opportunity to see how he does no rider before makes final decision to place on probation or not. About a month ago a domestic violence evaluation was conducted and has been filed with the court in 17-11560 that recommends domestic violence intervention and psychiatric evaluation.
<u>04:02:35 PM</u>		Judge Mitchell is very aware of Terry Lemieux she has asked nco be terminated while in jail she is the one who contacts him on the video phone. The prosecutor talked about latest nco violation the felony charge in that case Terry Lemieux was charged with failing to obey officers orders as well it was the next day she was describing her fear that got the charges dismissed or taken care of.
<u>04:03:26 PM</u>		The days of the event when police shown up she was in the back yard if he controlled her she would have been able to leave the yard or call the police she choose not to.
<u>04:03:50 PM</u>		It isn't as black and white as presented. There is destructive relationship going on for both of them. Despite this fear she doesn't take advantage of as much as she could. This doesn't

		excuse the nco but just provides context.
<u>04:04:30 PM</u>		We have a situation where Mr. Osborn is going to be either spending 5 years in prison or earn the right in front of Judge Mitchell to be placed on probation he has warned Mr. Osborn he has to be perfect he doesn't think highly of Mr. Osborn and said so to his face.
<u>04:06:00 PM</u>		Ms. Osborn is no longer interested in relationship with her. 5 years is a long time. I agree with the credit time served the state has set forth except when warrant was served on 7/3 was served on both counts so think would get 106 days credit for the 2nd count as well. Asking court impose 60 additional days on 1 count of nco. The 16 days left on the battery charge is not really going to effect anything. The additional 60 consecutive to the other 60 would give additional 4 months incarceration on those charges that can start now while doing his rider.
<u>04:10:39 PM</u>	Osborn, Christopher	I realize this has been a terrible miss judgment on my part it was a very toxic relationship that I was involved in it is a love hate thing. I am not denying my fault but never put a hand on her. I have never put a hand on her I did spray her with wd-40 and admit that was wrong she comes after me asking me to come back and it is stupid should never have went there but it was my house. I moved to Spokane for 5 months so never reported to probation that is where I worked I lived in hotel there.
<u>04:12:05 PM</u>		I have been sentenced to 5 years and even if do a perfect rider don't know if would get out.
<u>04:12:26 PM</u>		i am done with this relationship.
<u>04:12:32 PM</u>	Judge Peterson	You told me the same thing in January of this year. I can play the audio for you.
<u>04:12:43 PM</u>	Osborn, Christopher	I believe you.
<u>04:13:10 PM</u>	Judge Peterson	Mr. Reuter is new on this case and doesn't have the history with you and frankly I don't even have the entire record you have record from other states with multiple violations and multiple convictions. I keep in mind too hill factors even when sentence on probation violation. Review prior log notes.
<u>04:18:10 PM</u>		Immediately you abscond from probation you never report to probation and there is new violation of the nco. You are a danger to society and threat to protected person.
<u>04:20:00 PM</u>		incarceration is only sentencing factor that makes much since. it is really the only sentencing option. I have to be mindful of Judge Waish's sentence. I didn't write this story you wrote it and it is what it is. I really don't have much choice but to impose on 16-21670 730 with credit 240 terminate probation 16-19408 180 with 164 credit concurrent with 21670. I don't

		know how department of corrections will do that if they will wait to send on rider until after done with time here I don't know.
<u>04:22:01 PM</u>		Wish you the best of luck.
<u>04:22:49 PM</u>	Tinke, Jennifer	Does court have 17-11560 - state will dismiss that case
<u>04:23:16 PM</u>	Reuter, Dennis	No objection
<u>04:23:19 PM</u>	Judge Peterson	On this form I am checking terminate nco that is only this case.
<u>04:24:27 PM</u>	Reuter, Dennis	Credit for 240 days means court did not give credit on 2nd nco violation
<u>04:24:38 PM</u>	Judge Peterson	After sentencing imposed he is no longer entitled to credit on both because they were structured consecutively. I did give him the 67 on both because that was pre sentencing.
<u>04:25:16 PM</u>	Reuter, Dennis	I understand I will look into that.
<u>04:25:43 PM</u>	End	

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FILED 10-17-17 AT 4:23P M.

CLERK OF THE DISTRICT COURT
BY [Signature] DEPUTY

**FIRST DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000**

STATE OF IDAHO,

CR- 16-21670

v

**ORDER AFTER HEARING ON
PROBATION VIOLATION /
CONTEMPT**

Christopher Osborn
Defendant

A HEARING WAS CONDUCTED on the date set forth below.

The defendant personally appeared was not present

The Defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and the right to have court appointed counsel if indigent, and the Defendant was represented by counsel waived the right to counsel

- The court conducted a hearing and received evidence.
- Stipulation entered into by both parties was received by the court.
- Defendant admitted to the violation. The court finds that the admission is knowingly and voluntarily entered.
- The State submitted a motion to dismiss.

NOW THEREFORE, IT IS HEREBY ORDERED, that the

Court finds that the Defendant has knowingly and willfully violated the terms of his probation by

[Signature]

Court finds that the Defendant is in contempt of Court for a knowing and willful violation of the Court's previously entered judgment by _____

- Hearing failed to show that the Defendant violated the terms of probation;
- Hearing failed to show that the Defendant is in contempt;
- Probation Violation / Contempt proceeding is dismissed.

CR-2016-21670
ORDR
Order
735629



THE COURT IMPOSES THE FOLLOWING PENALTIES UPON THE DEFENDANT:

MONIES ORDERED PAID: A \$2.00 handling fee is imposed on each installment

Fine/Penalty \$ _____ Suspended \$ _____

To be paid within 30 days of today or enroll in time payment program **BEFORE** due date.

Community service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Defendant must sign up for community service within ten (10) days of the date this order is signed and pay all sign-up fees and workman's compensation fees;

Sign-up fee waived Workman's compensation fees waived

Defendant shall reimburse Kootenai County for costs of defense in the amount of

\$ _____ payable by _____

Bond Exonerated Applied to Fine and Costs/Return Remainder, if any.

INCARCERATION ORDERED:

Jail 730 days, Credit 240 days.

Report to Jail _____ at _____ m.

Release _____

Work Release Authorized In-Home Monitoring

Defendant may perform _____ hours by _____ on the Kootenai County Sheriff's Community Labor Program, in lieu of said jail, or report to the Jail on the same date at 6:00 p.m. **to serve the full jail time. Defendant must sign up at the Jail within seven (7) calendar days** for the Labor Program.

IT IS FURTHER ORDERED THAT:

Defendant may purge the contempt by _____

and submitting written proof to the Court before _____. If such is not completed and the written proof is not delivered prior to that date, then the Defendant must report to jail as ordered above.

The probation previously imposed shall continue on the same terms and conditions and shall not expire until _____

The probation shall be extended to _____;

Additional terms of probation shall include _____;

The probation shall be supervised. **(See Supervised Probation Addendum attached.)**

The probation is hereby terminated. _____

The probation shall be terminated on _____

Other: _____

DATED THIS 17 DAY OF Oct 2017.

[Signature]
JUDGE

COPIES TO: DEF DEF ATTORNEY PROSECUTOR JAIL COM. SERVICE
NO OTHER Remo 7:51 PM PW

DATE: 10.17.17 DEPUTY CLERK Case

Jay Logsdon, Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: *[Signature]*

2017 OCT 27 PM 4:07

CLERK DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,)
)
Plaintiff,)
)
V.)
)
CHRISTOPHER NEAL OSBORN,)
)
Defendant.)
)
_____)

CASE NUMBER CR-16-0021670

**MOTION FOR CREDIT FOR TIME
SERVED**

Comes now Christopher Osborn, by and through undersigned Deputy Public Defender Jay Logsdon, and moves this Court for an order giving him credit for an additional 106 days served in custody in this matter.

This motion is based upon Idaho Criminal Rule 35(c), Idaho Code §19-2603 and the following memorandum of law, facts and argument.

LAW

Idaho law requires that when a sentence is imposed that credit be given for any time spent incarcerated in relation to that offense. See §19-2603, Pronouncement and execution of judgment after violation of probation:

When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld,

MOTION FOR CREDIT FOR TIME SERVED

Page 1

CR-2016-21670
MOTN
Motion
735615



pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence. *The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court* after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence. [Emphasis added.]

Idaho Criminal Rules (ICR), Rule 35(c), Credit for Time Served, states:

A motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code § 18-309 or 19-2603, may be made at any time.

FACTS

On January 20, 2017 Defendant Christopher Osborn was sentenced in Kootenai County CR-2016-21670 for two counts of violating a No Contact Order. The sentencing Court imposed 730 days of incarceration (365 for each count, to run consecutively) but suspended the sentence and placed Osborn on probation with credit for 67 days served on each count. At that point, a total of 134 days had been credited to his 730 day sentence. The judgments also reflect that the two probation periods were to be served concurrently.

Osborn requests that the Court take judicial notice of the January 20 judgments.

On February 16, 2017 a bench warrant was issued for Osborn for alleged violation of his probation. The warrant was served on July 3 and an evidentiary hearing was eventually set for October 17, 2017. Mr. Osborn was in custody on the bench warrant during the 106 days between July 3 and October 17. The probationary terms were still running concurrently.

MOTION FOR CREDIT FOR TIME SERVED

Page 2

Osborn requests that the Court take judicial notice of the bench warrant, return of service and the setting of the evidentiary hearing.

At the October 17 evidentiary hearing Osborn admitted his violation. Disposition took place that same day with the Court imposing the full 730 days of incarceration with credit for the 134 days previously served and another 106 days as to only one of the counts in this case. No credit for time served was given as to the other count in the case. At that point, a total of 240 days credit for time served was applied to his 730 day sentence.

Osborn requests that the Court take judicial notice of the October 17 admission and disposition as reflected in the court's file.

Over Osborn's objection, the Court did not give him credit for the 106 days served from July 3 to October 17 as to the second count in this case. The Court explained that because the sentences were to run consecutively, it was not necessary to give credit toward both cases for the 106 days spent in custody on the bench warrant; credit given for only one of the two counts was legally sufficient.

ARGUMENT

Although prior case law at one time supported this Court's reasoning, that precedent was overturned in 2015.

In general, credit must be given for time spent in pre-disposition custody on a warrant alleging a probation violation.

...credit must be given for jail incarceration after arrest for a probation violation. This is mandated by I.C. §19-2603, which provides that when a defendant has been arrested on a bench warrant for a probation violation and the probation has consequently been

revoked, “the time of the defendant's sentence shall count from the date of service of such bench warrant.” *See also State v. Covert*, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct.App.2006); *State v. Lively*, 131 Idaho 279, 280, 954 P.2d 1075, 1076 (Ct.App.1998); *State v. Buys*, 129 Idaho 122, 127–28, 922 P.2d 419, 424–25 (Ct.App.1996).

State v. McCarthy, 145 Idaho 397, 179 P.3d 360 at 361 (Ct.App. 2008). The *McCarthy* opinion cited the 1991 opinion of *State v. Hernandez*, 120 Idaho 785, 820 P.2d 380 (Ct.App.1991), and the 1981 case of *State v. Hoch*, 102 Idaho 351, 630 P.2d 143 (1981). The *McCarthy* opinion also commented on NOT giving credit for more than one case when the underlying sentences were to be served consecutively:

We contrasted this situation with that of consecutive sentences, the Idaho Supreme Court having held that credit must be allowed on only one of multiple consecutive sentences because conferring credit on each of the consecutive sentences would give the defendant credit for more time than he actually spent in confinement. [*Hernandez*, 120 Idaho] at 791, 820 P.2d at 386 (citing *State v. Hoch*, 102 Idaho 351, 630 P.2d 143 (1981)).

However, the Idaho Supreme Court overruled the *Hoch* holding in the 2015 case of *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015). The *Owens* case involved §18-309, mandating pre-judgment credit for time served (analogous to §19-2603). “Idaho Code section 18-309 allows a defendant to receive credit on multiple charges for pre-judgment time served and therefore requires this Court to overrule *State v. Hoch*.” *Owens*, 158 Idaho at 3, 343 P.3d at 32.

The statute in *Owens*' case focused upon the following language from §18-309:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. ...

That language parallels the language of §19-2603, applicable to Mr. Osborn's situation:

... The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, [or] for any time served following an arrest of the defendant pursuant to section 20-227 ...

The *Owens* court reminded us that an unambiguous statute must be applied as given, without a contrary interpretation by divining an assumed legislative intent. *Owens* states:

We hold that (1) Idaho Code section 18-309's language unambiguously requires courts to credit a defendant any prejudgment incarceration served on each count and (2) *State v. Hoch* incorrectly relied on an assumed legislative intent that conflicts with the statute's plain language. Thus, *Hoch* was manifestly wrong, and we overrule *Hoch* to vindicate plain, obvious principles of law. We therefore hold a defendant receives credit for any prejudgment incarceration served on each of his consecutive sentences.

343 P.3d at 35.

Similar reasoning applies to Osborn's case. He was held in custody and served time for both counts of CR-2016-21670. Had he been released on one of the counts, he still would have been held in custody on the second count. Idaho Code §19-2603 unambiguously requires that he receive credit on each count for the time he served in pre-disposition custody on each count.

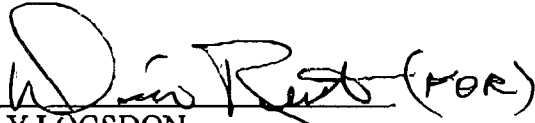
CONCLUSION

Mr. Osborn was held on a warrant in relation to concurrent probation for both counts of violating a no contact order. The sentencing and probation-related statutes require credit be given for all time served following the service of a bench warrant alleging a probation violation. The statute is clear and unambiguous. Prior erroneous interpretations of like statutes have been overruled in *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015).

Mr. Osborn must receive an additional credit of 106 days spent in custody, for a total of 346 days of pre-disposition credit.

DATED this 27th day of October, 2017.

THE LAW OFFICE OF THE PUBLIC DEFENDER OF KOOTENAI COUNTY

BY:  (FOR)
JAY LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 27 day of October, 2017, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail



COEUR D'ALENE CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323
FAX: (208) 769-2326

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2017 OCT 31 AM 11:50

CLERK DISTRICT COURT
[Signature]
DEPUTY
ps

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

STATE OF IDAHO,)	
	)	CASE NO. CRM-16-021670
Plaintiff.)	
	)	NOTICE OF OBJECTION
vs.	)	TO DEFENDANT'S MOTION
	)	FOR CREDIT FOR TIME SERVED
)	
CHRISTOPHER NEAL OSBORN,)	
Defendant.)	
_____)	

COMES NOW, the Office of the Coeur d'Alene City Attorney-Criminal Division, and respectfully objects to the Defendant's Motion For Credit For Time Served, dated October 27, 2017.

The State objects because the case law cited by the Defendant is not applicable for this motion. Defendant relies upon case law for credit for time served *prejudgment* as a basis for credit for time served on a probation violation where the suspended sentence was ordered to run consecutively.

Here the court revoked the Defendant's probation and imposed the suspended sentence. The court properly followed Idaho Code §19-2603 when calculating the credit for time served. The Defendant is not entitled to credit for time served on both counts because the judgment previously imposed dictated the suspended jail in this case would run consecutively.

Dated this 30th day of October, 2017.

[Signature]
Deputy City Attorney

CR-2016-21670
NOTC
Notice
735614



CERTIFICATE OF MAILING/SERVICE

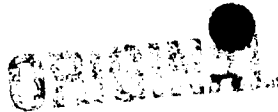
I HEREBY CERTIFY that I mailed/delivered a true and correct copy of the foregoing OBJECTION TO DEFENDANT'S MOTION, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice Mail at the Kootenai County Courthouse to:

JAY LOGSDON
DENNIS REUTER
PUBLIC DEFENDER'S OFFICE
INTEROFFICE MAIL

FAX: (208)446-1701

DATED this 30th day of October, 2017.

Sharon Bruce



Jay Logsdon, Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2017 NOV -9 PM 2: 51

CLEK DISTRICT COURT
[Signature]
DEPUTY
[Signature]

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-16-0021670
)	
V.	)	REPLY TO STATE'S OBJECTION
	)	FOR CREDIT FOR TIME SERVED
CHRISTOPHER NEAL OSBORN,)	
)	
Defendant.)	
)	

Defendant Chris Osborn replies to the State's objection to granting him credit for time served.

The State objects to credit for time served because the case law cited by the defense pertains to prejudgment credit, not predisposition credit. While true, Defendant made that same point in his memorandum – the decisions and arguments regarding the two statutes are analogous. See these sentences taken from the defendant's opening memorandum: "The [*State v. Owens* case [158 Idaho 1, 343 P.3d 30 (2015)] involved §18-309, mandating pre-judgment credit for time served (*analogous* to §19-2603)" "That language [of 18-309] *parallels* the language of §19-2603, applicable to Mr. Osborn's situation" and "*Similar reasoning* [as displayed in the *Owens*' case] applies to Osborn's case." [Emphasis added.]

**REPLY TO STATE'S OBJECTION
FOR CREDIT FOR TIME SERVED**

CR-2016-21670
REPL
Reply
735610

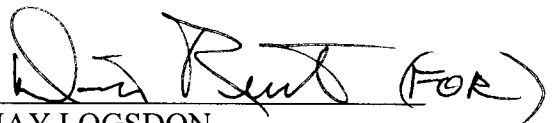


While the *Owens*' case does not construe the predisposition credit statute §19-2603, the message is the same for Osborn's case. Credit for time served must be given when a statute such as §19-2603 unambiguously requires credit be given for all "...time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, [or] for any time served following an arrest of the defendant pursuant to section 20-227...".

Just as in *Owens*, predisposition credit for each consecutive sentence must be given because that is what the statute requires. Osborn is not getting credit for time he has not served; he is getting credit for time he has served on concurrent probations, applied to each of two consecutive sentences. Following the statute mandates this result.

DATED this 7th day of November, 2017.

THE LAW OFFICE OF THE PUBLIC
DEFENDER OF KOOTENAI COUNTY

BY:  (FOR)
JAY LOGSDON
DEPUTY PUBLIC DEFENDER


CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 9 day of November, 2017, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail



**REPLY TO STATE'S OBJECTION
FOR CREDIT FOR TIME SERVED**

Page 2

Description		CR 2016-21670 Osborn, Christopher 20171204 Motion Judge Peterson Clerk Cassie Poole
Date	12/4/2017	Location 1K-CRT11
<i>Cassie Poole</i>		
Time	Speaker	Note
04:01:38 PM	Judge Peterson	Defendant not present, Mr. Reuter on his behalf, Mr. Somerton for the city
04:01:44 PM		Mr. Bailiff reports there isn't a Christopher Osborn in the jail
04:01:53 PM	Reuter, Dennis	He must be on his rider
04:02:42 PM	Judge Peterson	Not entirely understanding Mr. Logsdons calculation. When he says with credit for 134 days previously served and 106 as to only one count and 106 was given to other counts of the case.
04:03:53 PM		Mr. Logsdons argument is since probation is concurrent should apply to both.
04:04:20 PM	Reuter, Dennis	I guess main argument of motion is the statute is unambiguous and under statute must give credit to both sentences even though they are consecutive. In the Owens case similar reasoning for giving credit for sentence was involved and court has interpreted the statute as allowing the court to do what it did in this case.
04:05:27 PM	Judge Peterson	Have there been cases post Owens indicating that applies to post probation
04:05:44 PM	Reuter, Dennis	No
04:05:48 PM		If you look at Owens reason said unambiguous the statute mandates give credit time served the person shall receive credit. 19-2603 says the same thing the defendant shall receive credit. In the Owens case also said credit should be for any period of incarceration. When bench warrant issued person receives credit for anytime served. The third thing they talked about the offense not cases with in that here they were talking about probation. Our argument same reasoning applies here and so court has to give credit.
04:07:10 PM	Somerton, Wes	Basically the defense is asking for their cake and to eat it too they don't get that. State v Owens the court in that case held consecutive sentences are served in order the one sentence doesn't begin until the other sentence ends. If the defendant served 50 days in jail before convicted on counts he gets 50 days credit for each sentence. When defendant is sentenced to concurrent entitled to all the sentences at the same time.
04:09:05 PM		The judgment was correct in this case. The pre sentence

CR - 2016 - 21670
CMIN
Court Minutes
735548



		calculation was given in this case the 67 days each count and the court imposed the suspended time consecutive so when probation violation occurred on the admission this court only imposed the credit time served against the total balance of the jail time that is consistent with Owens. This court is correct in its calculation ask court to deny motion.
<u>04:10:12 PM</u>	Judge Peterson	I appreciate the parties providing authority on this. My understanding is after sentencing is imposed and it is structured consecutively he is no longer entitled to credit on each count and he got credit for the time he was in towards the structured sentence he doesn't get it twice he got it once which he is entitled to. Think the proper way to calculate is to deny request. I did give credit that he was entitled to unlike prejudgment there is not structure here detention was post imposition of sentence where sentence was structured consecutive even though probation was concurrent.
<u>04:11:39 PM</u>		Court feels states interpretation is the correct one. Deny motion.
<u>04:12:20 PM</u>		Motion is denied.
<u>04:12:27 PM</u>	Somerton, Wes	I will submit order.
<u>04:13:30 PM</u>	End	

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COEUR D'ALENE CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323
FAX: (208) 769-2326

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 12-9-18
AT 12:55 O'CLOCK P M
CLERK, DISTRICT COURT
[Signature]
DEPUTY

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

STATE OF IDAHO,)
Plaintiff,) CASE NO. CRM-16-021670
)
vs.) ORDER DENYING DEFENDANT'S
) RULE 35 MOTION
CHRISTOPHER NEAL OSBORN,)
Defendant.)
_____)

The Court heard the above matter on December 4, 2017, based on Defendant's Rule 35 Motion for credit for post judgment time served. The Defendant was represented by his attorney, Dennis Reuter, Deputy Kootenai County Public Defender; the state was represented by Wes Somerton, Coeur d'Alene Chief Deputy City Attorney, the Honorable Clark Peterson, Magistrate presiding.

After reviewing the parties' briefs submitted in this matter and heard the legal arguments of counsel the Court announced its findings and conclusions on the record. Based on the announced findings and conclusions:

IT IS HEREBY ORDERED that Defendant's Rule 35 Motion is denied.

Entered this 14 day of December, 2017.

[Signature]
CLARK PETERSON - Magistrate Judge

Copies to:

Def. _____ Def. Att _____ CDA Pros. _____
CDA PD _____ Jail, CIB _____ Sup. Ct. _____
Aud. _____ Bonding Co. _____ Other _____
Date _____ Dep. Clerk _____

CR - 2016 - 21670
ORDR
Order
735544



CERTIFICATE OF MAILING

I hereby certify that I mailed/delivered a true and correct copy of the forgoing Order Denying Defendant's Motion, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice mail at the Kootenai County Courthouse to:

Dennis Reuter
Attorney for Defendant
FAX: (208)446-1701
email: pdfax@kcgov.us

12:30 PM

City of Coeur d'Alene Attorney Office
FAX: 769-2326
email: cdaprosnotices@cdaid.org

DATED this 9 day of December, ~~2017~~²⁰¹⁸.

Cause

ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: ^{SS}

Jay Logsdon, Deputy Public Defender
The Law Office of the Public Defender Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

2018 JAN 11 AM 9: 52

CLERK DISTRICT COURT
Cindy O'Beilly
DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff/)	
Respondent,	)	CASE NUMBER CR-16-0021670
)	
V.)	
)	
CHRISTOPHER NEAL OSBORN,	)	NOTICE OF APPEAL
)	
Defendant/)	
Appellant.)	
)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE CLERK OF THE ABOVE ENTITLED COURT:

1. The above named Appellant appeals against the above named Respondent to the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, from the "Order Denying Appellant's Rule 35 Motion" entered in the above entitled matter (CR-2016-21670) on December 4, 2017, filed with the court on January 9, 2018, the Honorable Clark Peterson presiding.

2. Appellant Christopher Osborn, represented by deputy public defender Dennis Reuter (Public Defender's Office, P.O. Box 9000, Coeur d'Alene ID 83816) appeals to the District

NOTICE OF APPEAL

CR-2016-21670
APDC
Appeal Filed in District Court
735541

-1-



Court the above ruling by Magistrate Peterson pursuant to Rule 11(c)(6) and Rule 11(c)(9), Idaho Appellate Rules; also Rule 54.1(f), Idaho Criminal Rules. The State is represented by the City of Coeur d'Alene, Deputy Prosecutor Jennifer Tinkey, 710 E. Mullen Avenue, Coeur d'Alene ID 83814.

3. This appeal is made upon matters of law.

4. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to: **The court erred by not giving proper credit against the sentence for time previously served in custody.**

5. Pursuant to Idaho Criminal Rule 54.6 Appellant requests preparation of transcripts of the following recorded proceedings in the magistrate division: **Hearing on December 4, 2017 regarding appellant's Rule 35(c) Motion for Credit for Time Served.**

6. The testimony and proceedings in the original hearing were recorded on audiotape, and such recordings are in the possession of the clerk of the District Court of the First Judicial District, Kootenai County, Idaho.

7. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

8. The Appellant requests the preparation of the entire clerk's standard record pursuant to Idaho Criminal Rule 54.8 as it relates to this disposition.

9. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 54.8 of the Idaho Criminal Rules: **None.**

10. The Appellant is exempt from paying the estimated fee for the preparation of the

record because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

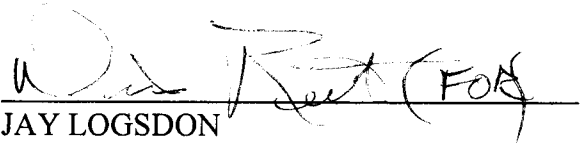
11. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

12. I hereby certify that a true and correct copy of this Notice of Appeal was personally served upon the prosecuting attorney pursuant to Rule 54.4(h) of the Idaho Criminal Rules, by Interoffice mail.

DATED this 10th day of January, 2018.

THE LAW OFFICE OF THE PUBLIC
DEFENDER OF KOOTENAI COUNTY

BY:

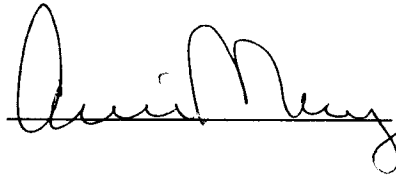

JAY LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 11 day of January, 2018, addressed to:

Coeur d'Alene City Prosecutor
X via Interoffice Mail

Transcript Department
Clerk of the Court
P.O. Box 9000
Coeur d'Alene ID 83816
X via Interoffice Mail

A handwritten signature in black ink, appearing to read "David M. King", written over a horizontal line.

COEUR D'ALENE CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323
FAX: (208) 769-2326

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 12-9-18
AT 12:55 O'CLOCK P M
CLERK, DISTRICT COURT
DEPUTY

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

STATE OF IDAHO,)	
	)	CASE NO. CRM-16-021670
Plaintiff,)	
	)	ORDER DENYING DEFENDANT'S
vs.	)	RULE 35 MOTION
)	
CHRISTOPHER NEAL OSBORN,)	
)	
Defendant.)	
_____)	

The Court heard the above matter on December 4, 2017, based on Defendant's Rule 35 Motion for credit for post judgment time served. The Defendant was represented by his attorney, Dennis Reuter, Deputy Kootenai County Public Defender; the state was represented by Wes Somerton, Coeur d'Alene Chief Deputy City Attorney, the Honorable Clark Peterson, Magistrate presiding.

After reviewing the parties' briefs submitted in this matter and heard the legal arguments of counsel the Court announced its findings and conclusions on the record. Based on the announced findings and conclusions:

IT IS HEREBY ORDERED that Defendant's Rule 35 Motion is denied.

Entered this 14 day of December, 2017.



CLARK PETERSON - Magistrate Judge

Copies to:

Def. _____	Def. Att _____	CDA Pros. _____
CDA PD _____	Jail, CIB _____	Sup. Ct. _____
Aud. _____	Bonding Co. _____	Other _____
Date _____	Dep. Clerk _____	

CERTIFICATE OF MAILING

I hereby certify that I mailed/delivered a true and correct copy of the forgoing Order Denying Defendant's Motion, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice mail at the Kootenai County Courthouse to:

Dennis Reuter
Attorney for Defendant
FAX: (208)446-1701
email: pdfax@kcgov.us

City of Coeur d'Alene Attorney Office
FAX: 769-2326
email: cdaprosnotices@cdaid.org

DATED this 9 day of December, ~~2017~~²⁰¹⁸.

Case

2018 FEB 13 AM 9:28

CLERK DISTRICT COURT

Cindy O'Beilly
DEPUTY

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

---oOo---

STATE OF IDAHO,)
)
Plaintiff,) CASE NO. CR-16-21670
)
vs.) NOTICE OF LODGING
)
CHRISTOPHER NEAL OSBORN,)
) TRANSCRIPT ON APPEAL
Defendant.)
)

TO: THE PARTIES ABOVE NAMED OR THEIR ATTORNEYS:

YOU ARE HEREBY NOTIFIED that the transcript,
totaling 12 pages, in the above-entitled matter, has
been lodged with the Clerk of the District Court,
Kootenai County, State of Idaho.

You may secure your copy of the transcript from the
Clerk of the District Court, Criminal Division.

DATED this 12th day of February, 2017.

CR-2016-21670
NOTC
Notice
735536



Valerie Nunemacher

Valerie Nunemacher

Copies to: WESLEY SOMERTON
Prosecuting Attorney
Fax No. 208.446-1841
764-2326

DENNIS REUTER
Public Defender
Fax No. 208.446.1701

Filed 2/20/17 #40

Filed 2/20/17 #39

Notice of Lodging Transcript

STATE OF IDAHO
 COUNTY OF KOOTENAI) SS
 FILED: 2/16/18
 AT 2:23 O'CLOCK P M
 CLERK, DISTRICT COURT
 DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR 2016-21670
)	
vs	)	Notice of Settling
	)	Transcript on Appeal and
	)	Briefing Schedule
)	
CHRISTOPHER NEAL OSBORN,)	
)	
Defendant/Appellant.)	

CR-2016-21670
 NOTC
 Notice
 735520



TO: THE PARTIES ABOVE NAMED OR THEIR ATTORNEYS:

It appearing that on February 13, 2018 a transcript of the requested hearing in this matter was received by the Clerk, and that a Notice of Lodging such transcript was mailed or delivered by the Clerk to all attorneys of record or parties appearing in person on February 13, 2018 and that no objection to the transcript have been filed, and that more than twenty-one (21) days have elapsed since such Notice of Lodging was mailed by the Clerk; and that such transcript is deemed settled pursuant to I.C.R. 54.9;

NOW, THEREFORE, PURSUANT to I.C.R. 54.10, YOU ARE HEREBY NOTIFIED THAT such transcript together with the Clerk's record and any exhibits offered or admitted in the trial in this matter have been filed with the District Court, as the Appellate Court in this matter, and

Notice Of Settling Transcript on Appeal and Briefing Schedule

YOU ARE FURTHER NOTIFIED THAT PURSUANT TO I.C.R. 54.15 and I.A.R. 34, Appellant's Brief must be filed with the Court by April 13, 2018; Respondent's Brief so filed by May 14, 2018; and any reply brief so filed by June 4, 2018.

YOU ARE FURTHER NOTIFIED that if briefs are not filed within the above referenced time limits, the Court may schedule this matter for argument pursuant to I.C.R. 54.16; or the Court may dismiss the appeal pursuant to I.C.R. 54.13.

Dated this 16th day of February, 2018.

JIM BRANNON
CLERK OF THE DISTRICT COURT

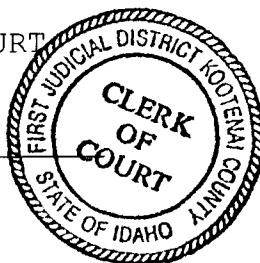
By: Ma J
Deputy Clerk

I hereby certify that a true and correct copy of the foregoing was faxed this 16th day of December, 2016, to:

Copies to: WESLEY SOMERTON #5343 Prosecuting Attorney Fax No. (208) 446-1841
DENNIS REAUTER #5345 PUBLIC DEFENDER Fax No. (208) 446-1701

JIM BRANNON
CLERK OF THE DISTRICT COURT

Ma J
Deputy Clerk



ORIGINAL

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:
2018 APR -6 PM 3:19
Signed: 4/8/2018 09:55:20 AM
CLERK DISTRICT COURT
Tony M. [Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, KOOTENAI COUNTY

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	CASE NUMBER
	)	CR-2016-21670
V.)	
)	
CHRISTOPHER N. OSBORN,	)	APPELLANT'S
	)	OPENING BRIEF
Defendant/Appellant.)	
)	

Appeal from the Magistrate's Division of the First Judicial District for Kootenai County.

Honorable Clark Peterson presiding.

ATTORNEYS FOR RESPONDENT:

Coeur d'Alene Prosecuting Attorney
710 E. Mullan Avenue
Coeur d'Alene, ID 83814
208-769-2323

BY: JENNIFER TINKEY
Deputy Prosecuting Attorney

ATTORNEYS FOR APPELLANT:

Kootenai County Pub Defender
P.O. Box 9000
Coeur d'Alene, ID 83816
208-446-1700

BY: DENNIS REUTER
Deputy Public Defender

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STATEMENT OF THE CASE

(i) Nature of the case.

Christopher Osborn pled guilty to a two-count complaint alleging two misdemeanors by twice violating a No Contact order. Judge Walsh placed Osborn on two concurrent terms of probation, but with underlying consecutive jail sentences.

Osborn later violated the terms of his probation and police arrested him on a probation violation warrant. Upon Osborn's admission to violating his probation, Judge Peterson imposed the underlying consecutive sentences and, pursuant to Idaho Code §19-2603, gave Osborn credit for time Osborn spent in predisposition incarceration. However, the Court gave predisposition credit on only one count even though the police had arrested and incarcerated Osborn on both counts.

Osborn challenges and appeals the magistrate's ruling that Idaho Code §19-2603 does not require predisposition credit be given as to both counts in this case.

(ii) The course of the proceedings.

On November 14, 2016, police charged Christopher Osborn by citation with two misdemeanor counts of violating a no contact order contrary to Idaho Code §18-920. (Osborn requests that, pursuant to Idaho Rules of Evidence, Rule 201, the Court take judicial notice of the court's file in CR-2016-21670, specifically the e-citation. Osborn attaches a copy of the citation as Exhibit 1.)

On January 20, 2017 Christopher Osborn pled guilty to the two counts and Magistrate Judge Walsh sentenced Osborn on the two misdemeanors. Judge Walsh Walsh suspended two consecutive jail sentences on the two misdemeanors, one jail sentence per count, placing Osborn on concurrent probation for the two counts. Pursuant to Idaho Code §18-309, Judge Walsh gave Osborn credit for the time spent in presentence incarceration as to each Count. (Osborn requests that the Court take judicial notice of the court's file in CR-2016-21670, specifically the two judgments imposed by Judge Walsh. Osborn attaches a copy of the two judgments as Exhibits 2 and 3.)

Thereafter, Osborn violated the terms of his probation and on February 14, 2017 the Court issued a "no bail" warrant for his arrest. The warrant covered both counts. Coeur d'Alene Officer Ziegler arrested and served Osborn with the warrant on June 30, 2017. (Mr. Osborn requests that the Court take judicial notice of the warrant and return of service in CR-2016-21670. Osborn attaches a copy of the returned warrant as Exhibit 4.)

Osborn admitted violating his terms of probation. At disposition on October 17, 2017 Judge Peterson imposed the earlier-suspended consecutive sentences. Pursuant to Idaho Code §19-2603, Judge Peterson gave credit for Osborn's pre-disposition incarceration as to one of the Counts, but not both. (Mr. Osborn requests that the Court take judicial notice of the disposition order giving time-served credit for a total of only 240 days, attached as Exhibit 5.)

Osborn claims that §19-2603 requires credit for both counts, 106 days on Count 1 plus 106 days on Count 2, for a total of 346 days served, not 240. (Such credit would include credit for the pre-sentence incarceration as well.)

(iii) Statement of the facts.

As shown in Exhibit 4, authorities served Christopher Osborn with a warrant of arrest for violating the terms of probation. The warrant was for Kootenai County CR-2016-21670 and encompassed both counts.

As to Count 1, Osborn received credit for 106 additional days' credit for incarceration spent between service of the warrant and disposition. As to Count 2, Judge Peterson gave no credit. (Tr. p. 9-10.)

ISSUE PRESENTED ON APPEAL

Idaho's Supreme Court ruled that the unambiguous language of Idaho Code §18-309 requires that credit be given for presentence incarceration toward every charge for which a person was incarcerated. *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015). This is so even when the judgment imposes consecutive sentences of incarceration. *Id.*

Does the similar language of Idaho Code §19-2603 require a similar ruling for predisposition credit?

ARGUMENT

Standard of Review.

Denial of a Rule 35 motion to correct an illegal sentence – free review.

“As a general matter, it is a question of law as to whether a sentence is illegal or was imposed in an illegal fashion [under Idaho Criminal Rule 35], and this Court exercises free review over questions of law.” *State v. Lute*, 150 Idaho 837, 252 P.3d 1255 (2011) citing *State v. Clements*, 148 Idaho 82, 218 P.3d 1143 (2009).

See also *State v. Hale*, 116 Idaho 763, 779 P.2d 438 at 440 (Ct.App. 1989):

Under I.C.R. 35, an illegal sentence may be corrected at any time. Also, in an appeal from the denial of a motion under Rule 35 to correct an alleged illegal sentence, the question whether a sentence imposed is "illegal" is one of law freely reviewable by the appellate court.

Likewise, “[t]he question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts.” *State v. Taylor*, 160 Idaho 381 at 384–85, 373 P.3d 699 at 702–03 (2016) (quoting *State v. Vasquez*, 142 Idaho 67 at 68, 122 P.3d 1167 at 1168 (Ct.App. 2005)).

Idaho courts interpret statutes; they do not create them.

“Statutory interpretation begins with ‘the literal words of the statute, and this language should be given its plain, obvious, and rational meaning.’ ” *Seward v. Pac. Hide & Fur Depot*, 138 Idaho 509 at 511, 65 P.3d 531 at 533 (2003) (quoting *Jen–Rath Co. v. Kit Mfg. Co.*, 137 Idaho 330 at 335, 48 P.3d 659 at 664 (2002)). “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.’ ” *St. Luke’s Reg’l Med. Ctr., Ltd. v. Bd. of Comm’rs of Ada Cnty.*, 146 Idaho 753 at 755, 203 P.3d 683 at 685 (2009) quoting *Payette River Prop. Owners Ass’n v. Bd. of Comm’rs of Valley Cnty.*, 132 Idaho 551 at 557, 976 P.2d 477 at 483 (1999)). This is because “[t]he asserted purpose for enacting the legislation cannot modify its plain meaning.” *Verska v. Saint Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889 at 892–93, 265 P.3d 502 at 505–06 (2011).

When interpreting a statute, the courts do not engage in statutory construction when the language is clear and not ambiguous. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000).

The literal words of the statute “must be given their plain, usual, and ordinary meaning; . . . [i]f the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.” *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 139 Idaho 65 at 69, 72 P.3d 905 at 909 (2003).

Even if a clear statute created absurd results, the statute cannot be changed by the courts. Courts do not have the authority to revise or void “...an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written.” *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 at 896, 265 P.3d 502 at 509 (2011). The Court reasoned:

Indeed, the contention that we could revise an unambiguous statute because we believed it was absurd or would produce absurd results is itself illogical. [*Id.* Internal citation and quotation marks omitted.]

Even if the statute were construed to be ambiguous, the rule of lenity would require the same result. Idaho Code §19-2603 says credit must be given for all pre-disposition incarceration. The rule of lenity was expressed in *State v. Nab*, 112 Idaho 1139, 739 P.2d 438 at 440 (Ct.App. 1987):

Even if we were persuaded the statute was ambiguous, we would be constrained by the principle of lenity to reach the same result. *State v. McKaughen*, 108 Idaho 471, 700 P.2d 93 (Ct.App. 1985) (criminal statutes are strictly construed in their substantive

elements); *Rewis v. United States*, 401 U.S. 808, 91 S.Ct. 1056, 28 L.Ed.2d 493 (1971) (ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity).

Under the rule of lenity, a person can rely on §19-2603 to receive credit for predisposition credit as to both counts of a case when that person is arrested on both counts.

Courts also refer to the rule of lenity as the “void for vagueness” doctrine. The void for vagueness doctrine is premised upon the Due Process Clause of the Fourteenth Amendment of the U.S. constitution as well as Article 1, Section 13 of Idaho’s constitution. *State v. Laramore*, 145 Idaho 428, 179 P.3d 1084 (Ct.App. 2007).

“As generally stated, the void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903, 909 (1983)(excluding additional citations).

The standard to use in analyzing these so-called “void for vagueness” situations has been set forth in *State v. Prather*, 135 Idaho 770, 25 P.3d 83 at 86 (2001):

The void for vagueness doctrine is an aspect of due process which requires that the meaning of criminal statutes be determinable. [*State v.*] *Cobb*, 132 Idaho [195] at 197, 969 P.2d [244] at 246. Due process requires that individuals be informed of what the law commands or forbids and that ***people of common intelligence not be forced to guess at the meaning of the statute.*** *Smith v. Goguen*, 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974). Additionally, a statute is void for vagueness if it “invites arbitrary and discriminatory enforcement.” *Cobb*, 132 Idaho at 197, 969 P.2d at 246. “A void for vagueness challenge is more favorably acknowledged and a more stringent vagueness test will be applied

where a statute imposes a criminal penalty, or if the law interferes with a substantial amount of conduct protected by the First Amendment." *Id.* at 198, 969 P.2d at 247 (internal citations omitted). [Emphasis added.]

Ignoring the clear statutory language requiring credit for all time served on a warrant can create arbitrary enforcement as one judge may give credit while another would not.

Idaho statute §18-309 determines when credit for pre-sentence incarceration applies.

Idaho Code §18-309 determines when a defendant receives credit for pre-sentence incarceration. (This case involves credit for pre-disposition incarceration, not pre-sentence incarceration - but the principles parallel each other.) That statute reads:

In computing the term of imprisonment, *the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment*, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term. [Emphasis added.]

For decades upon decades Idaho's case law incorrectly held that prejudgment credit need not be given on both of two consecutive sentences; credit for one of them was deemed sufficient. See, for example, *State v. Hernandez*, 120 Idaho 785 at 791, 820 P.2d 380 at 386 (Ct.App. 1991), citing *State v. Hoch*, 102 Idaho 351, 630 P.2d 143 (1981)).

However, in 2015 those rulings changed. *Hock* and similar cases were overruled in *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015).

Idaho Code §18-309 clearly requires credit be given even for consecutive sentences.

In 2015, The Idaho Supreme Court decided *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015). The court reiterated that when a statute is not ambiguous, the courts apply that law even if unusual or absurd results occur.

The *Owens* case involved §18-309, mandating pre-judgment credit for time served (analogous to §19–2603) and overruled *Hoch*. The Supreme Court concluded that “Idaho Code section 18–309 allows a defendant to receive credit on multiple charges for pre-judgment time served and therefore requires this Court to overrule *State v. Hoch*.” *Owens*, 158 Idaho at 3, 343 P.3d at 32.

The statute in *Owens*' case focused upon the following language from §18–309:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered.

...

That language parallels the language of §19–2603, applicable to Mr. Osborn's situation:

... The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, ...

The *Owens* court reminded us that an unambiguous statute must be applied as given, without divining an assumed legislative intent. *Owens* states:

We hold that (1) Idaho Code section 18-309's language unambiguously requires courts to credit a defendant any pre-judgment incarceration served on each count and (2) *State v. Hoch* incorrectly relied on an assumed legislative intent that conflicts with the statute's plain language. Thus, *Hoch* was manifestly wrong, and we overrule *Hoch* to vindicate plain, obvious principles of law. We therefore hold a defendant receives credit for any pre-judgment incarceration served on each of his consecutive sentences.

343 P.3d at 35.

Similar reasoning applies to Osborn’s case. He was held in custody and served time for both counts of CR-2016-21670. Had he been released on one of the counts, he still would have been held in custody on the second count. Idaho Code §19–2603 unambiguously requires that he receive credit on each count for the time he served in pre-disposition custody on each count.

Idaho Code §19-2603 determines when credit for pre-disposition incarceration applies.

Just as §18-309 establishes when pre-sentence incarceration credit must be given, §19-2603 establishes when pre-disposition incarceration credit be given after a defendant commits a probation violation.

That statute, “Pronouncement and execution of judgment after violation of probation,” provides:

When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence. ***The defendant shall receive credit for time served from the date of service of a bench warrant*** issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence. [Emphasis added.]

Idaho Code §19-2603 also clearly requires credit be given even for consecutive sentences.

Under §19-2603, courts must give credit for pre-disposition incarceration at a probation violation disposition: “The defendant shall receive credit for time served from the date of service of a bench warrant...” linked to the probation-connected crime. That language is as plain and unambiguous as the language in §18-309.

See also *State v. Covert*, 143 Idaho 169 at 170, 139 P.3d 771 at 772 (Ct. App. 2006):

If a probationer has been arrested for a probation violation, the defendant's incarceration from the time of service of the bench warrant will count as part of the sentence. See I.C. § 19-2603; *State v. Lively*, 131 Idaho 279, 280, 954 P.2d 1075, 1076 (Ct. App.1998). Thus, a defendant is entitled to credit for those periods of incarceration prior to disposition of a probation violation allegation, which were not served voluntarily as a condition of probation. *Lively*, 131 Idaho at 280-81, 954 P.2d at 1076-77.


CONCLUSION

Police arrested Mr. Osborn for violating the terms of his probation. The warrant of arrest applied to both counts of CR-2016-21670, although the underlying sentences ran concurrently.

At disposition, according to Idaho Code §19-2603, “[t]he defendant shall receive credit for time served from the date of service of a bench warrant...” This language reflects a clear and unambiguous directive that the Court give Mr. Osborn credit for time served on count one and credit for time served on count two.

With proper application of this statute, the Court must give an additional 106 days of incarceration credit toward Osborn’s sentence. The Court must amend the disposition order to reflect 346 days of credit, not just 240 days.

SUBMITTED this 6th day of April, 2018.

BY: 
DENNIS REUTER
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of April, 2018 I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Jennifer Tinkey
Coeur d'Alene Prosecuting Attorney
FAX: 208-769-2326

- U.S. Mail
- Hand Delivered
- Fax
- Overnight Mail



CITY OF COEUR D'ALENE - CITATION

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:

County: KOOTENAI State: ID Citation #: C2505478
DR#: 18C37016

VIOLATOR

Last Name: OSBORN MI: NEAL
First Name: CHRISTOPHER DOB: 10/26/1974
Hm. Address: 2710 N 10TH PL Hm. Phone: 638-352-3936
City: COEUR D'ALENE State: ID Zip: 83816
Height: 6'00" Weight: 230 Sex: M Race: W Eyes: GRN Hair: BRO
Lic. Expires: Operator: N

Bus.Name:
Bus.Addr.:
Bus.Phone:
Juvenile: N CDL: N Class:

REGISTRATION

Yr. Veh: Veh. Lic#: State:
Make: Model:
Color: Style:
VIN:

LOCATION

Upon a Public Street or Highway or Other Location Namely:
2710 N. 10TH PL

Hwy: Mp:

VIOLATIONS

Did unlawfully commit the following Offense(s) on: 11/14/2016, 00:09
Infraction Citation: N Misdemeanor Citation: Y Care: N
GVWR 26001+: N 16+ Persons: N Hazmat: N
Accident: N Companion Citation: N
Posted Speed: Observed Speed:
To Wit:
No Contact Order-violation Of

18-920
To Wit:
No Contact Order-violation Of

18-920
Witnessing Officer:
Serial# Addr.:
Dept.:

SIGNATURE

hereby certify service upon the defendant personally on 11/14/2016, 00:52

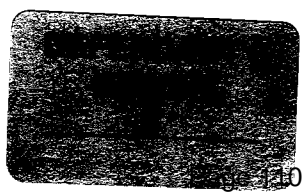
Officer: [Signature]
Officer name: J.PROCTOR
Officer ID: K89

COURT INFORMATION

KOOTENAI
324 W GARDEN AVE.
COEUR D'ALENE, ID 83814-1972
208-446-1170
XXXX BOOKED AT PSB XXXX

Contact the Court no later than 12/05/2016. This IS NOT the time for you to appear before a judge, it is however the time by which YOU MUST contact the Clerk of the District Court regarding your citation.

CR16-21670



FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO V
CHRISTOPHER NEAL OSBORN
2710 N 10TH PL
COEUR D'ALENE, ID 83815

JUDGMENT FILED 1/20/17 AT 1118A a.m.

CLERK OF THE DISTRICT COURT

BY Wanda Bue, DEPUTY BOND:

MO
AGENCY: COEUR D'ALENE PD
CASE # CR-2016-0021670 CITATION # C2505478
CHARGE: I18-920 NO CONTACT ORDER VIOLATION
AMENDED:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Dismissed - States Motion
- Judgment—Not Guilty
- Judgment on Trial—Guilty
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment. Fines 600

Fine / Penalty \$ 300 which includes costs, and probation fee if applicable. Suspended \$ _____

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service* _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Community Service* in lieu of jail **Must sign up within 7 days***.

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution and/or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 278 days, Credit 67 days, Discretionary Jail 20 days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum.

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR 2 YEAR(S) ON THE FOLLOWING CONDITIONS: probation concurrent

Violate no federal, state or local laws more serious than an infraction. Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a _____, and file proof of _____, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Other _____

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN
THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: IC Def. Atty. RD Pros. COA Date 1-20-2017 Judge# 328

Def. IC [] workrelease@kcgov.us [] AMP via email: kcmp@kcgov.us [] Dr. Serv. fax 208-334-8739 [] Other _____

[] KCSO RECORDS (fax 446-1307) [] Agency _____ Date 1/20/17 Deputy Clerk Wanda Bue

amended 1/23/17

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO, COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000, COEUR D'ALENE, IDAHO 83816-9000

STATE OF IDAHO V
CHRISTOPHER NEAL OSBORN
2710 N 10TH PL
COEUR D'ALENE, ID 83815

JUDGMENT
FILED 1-20-17 AT 1118A m.

CLERK OF THE DISTRICT COURT

BY [Signature], DEPUTY
BOND:

MO
AGENCY: COEUR D'ALENE PD
CASE # CR-2016-0021670 CITATION # C2505478
CHARGE: I18-920 NO CONTACT ORDER VIOLATION
AMENDED:

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- Been advised of right to court appointed counsel if indigent
- Defendant waived right to counsel
- Defendant represented by counsel
- Judgment, Plea of Guilty / Rights Waived
- Withheld Judgment Accepted
- Dismissed
- Dismissed - States Motion
- Judgment—Not Guilty
- Judgment on Trial—Guilty
- Judgment for Defendant / Infraction
- Judgment for State / Infraction
- Bond Forfeited / Conviction Entered - Case Closed
- Bond Forfeited / Dismissed

MONIES ORDERED PAID: A \$2.00 handling fee will be imposed on each installment. Fines consecutive

Fine / Penalty \$ 300 which includes costs, and probation fee if applicable. Suspended \$ _____

Pay within 30 days of today, or enroll in time payment program BEFORE due date.

Community Service* _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Community Service* in lieu of jail **Must sign up within 7 days***

Reimburse _____

Restitution _____

Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party. Authorization from defendant to pay restitution and/or infractions from bond.

No Contact Order, as condition of bond, terminated.

INCARCERATION ORDERED:

Jail 365 days, Suspended 278 days, Credit 67 days, Discretionary Jail 20 days are imposed & will be scheduled by the Adult Misdemeanor Probation Office, or Court, for violations of the terms below or on the attached addendum. Jail consecutive

Report to Jail _____ Release _____ Work Release Authorization (if you qualify).

Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ **Must sign up within 7 days.**

Follow the Labor Program schedule and policies.

DRIVING PRIVILEGES SUSPENDED _____ days commencing _____

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID 83707-1129.

Temporary Driving Privileges Granted commencing _____

To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

PROBATION ORDERED FOR 2 YEAR(S) ON THE FOLLOWING CONDITIONS: probation concurrent

Violate no federal, state or local laws more serious than an infraction. Supervised - See Addendum

Commit no similar offenses.

Maintain liability insurance on any vehicle that you drive.

Do not operate a motor vehicle with any alcohol or controlled substances in your bloodstream.

You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.

Obtain a _____, and file proof of _____, within _____ days.

Enroll in & complete _____ program. File proof of completion within _____ days.

Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.

Other _____

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN
THE DEFENDANT HAS THE RIGHT TO APPEAL
THIS JUDGMENT WITHIN 42 DAYS

Copies To: _____ Date 1-20-2017 Judge# 328

Def. IC Def. Atty. PD [] Pros. COA [] Comm. Serv. [] Jail [] jails@kcgov.us

workrelease@kcgov.us [] AMP via email: kcmp@kcgov.us [] Dr. Serv. fax 208-334-8739 [] Other _____ RE: NCO

[] KCSO RECORDS (fax 446-1307) [] Agency _____ Date 1/20/17 Deputy Clerk Wanda Bus

amended 1/23/17

RECEIVED

FEB 17 2017

ORIGINAL

Warrants Office

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

MAGISTRATE'S DIVISION

2017 JUL -3 AM 11:14

<p>STATE OF IDAHO, Plaintiff, v Osborn, Christopher Neal [REDACTED] Defendant</p>	<p>Case Number: CR-16-21670 CLERK DISTRICT COURT BENCH WARRANT PROBATION VIOLATION DEPUTY [Signature]</p>
<p>NO PHOTO AVAILABLE</p>	

TO: ANY SHERIFF, CONSTABLE, MARSHALL OR POLICEMAN IN THE STATE OF IDAHO:

YOU ARE HEREBY COMMANDED, to forthwith arrest the above-named defendant in the daytime or the nighttime, wherever the defendant may be found, including the defendant's residence and deliver the defendant into the custody of the Sheriff of Kootenai County, Idaho, for presentment before the above entitled court as soon as it is reasonably possible following the arrest to answer to the alleged probation violation filed in the above entitled matter; bond herein shall be set in the amount of \$ no bail.

DATED: 2/14/17

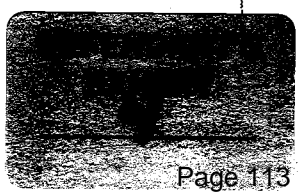
[Signature]
MAGISTRATE

Sentenced on Idaho Codes:
18-920 - Violation of a No Contact Order, 18-920 - Violation of a No Contact Order,

RETURN OF SERVICE

I hereby acknowledge that I served the foregoing warrant by arresting the above-named Defendant on the 30TH day of JUNE, in the year 2017:

C. ZIEGLER K96 / COEUR D'ALENE POLICE
Officer/Agency



FILED 10/17/17 AT 4:23P M.

CLERK OF THE DISTRICT COURT
BY _____ DEPUTY

**FIRST DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE, P.O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000**

STATE OF IDAHO,

CR- 16-121670

v

Christopher Osborn
Defendant

ORDER AFTER HEARING ON
PROBATION VIOLATION /
CONTEMPT

A HEARING WAS CONDUCTED on the date set forth below.

The defendant personally appeared was not present

The Defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and the right to have court appointed counsel if indigent, and the Defendant was represented by counsel waived the right to counsel

- The court conducted a hearing and received evidence.
- Stipulation entered into by both parties was received by the court.
- Defendant admitted to the violation. The court finds that the admission is knowingly and voluntarily entered.
- The State submitted a motion to dismiss.

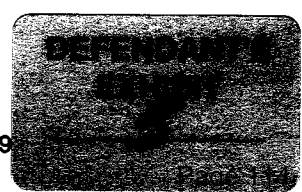
NOW THEREFORE, IT IS HEREBY ORDERED, that the

Court finds that the Defendant has knowingly and willfully violated the terms of his probation by

John Moran

Court finds that the Defendant is in contempt of Court for a knowing and willful violation of the Court's previously entered judgment by _____

- Hearing failed to show that the Defendant violated the terms of probation;
- Hearing failed to show that the Defendant is in contempt;
- Probation Violation / Contempt proceeding is dismissed.



THE COURT IMPOSES THE FOLLOWING PENALTIES UPON THE DEFENDANT:

MONIES ORDERED PAID: A \$2.00 handling fee is imposed on each installment

Fine/Penalty \$ _____ Suspended \$ _____

To be paid within 30 days of today or enroll in time payment program **BEFORE** due date.

Community service _____ hours by _____ Setup Fee \$ _____ Insurance Fee \$ _____

Defendant must sign up for community service within ten (10) days of the date this order is signed and pay all sign-up fees and workman's compensation fees;

Sign-up fee waived Workman's compensation fees waived

Defendant shall reimburse Kootenai County for costs of defense in the amount of

\$ _____ payable by _____

Bond Exonerated Applied to Fine and Costs/Return Remainder, if any.

INCARCERATION ORDERED:

Jail 730 days, Credit 240 days.

Report to Jail _____ at _____ m.

Release _____

Work Release Authorized In-Home Monitoring

Defendant may perform _____ hours by _____ on the Kootenai County Sheriff's Community Labor Program, in lieu of said jail, or report to the Jail on the same date at 6:00 p.m. **to serve the full jail time. Defendant must sign up at the Jail within seven (7) calendar days** for the Labor Program.

IT IS FURTHER ORDERED THAT:

Defendant may purge the contempt by _____

_____ and submitting written proof to the Court before _____. If such is not completed and the written proof is not delivered prior to that date, then the Defendant must report to jail as ordered above.

The probation previously imposed shall continue on the same terms and conditions and shall not expire until _____

The probation shall be extended to _____

Additional terms of probation shall include _____

The probation shall be supervised. **(See Supervised Probation Addendum attached.)**

The probation is hereby terminated.

The probation shall be terminated on _____

Other: _____

DATED THIS 17 DAY OF Oct 2017

[Signature]
JUDGE

COPIES TO: DEF DEF ATTORNEY PROSECUTOR JAIL COM. SERVICE
 OTHER _____

DATE: _____ DEPUTY CLERK _____

* * * Communication Result Report (Apr. 6. 2018 1:11PM) * * *

1) KC Public Defender
2)

Date/Time: Apr. 6. 2018 1:05PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
8247	Memory TX	CDA PA	P. 21	OK	

Reason for error
 E. 1) Hang up or line fail
 E. 2) Busy
 E. 3) No answer
 E. 4) No facsimile connection
 E. 5) Exceeded max. E-mail size
 E. 6) Destination does not support IP-Fax

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, KOOTENAI COUNTY

STATE OF IDAHO,)
)
 Plaintiff/Respondent,)
)
 V.)
)
 CHRISTOPHER N. OSBORN,)
)
 Defendant/Appellant.)
)

CASE NUMBER
CR-2016-21670

APPELLANT'S
OPENING BRIEF

Appeal from the Magistrate's Division of the First Judicial District for Kootenai County.

Honorable Clark Peterson presiding.

ATTORNEYS FOR RESPONDENT:

Coeur d'Alene Prosecuting Attorney
710 E. Mullan Avenue
Coeur d'Alene, ID 83814
208-769-2323

BY: JENNIFER TINKEY
Deputy Prosecuting Attorney

ATTORNEYS FOR APPELLANT:

Kootenai County Pub Defender
P.O. Box 9000
Coeur d'Alene, ID 83816
208-446-1700

BY: DENNIS REUTER
Deputy Public Defender

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF IDAHO, KOOTENAI COUNTY

STATE OF IDAHO,

Plaintiff/Respondent,

V.

CHRISTOPHER N. OSBORN,

Defendant/Appellant.

)
)
) **CASE NUMBER**
) **CR-2016-21670**
)

) **ERRATA RE: APPELLANT'S OPENING**
) **BRIEF**
)

Comes now Christopher Osborn, by and through his undersigned attorney, and provides the following correction to the Appellant's Opening Brief filed with the Court on or about April 6, 2018.

Error and Correction


On page 10 of the Appellant's opening brief, the first paragraph of the "Conclusion" section reads: "Police arrested Mr. Osborn for violating the terms of his probation. The warrant of arrest applied to both counts of CR-2016 -21670, although the underlying sentences ran concurrently."

That paragraph should read: "Police arrested Mr. Osborn for violating the terms of his probation. The warrant of arrest applied to both counts of CR-2016 -21670, although the

underlying sentences ran ~~concurrently~~ consecutively.”

DATED this 18th day of April, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER

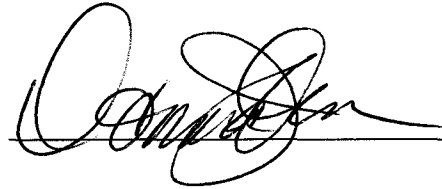
BY: 
DENNIS REUTER
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 20 day of April, 2018, addressed to:

Jennifer Tinkey
Coeur d'Alene Prosecutor

- Via Fax
- Interoffice Mail
- Via Email
- iCourt



CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323

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

STATE OF IDAHO,)	
	)	CASE NO. CR-2016-21670
Plaintiff-Respondent,)	
)	
vs.	)	BRIEF OF RESPONDENT
)	
CHRISTOPHER N.OSBORN,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

Appeal from the Magistrate Division
of the First Judicial District
in and for the County of Kootenai
HONORABLE CLARK PETERSON
MAGISTRATE

JENNIFER TINKEY
Deputy City Attorney
710 E. Mullan Avenue
Coeur d'Alene, Idaho 83814
(208) 769-2323
ATTORNEY FOR RESPONDENT

JAY LOGSDON
Deputy Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
(208) 446-1700
ATTORNEY FOR APPELLANT

BRIEF OF RESPONDENT: 1

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BRIEF OF RESPONDENT: 3

NATURE OF THE CASE

This is an appeal from Magistrate Judge Clark Peterson's denial of an Idaho Criminal Rule 35 Motion.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

The Respondent has reviewed the Statement of Facts and Course of Proceedings submitted in Appellant's brief and has no changes but would add to what has been stated.

On October 27, 2017, Appellant filed *Motion for Credit for Time Served* under Idaho Criminal Rule 35. Respondent attaches as Exhibit A. Appellant sought an extra 106 days of credit for time served; arguing that although the underlying sentences were consecutive, he should receive separate credit for time served for each crime for the time spent in custody before disposition of his probation violation.

The Respondent filed *Notice of Objection to the Motion* dated October 30, 2017. Respondent attaches as Exhibit B. Appellant then filed *Reply to the State's Objection for Credit for Time Served*. Appellant attaches as Exhibit C. The *Motion* was heard by Judge Peterson on December 4, 2017 and Judge Peterson denied the Appellant's Rule 35 *Motion for Credit Time Served* resulting in this appeal. Appellant attaches as Exhibit D.

ISSUE PRESENTED

While the Appellant was in custody on a warrant for violation of probation, was he entitled to credit for time served for each crime when judgment had already been entered and the jail time was ordered to be consecutive?

STANDARD OF REVIEW

The standard of review was set forth by the Appellant in his brief.

ARGUMENT

In 2015, both Idaho Code §18-309 and Idaho Code §19-2603 were amended. Statutory construction is telling when the laws were amended at the same time and the language used is not a mirror between the sections. The amended language of the statutes is contained below, the shaded sections were the additions and the strike through were deleted.

SECTION 1. That Section 18-309, Idaho Code, be, and the same is hereby amended to read as follows:

- **18-309. Computation of term of imprisonment.**

- (1) In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.
- (2) In computing the term of imprisonment when judgment has been withheld and is later entered or sentence has been suspended and is later imposed, the person against whom the judgment is entered or imposed shall receive credit in the judgment for any period of incarceration served as a condition of probation under the original withheld or suspended judgment.

SECTION 2. That Section 19-2603, Idaho Code, be, and the same is hereby amended to read as follows:

- **19-2603.**

Pronouncement and execution of judgment after violation of probation. When the defendant is brought before the court in such case finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, the original judgment shall be in full force and effect and may be executed according to law, and revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence, but the time of. The defendant's sentence shall count shall receive credit for time served from the date of service of such a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the

defendant pursuant to section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence.

2015 Ida. ALS 99, 2015 Idaho Sess. Laws 99, 2015 Ida. Ch. 99, 2015 Ida. HB 64.

The Appellant relies heavily on the argued similarity between Idaho Code §18-309 and Idaho Code §19-2603 as a basis for granting credit for time served on each crime for time spent in custody before disposition on a probation violation. However, when the laws were amended in 2015, Idaho Code §18-309(2) was added and additional language was added to 19-2603 and neither of those additions contain any language that would support the Appellant's argument. In fact, the plain meaning of those statutes states when a defendant violates probation, the probation can be revoked and the previously suspended judgment imposed. The credit for time served **toward the judgment** that was suspended starts when the bench warrant is served. The Appellant's brief fails to recognize the fundamental procedural distinction between the code sections: the existence of a judgment. Once there is a judgment that articulates the manner in which time is to be calculated, Idaho Code §19-2603 has to be read in that context.

When the Appellant, Christopher Osborn, was sentenced on two counts of Violation of a No Contact Order, Judge Walsh executed judgment. For each crime, the executed judgment was for 365 days of jail with 67 days pre-judgment credit for time served. This award of credit for time served for each crime is correct under Idaho Code §18-309 and under *State v. Owens*, 158 Idaho 1, 343 P.3d 30(2015). Idaho Code §18-309 says in part "In computing the term of imprisonment, the person against whom the judgment was entered shall receive credit in the judgment for any period of incarceration **prior to the entry of judgment.**" [Emphasis added.]

Because Osborn was convicted of two crimes, under Idaho Code §18-308 the imprisonment to which he was sentenced could be ordered to be consecutive, which the court did. In the courts discretion under Idaho Code §19-2601(2), Judge Walsh suspended the execution of the judgment and placed Osborn on probation.

Osborn accepted the terms of probation and the suspended jail sentence which was

structured to run consecutively. Had he not accepted probation at the time of sentencing, he would not have received the benefit of a suspended judgment and would have begun his imprisonment term of 596 days. “Consecutive sentences are served in order, and one sentence does not begin until the other sentence ends. For example, a defendant sentenced to 100 days consecutively for eight counts will serve 800 days in jail. However, if that defendant served 50 days in jail before he was convicted of the eight counts, he gets 50 days credit for each of those 100 day sentences. He then has 50 days left to serve on the first count. When that time is served, he has 50 days left to serve on the second count. And so it continues for each count in the judgment. However, when a defendant is sentenced to a concurrent sentence, he serves all his sentences at the same time. That means that if he is sentenced to 100 days for eight counts, he will serve 100 days total for all eight counts. If that defendant gets 50 days of prejudgment credit, he will get that credit towards all eight counts at the same time. He will then only serve 50 more days in jail. This is how the statute's plain language requires courts to apply credit for time served.” *Owens, 158 Idaho 1, 4, 343 P.3d 30, 33 (2015)*.


When Osborn violated the terms and conditions of probation, the court revoked probation and executed the judgment that was already ordered, which was 596 days of jail. Osborn is entitled to 106 days credit for time served against that judgment of 596 days. That is the length of time he spent in custody from the date of the served bench warrant until the date of his probation violation disposition when probation was revoked. Being in custody on the probation violation warrant in this case does not somehow erase the judgment that was entered against him and lessen the jail sentence he must serve when his probation was revoked and judgment was executed. If that were true, the probation violation disposition would have the effect of amending the original judgment to reflect a lesser amount of jail to be imposed, which truly would be an absurd result.

CONCLUSION

Based upon the foregoing argument and authority, Respondent hereby respectfully

requests that the magistrate's denial of the *Motion for Credit for Time Served* be upheld.

RESPECTFULLY SUBMITTED this 14 day of May, 2018.



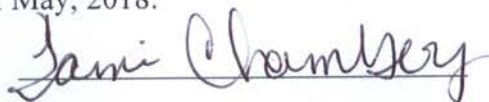
JENNIFER TINKEY, ATTORNEY FOR RESPONDENT

CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that I mailed/delivered a true and correct copy of the foregoing Brief of Respondent, by regular U.S. Mail, postage prepaid or by Interoffice Mail at the Kootenai County Courthouse or by facsimile transmission to:

JAY LOGSDON
Deputy Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
(208) 446-1700

this 14th day of May, 2018.



Jami Chambers

BRIEF OF RESPONDENT: 8

Jay Logsdon, Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

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

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-16-0021670
)	
V.	)	MOTION FOR CREDIT FOR TIME
	)	SERVED
CHRISTOPHER NEAL OSBORN,)	
)	
Defendant,)	
_____)	

Comes now Christopher Osborn, by and through undersigned Deputy Public Defender Jay Logsdon, and moves this Court for an order giving him credit for an additional 106 days served in custody in this matter.

This motion is based upon Idaho Criminal Rule 35(c), Idaho Code §19-2603 and the following memorandum of law, facts and argument.

LAW

Idaho law requires that when a sentence is imposed that credit be given for any time spent incarcerated in relation to that offense. See §19-2603, Pronouncement and execution of judgment after violation of probation:

When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld,

MOTION FOR CREDIT FOR TIME SERVED

Page 1



pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence. *The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court* after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence. [Emphasis added.]

Idaho Criminal Rules (ICR), Rule 35(c), Credit for Time Served, states:

A motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code § 18-309 or 19-2603, may be made at any time.

FACTS

On January 20, 2017 Defendant Christopher Osborn was sentenced in Kootenai County CR-2016-21670 for two counts of violating a No Contact Order. The sentencing Court imposed 730 days of incarceration (365 for each count, to run consecutively) but suspended the sentence and placed Osborn on probation with credit for 67 days served on each count. At that point, a total of 134 days had been credited to his 730 day sentence. The judgments also reflect that the two probation periods were to be served concurrently.

Osborn requests that the Court take judicial notice of the January 20 judgments.

On February 16, 2017 a bench warrant was issued for Osborn for alleged violation of his probation. The warrant was served on July 3 and an evidentiary hearing was eventually set for October 17, 2017. Mr. Osborn was in custody on the bench warrant during the 106 days between July 3 and October 17. The probationary terms were still running concurrently.

MOTION FOR CREDIT FOR TIME SERVED

Page 2

Osborn requests that the Court take judicial notice of the bench warrant, return of service and the setting of the evidentiary hearing.

At the October 17 evidentiary hearing Osborn admitted his violation. Disposition took place that same day with the Court imposing the full 730 days of incarceration with credit for the 134 days previously served and another 106 days as to only one of the counts in this case. No credit for time served was given as to the other count in the case. At that point, a total of 240 days credit for time served was applied to his 730 day sentence.

Osborn requests that the Court take judicial notice of the October 17 admission and disposition as reflected in the court's file.

Over Osborn's objection, the Court did not give him credit for the 106 days served from July 3 to October 17 as to the second count in this case. The Court explained that because the sentences were to run consecutively, it was not necessary to give credit toward both cases for the 106 days spent in custody on the bench warrant; credit given for only one of the two counts was legally sufficient.

ARGUMENT

Although prior case law at one time supported this Court's reasoning, that precedent was overturned in 2015.

In general, credit must be given for time spent in pre-disposition custody on a warrant alleging a probation violation.

...credit must be given for jail incarceration after arrest for a probation violation. This is mandated by I.C. §19-2603, which provides that when a defendant has been arrested on a bench warrant for a probation violation and the probation has consequently been

revoked, "the time of the defendant's sentence shall count from the date of service of such bench warrant." See also *State v. Covert*, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct.App.2006); *State v. Lively*, 131 Idaho 279, 280, 954 P.2d 1075, 1076 (Ct.App.1998); *State v. Buys*, 129 Idaho 122, 127–28, 922 P.2d 419, 424–25 (Ct.App.1996).

State v. McCarthy, 145 Idaho 397, 179 P.3d 360 at 361 (Ct.App. 2008). The *McCarthy* opinion cited the 1991 opinion of *State v. Hernandez*, 120 Idaho 785, 820 P.2d 380 (Ct.App.1991), and the 1981 case of *State v. Hoch*, 102 Idaho 351, 630 P.2d 143 (1981). The *McCarthy* opinion also commented on NOT giving credit for more than one case when the underlying sentences were to be served consecutively:

We contrasted this situation with that of consecutive sentences, the Idaho Supreme Court having held that credit must be allowed on only one of multiple consecutive sentences because conferring credit on each of the consecutive sentences would give the defendant credit for more time than he actually spent in confinement. [*Hernandez*, 120 Idaho] at 791, 820 P.2d at 386 (citing *State v. Hoch*, 102 Idaho 351, 630 P.2d 143 (1981)).

However, the Idaho Supreme Court overruled the *Hoch* holding in the 2015 case of *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015). The *Owens* case involved §18-309, mandating pre-judgment credit for time served (analogous to §19-2603). "Idaho Code section 18-309 allows a defendant to receive credit on multiple charges for pre-judgment time served and therefore requires this Court to overrule *State v. Hoch*." *Owens*, 158 Idaho at 3, 343 P.3d at 32.

The statute in *Owens'* case focused upon the following language from §18-309:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment for any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered. ...

That language parallels the language of §19-2603, applicable to Mr. Osborn's situation:

... The defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, [or] for any time served following an arrest of the defendant pursuant to section 20-227 ...

The *Owens* court reminded us that an unambiguous statute must be applied as given, without a contrary interpretation by divining an assumed legislative intent. *Owens* states:

We hold that (1) Idaho Code section 18-309's language unambiguously requires courts to credit a defendant any prejudgment incarceration served on each count and (2) *State v. Hoch* incorrectly relied on an assumed legislative intent that conflicts with the statute's plain language. Thus, *Hoch* was manifestly wrong, and we overrule *Hoch* to vindicate plain, obvious principles of law. We therefore hold a defendant receives credit for any prejudgment incarceration served on each of his consecutive sentences.

343 P.3d at 35.

Similar reasoning applies to Osborn's case. He was held in custody and served time for both counts of CR-2016-21670. Had he been released on one of the counts, he still would have been held in custody on the second count. Idaho Code §19-2603 unambiguously requires that he receive credit on each count for the time he served in pre-disposition custody on each count.

CONCLUSION

Mr. Osborn was held on a warrant in relation to concurrent probation for both counts of violating a no contact order. The sentencing and probation-related statutes require credit be given for all time served following the service of a bench warrant alleging a probation violation. The statute is clear and unambiguous. Prior erroneous interpretations of like statutes have been overruled in *State v. Owens*, 158 Idaho 1, 343 P.3d 30 (2015).


MOTION FOR CREDIT FOR TIME SERVED

Page 5

Mr. Osborn must receive an additional credit of 106 days spent in custody, for a total of 346 days of pre-disposition credit,

DATED this 27th day of October, 2017.

THE LAW OFFICE OF THE PUBLIC DEFENDER OF KOOTENAI COUNTY

BY:  (FOR)
JAY LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 27 day of October, 2017, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail



COEUR D'ALENE CITY ATTORNEY'S OFFICE
 710 E. MULLAN AVENUE
 COEUR D'ALENE, IDAHO 83814
 TELEPHONE: (208) 769-2323
 FAX: (208) 769-2326

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


STATE OF IDAHO,)	
	)	CASE NO. CRM-16-021670
Plaintiff.)	
	)	NOTICE OF OBJECTION
vs.	)	TO DEFENDANT'S MOTION
	)	FOR CREDIT FOR TIME SERVED
)	
CHRISTOPHER NEAL OSBORN,)	
Defendant.)	
_____)	

COMES NOW, the Office of the Coeur d'Alene City Attorney-Criminal Division, and respectfully objects to the Defendant's Motion For Credit For Time Served, dated October 27, 2017.

The State objects because the case law cited by the Defendant is not applicable for this motion. Defendant relies upon case law for credit for time served *prejudgment* as a basis for credit for time served on a probation violation where the suspended sentence was ordered to run consecutively.

Here the court revoked the Defendant's probation and imposed the suspended sentence. The court properly followed Idaho Code §19-2603 when calculating the credit for time served. The Defendant is not entitled to credit for time served on both counts because the judgment previously imposed dictated the suspended jail in this case would run consecutively.

Dated this 30th day of October, 2017.


 Deputy City Attorney



CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that I mailed/delivered a true and correct copy of the foregoing OBJECTION TO DEFENDANT'S MOTION, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice Mail at the Kootenai County Courthouse to:

JAY LOGSDON
DENNIS REUTER
PUBLIC DEFENDER'S OFFICE
INTEROFFICE MAIL

FAX: (208)446-1701

DATED this 30th day of October, 2017.

Shawn Brice

COPY

Jay Logsdon, Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

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

STATE OF IDAHO,)

Plaintiff,)

V.)

CHRISTOPHER NEAL OSBORN,)

Defendant.)

CASE NUMBER CR-16-0021670

REPLY TO STATE'S OBJECTION
FOR CREDIT FOR TIME SERVED

Defendant Chris Osborn replies to the State's objection to granting him credit for time served.

The State objects to credit for time served because the case law cited by the defense pertains to prejudgment credit, not predisposition credit. While true, Defendant made that same point in his memorandum – the decisions and arguments regarding the two statutes are analogous. See these sentences taken from the defendant's opening memorandum: "The [*State v.*] *Owens* case [158 Idaho 1, 343 P.3d 30 (2015)] involved §18-309, mandating pre-judgment credit for time served (*analogous* to §19-2603)" "That language [of 18-309] *parallels* the language of §19-2603, applicable to Mr. Osborn's situation" and "*Similar reasoning* [as displayed in the *Owens*' case] applies to Osborn's case." [Emphasis added.]

REPLY TO STATE'S OBJECTION
FOR CREDIT FOR TIME SERVED

Page 1

PLAINTIFF'S
EXHIBIT NO. C
IDENTIFICATION/EVIDENCE
CASE NO. _____
DATE: _____

While the *Owens*' case does not construe the predisposition credit statute §19-2603, the message is the same for Osborn's case. Credit for time served must be given when a statute such as §19-2603 unambiguously requires credit be given for all "...time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, [or] for any time served following an arrest of the defendant pursuant to section 20-227...".

Just as in *Owens*, predisposition credit for each consecutive sentence must be given because that is what the statute requires. Osborn is not getting credit for time he has not served; he is getting credit for time he has served on concurrent probations, applied to each of two consecutive sentences. Following the statute mandates this result.

DATED this 7th day of November, 2017.

THE LAW OFFICE OF THE PUBLIC
DEFENDER OF KOOTENAI COUNTY

BY: Jay Logsdon (FOR)
JAY LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 9 day of November, 2017, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Via Fax

Interoffice Mail

[Signature]

**REPLY TO STATE'S OBJECTION
FOR CREDIT FOR TIME SERVED**

Page 2

COEUR D'ALENE CITY ATTORNEY'S OFFICE
710 E. MULLAN AVENUE
COEUR D'ALENE, IDAHO 83814
TELEPHONE: (208) 769-2323
FAX: (208) 769-2326

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 12-9-18
AT 12:55 O'CLOCK P M
CLERK, DISTRICT COURT
DEPUTY

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


STATE OF IDAHO,)
Plaintiff,) CASE NO. CRM-16-021670
vs.)
CHRISTOPHER NEAL OSBORN,) ORDER DENYING DEFENDANT'S
Defendant.) RULE 35 MOTION

The Court heard the above matter on December 4, 2017, based on Defendant's Rule 35 Motion for credit for post judgment time served. The Defendant was represented by his attorney, Dennis Reuter, Deputy Kootenai County Public Defender; the state was represented by Wes Somerton, Coeur d'Alene Chief Deputy City Attorney, the Honorable Clark Peterson, Magistrate presiding.

After reviewing the parties' briefs submitted in this matter and heard the legal arguments of counsel the Court announced its findings and conclusions on the record. Based on the announced findings and conclusions:

IT IS HEREBY ORDERED that Defendant's Rule 35 Motion is denied.

Entered this 14 day of December, 2017.


CLARK PETERSON - Magistrate Judge

Copies to:

Def. _____ Def. Att _____ CDA Pros. _____
CDA PD _____ Jail, CIB _____ Sup. Ct. _____
Aud. _____ Bonding Co. _____ Other _____
Date _____ Dep. Clerk _____

ORDER DENYING DEFENDANT'S MOTION

PLAINTIFF'S
EXHIBIT NO. D
IDENTIFICATION/EVIDENCE
CASE NO. _____
DATE: _____

CERTIFICATE OF MAILING

I hereby certify that I mailed/delivered a true and correct copy of the forgoing Order Denying Defendant's Motion, by regular U.S. Mail, postage prepaid, by facsimile, or by Interoffice mail at the Kootenai County Courthouse to:

Dennis Reuter
Attorney for Defendant
FAX: (208)446-1701
email: pdfax@kcgov.us

City of Coeur d'Alene Attorney Office
FAX: 769-2326
email: cdaprosnotices@cdaid.org

DATED this 9 day of December, ~~2017~~²⁰¹⁸.

Case

Jay Weston Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
Email: Pdfax@kcgov.us

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

STATE OF IDAHO,

Plaintiff,

vs.

CHRISTOPHER NEAL OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**SECOND MOTION REQUESTING
ORDER FOR CREDIT FOR TIME
SERVED PURSUANT TO I.C.R. 35(C)
AND TO CLARIFY CONCURRENT
SENTENCE**

COMES NOW, the above named defendant, by and through their attorney, Jay W. Logsdon, Deputy Public Defender, and hereby pursuant to Idaho Criminal Rule 35(c) requests the Court issue an order based on the Judgment entered herein October 17, 2017, that will provide the defendant with credit for all the time served since disposition. I.R.C.(c) provides, "a motion to correct a court's computation of credit for time served, granted pursuant to Idaho Code Sections 18-309 or 19-2603, may be made at any time."

This request is made for an Order giving the Defendant credit for time served at the time of the writing of this Motion in the amount of **451**. Calculation for the time served is as follows:

1. The Court provided the defendant with 240 days credit on October 17, 2017;
2. The defendant has been in custody since then and so as of today should have 211 days additional credit.

Pursuant to the Court's judgment, the defendant's release date should be February 19, 2019. However, Kootenai County jail staff thought the sentence was intended to be consecutive to that in CR-17-11559, and so have him scheduled for release on August 20, 2019. Counsel has listened to the recording of the disposition and it was clearly intended to be concurrent.

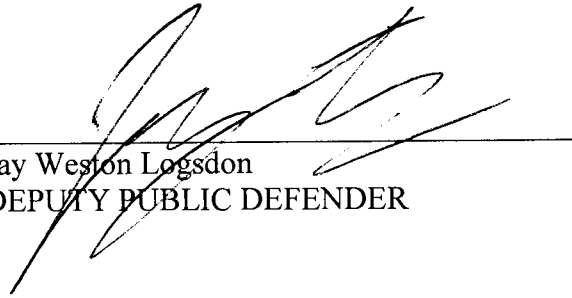
**STIPULATED SECOND MOTION REQUESTING ORDER FOR CREDIT
FOR TIME SERVED PURSUANT TO I.C.R. 35C**

PAGE 1

If needed, Counsel requests a hearing on the matter; requested time is five (5) minutes.

DATED this 17 day of May, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER



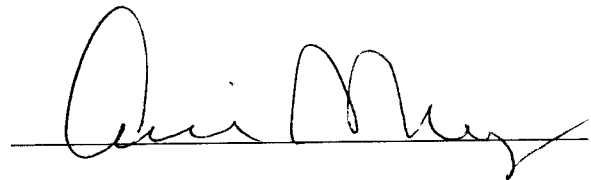
Jay Weston Logsdon
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 17 day of May, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

- Via Fax
- Interoffice Mail
- Via Email



Jay Logsdon, Deputy Public Defender
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PO Box 9000
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Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	CASE NUMBER
	)	CR-2016-21670
V.)	
)	
CHRISTOPHER N. OSBORN,	)	APPELLANT'S REPLY BRIEF
)	
Defendant/Appellant.)	
)	

Appeal from the Magistrate Court of the First Judicial District for Kootenai County.

Honorable Clark Peterson presiding.

ATTORNEY FOR THE PLAINTIFF:

JENNIFER TINKEY
DEPUTY PROSECUTING ATTORNEY
710 E. MULLAN AVE.
COEUR D'ALENE, ID 83814

ATTORNEY FOR DEFENDANT:

JAY LOGSDON
DEPUTY PUBLIC DEFENDER
PO BOX 9000
COEUR D'ALENE, ID 83816

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CASES

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State v. McCarthy, 145 Idaho 397 (Ct.App.2008)----- 1

STATUTES AND REGULATIONS

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ISSUES PRESENTED

- I. Whether a consecutive sentence on two or more charges in a matter turns those charges into one judgment for purposes of credit for time served pursuant to I.C. § 19-2603.

ARGUMENT

I.

The state argues that where a defendant is found guilty of two offenses and judgment is entered consecutively on those sentences, the two offenses morph into one judgment for purposes of I.C. § 19-2603. The state's argument relies on the Supreme Court's decision in *State v. Hoch*, 102 Idaho 351 (1981), but its logic is the same. In essence "because conferring credit on each of the consecutive sentences would give the defendant credit for more time than he actually spent in confinement" credit should only be awarded to one of the consecutive sentences. *State v. McCarthy*, 145 Idaho 397, 399 (Ct.App.2008). Both sides, however, note that the Supreme Court has overruled this case. So the state attempts to draw a distinction between I.C. § 19-2603 and I.C. § 18-309 in that one refers to "the offense" and the other to "the sentence." But aside from its reliance on overruled case law, the state is unable to draw any other distinction.

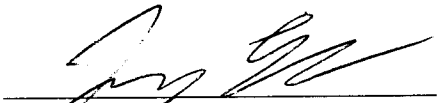
This Court should find that a defendant is sentenced on an offense, pursuant to I.C. § 19-2601. There is no melding of sentences for purposes of I.C. 19-2603. A person being held post-sentence is being held post-sentence on each offense. Until such time as the Court revokes probation and imposes the suspended sentence or withheld judgment, the credit is accrued against each offense

because the defendant is being held on each sentence. The only way to avoid this would be to issue bench warrants on one offense rather than all of them. Otherwise, there is no mechanism whereby multiple offenses with their own sentence can be treated as on sentence against which a defendant awaiting a hearing on a probation violation accrues credit.

DATED this 17 day of May, 2018.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:



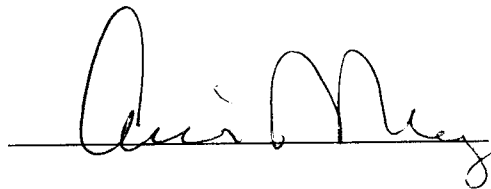
JAY LOGSDON, ISB 8759
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 17 day of May, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

~~*~~ iCourt



Description	CR 2016-21670 Osborn, Christopher 20180618 Motion for Rule 35 Judge Peterson Clerk Cassie Poole		
Date	6/18/2018	Location	1K-CRT10
Time	Speaker	Note	
09:49:56 AM	Judge Peterson	Defendant present in custody with Mr. Logsdon, Mr. Gowey for the city	
09:50:30 AM		2nd motion filed requesting credit time served and to clarify sentence the matter is also as I understand it on appeal	
09:50:47 AM	Gowey, Roy	There is oral argument set later this month. Agree court can clarify credit time served.	
09:51:14 AM		Ms. Tinkey had some concerns about the way he worded somethings but agree there was another case should be getting concurrent jail time with. The defendant went on rider and remained in custody on this case.	
09:51:50 AM		Our position is that we believe since brought pursuant to (c) we are not objecting procedurally. The calculation Ms. Tinkey wasn't sure of.	
09:52:32 AM	Logsdon, Jay	At the time I took this case the attorney that had it before me client returned from retained and his release date appeared off the jail was confused by the various indications of what was concurrent and consecutive. I spoke to Ms. Tinkey about facts and circumstances. The jail ran this consecutive to the felony matter so he didn't get credit from the date of disposition until he came back from retained.	
09:54:01 AM	Judge Peterson	The judgments in this case don't indicate they are concurrent or consecutive to anything else.	
09:54:14 AM	Logsdon, Jay	There was discussion between yourself and attorneys and court wasn't running consecutive to felony matter	
09:54:40 AM		In felony case court didn't make any indication of concurrent or consecutive.	
09:54:51 AM	Judge Peterson	To the extent that term is at issue have to grant that motion. As for calculation as to days or time is there any further issue you need to address regarding that?	
09:55:31 AM	Logsdon, Jay	The order granting credit time served indicates runs concurrent and to give credit of 451 days think that makes it as clear as can make it.	
09:56:08 AM	Judge Peterson	Order will be entered.	

<u>09:56:45</u> <u>AM</u>		Will enter the order as submitted.
<u>09:57:04</u> <u>AM</u>	End	

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Jay Weston Logsdon, Deputy Public Defender
Kootenai County Public Defender
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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

vs.

CHRISTOPHER NEAL OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**ORDER GRANTING CREDIT FOR
TIME SERVED**

The Court having before it the Second Motion for Credit for Time Served and good cause appearing now, therefore

IT IS HEREBY ORDERED that the sentence in this case runs concurrent with CR-17-11559;

IT IS FURTHER ORDERED that the defendant be given credit for all time served since October 17, 2017, and so should have 451 days credit as of May 16, 2018.

DATED this 22nd day of ^{June}~~May~~, 2018.

Order reflects ruling of the court made on the record on 6/18/18



Signed: 6/22/2018 11:52 AM

DISTRICT JUDGE

CLERK'S CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 22nd day of ~~May~~^{June}, 2018, addressed to:

Kootenai County Public Defender FAX 208-446-1701/ Email: pdfax@kcgov.us

Coeur d'Alene Prosecutor FAX 769-2326 cdaprosnotices@cdaid.org

Kootenai County Jail Fax: 208-446-1407/ Email: jailpw@kcgov.us

Signed: 6/22/2018 01:07 PM

Cassie Poole

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

2018 JUN 26 PM 4:33

Signed: 6/27/2018 08:16:10 AM
CLERK DISTRICT COURT

Tommy Muzzy
DEPUTY

STATE OF IDAHO,)
)
 Plaintiff,)
)
 V.)
)
 CHRISTOPHER OSBORN,)
)
 Defendant.)
 _____)

CASE NUMBER M16-21670

AFFIDAVIT FOR GOOD TIME

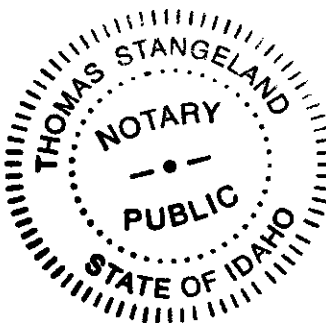
STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

I, DEPUTY K. MUZZY, being first duly sworn, depose and say:

1. That I am the duly sworn Sheriff of Kootenai County (or am acting with his authority as a duly sworn deputy).
2. The above-named defendant is in custody of the Kootenai County Sheriff for a term of 599 DAYS commencing on the 18TH DAY OF JUNE, 2018, pursuant to an order of this Court.
3. I am familiar with the actual behavior and/or record of behavior of the above named defendant throughout their incarceration and this defendant has a good record as a prisoner and has performed tasks assigned them in an orderly and peaceable manner.
4. I therefore recommend that the above named defendant be allowed five (5) days off of each and every month of their sentence pursuant to Idaho Code § 20-621 and that they be discharged from the custody of the Kootenai County Sheriff on the 16TH day of NOVEMBER, 2018.
5. Contingent upon no rule violations before the release date.

K. Muzzy
AFFIANT

SUBSCRIBED AND SWORN to before me this 25th day of June, 2018.



Thomas Stangeland
NOTARY PUBLIC FOR IDAHO

Commission expires: 100322

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

STATE OF IDAHO,)	
	)	CASE NUMBER M16-21670
Plaintiff,)	
)	
V.)	
	)	ORDER FOR GOOD TIME
CHRISTOPHER OSBORN,)	
)	
Defendant.)	
_____)	

Having considered the foregoing affidavit and recommendation for commutation of sentence for good behavior and good cause appearing,

IT IS HEREBY ORDERED that the above named defendant be allowed five (5) days off for each and every month of their sentence and that they be discharged from the custody of the Kootenai County Sheriff on the **16TH day of NOVEMBER, 2018**, unless the defendant violates the Jail rules prior to such date.

Dated this 29th day of June, 2018.

Signed: 6/29/2018 01:53 PM


District Judge/Magistrate

Copies routed to:

- ___ Court
- ___ Sheriff's Department jailpw@kcgov.us
- ___ Prosecuting Attorney cdaprosnotices@cdaid.org
- ___ Probation & Parole
- ___ Defense Attorney pdfax@kcgov.us

Description	CR 2016-21670 Osborn, Christopher Neal 20180711 Oral Argument Judge Meyer Clerk Denice Larsen Court Reporter Diane Bolan		
Date	7/11/2018	Location	1K-CRT10
Time	Speaker	Note	
04:22:39 PM	Judge Meyer	Calls case. Def present in custody. Jay Logsdon for def. Jennifer Tinkey for state.	
04:23:17 PM	Judge Meyer	This is an appeal from a Rule 35.	
04:23:27 PM	Jay Logsdon	I was initial counsel on this and then I handed off to Mr. Reuter, and when he retired I have it back. Mr. Reuter said he should get credit for each count. 106 days should apply to each individually instead of consecutively.	
04:24:36 PM	Judge Meyer	Judge Walsh sentenced and the jail time was consecutive on each charge and probation concurrent. Your claim Mr. Osborn is that he should get 106 days on each charge correct?	
04:25:16 PM	Jay Logsdon	Correct. So we are just arguing over what does the statute mean by getting credit for the sentence. Re Houck case. Re Owens case.	
04:26:44 PM	Jay Logsdon	Each offense carries it's own sentence. There is no law that construes this differently. The way the law are written, they don't combine the offenses for purposes of credit for time served. Each sentence should get credit for time.	
04:28:47 PM	Jennifer Tinkey	There is a huge distinction. There is pre judgment credit for time served covered in 18-309. Then there is execution of judgment under 19-2603. The credit for time that is given, they don't cover post judgment. The key element is the existence of a judgment.	
04:29:50 PM	Jennifer Tinkey	Judge Walsh ran these sentences consecutively. She imposed 365 with 67 days credit for time served in each count. Re Houck case.	
04:31:32 PM	Jennifer Tinkey	Mr. Osborn gets arrested for the probation violation. The judgment has already been entered. When she sentenced him she gave him the opportunity to do probation. If he hadn't accepted, she would have said serve your sentence. But he got probation. So the sentence was suspended. Re 19-2603.	
04:33:46 PM	Jennifer Tinkey	His probation was revoked and he is serving his sentence. To now to say he is receiving credit for time served on both charges when they are to run consecutively, amends the judgment.	

04:35:25 PM	Jennifer Tinkey	He was given 106 days time served against the whole sentence on his probation violation.
04:36:48 PM	Judge Meyer	Reviews judgments. Where does the 106 days come from?
04:37:45 PM	Jennifer Tinkey	67 days prior to being sentenced. Then he gets arrested on the probation violation. While he sits in custody, he accrued 106 days credit for time served. He feels like he should get an extra 106 days
04:38:48 PM	Judge Meyer	You are saying he only gets the one amount? Is the state contending that he would be double dipping if he gets it on both?
04:39:44 PM	Jennifer Tinkey	Yes.
04:40:04 PM	Judge Meyer	Explain to me the difference between 18-309 and 19-2603. To me it is logical he would get 106 days credit on each count.
04:40:40 PM	Jennifer Tinkey	It is post judgment. Re 19-2603. Revoking takes away the privilege of probation. He got his pre judgment credit on each count.
04:43:48 PM	Jennifer Tinkey	Re McCarthy case. My argument is the huge thing that is different between 18-309 and 19-2603 is that there is a judgment.
04:45:10 PM	Jay Logsdon	The bone of contention continues to be what it means by sentence. The state is advocating for sentence to mean everything under a case number. Re Owens case.
04:46:51 PM	Jay Logsdon	The statutes here I think are quite clear. You get credit towards your sentence. There is no statute that turns a case number into something that has a case number. The sentence is on each individual charge.
04:47:48 PM	Jay Logsdon	Re State vs McCarthy.
04:51:38 PM	Judge Meyer	I will take that under advisement.
04:52:14 PM	End	

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

STATE OF IDAHO,

Plaintiff,

V.

CHRISTOPHER N. OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND
ORDER FOR GOOD TIME**

COMES NOW, the above named defendant, by and through their attorney, and hereby moves the Court for its Order releasing the defendant.

This motion is made pursuant to the Memorandum Decision and Order on Defendant's Appeal of Denial of Rule 35 Motion. Pursuant to that Order, the defendant has been credited an additional 106 days. Thus, Mr. Osborn had 384 days to serve as of October 17, 2017, providing him with a release date of November 5, 2018. Pursuant to the Court's Order for good time, Mr. Osborn is to be released on November 16, 2018. With the additional credit and with good time, the release date should be September 17, 2018.

**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

Page 1

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

DATED this 9 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER

BY:



JAY WESTON LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

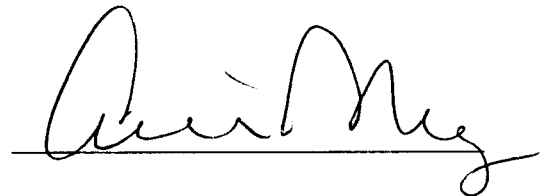
I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 9 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Fax

Interoffice Mail

iCourt



**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

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

<p>STATE OF IDAHO, <i>Plaintiff,</i> vs. CHRISTOPHER NEAL OSBORN, <i>Defendant.</i></p>	<p>CASE NO. CR-16-21670 MEMORANDUM DECISION AND ORDER ON DEFENDANT'S APPEAL OF DENIAL OF RULE 35 MOTION</p>
---	--

On January 11, 2018, Appellant Christopher Neal Osborn filed an appeal from the Honorable Magistrate Judge Clark Peterson's order denying Appellant's Rule 35 Motion for credit for post judgment time served. Oral argument was held before the Honorable Judge Cynthia K.C. Meyer on July 11, 2018. Appellant was present and represented by Deputy Public Defender Jay Logsdon. Respondent was represented by Deputy City Attorney Jennifer Tinkey. For the reasons discussed below, the Court reverses and remands.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was convicted of two counts of violating a no contact order in violation of Idaho Code § 18-920. On January 1, 2017, the Honorable Magistrate Judge Mayli Walsh

MEMORANDUM DECISION AND ORDER ON DEFENDANT'S APPEAL OF DENIAL OF RULE 35 MOTION 1

sentenced Appellant to a \$300 fine, 365 days in jail, 278 days suspended, with credit for 67 days and 20 days of discretionary jail time on each count to be served consecutively. Judge Walsh suspended both sentences and placed Appellant on probation for two years for each count to be served concurrently. *See* January 1, 2017 Order. Appellant was given 67 days credit against each sentence (134 days total). On July 3, 2017, a bench warrant was issued for Appellant's arrest based on a probation violation. Appellant was in custody on the bench warrant for 106 days before the evidentiary hearing on October 17, 2017. Appellant admitted to the probation violation and the Honorable Magistrate Judge Clark Peterson imposed Appellant's sentences ordering him to serve 730 days in jail with credit for 240 days (134 days plus 106 days). *See* October 17, 2017 Order.

On October 27, 2017, Appellant filed a Rule 35 motion which sought credit for time served; specifically that 106 days credit be applied against each count for a total of 346 days credit. On January 9, 2018, Appellant's Rule 35 motion was denied. Appellant subsequently filed this appeal on January 11, 2018.

STANDARD OF REVIEW

"The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts." *State v. Taylor*, 160 Idaho 381, 384, 373 P.3d 699, 702 (2016) (quoting *State v. Vasquez*, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005)). "When the district court acts in an appellate capacity on appeal from the magistrate division," the reviewing court reviews "the record independently of, but with due regard for, the decision of the district court." *State v. Thompson*, 130 Idaho 819, 821, 948 P.2d 174, 176 (Ct. App. 1997).

The district court exercises "free review over statutory interpretation because it is a

question of law.” *State v. Owens*, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015). “Our objective when interpreting a statute is to derive the intent of the legislative body that adopted the act.” *Id.* (citations and internal quotation marks omitted). “This Court considers the statute as a whole, and gives words their plain, usual, and ordinary meanings.” *Id.* “When the statute’s language is unambiguous, the legislature’s clearly expressed intent must be given effect, and we do not need to go beyond the statute’s plain language to consider other rules of statutory construction.” *Id.*

DISCUSSION

I. **Appellant is entitled to 106 days credit against each sentence under the plain language of Idaho Code §§ 19-2603, 18-309, and the *Owens* line of cases.**

Generally, “[c]redit on a prison sentence for periods of incarceration in a county jail is addressed in two statutes: Idaho Code §18-1309 governs prejudgment incarceration and I.C. § 19-2603 governs incarceration upon arrest for a probation violation.” *State v. Mace*, 157 Idaho 885, 887, 341 P.3d 602, 604 (Ct. App. 2015) (footnotes omitted). Idaho Code § 18-309(2) states, in pertinent part, “the person against whom the judgment is entered or imposed shall receive credit in the judgment for any period of incarceration served as a condition of probation under the original withheld or suspended judgment.” I.C. § 18-309. Idaho Code § 19-2603 states, in pertinent part, “[t]he defendant shall receive credit for time served from the date of service of a bench warrant issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant.” I.C. § 19-2603. “Taken together, these statutes generally entitle a defendant to credit on a sentence for incarceration referable to the offense at issue unless certain exceptions apply.” *Mace*, 157 Idaho at 887, 341 P.3d at 604.

Prior to the Idaho Supreme Court’s decision in *Owens*, and the 2015 amendments to Idaho Code §§ 18-1309 and 19-2603, credit was “allowed on only one of multiple consecutive

sentences because conferring credit on each of the consecutive sentences would give the defendant credit for more time than he actually spent in confinement.” *State v. McCarthy*, 145 Idaho 397, 399, 179 P.3d 360, 362 (Ct. App. 2008) (describing Idaho Supreme Court’s stance on credit for time served on consecutive sentences in *State v. Hernandez* and *State v. Hoch*). The *Owens* court expressly overruled *State v. Hoch* and held the *Hoch* decision was “manifestly wrong” in its approach to credit for time served multiple counts. *State v. Owens*, 158 Idaho 1, 4, 343 P.3d 30, 33 (2015). The *Owens* court held that Idaho Code § 18-1309’s language “plainly gives credit for prejudgment time in custody against each count’s sentence. The statute does not limit that credit in any way.” *State v. Owens*, 158 Idaho 1, 4, 343 P.3d 30, 33 (2015). “The statute has a mandatory directive that specifically conditions credit for time served on the fact that the incarceration was for ‘the offense’ for which the judgment was entered.” *Id.* “This indicates that as long as defendant’s prejudgment jail time was for ‘the offense’ the defendant was convicted of and sentenced for, the court gives the defendant that credit. If the legislature had delineated credit for incarceration for ‘each case’ or another description other than ‘the offense,’ the outcome would be different.” *Id.*

Similarly, under Idaho Code § 19-2603, “credit must be given for jail incarceration after arrest for a *probation violation*.” *State v. McCarthy*, 145 Idaho 397, 398, 179 P.3d 360, 361 (Ct. App. 2008). “This is mandated by I.C. § 19-2603, which provides that when a defendant has been arrested on a bench warrant for a probation violation and the probation has consequently been revoked, ‘the time of the defendant’s sentence shall count from the date of service of such bench warrant.’” *Id.* Following the Court’s reasoning in *Owens*, and the plain language of Idaho Code § 19-2603, if the bench warrant includes more than one offense, then a defendant is entitled to credit for time served on each offense. In the present case, Appellant was taken into custody

under a bench warrant based on a probation violation that applied to both charges. The fact that Appellant's sentences were imposed to run consecutively is of no moment, because he violated the terms of his probation on both charges. Thus, under the plain language of Idaho Code § 19-2603, Appellant is entitled to credit for 106 days against each count, for total credit of 346 days.

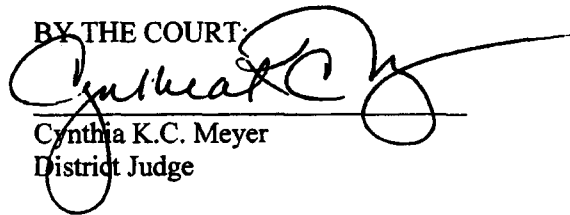
Respondent's argument that Appellant is entitled to 106 days credit against his 730 day sentence is unavailing because Respondent relies on case law and an interpretation of Idaho Code §§ 18-1309 that was expressly overruled by the Idaho Supreme Court in *Owens*.

CONCLUSION

For the above stated reasons, the magistrate court erred when it gave Appellant credit for 240 days rather than 346 days. Accordingly this Court reverses the magistrate court's orders and remands for proceedings consistent with this decision.

DATED this 9th day of August, 2018.

BY THE COURT:



Cynthia K.C. Meyer
District Judge

CERTIFICATE OF SERVICE

Signed: 8/9/2018 02:21 PM

I hereby certify that on the ____ day of August, 2018, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Jay Logsdon
pdfax@kcgov.us

Jennifer Tinkey
cdaprosnotices@cdaid.org

Judge Peterson--interoffice



Deputy Clerk

Jay Weston Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

CHRISTOPHER N. OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**AMENDED MOTION TO CORRECT
ORDER FOR CREDIT FOR TIME
SERVED AND ORDER FOR GOOD TIME**

COMES NOW, the above named defendant, by and through their attorney, and hereby moves the Court for its Order releasing the defendant.

This motion is made pursuant to the Memorandum Decision and Order on Defendant's Appeal of Denial of Rule 35 Motion. Pursuant to that Order, the defendant has been credited an additional 106 days. Thus, Mr. Osborn had 384 days to serve as of October 17, 2017, providing him with a release date of November 5, 2018. Pursuant to the Court's Order for good time, Mr. Osborn is to be released on November 16, 2018. With the additional credit and with good time, the release date should be May 29, 2017. Previously counsel for Mr. Osborn forgot to give him good time for the time he did from being taken into custody on June 29, 2017.


**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

Page 1

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

DATED this 15th day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER

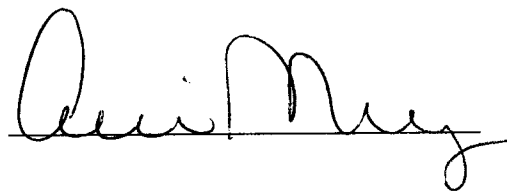
BY: 
JAY WESTON LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 15 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

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**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

Jay Weston Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
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Bar Number: 8759
iCourt: pdfax@kcgov.us

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

STATE OF IDAHO,

Plaintiff,

V.

CHRISTOPHER N. OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**SECOND AMENDED MOTION TO
CORRECT ORDER FOR CREDIT FOR
TIME SERVED AND ORDER FOR GOOD
TIME**

COMES NOW, the above named defendant, by and through their attorney, and hereby moves the Court for its Order releasing the defendant.

This motion is made pursuant to the Memorandum Decision and Order on Defendant's Appeal of Denial of Rule 35 Motion. Pursuant to that Order, the defendant has been credited an additional 106 days. Thus, Mr. Osborn had 384 days to serve as of October 17, 2017, providing him with a release date of November 5, 2018. Pursuant to the Court's Order for good time, Mr. Osborn is to be released on November 16, 2018. With the additional credit and with good time, the release date should be August 20, 2018. Previously counsel for Mr. Osborn forgot to give him good time for the time he did from being taken into custody on June 29, 2017, and the in the first Amended Motion

**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

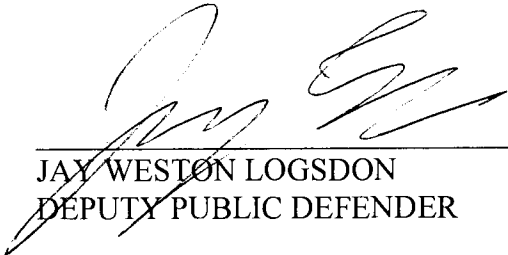
Page 1

started the sentence the Court entered in October in July when Mr. Osborn was arrested and again got the wrong end date. But counsel is sure, having done the math now three times, that August 20, 2018, is correct.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

DATED this 25 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER

BY: 
JAY WESTON LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

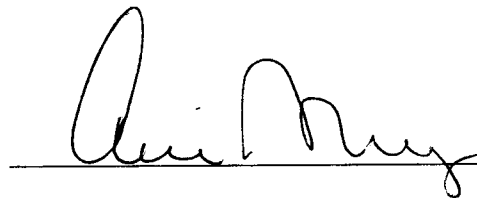
I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 16 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

Fax

Interoffice Mail

iCourt



**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

Page 2

Jay W. Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
Pdfax@kcgov.us

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

STATE OF IDAHO

Plaintiff,

V.

CHRISTOPHER NEAL OSBORN,

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

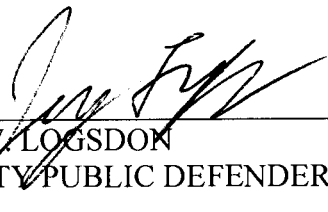
MOTION TO SHORTEN TIME

COMES NOW, the above named defendant, by and through their attorney and hereby moves the Court for an Order Shortening Time for hearing the **Second Amended Motion to Correct Order for Credit for Time Served and Order for Good Time** in this matter.

This motion is made pursuant to I.C.R. 45(c) on the grounds that this was the first available date and time due to a time sensitive matter.

DATED this 16 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER



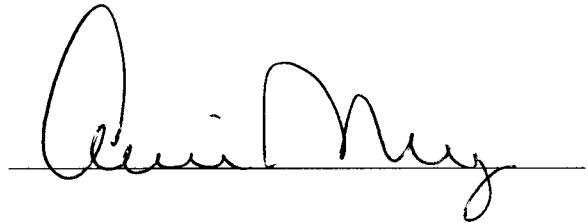
JAY W. LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 16 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor

- Via iCourt
- Via Interoffice Mail
- Via Email



Description	CR 2016-21670 Osborn, Christopher Neal 20180817 Motion for Corrected Credit for Time Served and Good Time Judge Meyer Clerk Denice Larsen Court Reporter Diane Bolan		
Date	8/17/2018	Location	1K-CRT10
Time	Speaker	Note	
09:00:47 AM	Judge Meyer	Calls case. Def present in custody. Jay Logsdon for def. Wes Somerton for State.	
09:01:09 AM	Judge Meyer	I indicated through my clerk that I would hear this motion, then this morning I thought I can't hear this. I think it is in appropriate for me to do that. There hasn't been a remittitur. I appreciate your being here. I apologize for the inconvenience.	
09:02:28 AM	End		

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Jay Weston Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
iCourt: pdfax@kcgov.us

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

STATE OF IDAHO,

Plaintiff,

V.

CHRISTOPHER N. OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**SECOND AMENDED MOTION TO
CORRECT ORDER FOR CREDIT FOR
TIME SERVED AND ORDER FOR GOOD
TIME**

COMES NOW, the above named defendant, by and through their attorney, and hereby moves the Court for its Order releasing the defendant.

This motion is made pursuant to Idaho Criminal Rule 38, 46, and 54. The grounds for this Motion are that pursuant to the District Court's Order, the defendant has been credited an additional 106 days. Thus, Mr. Osborn had 384 days to serve as of October 17, 2017, providing him with a release date of November 5, 2018. Pursuant to the Court's Order for good time, Mr. Osborn is to be released on November 16, 2018. With the additional credit and with good time, the release date should be August 20, 2018. Previously counsel for Mr. Osborn forgot to give him good time for the time he did from being taken into custody on June 29, 2017, and the in the first Amended Motion

**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

Page 1

started the sentence the Court entered in October in July when Mr. Osborn was arrested and again got the wrong end date. But counsel is sure, having done the math now three times, that August 20, 2018, is correct.

Although the remitter has not come down yet, this Court retains the power to stay the sentence at any time under I.C.R. 54. In order to prevent injustice, this Court is asked to release the defendant on the 20th of August, 2018.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

DATED this 17 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER

BY: Jay Weston Logsdon
JAY WESTON LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 17 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

X iCourt

[Signature]

**MOTION TO CORRECT ORDER FOR
CREDIT FOR TIME SERVED AND ORDER FOR GOOD TIME**

Jay W. Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
Pdfax@kcgov.us

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

STATE OF IDAHO

Plaintiff,

V.

CHRISTOPHER NEAL OSBORN,

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

MOTION TO SHORTEN TIME

COMES NOW, the above named defendant, by and through their attorney and hereby moves the Court for an Order Shortening Time for hearing the **Second Amended Motion to Correct Order for Credit for Time Served and Order for Good Time** in this matter.

This motion is made pursuant to I.C.R. 45(c) on the grounds that this was the first available date and time due to a time sensitive matter.

DATED this 17 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER



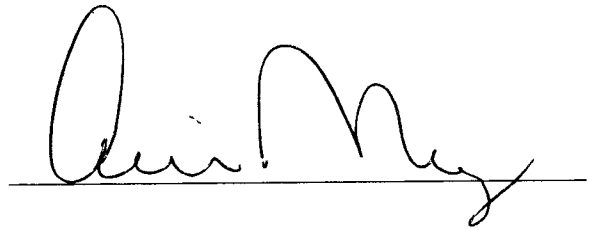
JAY W. LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 17 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor

- Via iCourt
- Via Interoffice Mail
- Via Email



Description	CR 2016-21670 Osborn, Christopher 20180820 Motion Hearing Judge Peterson Clerk Tiffany Burton		
Date	8/20/2018	Location	1K- CRT13
Time	Speaker	Note	
02:04:20 PM	Judge Peterson	Calls case; Def present in custody w/ DA Mr Clapin; PA Ms. Tinkey	
02:04:34 PM	J	Motion to Shorten Time; not entirely sure what the parties are requesting. To my knowledge Remitter has not been processed, don't believe I can act.	
02:05:17 PM	DA	That's the issue. Counsel picked up on that. He should be getting out around right now, but is not because of those issues.	
02:06:17 PM	J	When I received the motion at the end of last week, I instructed my clerk that when we get the remitter we will hear the motion.	
02:06:48 PM	DA	What counsel would like the court to consider since this is up in the air, Rule 54 and issue a stay on appeal and release him today. Can sort thought the other details at a later point in time.	
02:07:25 PM	J	I understand if calculations are different he may be getting out, but there are rules of procedures.	
02:07:49 PM	PA	I don't believe there is a remitter yet. We are intending to contact the AG office to see if they will take it for appeal.	
02:09:50 PM	J	Can you expedite that? Disinclined to shorten time. Will set a hearing and I will hear the arguments at that time as soon as I receive a remitter.	
02:14:36 PM	End		

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Jay Weston Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
iCourt: pdfax@kcgov.us

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

STATE OF IDAHO,

Plaintiff,

V.

CHRISTOPHER N. OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

MOTION FOR STAY OF SENTENCE

COMES NOW, the above named defendant, by and through his attorney, and hereby moves the Court for its Order releasing the defendant and staying the sentence.


This motion is made pursuant to Idaho Criminal Rule 38, 46, and 54. The grounds for this Motion are that pursuant to the District Court's Order, the defendant has been credited an additional 106 days. Thus, Mr. Osborn had 384 days to serve as of October 17, 2017, providing him with a release date of November 5, 2018. Pursuant to the Court's Order for good time, Mr. Osborn is to be released on November 16, 2018. With the additional credit and with good time, the release date should be August 22, 2018.

Because the remittur has not come down yet, this Court retains the power to stay the sentence at any time under I.C.R. 54(e)(1). In order to prevent an injustice, this Court is asked to release the defendant.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is ten minutes.

DATED this 21 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER

BY: 

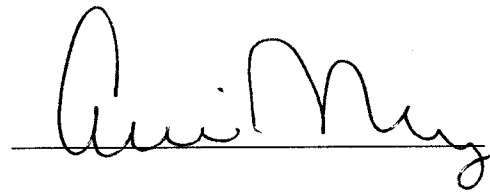
JAY WESTON LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 21 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

& i court



Jay W. Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
Pdfax@kcgov.us

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

STATE OF IDAHO

Plaintiff,

V.

CHRISTOPHER NEAL OSBORN,

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

MOTION TO SHORTEN TIME

COMES NOW, the above named defendant, by and through their attorney and hereby moves the Court for an Order Shortening Time for hearing the **Motion for Stay of Sentence** in this matter.

This motion is made pursuant to I.C.R. 45(c) on the grounds that this was the first available date and time due to a time sensitive matter.

DATED this 22 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER



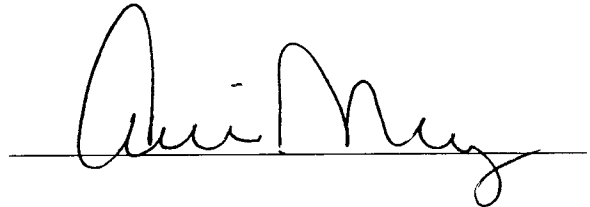
JAY W. LOGSDON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 22 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor

- Via iCourt
- Via Interoffice Mail
- Via Email



Jay W. Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759
Email: pdfax@kcgov.us

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

STATE OF IDAHO

Plaintiff,

V.

CHRISTOPHER NEAL OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

**MATERIAL IN SUPPORT OF MOTION
FOR STAY**

COMES NOW the above named defendant by and through their attorney, Jay W. Logsdon, Deputy Public Defender and hereby submits the following material in support of his Motion for a Stay previously filed with this court.

Attached is an email from Deputy Muzzy of the Kootenai County Jail who is tasked with determining good time release dates. As the Court can see, Mr. Osborn should have been released on 8/17/18.

DATED this 23 day of August, 2018.

KOOTENAI COUNTY PUBLIC DEFENDER



JAY W. LOGSDON
DEPUTY PUBLIC DEFENDER

MATERIAL IN SUPPORT OF MOTION FOR STAY

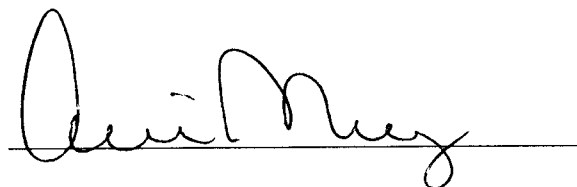
PAGE 1

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the 23 day of August, 2018, addressed to:

Coeur d'Alene Prosecutor FAX 769-2326

- Via Fax
- Via Interoffice Mail
- Via Email
- iCourt



Jay Logsdon

From: Kevin Muzzy
Sent: Thursday, August 23, 2018 4:31 AM
To: Jay Logsdon
Subject: RE: Chris Osborn

Jay,

This adjustment would modify his release date with good time to 08/17/2018 (this calculation includes an adjustment to good time due to the shorter sentence).

From: Jay Logsdon
Sent: Tuesday, August 21, 2018 4:13 PM
To: Kevin Muzzy <kmuzzy@kcgov.us>
Subject: Chris Osborn

Hello! So Chris got an appeal granted giving him an additional 106 days credit as of 10/17/17. I'm concerned that with that credit, and with a recalculation of good time, he is going to have a release date prior it 9/13/18 when the appeal goes into effect. I want to ask the court to stay the sentence and release him as of the date he ought to be released once the appeal goes into effect. Can you tell me what his release date will be once that 106 days credit is added? Sorry and thank you.

Jay Logsdon
Deputy Public Defender
The Law Office of the Public Defender of Kootenai County
1607 Lincoln Way
P.O. Box 9000
Coeur d'Alene, ID 83816
Phone: 208-446-1700
Fax: 208-446-1701

Description	CR 2016-21670 Osborn, Christopher Neal 20180824 Motion for Stay of Execution of Sentence Judge Simpson Clerk Denice Larsen Court Reporter	
Date	8/24/2018	Location 1K-CRT10
Time	Speaker	Note
09:09:40 AM	Judge Simpson	Calls case. Def present in custody. Jay Logsdon for def. Roy Gowey for state.
09:10:11 AM	Judge Simpson	We shortened time on this. He has represented that he served the entire sentence. He shouldn't be held. The is an execution of stay of sentence until the remittitur.
09:11:09 AM	Roy Gowey	Mr. Logsdon was filling me in, it is not my case. For whatever reason we did not receive any notice of the hearing.
09:11:34 AM	Judge Simpson	I think his time was up Monday
09:11:40 AM	Jay Logsdon	The 17th.
09:11:44 AM	Judge Simpson	I didn't want to hold him beyond the sentence. When it goes back then you can request the court impose whatever additional days if you find the credit is not correct.
09:12:07 AM	Roy Gowey	I appreciate that. We may have an appeal of Judge Meyer's decision.
09:12:25 AM	Judge Simpson	But he won't have to sit in jail.
09:12:36 AM	Roy Gowey	It can be cured if there is a problem.
09:12:55 AM	Judge Simpson	I will sign an order staying execution of sentence. He will be released today.
09:13:25 AM	End	

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Jay W. Logsdon, Deputy Public Defender
Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83816
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 8759

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

STATE OF IDAHO

Plaintiff,

V.

CHRISTOPHER NEAL OSBORN

Defendant.

**CASE NUMBER PD CR-16-0021670
MISD**

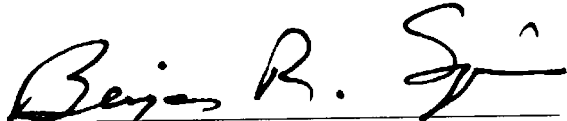
ORDER TO STAY SENTENCE

The Court having before it the Motion to Stay the Sentence and good cause appearing,
now therefore

IT IS HEREBY ORDERED that the jail sentence in this matter is hereby stayed pending
the remittur of the appeal.

DATED this _____ day of August, 2018.

Signed: 8/24/2018 09:59 AM


BENJAMIN SIMPSON
DISTRICT JUDGE

CLERK'S CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the _____ day of August, 2018, addressed to:

Signed: 8/24/2018 10:01 AM

Kootenai County Public Defender Email: pdfax@kcgov.us
Coeur d'Alene Prosecutor email:cdapronotices@cdaid.org
Kootenai County Jail: jailpw@kcgov.us



LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar #4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

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

STATE OF IDAHO,	)	District Court Case No. CR-2016-21670
)	
Plaintiff-Appellant,	)	Supreme Court No.
)	
v.	)	NOTICE OF APPEAL
)	
CHRISTOPHER NEAL OSBORN,)	
)	
Defendant-Respondent.)	
)	

TO: CHRISTOPHER NEAL OSBORN, THE ABOVE-NAMED RESPONDENT, JAY W. LOGSDON, KOOTENAI COUNTY PUBLIC DEFENDER'S OFFICE, DEPT. PD, P. O. BOX 9000, COEUR D'ALENE, ID 83816-9000, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM DECISION AND ORDER ON DEFENDANT'S APPEAL OF DENIAL OF RULE 35 MOTION, entered in the above-

entitled action on the 9th day of August, 2018, the Honorable Cynthia K.C. Meyer presiding. A copy of the judgment or order being appealed is attached to this notice.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.

3. Preliminary statement of the issue on appeal: Did the district court err by concluding that Osborn was entitled to credit for time served, reversing the magistrate's denial of a Rule 35 motion?

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript:

The state requests no additional transcripts. The state requests that any transcripts prepared for the appeal to the district court be included in the record as exhibits.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:

DIANE BOLAN
dbolan@kcgov.us

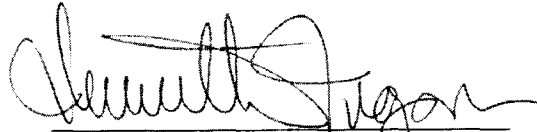
(b) That arrangements have been made with the Kootenai County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 12th day of September, 2018.

A handwritten signature in black ink, appearing to read "Kenneth K. Jorgensen", written over a horizontal line.

KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of September, 2018, served a true and correct copy of the foregoing NOTICE OF APPEAL to the individuals listed below by means of iCourt File and Serve:

THE HONORABLE CYNTHIA K.C. MEYER
Kootenai County District Court
cmeyer@kcgov.us

THE HONORABLE CLARK A. PETERSON
Kootenai County Magistrate Court
capeterson@kcgov.us

BARRY W. McHUGH
Kootenai County Prosecuting Attorney
kcpaicourts@kcgov.us

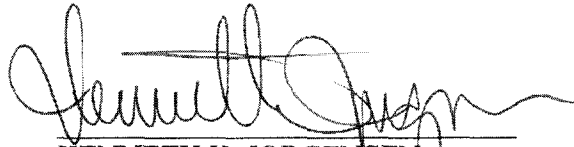
JENNIFER TINKEY
Coeur d'Alene City Prosecuting Attorney's Office
cdaprosnotices@cdaid.org

JAY W. LOGSDON
Kootenai County Public Defender's Office
pdfax@kcgov.us

DIANE BOLAN
dbolan@kcgov.us

COPY TO:

KAREL A. LEHRMAN
CLERK OF THE COURT
IDAHO SUPREME COURT
supremecourtdocuments@idcourts.net


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd

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

State of Idaho

vs.

Christopher Neal Osborn

Supreme Court No. 46389-2018
District Court No. CR-2016-21670
CERTIFICATE OF EXHIBITS

I, Gayle Sanchez, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho in and for the County of Kootenai, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY that the following documents will be submitted as EXHIBITS to the Record.

1. Transcript of Rule 35 – Credit for Time Served Hearing Held on 12/04/2017, in Kootenai, Idaho, filed 02/13/2018.

IN WITNESS, I have set my hand and affixed the seal of the said Court on this the 28th day of November, 2018.

JIM BRANNON
Clerk of the Court

By: Gayle Sanchez
Deputy Clerk



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

State of Idaho

vs.

Christopher Neal Osborn

Case No. CR-2016-21670

Clerk's Certificate of Service

I, Gayle Sanchez, Deputy Clerk of the District Court of the First Judicial District, of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing Record in the above entitled cause was electronically compiled at my direction, and is a true, full and correct Record of the pleadings and documents as requested by the parties.

I further certify that I have caused to be served the Clerk's Record and Reporter's Transcript along with copies of an Exhibit (transcript prepared for appeal to district court) and Other Confidential Documents to each of the Attorneys of Record or Parties in this case as follows:

CERTIFICATE OF SERVICE

I certify that on this date, I served a copy of the attached to:

Lawrence Wasden – Attorney General
ecf@ag.idaho.gov

- By E-mail By mail
 By fax (number) _____
 By overnight delivery/Fed Ex
 By personal delivery

Eric Fredericksen - State Appellate PD
documents@sapd.state.id.us

- By E-mail By mail
 By fax (number) _____
 By overnight delivery/Fed Ex
 By personal delivery

Jim Brannon
Clerk of the Court

Dated: 12/18/2018

By: Gayle Sanchez
Deputy Clerk

