



Your Honor,

A blank PSI questionnaire was dropped off at the Kootenai County Public Safety Building for the defendant to complete. On 12/27/22, the GAIN provider advised the defendant refused to complete the GAIN assessment, and he said he was advised by his attorney not to complete the PSI questionnaire. I reached out to the defendant's attorney via email to confirm this information. On 01/09/23, the defendant's attorney responded to my email stating, "Hello. I did tell Mr. Martin not to participate in the presentence investigation due to preserving his fifth amendment right. We are currently motioning the court for acquittal, as well as a motion for new trial. Additionally, I am under the belief that he most likely will have a minimum of 30 years actual jail time which would be a life sentence center in his age. Please complete the report to the best of your ability without his input."

Letter of Advisement 1.

On February 2, 2023, the defendant filed a Notice of Hearing for a Motion to Continue and Defendant's Amended Motion to Set Aside Verdict and Renewal Request for Entry of Judgment of Acquittal Pursuant to I.C.R. 29(c)(1), scheduling those motions for hearing on the same day as sentencing, February 10, 2023. The actual Motion to Continue was not filed until the date set for sentencing: February 10, 2023. In part, the defendant moved for a continuance because:

Mr. Martin's pre-sentence investigation report has not been served on counsel as of February 3, 2023. Therefore, Counsel will need additional time to review the States additional sentencing material, and the PSI when it is served on counsel.

Lastly, if the Court were to deny Defendant's motion to continue sentencing it would violate Mr. Martin's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, sec. 13 of the Idaho Constitution, as he will not be adequately prepared for sentencing.

Mot. to Continue 2.

On February 3, 2023, the State of Idaho (State) filed Additional Sentencing Materials.

On February 7, 2023, the defendant objected to the State's additional sentencing materials, "displaying his full social security number, full birthdate, minor children full names being disclosed, and any personal medical records that may be contained within the disclosure." Obj. to State's Filing of Pl.'s Add. Sentencing Mat. 1.

On February 7, 2023, the defendant filed a Motion to Dismiss Part II.

The Motion to Set Aside Verdict, Motion to Continue, Motion to Dismiss Part II, and Motion Objecting to the Additional Sentencing Materials was heard by the Court on February 10, 2023. The Court denied all Motions, and issued Orders stating the same on February 28, 2023.

The defendant was sentenced on February 10, 2023 by the Honorable Scott Wayman as follows:

Count I - for a fixed term of 20 years, followed by a LIFE year indeterminate sentence, for a total term not to exceed LIFE years.

Count II - for a fixed term of 20 years, followed by a LIFE year indeterminate sentence, for a total term not to exceed LIFE years.

Judgment and Sentencing 2.

On February 10, 2023, the day set for sentencing, the defendant filed an Amended Motion to Set Aside Verdict and Renewed Request for Entry of Judgement of Acquittal Pursuant to I.C.R. 29(c)(1). In this motion, the defendant again argues that there was insufficient reliable evidence provided to convict the defendant. Def.'s Am. Mot. to Set Aside Verdict 20. On March 1, 2023, the State filed an Objection to the Timeliness of the Defendant's Motion for New Trial.

On March 9, 2023, the defendant filed another Motion for New Trial, and a corresponding Notice of Hearing noting the Motion for April 12, 2023.

On March 25, 2023, the defendant filed a Notice of Appeal. On the same day, the defendant also filed a Motion for Appointment of State Appellate Public Defender's Office in Direct Appeal, and to keep the retained Counsel. On March 30, 2023, the Court issued an Order for Appointment of State Appellate Public Defender in Direct Appeal and Retaining Trial Counsel for Residual Purposes.

On March 28, 2023, the State filed a Brief in Opposition to Defendant's Motion for

New Trial, wherein the State “maintains the defendant’s motion for new trial was untimely and should not be considered on its merits. See Objection to Timeliness to Defendant’s Motion for New Trial filed March 1st, 2023.” Br. in Opp’n to Def.’s Mot. for New Trial 1.

On April 10, 2023, defense counsel e-mailed the Court requesting that the Motion for a New Trial be postponed. Materials in Supp. of Def.’s Obj. to Order Denying Mot. for New Trial. The Court did not reply until April 12, 2023, wherein the Court confirmed that the hearing scheduled would be taking place.

On April 12, 2023, the Court held a hearing on the Motion for New Trial. Neither defense counsel nor defendant were present. The defense counsel did not file a Motion to Continue. This was noted in the Court Minutes on April 12, 2023.

On April 14, 2023, the Court issued an Order Denying Defendant’s Motion for New Trial, Ordering: “that the defendant’s Motion for New Trial is denied based on the fact that it was filed in an untimely manner and appears meritless and for all reasons stated on the record.”

On April 18, 2023, this case was reassigned to Honorable Judge John Mitchell.

On April 26, 2023, the defendant filed a Motion to Withdraw and Appoint Public Defender. This motion included a Declaration of Kristen Pearson, in which she claims that the defendant’s family is pursuing a malpractice case against her. Mot. to Withdraw and Appoint Public Def. 4, ¶ 5.

On April 26, 2023, the defendant filed an Objection to the Entry of Order Denying Defendant’s Motion for New Trial.

On April 26, 2023, the defendant filed an Amended Motion for New Trial. In this Amended Motion for New Trial, the defendant claims that:

there is ample evidence to support the necessity of a new trial on the grounds the jury received evidence out of court, the Court misdirected the jury in a matter of law, the verdict is contrary to both law and evidence, the court erred in a decision of law

that arose during the course of the trial, the verdict was decided by means other than a fair expression of the opinion on the part of all jurors by the jurors receiving evidence out of court.

Am. Mot. for New Trial 4.

On April 26, 2023, defendant filed a Reply to Plaintiff's Objection to Defendant's Motion for New Trial. In this motion, defense counsel claims that the original Motion for New Trial was originally filed on February 25, 2023, but that it was rejected due to a wrong header, and that the clerk was in "training," and that the Motion was not accepted until March 13, 2023, when defense counsel called the Kootenai County District Clerk's Office. Reply to Pl.'s Obj. to Def.'s Mot. for New Trial 3. Defense counsel does not provide a reason for the delay for calling the District Court's Office between February 25, 2023 and March 13, 2023.

On April 27, 2023, the defendant filed Defendant's 2<sup>ND</sup> Motion to Compel. On May 3, 2023, the State filed a Response to Defendant's Motion to Compel. In this motion the State claim that all items being sought by the defendant has already been provided on June 1, 2021. Response to Mot. to Compel 1. The state additionally claims that:

[t]he state objects to this current Motion to Compel for the reason the requested information has already been discovered. Alternatively, the defendant was sentenced to prison on February 10, 2023 and it would appear that the Court has lost jurisdiction to hear this Motion to Compel from two years ago.

*Id.* at 3. The State does not cite to any Idaho Statutes or case law that would support their assertion that this Court has lost jurisdiction.

On April 27, 2023, the defendant filed a Motion for Release of Property. On May 5, 2023, the State filed an Objection to Release of Property, claiming that the "Kootenai County Sheriff's Department is not in possession of the cellphone." Obj. to Mot. to Release Property 1.

A hearing on the defendant's Motion to Compel, Motion to Withdrawal, Motion for

Release of Property, and Objection to Order Denying New Trial took place on May 30, 2023. At the conclusion of that hearing, the Court announced its ruling – denying all of the defendant’s motions. This decision provides the Court’s reasoning for those rulings.

## II. ANALYSIS.

The defendant in this matter filed a Notice of Appeal on March 25, 2023. Idaho Appellate Rule 13, entitled Stay of Proceedings upon appeal or certification, provides for the Powers of a District Court in a Criminal Action during the pendency of appeal:

**(c) Stay Upon Appeal--Powers of District Court--Criminal Action.** In criminal actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency of an appeal:

- (1) Settle the transcript on appeal.
- (2) Rule upon any motion for a new trial.
- (3) Rule upon any motion for arrest of judgment.
- (4) Conduct any hearing, and make any order, decision or judgment allowed or permitted by § 19-2601, Idaho Code.
- (5) Conduct any hearing and make any order, decision or judgment with regard to an originally withheld judgment upon a plea or verdict of guilty.
- (6) Place a defendant upon probation, modify or revoke such probation, or sentence a defendant upon revocation of probation.
- (7) Determine and order whether there shall be a stay of execution of a judgment of conviction upon an appeal to the Supreme Court, except where the sentence is capital punishment, in which case execution of the sentence shall be automatically stayed pending appeal.
- (8) Determine whether the defendant should be allowed bail, and if the defendant is allowed bail:
  - (i) Determine the amount of bail;
  - (ii) Modify the amount of bail from time to time;
  - (iii) Forfeit bail for violation of any of its conditions;
  - (iv) Issue a bench warrant for the arrest of the defendant for violation of bail.
- (9) Determine whether the defendant is entitled to a transcript and court appointed attorney on appeal at public expense, and if so, appoint an attorney for the defendant and upon the filing of a notice of appeal, order the preparation of the transcript and record at county expense.
- (10) Enter any other order after judgment affecting the substantial rights of the defendant as authorized by law.

- (11) Rule upon a motion to correct or reduce a sentence under Rule 35 I.C.R.
- (12) Sentence a defendant for a crime for which the defendant had been found guilty and which has been appealed.

Idaho Appellate Rule 13(c)(1)-(12).

Pursuant to the Notice of Hearing, the Motions in front of the Court on May 30, 2023, were: “Defendant's Motion to Withdraw and Appoint Public Defender, Defendant's Objection to Order Denying Defendant's Motion for New Trial, Defendant's 2nd Motion to Compel, and Defendant's Motion for Release of Property.” Notice of Hearing. 1.

The defendant's Motion for New Trial, which was previously denied as untimely, and meritless, is not in front of the Court today, and has not been noticed up for hearing.

#### **A. Defendant's Motion to Withdraw and Appoint Public Defender**

The defendant's Motion for to Withdraw and Appoint Public Defender, provides for three issues presented:

1. Defendant was not given Notice regarding the State's Objection to Defendant's Motion for New Hearing.
2. Defendant was informed by the court clerk Defendant's Motion for New Trial was removed from the calendar on April 10, 2023, and the Court under the theory of quasi estoppel should be prohibited from entering judgment on the matter of Defendant's Motion for New Trial.
3. New counsel should be appointed in this matter as there is a conflict of interest, and a public defender should be appointed as Mr. Martin is indigent.

Mot. to Withdraw and Appoint Public Defender 1 ¶¶ 1-3.

This Court issued an Order appointing a State Appellate Public Defender in Direct Appeal, and Retaining Trial Counsel for Residual Purposes on March 30, 2023. Idaho Appellate Rule 13(c)(9) provides the district court with the power and authority to “[d]etermine whether the defendant is entitled to a transcript and court appointed attorney on appeal at public expense, and if so, appoint an attorney for the defendant and upon the filing of a notice of appeal, order the preparation of the transcript and record at county expense.” The Court has already issued an order appointing a State Appellate Public

Defender for appeal purposes. The defendant does not provide any authority for the Court to additionally appoint a public defender in this matter, for all purposes other than the appeal. Therefore, this Motion is improperly in front of the Court.

Additionally, defendant's "Motion for Appointment of State Appellate Public Defender in Direct Appeal; Retaining Trial Counsel for Residual Purposes" filed on March 25, 2023, in addition to its title states, "Further, Defendant requests residual representation by Kristen Pearson pending the appeal." Motion for Appointment of State Appellate Public Defender in Direct Appeal; Retaining Trial Counsel for Residual Purposes 1. (underlining added).

Finally, none of defendant's three numbered reasons have any merit. The first reason, "Defendant was not given Notice regarding the State's Objection to Defendant's Motion for New Hearing" (Mot. to Withdraw and Appoint Public Defender 1 ¶ 1.) is not relevant to the issue of counsel's representation. Similarly, the second reason listed, "Defendant was informed by the court clerk Defendant's Motion for New Trial was removed from the calendar on April 10, 2023, and the Court under the theory of quasi estoppel should be prohibited from entering judgment on the matter of Defendant's Motion for New Trial." (Id. at ¶ 2.) is not relevant to counsel's continued representation in this matter. It should be noted that the Court Clerk did not inform the defendant that the Motion was removed from the calendar. The e-mails provided for by the defense to support this claim do not show that the court clerk responded with anything other than stating that the Motion would be heard. The third reason is conclusory: "New counsel should be appointed in this matter as there is a conflict of interest, and a public defender should be appointed as Mr. Martin is indigent." (Id. at ¶ 3). There is no admissible evidence presented to this Court of either a conflict nor defendant's indigency.

### **B. Defendant's Objection to Order Denying Defendant's Motion for New Trial**

Idaho Appellate Rule 13(c) provides what motions and actions that the district court shall have the power and authority to rule upon during the pendency of an appeal. Ruling on an Objection to an Order Denying Defendant's Motion for a New Trial is not listed. Therefore, this Motion is improperly in front of the Court. In his Objection to Order Denying Defendant's Motion for New Trial, "Defendant prays the Court rescinds its order denying his Motion for New Trial under the theory he did not receive notice from the State regarding it's hearing and the equitable doctrine of quasi estoppel." Obj. to Entry of Order Denying Def.'s Mot. for New Trial 3. To the extent that this Objection is asserted as a Motion for Reconsideration, Idaho Appellate Rule 13(c) does not provide the Court with the power and authority to rule upon such a motion to reconsider during the appeal.

On the other hand, ruling on a Motion for a New Trial is listed. As stated above, however, a Motion for New Trial is not in front of the Court today. Instead, the Objection to the Order entered is. This Objection is based, on part, on the assertion that "Defendant was informed by the court clerk Defendant's Motion for New Trial was removed from the calendar on April 10, 2023, and the Court under the theory of quasi estoppel should be prohibited from entering judgment on the matter of Defendant's Motion for New Trial." Obj. to Entry of Order Denying Def.'s Mot. for New Trial 1. Importantly, as noted above, this assertion is not correct. The defendant goes as far as stating that "Madam Clerk replied that the motion was removed from the calendar," (*Id.* at 3) however, this is not supported by the e-mail correspondence cited.

### **C. Defendant's 2nd Motion to Compel**

Idaho Appellate Rule 13(c) provides what motions and actions that the district court shall have the power and authority to rule upon during the pendency of an appeal. Ruling on a Motion to Compel is not listed. Therefore, this Motion is improperly in front of the

Court.

However, the State's response provides that this information had already been provided to the defendant, and re-provides the requested information. Therefore, even if this Motion was properly in front of the Court, the Motion would be denied.

#### **D. Defendant's Motion for Release of Property**

Idaho Appellate Rule 13(c) provides what motions and actions that the district court shall have the power and authority to rule upon during the pendency of an appeal. Ruling on a Motion to Release Property is not listed. Therefore, this Motion is improperly in front of the Court.

However, the State's response provides that the property requested, the defendant's cell phone, is not in the possession of the Kootenai County Sherriff's Office. Therefore, even if the Motion was properly in front of the Court, the Motion cannot be granted.

### **III. CONCLUSION AND ORDER**

For the reasons set forth above;

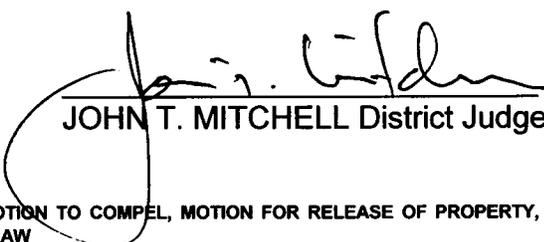
IT IS HEREBY ORDERED that SHANE EDWARD MARTIN's counsel's Motion to Withdraw and Appoint a Public Defender is hereby **DENIED**.

IT IS FURTHER ORDERED that SHANE EDWARD MARTIN's Objection to Order Denying Defendant's Motion for New Trial is hereby **DENIED**.

IT IS FURTHER ORDERED that SHANE EDWARD MARTIN's Defendant's 2nd Motion to Compel is hereby **DENIED**.

IT IS FURTHER ORDERED that SHANE EDWARD MARTIN's Motion for Release of Property is hereby **DENIED**.

DATED this 31<sup>st</sup> day of May, 2023.

  
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 31<sup>st</sup> day of May, 2023 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Prosecuting Attorney – Laura McClinton - IDOC Faxed to (208) 327-7445

Kristen Pearson – Defense Attorney *Kpearson@courts* *centralrecords@idoc.idaho.gov*  
*kpearsonlaw@gmail.com*

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY

BY: *[Signature]*  
Deputy