

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,)
)
 Plaintiff,)
)
 vs.)
)
 DANIELLE RENAI POE,)
)
 Defendant.)
 _____)

Case No. **CRF 2006 9479**

**MEMORANDUM DECISION AND
ORDER ON DEFENDANT’S MOTION
TO DISMISS CHARGE PURSUANT TO
IDAHO CODE 19-2604**

Defendant Danielle Renai Poe (Poe) filed a motion to have her felony dismissal and her conviction taken off her record. The reason for this motion is Poe at all times since this case began has been enlisted in the military but is presently unable to be deployed without dismissal of the charge. Motion to Dismiss Charge Pursuant to Idaho Code 19-2604, p. 1.

I. FACTUAL BACKGROUND.

On September 13, 2006, at the conclusion of a jury trial, Poe was found guilty of possession of a controlled substance (methamphetamine), for events that occurred on May 11, 2006. On November 1, 2006, at Poe’s sentencing hearing, as a result of a lack of criminal record, Poe was given a withheld judgment (judgment was withheld for five years) and placed on supervised probation for three years.

On May 28, 2008, a Report of Violation was filed by Poe’s probation officer, Ruth Brownlee. At a hearing held on June 23, 2008, Poe admitted the following violations:

consuming alcohol on December 28, 2007 (for which she had already served six days discretionary time); entering a bar on May 23, 2008; using methamphetamine on May 22, 2008; travelling to Spokane, Washington on May 22, 2008, without her probation officer's permission; breaking curfew, and; associating with John Padula, a convicted felon. At the conclusion of that hearing, this Court: 1) revoked Poe's withheld judgment and imposed a two-year fixed prison sentence followed by a two-year indeterminate sentence for a total of four years; 2) continued Poe's supervised probation and extended it eighteen more months to June 23, 2011, and; 3) added some additional probation terms. Due to a lack of testing for drugs and alcohol during Poe's first year and a half of probation, this Court required weekly random drug testing for the first year of her continued, extended period of probation. The Court required successful completion of the Good Samaritan 120-day inpatient faith-based drug treatment program, and also required a probation review hearing before the Court on October 23, 2008, immediately after the completion of that program. On October 23, 2008, Poe appeared before the Court. Given her successful completion of the Good Samaritan program and due to her consistently testing negative for the presence of controlled substances and alcohol, this Court continued Poe on probation.

On August 13, 2009, her probation officer Rhonda Stevens, filed a Petition for Unsupervised Probation and Case End Summary, requesting that this Court place Poe on unsupervised probation for the following reasons:

Ms. Poe has been supervised by the Idaho Department of Correction since her sentencing on November 1, 2006. She completed the Good Samaritan Program and is now a staff member for the program. She completed Cognitive Self Change, Moral Reconciliation Therapy, and Relapse Prevention at Restored Paths. She has continued to be involved in the weekly programs offered by the Altar Church. She has submitted to random drug testing on a weekly basis with all negative results. She has completed two hundred (200) hours of Community Service Work. At the request of her probation officer she has moved out of her parent's home and is now sharing a home with a roommate. This was a goal set up to

address her being more independent, and having more age appropriate responsibilities. Ms. Poe has paid her court fees and fines in full and is current on her cost of supervision. She appears to have remained compliant and violation free, since her last court date on June 23, 2008. Due to Ms. Poe's satisfaction of her conditions, this officer would recommend that she be placed on unsupervised probation until her full-term expiration date of June 23, 2011.

Petition for Unsupervised Probation and Case End Summary, p. 1. That petition by Poe's probation officer advised the Kootenai County Prosecuting Attorney to advise the Court within thirty days if there was any information they had contrary to the above information given by Poe's probation officer. *Id.* No objection was made by the Kootenai County Prosecuting Attorney. On September 14, 2009, this Court filed an "Order for Unsupervised Probation", placing Poe on unsupervised probation until June 23, 2011.

On November 23, 2009, Poe filed a "Motion to Dismiss Charge Pursuant to Idaho Code 19-2604", and noticed said motion for hearing on December 2, 2009. The stated reason for that motion is: "...Defendant is enlisted in the military and unable to be deployed without the charge being dismissed." Motion to Dismiss Charge Pursuant to Idaho Code 19-2604, p. 1.

At the December 2, 2009, hearing, Poe's attorney wished to present factual evidence. Prior to hearing that evidence, this Court noted two *legal* problems with Poe's motion: 1) as a matter of law, how can the relief requested be provided if Poe has not at all times been compliant with her probation terms and conditions, given the May 28, 2008, probation violation, and 2) how can it be said Poe has successfully completed her probation when her probation does not end until June 23, 2011? As to the second issue, the Court stated there needed to be a motion to discharge her from probation before the Court could continue. Poe's attorney made such a motion, to which the State objected. At the conclusion of some argument over that motion, evidence was taken. At the conclusion of

the extensive evidence, this Court took the motion to discharge Poe from probation under advisement, and took Poe's "Motion to Dismiss Charge Pursuant to Idaho Code 19-2604" under advisement and ordered additional briefing be filed by Poe and the State on that motion by no later than December 9, 2009. On December 4, 2009, the State filed its brief. On December 9, 2009, Poe filed her brief.

The "facts" regarding Poe's motion can be summarized as follows: Idaho National Guard Lieutenant Colonel Blagburn testified at the December 2, 2009, hearing. His testimony was uncontradicted. Blagburn is the senior commander for the Idaho National Guard. Poe is a "Specialist" and has been a member of the National Guard since 2005. Blagburn has worked with and has supervised Poe for the last fourteen months. Blagburn testified "she is a good soldier", "she has served with outstanding achievement over the last eighteen months" and she has received an "impact award." Blagburn testified Poe is tested every year by the Idaho National Guard for the presence of controlled substances has at all times tested negative. Blagburn testified he is willing to drug test her every month in the future. Blagburn testified Poe's felony conviction will "kill her career" and she will have to be "discharged according to regulation." According to Blagburn, due to the felony conviction, Poe is "flagged", meaning she is not able to conduct weapons training. As a result of being "flagged", Poe will not be deployed with her unit. Her unit is on "alert" to be deployed to Afghanistan or Iraq. Blagburn testified that if her felony conviction were removed, she would immediately be placed on a "deployment roster" and there would be a 75% chance she would be deployed before March 2010.

Tim Remington testified at the hearing. He is the Pastor of the Altar Church in Coeur d'Alene and owner of the Good Samaritan Rehabilitation facility, a faith-based chemical dependency inpatient facility. Remington has hired Poe as his "Weekend

Administrator” for his women’s inpatient rehabilitation facility. Remington testified Poe has become a Twelve-Step Instructor. Remington testified Poe was exemplary in the program, and that he hired her because she does not deviate from the rules and due to the way she interacts with the clients.

Probation officer Rhonda Stevens testified that she had been Poe’s probation officer recently. Stevens testified Poe’s drug testing had all been negative for drugs and alcohol. She testified Poe has been working three jobs: at Good Samaritan; Joshua Tree Physical Therapy; and for the Idaho National Guard. Even though Poe had been on unsupervised probation since September 14, 2009, Stevens felt it was too soon to be taken off unsupervised probation altogether. According to Blagburn, it is not the probation that would cause Poe to be terminated from the Idaho National Guard, it is the fact of the felony conviction. However, under I.C. § 19-2604, one cannot obtain a dismissal until probation is completed. Thus, the need for Poe’s motion to terminate probation in addition to her “Motion to Dismiss Charge Pursuant to Idaho Code 19-2604.”

II. STANDARD OF REVIEW.

Poe’s “Motion to Dismiss Charge Pursuant to Idaho Code 19-2604” is a matter committed to this Court’s discretion. *State v. Wiedmeier*, 121 Idaho 189, 824 P.2d 120 (1992).

III. ANALYSIS.

In Poe’s brief, she states:

While the defendant can find no Idaho case in which the probationer has violated probation one time then seeks relief under this statute, neither can defendant find a case where the defendant who seeks relief is an outstanding soldier whose military unit has been alerted that it will be deployed overseas to fight the war on terror. Such “military necessity” should invoke this court’s plenary powers to grant leniency. Before the court is an exceptional soldier serving her country in extraordinary times.

Defendant's Brief in Support of Motion to Dismiss IC 19-2604, p. 5. (italics added). The State found just such an "...Idaho case in which the probationer has violated probation one time then seeks relief under this statute...", and that is *State v. Schwartz*, 139 Idaho 360, 79 P.3d 719 (Idaho 2003). This is the case which prompted the Court at oral argument to ask Poe's counsel what legal basis this Court had to grant the motion.

The State anticipated that Poe would argue that even though she violated probation while on a withheld judgment, she had been successful on probation since the time sentence was imposed. State's Memorandum, p. 3. The State argues the Idaho Supreme Court has addressed that issue in *State v. Schwartz. Id.* Even though Poe had the benefit of the State filing its brief three days in advance of the deadline and three days before Poe filed her brief, Poe's counsel did not discuss *Schwartz* in Poe's brief. Thus, Poe's claim that "...the defendant can find no Idaho case in which the probationer has violated probation one time then seeks relief under this statute..." is incredible at best, and at worst, disingenuous. In order to make that claim, Poe's counsel must have neither read the annotations to Idaho Code § 19-2604 (as *Schwartz* appears in the annotations to that statute), nor read the State's brief, filed three days before Poe's brief. If counsel for Poe had either read the annotations to Idaho Code § 19-2604 and found *Schwartz* or had read the State's brief before writing: "...the defendant can find no Idaho case in which the probationer has violated probation one time then seeks relief under this statute...", then such would be an untruthful statement. No matter the nature of that transgression by Poe's counsel, the Court will not visit any punishment for such upon Poe.

The State in its briefing correctly notes the language of the statute applicable to this case, Idaho Code § 19-2604(1):

19-2604. DISCHARGE OF DEFENDANT -- AMENDMENT OF JUDGMENT.

(1) If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, or has successfully completed and graduated from an authorized drug court program or mental health court program and has at all times complied with the terms and conditions of probation during any period of probation that may have been served following such graduation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant; and this shall apply to the cases in which defendants have been convicted and granted probation by the court before this law goes into effect, as well as to cases which arise thereafter. The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

State's Memorandum, p. 2.

Schwartz concerned a defendant who had been given the benefit of a withheld judgment, placed on probation, violated his probation and sent to a retained jurisdiction.

Upon return from a retained jurisdiction, subsection two to Idaho Code § 19-2604 applies:

(2) If sentence has been imposed but suspended during the first one hundred eighty (180) days of a sentence to the custody of the state board of correction, and the defendant placed upon probation as provided in subsection 4. of section 19-2601, Idaho Code, upon application of the defendant, the prosecuting attorney, or upon the court's own motion, and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of his probation, or has successfully completed and graduated from an authorized drug court program or mental health court program and has at all times complied with the terms and conditions of probation during any period of probation that may have been served following such graduation, the court may amend the judgment of conviction from a term in the custody of the state board of correction to "confinement in a penal facility" for the number of days served prior to suspension, and the amended judgment may be deemed to be a misdemeanor conviction.

Although only six years old, the decision in *Schwartz* was authored by the only remaining Idaho Supreme Court Justice who joined in that opinion, current Chief Justice Eismann.

The current Idaho Supreme Court has as a "Legislative Priorities of the Courts" (Attached

as Exhibit A to this decision), stated the following:

COMPLIANCE WITH PROBATION – RELIEF FROM CONVICTION

Idaho Code § 19-2604 currently provides that a court may terminate a period of probation and set aside a conviction where a defendant in a criminal case has “at all times complied with the terms and conditions” of probation, and where the court is convinced that there is no longer cause for continuing probation and that it would be compatible with the public interest. Judges encounter cases in which a defendant has performed well and appears to deserve having a conviction set aside, but is not eligible for such consideration because of a minor violation at some point of one of the terms of probation. These defendants could be considered for relief under this statute if they were required to have substantially, rather than “at all times,” complied with the conditions of probation. A judge would still have to be convinced that such action is compatible with the public interest.

Legislative Priorities of the Courts, p. 4. That document was given by the Idaho Supreme Court to District and Magistrate Judges throughout the State of Idaho, to in turn give to their local State Senators and Representatives in local meetings during the months of November and December 2009 (on December 1, 2009, the document was given to Senators and Representatives from Kootenai County by all Magistrate Judges chambered in Kootenai County and all but one District Judge Chambered in Kootenai County).

“Substantial compliance” would certainly be a more practical and flexible solution to the unintended consequence of creating lifelong felony records simply due to one probation violation which is then followed by long-term compliance with probation terms and successful completion of probation. That unintended consequence is even more profound when, as is often the case, the probation violation occurs early on in the period of probation. Most of the defendants this Court places on probation have committed a drug possession crime or drug-related crime (burglary, theft, forgery to obtain drugs, or crimes of violence committed while under the influence of drugs).

Chemical dependency treatment professionals explain that in dealing with addiction, relapse is expected. Thus, the reality is in many cases where the defendant is placed on

probation, relapse will occur; thus, a probation violation will occur. Compounding the fact that from a chemical dependency (addiction) standpoint alone, it is truly the exceptional case where there is *no* relapse from the addiction, many of those defendants this Court places on probation for drug crimes also have one or more of the following factors that contribute significantly to relapse from other than chemical dependency: relatively young age (i.e., immature), a victim of past significant trauma, suffering from various mental illness, homelessness, joblessness, in a bad relationship with a physically abusive significant other or a chemically dependant significant other. The most significant factor is often the choice of acquaintances the probationer has made. Just because a drug user has pled guilty to a felony or has been found guilty of a felony and has now been placed on probation doesn't mean the probationer's past drug-using friends will stop hanging around the probationer, even if the probationer makes every effort to avoid these drug-using acquaintances.

Poe had many of these challenges. Poe is young. She was 22 years old when she committed this offense and 24 years old when she relapsed in May 2008. Poe's brother has a history of methamphetamine use. Poe violated her probation by associating with Padula, a convicted felon and a friend with whom she had previously been in a relationship.

According to the Report of Probation Violation: Poe had lived with Padula for a few days due to Poe getting in an argument with her mother and Poe moving out; Padula was physically abusive to Poe, and kidnapped her on May 22, 2007; and Poe admitted smoking methamphetamine that day following a period where she was arguing with and was abused by Padula. Poe's probation violations all resulted from this event. That event followed a year and a half of successful probation. Apparently, Poe was able to avoid Padula until she left home following the argument with her mother. Following that event, Poe has shown

she is committed to her recovery and in fact supervises, mentors, teaches others in an inpatient recovery setting.

Statistics from the State of Idaho Department of Correction show that about 17% of probationers commit a probation violation. Idaho Department of Correction, Annual Statistical Report (2008), p. 48, Table 5. Since 1996, that amounts to 6,196 citizens on probation who committed a probation violation during their probation. A person on probation is most likely to violate within the first eighteen months of probation. *Id.*, p. 43, Chart 48. That is certainly what happened in Poe's case. After that eighteen-month period, the percentage of those on probation who violate drops quite rapidly, and after thirty months it becomes rare. *Id.* Not surprisingly, if a probationer is going to fail to be "at all times compliant" with the terms and conditions of his or her probation, the probationer is most likely to fail in the first eighteen months of his or her probation.

Of those 6,196 Idaho probationers who have had a probation violation in the last thirteen years, some of them undoubtedly had multiple violations and some probably had multiple violations that have occurred over several years while on probation. But of those 6,196 probationers who have had a probation violation in the last thirteen years, some of them, perhaps a majority of them (the Idaho Department of Correction has not broken this down) had only *one* violation. Whether those who had only one violation amount to a majority of the 6,196 probationers who violated, or a minority, it is without doubt a significant number. To preclude that significant number (who have only one violation) from a means of extricating themselves from the morass that follows a felony conviction is counterproductive. Such a result is contrary to the purpose of Idaho Code § 19-2604, which "...is to allow a person convicted of a felony to amend the judgment so that the harsh consequences of a felony conviction can be avoided." *Housley v. State*, 119 Idaho 885,

890, 811 P.2d 495, 500 (Ct.App. 1991).

A felony conviction eliminates a person from many jobs. An excellent journal article detailing this reality and the sequential effects of that reality, is ADDING IT UP: THE ECONOMIC IMPACT OF INCARCERATION ON INDIVIDUALS, FAMILIES AND COMMUNITIES, H.Watts and D.S. Nightingale, 3 Journal of the Oklahoma Criminal Justice Research Consortium (1996). In addition to the military, a felony record may preclude employment in certain areas such as transportation, health care and education. RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION, A STATE-BY-STATE RESOURCE GUIDE, Margaret. Colgate Love, William S. Hein & Co. Inc., (2006), (summary, p. ix). Being employed is obviously one of the attributes of a successful or “normal” life. Employment alleviates many stressors and provides self worth. On the other hand, unemployment is one of the biggest risk factors in recidivism.

This, then, becomes the vicious cycle. The felon, despite having rehabilitated themselves and changed the way they conduct their life, due to the existence of a felony conviction, is unemployed or employed at a minimum wage job with no benefits (underemployed). There are a great number of jobs from which one is automatically eliminated for having a felony conviction. The felony conviction alone assists in ensconcing them in poverty.

Being a convicted felon certainly has no bearing on whether a woman of child-bearing age will bear a child. Thus, women of Poe’s age who have a felony conviction may have a child or children, and those children are more likely to be born into poverty due in part to the mother’s felony conviction. In addition to the poverty, the parent bears the stigma of the felony conviction and the child carries that stigma as well.

Due to the convicted felon’s increased chance of experiencing poverty, the convicted

felon's peer group will be similar to their socio-economic group...others who are unemployed or underemployed. Many of them are also convicted felons. Because one's associations are the biggest risk factor in recidivism, the risk of all of the following *increase* if those associations are predominantly other convicted felons living at or near the poverty level: future drug and alcohol abuse and addiction; future physical abuse; future untreated health care issues. If they are not working, they still need to eat and survive; thus, the risk for illicit employment (prostitution, drug sales, theft) increases. The risk of all of these bad outcomes applies not only to the convicted felon but also their children. The taxpayer winds up paying for the treatment of the felon and their children (when they get treatment) in two ways: 1) through unpaid medical expenses at the emergency room that are paid by the county medical indigency fund, or 2) the insured patient pays for the convicted felon's treatment because the hospital writes off the unpaid medical expense and passes it on to the patient with the insurance.

Or, Poe can turn her part-time job as a reserve officer into a full-time high-paying job in the military, where she can be tested monthly for continued compliance with her recovery, serve our country, obtain a paycheck, receive health care and other benefits, develop a career in the military (or develop skills that can be used in other professions), pay taxes, raise a family in a better socio-economic situation and pay into a retirement.

Again, the purpose of Idaho Code § 19-2604 is to allow a person convicted of a felony to amend the judgment so that the harsh consequences of a felony conviction can be avoided, and the procedure is best described as a statutory partial expungement. *Housley v. State*, 119 Idaho 885, 890, 811 P.2d 495, 500 (Ct.App. 1991). It is possible to interpret Idaho Code § 19-2604 differently than interpreted by *Schwartz*. Idaho Code § 19-2604(1) is written in the disjunctive, with the use of the word "or". The pertinent portion

reads:

(1) If sentence has been imposed but suspended, *or* if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, *or* has successfully completed and graduated from an authorized drug court program or mental health court program and has at all times complied with the terms and conditions of probation during any period of probation that may have been served following such graduation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant;

I.C. § 19-2604(1). (emphasis added). The italicized portion shows three disjunctive methods by which one may obtain a dismissal: 1) via imposition of sentence and suspension of sentence and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of probation; 2) via withheld judgment and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of probation; 3) via successful completion and graduation from an authorized drug court or mental health court program and upon satisfactory showing that the defendant has at all times complied with the terms and conditions of probation after completing that program.

Does the language: "...and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation..." apply to all times the defendant was on probation, or does that language apply to the time that the defendant was placed on probation with a withheld judgment, the time defendant was sentenced and placed on probation, and/or the time defendant was on probation following successful completion of a drug or mental health court? Being on probation during a withheld, being on probation during a suspended prison sentence, and being on probation following a successful completion of drug or mental health court are three

different things. They cover three discrete time periods. It is *impossible* to be on probation during a withheld judgment and to be on probation during a suspended prison sentence at the same time. When a court enters an order withholding judgment and places the defendant on probation pursuant to § 19-2601(3), no sentence is then imposed and no judgment of conviction is entered. *State v. Woodbury*, 141 Idaho 547, 112 P.3d 835 (Ct.App. 2005). Since it is *impossible* to both be on probation during a period of withheld judgment, and at the same time be on probation during a suspended prison sentence; and since I.C. § 19-2604(1) is written in the *disjunctive* concerning those two different times for which the same person can be placed on probation, this Court finds the interpretation of that statute (that one can be compliant “at all times” during the period of probation while judgment and sentence was imposed but suspended, yet earlier have not been compliant “at all times” while on probation for a withheld judgment, and still be entitled to dismissal of the case), to be just as plausible as the interpretation found in *Schwartz*. The Court is mindful that *Schwartz* interpreted subsection two of that statute, not subsection one which is applicable in the present case. However, the analysis of *Schwartz* could certainly apply to subsection one.

This Court finds that the current Idaho Supreme Court is of the opinion that the existing language in Idaho Code § 19-2604 is problematic and leads to unintended results. This Court finds the current Idaho Supreme Court might not view *Schwartz* (and its interpretation of subsection two) favorably, and may not apply such interpretation to subsection one, especially given the facts of the present case. Two months ago, the Idaho Court of Appeals wrote: “The rule of *stare decisis* dictates that we follow [controlling precedent], unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and

remedy continued injustice.” *Hughes v. State*, 2009 Westlaw 3273940 (Ct.App. October 14, 2009), citing *Reyes v. Kit Mfg. Co.*, 131 Idaho 239, 240, 953 P.2d 989, 990 (1998) (quoting *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 77, 803 P.2d 978, 983 (1990)). This Court finds following *Schwartz*, at least as applied to subsection one of I.C. § 19-2604, given the facts of this case, may lead to a “manifestly wrong” result, would be “unjust or unwise”, and overruling *Schwartz* would be “necessary to vindicate plain, obvious principles of law and remedy continued injustice.” *Id.* This Court emphasizes this decision is limited to the facts of this case. By the terms of Idaho Code § 19-2604, a dismissal could never occur in any sex crime involving a child. This decision is limited to the specific facts: a drug possession crime in which there has not only been substantial compliance by Poe on probation where not only is the defendant in recovery, but where the Poe’s performance is so highly thought of that the highest ranking member of the Idaho National Guard travelled from Lewiston, Idaho, to provide his testimony to this Court.

This Court also finds it somewhat likely the Idaho Legislature will make changes to Idaho Code § 19-2604 in the upcoming legislative session. The Idaho Supreme Court is obviously recommending such a change. The proposed change would seem to have no “cost” involved, and indeed, would seem to reduce costs given the likely consequence of people finding better paying jobs without the continuing felony conviction. If that statutory change occurred this legislative session, Poe would still lose her opportunity for a career in the military. This is because her deployment is likely to occur in the spring of 2010, and any statutory change would take effect after July 1, 2010. Thus, even though the statute may change before her deployment, it would not take effect in time and Poe would be discharged or terminated from the Idaho National Guard due to her felony conviction.

This Court finds there is no longer cause for continuing Poe’s probation. This Court

finds there has been substantial compliance with Poe's probation terms and conditions. This Court finds beyond any doubt that it would be "compatible with the public interest" under I.C. § 19-2604(1) for Poe to have her methamphetamine charge dismissed so that she may enter active duty and serve our country. Poe has proven herself to be a valuable member and employee of the National Guard. She has proven herself to be a reliable employee of a physical therapy business. Poe has proven to be not only successful in her own recovery from abuse of or addiction to controlled substances, but she has proven herself to be a trusted employee of an inpatient treatment program, supervising several women in inpatient treatment during the weekends. Given her consistent job performance, especially her job performance supervising others in recovery, coupled with her desirability to the military, it would be difficult to imagine a case more "compatible with the public interest."

Finally, Poe cited "*State v. Turpen*, ISC No. 34994", (Sup.Ct. Docket No. 34994, decided August 28, 2009), for the proposition that this Court has "inherent power to expunge". The Court has read that opinion and finds the relief available under Idaho Administrative 32(i) does not provide the relief that Poe requires to enter into active service in the military, that being dismissal of the charge. Idaho Court Administrative Rule 32(i) simply allows a court to "...seal or redact court records on a case-by-case basis" if certain criteria are met. *Turpen*, p. 4.

IV. ORDER.

IT IS HERBY ORDERED THAT DANIELLE RENAI POE's "Motion to Dismiss Charge Pursuant to Idaho Code 19-2604" is **GRANTED**, the charges against Poe are DISMISSED pursuant to I.C. § 19-2604(1).

IT IS FURTHER ORDERED THAT DANIELLE RENAI POE's Motion to Discharge

from Probation made at the December 2, 2009, hearing, is **GRANTED**. Effective the date of this Order, Poe is forever DISCHARGED from unsupervised probation in CRF 2006 9479.

DATED this 14th day of December, 2009.

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of December, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Bill Douglas, w/attachments
Prosecuting Attorney – Donna Gardner/Art Verharen, w/attachments

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY: _____
Deputy