

FILED _____

AT _____ O'clock ____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. CRF 2013 11265
<i>Plaintiff,</i>)	ORDER DENYING DEFENDANT'S
vs.)	"MOTION TO END PROBATION OR
KILO J. LE VEQUE,)	REDUCE TERMS OF PROBATION"
IDOC: 110075)	AND ORDER MODIFYING TERM OF
<i>Defendant.</i>)	PROBATION

I. INTRODUCTION.

On January 15, 2014, the defendant Kilo J. LeVeque was sentenced to four years fixed followed by an indeterminate term of six years for the felony crime of Burglary, committed on June 8, 2013. This Court imposed a period of retained jurisdiction and sent LeVeque to prison for a rehabilitation program. On May 24, 2014, following the period of retained jurisdiction, this Court placed LeVeque on supervised probation for three years.

This matter came before the Court on June 2, 2015, via the defendant's "Motion to End Probation and Reduce Terms of Probation", filed April 29, 2015. In that motion LeVeque requests his three years of supervised probation be reduced to just twelve months, and that the Court "...enter an Order to the Probation Department [the Court presumes he means the State of Idaho Department of Correction, Probation and Parole] to eliminate his status in any way as a 'sex offender' or some similar label." Motion to End Probation and Reduce Terms of Probation, p. 1.

The Court heard testimony from the defendant Kilo J. LeVeque and his probation officer, Lori Rawson, and argument from counsel. The Court also noted that LeVeque's court file shows LeVeque has willfully violated his three years of supervised probation which began on May 21, 2014, testing positive for alcohol on July 27, 2014, testing positive for alcohol on August 21, 2014, failing his sexual history polygraph on September 19, 2014, and testing positive for Mitragynine and 7-Hydroxymitragynine, two of the active ingredients found Kratom in Biak-Biak on May 18, 2015. For each of these offenses LeVeque has been given discretionary jail time.

II. THE DEFENDANT'S "MOTION TO END PROBATION OR REDUCE TERMS OF PROBATION" MUST BE DENIED.

The Court finds it lacks the ability to dictate how to classify and supervise LeVeque to an executive branch agency such as the State of Idaho Department of. LeVeque's motion flies in the face of the doctrine of separation of powers. *Searcy v. Idaho State Bd. of Correction*, --- P.3d ----, 2015 WL 160361, p. 4 (Ct.App. January 14, 2015). On this issue the Idaho Supreme Court has held:

"The courts will refrain from second-guessing the legislative and executive branches on issues of basic policy. Under our system of separation of powers, such decisions are vested in the politically responsive coordinate branches. * * *

"In addition, courts must not intrude into realms of policy exceeding their institutional competence. The judicial branch lacks the fact-finding ability of the legislature, and the special expertise of the executive departments.... [Courts] should not attempt to balance the detailed and competing elements of legislative or executive decisions."

Ransom v. City of Garden City, 113 Idaho 202, 205, 743 P.2d 70, 73 (1987) (quoting *Industrial Indem. Co. v. State*, 669 P.2d 561, 563 (Alaska 1983) (citations omitted)); see also, *Julius Rothschild & Co. v. State*, 66 Hawaii 76, 655 P.2d 871, 881 (Hawaii 1982). The Idaho Supreme Court noted the policy against "plac[ing] the court in the unseemly position of determining the propriety of decisions expressly entrusted to a coordinate branch of government." 113 Idaho 202, 206, 743 P.2d 70, 74, citing *Johnson v. State*, 69 Cal.2d 782, 73 Cal.Rptr. 240 447 P.2d 352, 360 (1968)447 P.2d at 360. *State v. Thiel*, 158 Idaho 103, ___, 343 P.3d 1110, 1118 (February 27, 2015) also provides a good discussion by the Supreme Court of Idaho on separation of powers.

Counsel for LeVeque argued that the Idaho Department of Corrections policy for classifying sex offenders was "arbitrary and capricious", but other than repeating that statement several times at increasing levels of volume, offered no facts or legal argument in support of that bald claim. This Court notes, "A reviewing court 'shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.'" Idaho Code § 67-5279(1). *Brett v. Eleventh Street Dockowner's Association, Inc.*, 141 Idaho 517, 521, 112 P.3d 805, 809 (2005) (citing I.C. 67-5279(1)). Probation and Parole Officer Lori Rawson testified that the Idaho Department of Correction's procedure to determine who should be classified as being supervised as a sex offender is based on two criteria: 1) the sex offense crime as originally charged (in LeVeque's case, second degree rape, a felony in South Dakota, even though he later pled guilty to a misdemeanor) and 2)

whether the probationer has been crime free for ten years following that sex offense (LeVeque's offense in South Dakota was in 2011 and a conviction in 2012). That policy is simply not arbitrary and capricious. This Court will not substitute its judgment for the judgment of the Idaho Department of Corrections.

II. THE COURT FINDS THE DEFENDANT'S TERM OF PROBATION MUST BE EXTENDED BASED UPON DEFENDANT'S MULTIPLE VIOLATIONS.

The Court also finds that due to LeVeque's multiple violations of probation, that his supervised probation must be continued for an additional one year, and now ends on May 21, 2018. "Idaho Code § 20–221 provides that the court may impose and may, at any time, modify any conditions of probation or suspension of sentence. Our Supreme Court has also held that 'after a judge has granted probation, he retains jurisdiction during the probationary period, and has continuing discretion to modify its conditions.'" *State v. Garcia*, 124 Idaho 474, 475, 860 P.2d 677, 678 (Ct. App. 1993) (citing *State v. Oyler*, 92 Idaho 43, 47, 436 P.2d 709, 713 (1968)). The Court finds that this one-year extension is necessary for LeVeque's rehabilitation and for the protection of the public. Without question, the primary purpose of probation is rehabilitation. *State v. Harvey*, 142 Idaho 727, 732, 132 P.3d 1255, 1259 (Ct. App. 2006); *State v. McCool*, 139 Idaho 804, 807, 87 P.3d 291, 294 (2004); *State v. Dana*, 137 Idaho 6, 8, 43 P.3d. 767, 767 (2002). Achieving rehabilitation through probation, however, must be attained while protecting the safety of the public. *State v. Wardle*, 137 Idaho 808, 810, 53 P.3d 1227, 1229 (Ct. App. 2002).

III. ORDER.

IT IS HERBY ORDERED THAT KILO J. LE VEQUE's Motion to End Probation and Reduce Terms of Probation is DENIED in all aspects.

IT IS FURTHER ORDERED THAT KILO J. LE VEQUE's term of probation is extended by one year and now ends on May 21, 2018.

DATED this 3rd day of June, 2015.

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of June, 2015 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Prosecuting Attorney – Art Verharen
Defense Attorney – Douglas Pierce
Probation & Parole – Lori Rawson

Faxed to (208) 327-7445]

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____
Deputy