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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 49210-2021
Plaintiff-Appellant,	)	
	)	TWIN FALLS COUNTY NO. CR42-21-4019
v.	)	
	)	
CAMILLE J. POOL,	)	RESPONDENT'S BRIEF
	)	IN SUPPORT OF
Defendant-Respondent.	)	PETITION FOR REHEARING
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Camille J. Pool asks the Idaho Supreme Court to rehear her case, *State v. Pool*, No. 49210 (March 24, 2023) (*hereinafter*, Opinion). Ms. Pool seeks rehearing because the Opinion is inconsistent with Idaho precedent in holding, "where the protections against unlawful searches provided by the Fourth Amendment and Article I, section 17 are coextensive, a probationer's valid waiver of her rights under one constitutional provision constitutes consent to conduct covered by both constitutions." (Opinion, p.6.) Idaho precedent holds that the terms and

conditions of a probation agreement are interpreted using contract law standards and the reviewing court "look[s] first to the language of the Fourth Amendment waiver." *State v. Maxim*, 165 Idaho 901, 907 (2019); *see also State v. Hansen*, 167 Idaho 831, 836 (2020) (holding "we continue to believe that viewing the interpretation of the terms of a probation agreement as analogous to the interpretation of a contract is a prudent approach for determining whether a search falls within the scope of consent given by a probationer."); *State v. Jakowski*, 163 Idaho 257, 259-60 (2018) ("the resolution of each case . . . depend[s] upon the specific language of the waiver at issue"). The Opinion is also inconsistent with precedent recognizing and applying the parole evidence rule, the presumption against implicit waivers of constitutional rights, and the recognition that, when interpreting the rights afforded under the Idaho constitution, Idaho courts will not "borrow" from federal courts' interpretations of the rights afforded under the United States Constitution. *State v. Haggard*, 166 Idaho 858, 863 (2020); *State v. Werneth*, 101 Idaho 241, 243 (1980); *State v. Guzman*, 122 Idaho 981, 998 (1992); *State v. Newman*, 108 Idaho 5, 10 n.6 (1985).

Rehearing is warranted.

Statement of Facts and Course of Proceedings

The Statement of the Facts and the Course of Proceedings were articulated in Ms. Pool's Respondent's Brief, and the Opinion itself includes pertinent information about these facts and proceedings. These facts and proceedings are articulated in this Brief only where necessary to address the holdings that Ms. Pool asks this Court to reconsider.

ISSUE

Should this Court grant rehearing because this Opinion is inconsistent with controlling precedent?

ARGUMENT

This Court Should Rehear Ms. Pool's Case Because The Opinion Is Inconsistent With Controlling Precedent

A. Introduction

Ms. Pool respectfully asks this Court to rehear her case. In her probation agreement, Ms. Pool "waive[d] her 4th Amendment right to warrantless search." (Exh., p.5.) Instead of analyzing the language in the probation agreement to determine whether Ms. Pool also waived her rights under the Idaho Constitution, the Opinion concludes that the means by which the waiver term was executed, i.e., the warrantless probation search itself, defines the terms found in the agreement. (Opinion, p.8.)

Where this Court's precedent has held that, in determining whether the officer's actions are reasonable, "we look first to the language of the Fourth Amendment waiver," the Court's analysis is contrary to precedent. *Maxim*, 165 Idaho at 907. The Opinion's focus on extrinsic facts to determine whether the language of the probation agreement constituted a waiver of Ms. Pool's Idaho constitutional rights, its failure to recognize that there is a presumption against implicit waivers of constitutional rights, and its failure to recognize that Idaho courts do not "borrow" from federal courts' interpretations of federal constitutional rights, all warrant rehearing.

In light of these considerations, Ms. Pool asks this Court to rehear her case.

B. Standards For A Grant Of Rehearing

Idaho Appellate Rule 42 does not list any specific grounds for this Court to consider when determining whether to grant or deny a Petition for Rehearing; however, the choice of whether to do so is clearly left to the sound discretion of this Court. *See* I.A.R. 42. While not controlling, when considering whether to grant a Petition for Review from a decision rendered by the Idaho Court of Appeals, Idaho Appellate Rule 118 lists certain factors to consider including whether or not the opinion is in accord with applicable precedent. *See* I.A.R. 118(b). Ms. Pool respectfully asks this Court to grant her Petition for Rehearing and to reconsider her case because the Opinion is inconsistent with this Court's own precedent and United States Supreme Court precedent.

C. This Court Should Grant Ms. Pool's Petition For Rehearing

The Fourth Amendment to the United States Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. U.S. Const. amend. IV. Warrantless searches and seizures are presumptively unreasonable. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971). To overcome this presumption, the search must fall within a well-recognized exception to the warrant requirement. *Id.* at 455. When a defendant challenges a warrantless search, the State bears the burden to show that a well-recognized exception to the warrant requirement is applicable. *Vale v. Louisiana*, 399 U.S. 30, 34 (1970).

1. The Opinion Fails To Analyze The Terms Of The Probation Agreement And Deviates From Contract Law Precedent By Analyzing Extrinsic Evidence To Interpret The Contract Provisions

The Opinion is contrary to this Court's precedent because Idaho courts first evaluate the specific language found in the probation agreement when determining the breadth of a probationer's waiver. The language of the probation/parole waiver is interpreted like a contract term. For example, this Court in *State v. Jaskowski* held,

> It was no accident that our decision in *Gawron*[1] recognized the analogy between probation agreements and traditional contractual terms in governmental contracts. We take an objective approach to interpretation of contracts. Under this approach, the court will give force and effect to the words of the contract. The law presumes that the parties understood the import of their contract and that they had the intention which its terms manifest.

163 Idaho 257, 261 (2018). This Court more recently explained the proper methodologies to interpret the waiver provision of a probation agreement in *State v. Hansen,* 167 Idaho 831, 836 (2020).

> Indeed, we continue to believe that viewing the interpretation of the terms of a probation agreement as analogous to the interpretation of a contract is a prudent approach for determining whether a search falls within the scope of consent given by a probationer.
>
> In determining how a probationer may revoke the consent provided for in his probation agreement, a careful balance must be struck between the Fourth Amendment requirement that consent be voluntary and the contractual nature of probation agreements.

Id. The Opinion fails to apply the contract analysis. Instead, the Court sought to answer the question of whether the scope of the consent under the Fourth Amendment would consume the protections of the Idaho Constitution and, upon finding that the two were coextensive, concluded

[1] *State v. Gawron*, 112 Idaho 841 (1987).

that the waiver provision of the probation agreement included a waiver of Ms. Pool's right to be free from searches and seizures under the Idaho Constitution. (Opinion, p.8.) However, analyzing the facts surrounding the execution of the waiver term to interpret the extent of the waiver term is contrary to precedent.

In *Jaskowski*, this Court used contract interpretation principles to hold that the provision waiving Mr. Jaskowski's Fourth Amendment rights was conditioned upon a request to search, and that any search conducted without a request was not objectively reasonable. *Jaskowski*, 163 Idaho at 261. The *Jaskowski* Court summarized a similar argument from the State as follows:

> The State's argument in this appeal is essentially that which the Court of Appeals rejected in *Turek*:[2] that all Fourth Amendment waivers should be treated in the same way, without regard for the language used in the condition of probation. Our previous decisions regarding Fourth Amendment waivers do not support the State's assertion that we should adopt such a universal approach to Fourth Amendment waivers. *See Purdum*, 147 Idaho at 208, 207 P.3d at 184;[3] *Gawron*, 112 Idaho at 843, 736 P.2d at 1297.

Id. 163 Idaho at 260. The *Jaskowski* Court closely examined its previous decisions in *Purdum* and *Gawron* and concluded that the resolution of each case depended upon the specific language of the waiver at issue. *Id.* at 261. "[C]ourts evaluating the scope of the Fourth Amendment waiver must look to the language used in the condition of probation in order to determine whether the search was objectively reasonable." *Id.*

Thus, in determining whether a search was objectively reasonable, precedent dictates that the reviewing court first evaluates the language in the agreement. *Id.* at 260. When evaluating the

[2] *State v. Turek*, 150 Idaho 745 (Ct. App. 2011).
[3] *State v. Purdum*, 147 Idaho 206 (2009).

scope of the waiver, this Court has consistently declined to adopt a more generalized or broader interpretation of the waiver language. *See id*.

Further, using events or facts occurring outside the unambiguous probation agreement to interpret the meaning of the provisions within it is forbidden under the parole evidence rule. The parole evidence rule provides that, "[w]here preliminary negotiations are consummated by written agreement, the writing supercedes all previous understandings and the intent of the parties must be ascertained from the writing," *Nysingh v. Warren*, 94 Idaho 384, 385 (1971). In those cases in which the written agreement is complete upon its face, unambiguous, and no fraud or mistake has been alleged, "the extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to or detract from the terms of the written contract." *Valley Bank v. Christensen*, 119 Idaho 496, 498 (1991) (citing *Milner v. Earl Fruit Co.*, 40 Idaho 339, 232 P. 581 (1925).)

Here, the magistrate court advised Ms. Pool at her sentencing hearing that the probation agreement required her to waive her *Fourth Amendment right* to be free from search and seizure. (Exh., p.20 (emphasis added).) The specific mention of the Fourth Amendment precludes a broader interpretation that Ms. Pool was waiving of *all* of her search and seizure rights. *See Jaskowski*, 163 Idaho at 261. Thus, the district court properly concluded that Ms. Pool's oral waiver of her Fourth Amendment rights did not act to waive those rights protected by the Idaho Constitution. (R., p.90.) This Court should rehear Ms. Pool's case because the Court's Opinion considered extrinsic evidence when interpreting the waiver, and it failed to consider well-established precedent narrowly construing the language of the waiver.

2. The Opinion Is Contrary To Idaho And United States Supreme Court Precedent Applying A Presumption *Against* The Waiver Of Constitutional Rights

The Opinion is also inconsistent with Idaho and United States Supreme Court precedent concluding that, where the protections of the state and federal constitutions are coextensive, "a probationer's valid waiver of her rights under one constitutional provision constitutes consent to conduct covered by both constitutions." (Opinion, p.8.)

As this Court has recently held that, when interpreting the terms of a probation waiver, due process requirements dictate a general presumption that the terms be interpreted as not waiving constitutional rights. *State v. Haggard*, 166 Idaho 858, 863 (2020). In *Haggard*, this Court held, "Because the due-process requirements for waiving a right are proportional to the constitutional protection surrendered, a general presumption exists *against* the waiver of constitutional rights." *Id*. (emphasis in original).

In *State v. Thurlow*, this Court relied upon a definition and construction of the term "waiver":

> Waiver is defined as the voluntary relinquishment of a known right. Thus, the accused not only must voluntarily manifest his intention to waive his right or rights but it must clearly appear that he is completely aware of the nature of the charge against him and is competent to know the consequences arising from his waiver of these rights. In this connection this court will indulge every reasonable presumption against a waiver of fundamental constitutional rights, and will not presume acquiescence in their loss.

85 Idaho 96, 103 (1962) (internal citation omitted); *see also Carnley v. Cochran*, 369 U.S. 506, 515 (1962). And as the United States Supreme Court has held, "It has been pointed out that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional

rights and that we 'do not presume acquiescene in the loss of fundamental rights." *Johnson v. Zerbst*, 304 U.S. 458, 464-465 (1938).

3. The Opinion Is Contrary To Precedent Requiring A Separate Analysis Of The Protections Of The Idaho Constitution

The Opinion is also inconsistent with Idaho precedent interpreting the extent of the protections within the Idaho Constitution by concluding that, where the protections of the state and federal constitutions are coextensive, "a probationer's valid waiver of her rights under one constitutional provision constitutes consent to conduct covered by both constitutions." (Opinion, p.8.)

Article I, Section 17, of the Idaho Constitution states,

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

IDAHO CONST. art. I, § 17. This section contains "nearly identical guarantees" as those in the Fourth Amendment of the United States Constitution. *State v. Green*, 158 Idaho 884, 886 (2015).

However, "federal and state constitutions derive their power from independent sources." *State v. Newman*, 108 Idaho 5, 10 n.6 (1985). "The Court will consider federal rules and methodology when interpreting parts of the Idaho Constitution that have an analogous federal provision." *CDA Dairy Queen, Inc. v. State Ins. Fund*, 154 Idaho 379, 383 (2013). However, "state courts are at liberty to find within the provision of their own constitutions greater protection than is afforded under the federal constitution." *Newman*, 108 Idaho at 10 n.6. "This is

true even when the constitutional provisions implicated contain similar phraseology." *Id*. In fact, Idaho courts interpreting Idaho's Constitution have rejected the temptation to "borrow" from federal courts' interpretations of constitutional standards. Idaho courts do not "blindly apply United States Supreme Court interpretation and methodology" when interpreting the Idaho Constitution. *Id.*

For example, the Idaho Supreme Court departed from Fourth Amendment jurisprudence in interpreting Article I, § 17, in *State v. Guzman*, 122 Idaho 981, 998 (1992). The *Guzman* Court concluded that it would no longer "sheepishly follow[ ] in the footsteps of the U.S. Supreme Court," when analyzing its own state constitution. *Id*. The *Guzman* Court concluded that Article I, § 17, of the Idaho Constitution would not be limited by the federal constitution's "good faith" exception. *Id.* 122 Idaho at 993; *State v. Pettit*, 162 Idaho 849, 855 (Ct. App. 2017). Thus, a waiver of federal constitutional rights, even analogous rights, is insufficient to waive the protections of the Idaho Constitution. If the rights protected by the Idaho Constitution are to be waived, there must be a specific waiver of such rights; it cannot be presumed. *State v. Werneth*, 101 Idaho 241, 243 (1980); *Abercrombie v. State*, 586 Idaho 586, 593 (1967) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

The Opinion disregards the unique and separate protections of the Idaho Constitution and will likely prove problematic for those future cases involving fact patterns wherein the Idaho Constitution offers different/greater protections than the United States Constitution.

4. The Opinion Is Contrary To Precedent Defining The Scope Of Consensual Search

The Opinion concludes, "The fact that Pool's consent stems from a Fourth Amendment waiver does not limit the scope of her consent, but instead serves as a reference point for determining exactly what Pool consented to. The State frames the issue as whether she consented to the conduct that occurred here. If she did, that consent was valid for all warrantless searches except those for which the Idaho Constitution provided greater protection than the Fourth Amendment." (Opinion, p.6.) This holding is inconsistent with precedent.

Consent is one such well-recognized exception to the warrant requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The State "has the burden of proving that the consent was, in fact, freely and voluntarily given." *Schneckloth*, 412 U.S. at 222 (1973) (internal quotation marks omitted). Whether a consent to search was in fact voluntary is a question of fact to be determined from the totality of the circumstances. *Id.* at 227. When the basis for a search is consent, the government must limit the scope of the search to that demarcated by the person giving consent, as measured under an objective reasonableness standard. *See Florida v. Jimeno*, 500 U.S. 248, 250 (1991); *Walter v. United States*, 447 U.S. 649, 656 (1980). .

The consent exception encompasses Fourth Amendment waivers given as a condition of probation or parole, which operate as consent to search. *Purdum*, 147 Idaho at 208; *Gawron*, 112 Idaho at 843. When a search is authorized by consent, "the scope of the search is limited by the terms of its authorization." *Walter*, 447 U.S. at 656. "It is well settled that when the basis for a search is consent, the state must conform its search to the limitations placed upon the right granted by the consent." *Jaskowski*, 163 Idaho at 260 (quoting *Turek*, 150 Idaho at 749). "The

standard for measuring the scope of consent under the Fourth Amendment is that of objective reasonableness." *Turek*, 150 Idaho at 749 (citing *Jimeno*, 500 U.S. at 251). The United States Supreme Court in *Jimeno* also held, "A suspect may of course delimit as he chooses the scope of the search to which he consents." *Id.* at 252. It is the State's burden to demonstrate that the consent exception applies. *State v. Garnett*, 165 Idaho 845, 848 (2019), *reh'g denied* (2019).

The Opinion concluded that where "Pool's consent stems from a Fourth Amendment waiver" the Fourth Amendment "serves as a reference point for determining exactly what [conduct] Pool consented to" and, if Pool consented to the conduct that occurred here, "that consent was valid for all warrantless searches except those for which the Idaho Constitution provided greater protection than the Fourth Amendment." (Opinion, p.6.) However, this is contrary to the precedent of both this Court and United States Supreme Court where, by the plain language of the State-drafted probation contract, the scope of consent *was* limited—it waived only Ms. Pool's rights under the Fourth Amendment to the United States Constitution. *See Jimeno*, 500 U.S. at 250; *see also Jaskowski*, 163 Idaho at 260.

Ms. Pool respectfully requests that this Court rehear her case.

CONCLUSION

Ms. Pool respectfully requests that this Court grant her Petition for Rehearing, affirm the district court's order granting her suppression motion, and remand her case to the district court for further proceedings.

DATED this 25th day of May, 2023.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2023, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF IN SUPPORT OF PETITION FOR REHEARING to be served as follows:

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SJC/eas