

IDAHO  
 COUNTY OF KOOTENAI  
 9-28-07  
 COLUCCI  
 DISTRICT COURT

<b>IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE</b>		
<b>STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI</b>		
STATE OF IDAHO,	)	CASE NO. CR - 02 - 7607
	)	
Plaintiff,	)	ORDER RE: DEFENDANT'S MOTION
	)	TO SEAL CASE FILE
v.	)	
	)	
LANDON DENNIS ISBELL,	)	
	)	
Defendant.	)	

John E. Redal, REDAL & REDAL, for Defendant Landon Isbell.

Bryant Bushling, KOOTENAI COUNTY PROSECUTING ATTORNEY'S OFFICE, for the State of Idaho.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The Defendant, Landon Isbell, pled guilty on October 31, 2002 to the felony charge of possession of marijuana (I.C. § 37-2732(e)) as part of a plea agreement and received a withheld judgment pursuant to I.C. § 19-2604. The order withholding judgment and sentence mandated three years of supervised probation. Approximately one year later on October 20, 2003, based on a favorable report from his probation officer, the Defendant was transferred to unsupervised probation for the remainder of the three year period. Having successfully completed the entire probationary period with

no violations, the Defendant received an order of dismissal on November 4, 2005, dismissing the aforementioned charge pursuant to I.C. § 19-2604.

Defendant Isbell has no additional criminal history. He proceeded to earn an Associate of Science degree from North Idaho College, a Bachelor of Science degree from the University of Idaho, and a Master's degree from the University of Idaho. However, despite his education, the Defendant is struggling to secure employment. He believes that his struggles to secure employment stem from publicly available records showing his prior felony charge. As such, the Defendant made this Motion to Seal Case File pursuant to I.C.A.R. Rule 32(i).

## II. ANALYSIS

### A. Applicable Law

Idaho Court Administrative Rule 32(i) allows the court to redact or seal public records on a case-by-case basis. Initially, the judge must determine whether the individual's interest in privacy or the interest in public disclosure predominates. I.C.A.R. 32(i). Additionally, before issuing an order redacting or sealing records, the court must make one of the findings included in Rule 32(i), subsections 1-5. Relevant to this case is Rule 32(i)(3):

“That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials....” I.C.A.R. 32(i)(3).

In making such determinations, the court should apply “traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons.” I.C.A.R. 32(i). “If the court redacts or seals records to protect predominating

privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests.” *Id.*

Although the administrative rules are not a typical authority under which to request substantive court action, State v. Turpen confirms Rule 32(i) as the appropriate authority governing requests for expungement of records.<sup>1</sup> See State v. Turpen, 147 Idaho 869, 871, 216 P.3d 627, 629 (2009).

**B. The Defendant’s Interest in Privacy Outweighs the Interest in Public Disclosure.**

As the Rule provides, courts must consider Rule 32(i) motions on a case-by-case basis, determining in each case whether the individual’s interest in privacy or the interest in public disclosure predominates. I.C.A.R. 32(i). In this case, the court finds that the individual’s interest in privacy outweighs the interest in public disclosure based on consideration of a number of factors.

First, the Defendant’s underlying offense – felony possession of marijuana – while significant, is not a violent offense. Possession offenses certainly have negative societal effects, but typically they don’t suggest that the Defendant is a significant risk to the community, which corresponds to a relatively minor interest in public disclosure. In addition, the Defendant’s initial eligibility for a withheld judgment signals that from the outset the court viewed Defendant Isbell as a “stranger to the system” with a high potential for rehabilitation rather than recidivism.

Second, the Defendant successfully completed probation with no violations before having his charge dismissed under I.C. § 19-2604. In fact, Defendant Isbell

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<sup>1</sup> Turpen also clarified the term “expungement of record,” which refers to “the [p]rocess by which [a] record of criminal conviction is destroyed or sealed....” Turpen, 147 Idaho at 871, 216 P.3d at 629 (2009), citing BLACK’S LAW DICTIONARY, 522 (5th ed. 1979).

initially performed so well under supervised probation that he was transferred to unsupervised probation within the first year of supervision. He successfully completed approximately two remaining years of unsupervised probation without violation before receiving an order of dismissal under I.C. § 19-2604.

Furthermore, Defendant Isbell, by all accounts, has performed well since completing probation. He has no additional criminal history excluding minor traffic violations. Moreover, the Defendant has continued his education, having earned his Associate of Science from North Idaho College, Bachelor of Science from the University of Idaho, and Masters from the University of Idaho. While the court is not so naïve as to believe that educated persons cannot constitute a risk to the community, these achievements are nonetheless objective measures of Defendant Isbell's ability and desire to conform to society's standards, thereby reducing the interest in public disclosure of prior criminal charges.

In addition, the Defendant's privacy interest is not insignificant. Today, online records are readily available and free to the public. In trying to find professional employment, even the presence of a prior charge followed by dismissal could be reasonably calculated to have an effect on a potential employer's decision to hire one applicant over another.

Finally and perhaps most importantly, the offense occurred approximately ten years ago. The records have been public for that entire time. The interest in public disclosure has been served for the last ten years – the ten years during which the information contained in the records is most pertinent. In this kind of case, given the

age of the Defendant at the time of the offense<sup>2</sup> and the offense charged, the interest in public disclosure diminishes steadily with the passage of time, assuming continued law-abiding behavior by the Defendant.

In the present case, Defendant Isbell's privacy interest in sealing his case file to aid in obtaining professional employment outweighs the interest in public disclosure of a marijuana possession charge and dismissal from events that occurred approximately ten years ago.

As further support, the purpose of the withheld judgment option is to lessen the lasting effects of a single prior conviction for persons who demonstrate that they are eager and able to lead law-abiding lives. However, the availability of online records through the Idaho Judicial Repository has largely undermined the purpose of a withheld judgment because any person can see all charges and records online within seconds free of cost. This development serves to augment the individual's privacy interest going forward while also diminishing the interest in further public disclosure since the records are so readily available during their most useful and pertinent period.

**C. The Case File Contains Facts, the Dissemination of Which Would Reasonably Result in Economic Harm to a Person Having an Interest in the Case File.**

Upon resolving the balancing test in favor of the Defendant, the court must also make a written finding under Rule 32(i)(1-5) before sealing the case file. Defendant Isbell argues that subsection 3 applies to his case.<sup>3</sup> Subsection 3 refers to documents

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<sup>2</sup> Defendant Isbell's date of birth is 2/10/1983. The underlying charge occurred on 4/25/2002 when the Defendant was 19 years of age. Defendant Isbell is now 28 years of age.

<sup>3</sup> Alternatively, subsection 1 provides for documents containing "highly intimate facts, the publication of which would be highly objectionable to a reasonable person." I.C.A.R. 32(i)(1). Although Defendant Isbell and others might make a claim under this subsection, surely the legislature intended something beyond merely some ordinary criminal charge embarrassing to the Defendant. Otherwise, the written

or materials that “contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials.” I.C.A.R. 32(i)(3). Although the Defendant has not proven actual loss or harm, he need only convince the court that the dissemination of facts related to his case would reasonably result in economic harm. He has done so. Therefore, the records “contain facts or statements, the dissemination of which would reasonably result in economic or financial loss or harm.” *Id.*

In response, the State raised the issue of whether the Defendant is “a person having an interest in” the case file, arguing instead that the Defendant is merely the subject of the case file. I.C.A.R. 32(i)(3). Although the State’s contention echoes concepts of property law, Rule 32(i) itself refers to the “interest in privacy” in having the records sealed, suggesting that the Defendant has a privacy interest in the case file. Supplementing such an understanding, Turpen also refers to “the individual’s interest in privacy” during discussion of the balancing test to be performed by the court under Rule 32(i). Black’s legal definition of “interest” is not especially helpful in this context.<sup>4</sup>

Describing constitutionally protected privacy interests, the Ninth Circuit has recognized “the individual interest in avoiding disclosure of personal matters.” Doe v. Atty. Gen. of U.S., 941 F.2d 780, 795 (9th Cir. 1991), *citing* Whalen v. Roe, 429 U.S. 589, 599, 97 S.Ct. 869, 876 (1977). Furthermore, “both the common law and the literal understandings of privacy encompass the individual’s control of information concerning

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finding requirement could be completely undermined by any Defendant reasonably embarrassed about his/her prior criminal record.

<sup>4</sup> Black’s Law Dictionary defines “interest” as “the object of any human desire; esp., advantage or profit of a financial nature.” BLACK’S LAW DICTIONARY, 885 (9th ed. 2009). This definition is not extremely helpful in the present case, but certainly it contemplates something beyond the limited proprietary interest described in the second listed definition: “a legal share in something; all or part of a legal or equitable claim to or right in property.” *Id.*

his or her person.” U.S. Dept. of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749, 763, 109 S.Ct. 1468, 1476 (1989). Generally, the Ninth Circuit has chosen to weigh this broad constitutional right to informational privacy against the public’s interest in disclosure. Kallstrom v. City of Columbus, 136 F.3d 1055, n. 1 (6th Cir. 1998), *citing* e.g. Doe v. Atty. Gen. of U.S., 941 F.2d 780, 796 (9th Cir. 1991). Such an interpretation implicitly mirrors the balancing test contained in Rule 32(i).


Based on Rule 32(i) itself, Turpen’s interpretation of the rule, and the Ninth Circuit’s approach to constitutional privacy, the court finds that the Defendant has a privacy interest in the case file. Thus, Defendant Isbell is “a person having an interest in the documents.” I.C.A.R. 32(i).

In the present case, the Defendant’s interest in privacy outweighs the interest in public disclosure. Additionally, the case file contains facts, the dissemination of which would reasonably result in economic harm to a person having an interest in the case file. Finally, sealing the case file is “the least restrictive exception from disclosure consistent with privacy interests.” I.C.A.R. 32(i). Therefore, the Defendant’s Motion must be granted.

### III. Conclusion

The Defendant’s Motion to Seal Case File is hereby GRANTED as set forth above.

DATED this 6<sup>th</sup> day of July, 2011.

  
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John Patrick Luster  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION TO SEAL CASE FILE was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the 10<sup>th</sup> day of July, 2011 to the following:

John E. Redal  
Redal & Redal  
Fax: (208) 676-8680

Kootenai County Prosecutor  
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CLIFFORD T. HAYES  
Clerk of the District Court

By: 

Deputy Clerk