

STATE OF IDAHO)
County of BONNER)
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 BONNER**

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
DUSTIN BAME,)
)
Defendant.)

Case No. **CRF 1994 983**

**MEMORANDUM DECISION AND
ORDER DENYING MOTION TO
DISMISS CASE PURSUANT TO I.C.
§19-2604**

Defendant filed his Motion to Dismiss Pursuant to Idaho Code §19-2604 on September 27, 2004, along with an affidavit of Dustin Bame which stated: "that I have at all times been in compliance with the terms of my probation since the reaffirmation of my withheld judgment by order of Judge Judd dated October 28, 1996. The undersigned has been assigned all cases decided by Judge Judd upon his retirement.

This Court has reviewed the file. On October 30, 1996, an Order on Probation Violation Hearing was filed which stated that at hearing on October 9, 1996: "Defendant Dustin Bame, admitted all violations in the report of violation dated June 22, 1996." That Order on Probation Violation Hearing went on to order that Dustin Bame: "...continues to receive the benefit of the withheld judgment...", and Judge Judd imposed ten days in jail upon Mr. Bame. This Court has reviewed the June 22, 1996 Report of Violation to which Dustin Bame admitted all allegations. This Court cannot from a **factual standpoint** grant

the benefit of a dismissal following a withheld judgment. In his probation violation, Dustin Bame admitted soliciting a sex act from a fourteen year old girl in June 1996. This

occurred only a year and a half after pleading guilty to rape of a sixteen year old victim. In the Pre-sentence Report that sixteen year old girl indicated the sex was not consensual. The grant of a withheld judgment given those facts was a huge benefit to Mr. Bame in 1995. To solicit a sex act from a fourteen year old girl a year and a half later, get caught doing so and admit such leaves the undersigned with an easy decision as to deny the motion to dismiss. While Judge Judd must have had good reason on October 22, 1996 for allowing Mr. Bame to “continue to receive the benefit of the withheld judgment” in light of the admitted solicitation of a sexual act of a fourteen year old girl, the undersigned cannot understand why the withheld judgment was not revoked and sentence was not imposed at that time. While the undersigned cannot rewrite history, the undersigned refuses to be a part of the undeserved benefit which Mr. Bame now seeks.

From a **procedural standpoint** Mr. Bame cannot be given the relief sought. Since the time of Judge Judd’s decision in 1996 in this case, the Idaho Supreme Court has clarified the standard to which district judges are held. Idaho Code § 19-2604 requires the defendant to show satisfactorily that the defendant has “...**at all times** complied with the terms and conditions upon which he was placed on probation...” (emphasis added). The Idaho Supreme Court in *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 722 (2003) held this language “...does not refer only to the defendant’s most recent period of probation but to **all periods of probation** imposed with respect to the particular criminal charge.” (emphasis added). The Supreme Court clearly stated: “The statutory requirement, that a defendant has complied ‘at all times’ with the terms and conditions of

his probation, means just that.” *Id.* There can be no other interpretation than Mr. Bame did not at all times comply with the terms and conditions of his probation.

IT IS ORDERED that Defendant's Motion to Dismiss Pursuant to Idaho Code §19-2604 is DENIED.

Dated this _____ day of October, 2004.

John T. Mitchell, District Judge

I hereby certify that on the _____ day of October, 2004 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail to:

Phil Robinson, Prosecuting Attorney
Jonathan Hull, Defense Counsel
Probation & Parole

By _____
Deputy Clerk of Court