

STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 7/29/2023

AT 1:30 O'clock P. M
CLERK, DISTRICT COURT

Janet Lawson
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,)
 vs.)
)
 JARED GARITONE,)
)
 Defendant.)
)
 _____)

Case No. **CR28-21-10028**

**MEMORANDUM DECISION AND
ORDER ON APPEAL FROM
MAGISTRATE DIVISION**

This Court writes this Memorandum Decision and Order on Appeal From Magistrate Division because there are additional reasons to dismiss this appeal (additional to the reasons state on the record by this Court on May 25, 2022, when it affirmed Judge McFadden's decision to deny defendant's Motion to Suppress) which should be placed on the record. The Court also writes this Memorandum Decision cognizant that defendant has appealed this Court's decision to the Idaho Supreme Court, and that appeal suffers from the same fatal defects discussed below (recognizing such is a matter for the Idaho Supreme Court to address).

On August 9, 2021, Magistrate Judge Patrick McFadden heard oral argument on defendant's Motion to Suppress filed on July 7, 2021. At the conclusion of that hearing, Judge McFadden denied defendant's Motion to Suppress. A review of the Court minutes indicates Judge McFadden did not direct either counsel to prepare an order dismissing the

defendant's motion to suppress. A review of the transcript filed for the appeal before the undersigned indicates that neither counsel were directed to prepare an order, even though counsel for defendant noted that there might be an appeal on the motion to appeal. Tr. 21:8-23.

On December 9, 2021, defendant, through counsel filed a Notice of Appeal. In that Notice of Appeal, counsel for defendant refers to "judgments or orders" regarding the Motion to Suppress (December 9, 2021, Notice of Appeal 1, ¶ 2), even though no such order was ever prepared.

On May 25, 2022, this Court heard oral argument on defendant's appeal of Judge McFadden's decision denying defendant's Motion to Suppress. At no time in that appeal process did either counsel mention that no order had ever been signed by Judge McFadden (or any other judge) denying defendant's Motion to Suppress. At the conclusion of the May 25, 2022, hearing, this Court specifically ordered counsel for defendant to prepare an order affirming Judge McFadden's decision denying defendant's Motion to Suppress. Counsel for defendant did not file (lodge) a proposed order until July 27, 2022. It was only on July 29, 2022, when this Court reviewed that lodged order, that this Court discussed fatal flaws in the appeal before this Court, which were not raised by counsel to this point, and which have not been addressed to this point. That proposed "Order Denying Defendant's Appeal to District Court" lodged on July 27, 2022, states that, "The Defendant's Appeal to District Court is hereby denied." That is not what the order should state. The appeal was not denied; rather, Judge McFadden's decision denying defendant's Motion to Suppress was affirmed by this Court on the record on May 25, 2022. However, that defect in wording by defense counsel would not have kept this Court from signing such. This Court will not sign such proposed order and instead files this

Memorandum Decision and Order on Appeal From Magistrate Division. This Court does so to address the fatal errors made during the appeal from magistrate division to this Court, which have not been addressed by this Court up to this point in time.

On June 8, 2022, defendant, through counsel, filed a Notice of Appeal with the Idaho Supreme Court. That Notice of Appeal references a “Decision entered in the above-entitled matter on the 25th day of May 2022, the Honorable John T. Mitchell, presiding.” June 8, 2022, Notice of Appeal 1, ¶1. There was no “order” which was “entered” on May 25, 2022, because counsel for defendant did not get around to preparing one until July 27, 2022. Thus, there again is no judgment or order from which defendant is appealing, this time to the Idaho Supreme Court.

An appeal to district court from a magistrate’s decision **granting** a motion to suppress is allowed under I.C.R. 54(a)(1)(D). “The time to appeal begins to run from the date file stamped by the clerk of the district court on the order granting or denying the motion.” I.C.R. 54(b)(1)(B). “The notice of appeal must be filed within 42 days from the date file stamped by the clerk of the court on the judgment or order being appealed.” I.C.R. 54(b)(1)(A). However, the Idaho Criminal Rules do not allow for an automatic review by a district judge on appeal of a magistrate judge’s decision **denying** a defendant’s motion to suppress. Because defendant’s Motion to Suppress was denied, defendant’s remedy was to file a motion for permissive appeal of an interlocutory order with the magistrate judge, as provided in I.C.R. 54(a)(1)(I) and I.A.R. 12. Defendant did not bring such a motion before the magistrate judge or this Court.

An appeal from this Court to the Idaho Supreme Court regarding a motion to suppress is allowed under I.A.R. 11(c)(7), but again, an **order** is required. And, similarly, it only allows appeal to district court from “an order **granting** a motion to suppress evidence.”

Id.

An appeal will not ordinarily lie from a ruling or order orally made and found only in the reporter's transcript. *First National Bank v. Poling*, 42 Idaho 636, 641-42, 248 P. 19 (1926). A trial court's written memorandum decision clearly granting defendant's motion to dismiss an information was an appealable order. *State v. Schulz*, 151 Idaho 863, 865-66, 264 P.3d 970, 972-73 (2011). Judge McFadden did not issue a written decision.

Even if this Court could somehow allow Judge McFadden's oral order denying defendant's Motion to Suppress to be an appealable order (it is not because it was not written and it is not an appealable order), it would be barred by the statute of limitations. As mentioned above, the time to appeal is limited to 42 days. Judge McFadden's decision was rendered on the record on August 9, 2021, and the Notice of Appeal was filed on December 9, 2021, which is 122 days, or approximately 80 days too late.

The lack of an order by Judge McFadden and the fact that Judge McFadden's decision was not an appealable order were not discussed by either counsel in briefing or at oral argument before this Court on May 25, 2022. Obviously, this Court did not catch these fatal deficiencies until the date of this decision, July 29, 2022.

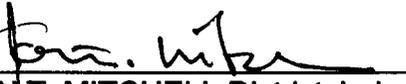
IT IS HEREBY ORDERED THAT, consistent with this Court's findings made on the record on May 25, 2022, Judge McFadden's decision made on the record denying defendant's Motion to Suppress is AFFIRMED in all aspects.

IT IS FURTHER ORDERED THAT, alternatively, defendant's appeal before this Court is DISMISSED as no order was timely prepared by defense counsel and signed by this Court; without an order, this Court could not hear such appeal this appeal must be dismissed for that reason.

IT IS FURTHER ORDERED THAT, alternatively, defendant's appeal before this

Court is DISMISSED as the appeal from Judge McFadden's decision to deny defendant's Motion to Suppress is not an appealable order and is thus not allowed under I.C.R. 54(a)(1)(D) and no motion to appeal an interlocutory order was made under I.C.R. I.C.R. 54(a)(1)(I) and I.A.R. 12.

DATED this 29th day of July, 2022

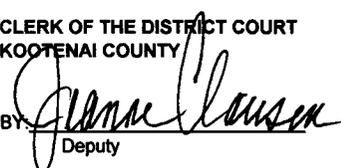

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of July, 2022 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - John Redal *redallaw@gmail.com*
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Court of Appeals, Melanie Gagnepain
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Honorable Patrick McFadden and
James Combo -I.o. I.o.

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY: 
Deputy