

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 49358-2021
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-46404
v.	)	
	)	
NICKOLAUS AARON	)	
OLDENBURG,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE NICKOLAUS AARON OLDENBURG  
District Judge**

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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	2
ARGUMENT .....	3
The District Court Erred By Denying Mr. Oldenburg’s Unopposed Motion To Seal His Criminal Case File .....	3
A. Introduction .....	3
B. The District Court Erred By Denying Mr. Oldenburg’s Unopposed Motion To Seal His Criminal Case File .....	3
CONCLUSION .....	9
CERTIFICATE OF SERVICE .....	10

**TABLE OF AUTHORITIES**

Cases

*Friends of Farm to Mkt. v. Valley Cnty.*, 137 Idaho 192 (2002) .....3

*In re Estate of Miller*, 143 Idaho 565 (2006).....3

*James v. Dexter*, 112 Ill. 489 (Ill. 1884) .....5

*Larson v. Marsh*, 14 N.W.2d 189 (Neb. 1944).....5

*State v. Clapp*, 168 Idaho 67 (Ct. App. 2020) .....8

*State v. Gamino*, 148 Idaho 827 (Ct. App. 2010) .....9

*State v. Klawonn*, 609 N.W.2d 515 (Iowa 2000).....5

*State v. Leavitt*, 153 Idaho 142 (2012) .....4

*State v. Montgomery*, 163 Idaho 40 (2017) .....3

*State v. Neal*, 159 Idaho 439 (2015).....3

*State v. Turpen*, 147 Idaho 869 (2009).....4

*Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889 (2011) .....3

*Washington County v. Davis*, 258 S.W. 324 (Ark. 1924) .....5

*Woodvine v. Triangle Dairy, Inc.*, 106 Idaho 716 (1984) .....4

Statutes

I.C. § 18-1507(2)(d) .....1

I.C. § 19-2602 .....9

I.C. § 19-2604 .....4

I.C. § 19-5307(1).....5

I.C. § 20-222 .....9

I.C. § 67-3003(2).....6, 7, 9

I.C. § 67-3004 .....*passim*

Rules

I.C.A.R. 32.....4, 8

Additional Authorities

IDAPA 11.10.02.021.....6

## STATEMENT OF THE CASE

### Nature of the Case

Nickolaus Aaron Oldenburg appeals from the district court's order denying his unopposed motion to seal his criminal case file pursuant to I.C. § 67-3004(10). He asserts that the district court erred by denying his motion because he met the requirements set forth in the statute. The district court's conclusion that it lacked authority to grant the motion should be reversed.

### Statement of Facts and Course of Proceedings

In 2018, Mr. Oldenburg was charged by Information with 13 counts of sexual exploitation of a child, I.C. § 18-1507(2)(d). (R., p.34.) Later that year, however, all 13 counts were dismissed pursuant to a "global resolution." (R., pp.56-57.)

In 2021, Mr. Oldenburg filed a motion to seal the criminal case file pursuant to I.C. § 67-3004(10). (R., p.67.) He asserted that the State had moved to dismiss all of the charges in this case, and that he had sought and received expungement of his criminal history records with the Idaho State Police. (R., p.68.) Mr. Oldenburg argued that pursuant to I.C. § 67-3004(10), a person whose charges were all dismissed in a criminal case and were not refiled is entitled to have his criminal case file sealed. (R., p.70.) The State did not object to the motion. (R., p.73.) Mr. Oldenburg then filed a supplemental memorandum in support of his motion after the district court expressed some concerns at a hearing. (R., pp.73; 79.)

The district court denied the unopposed motion in a written decision. (R., p.94.) Mr. Oldenburg appealed. (R., pp.101; 108.) The court concluded that although Mr. Oldenburg met the requirements of the statute, the court lacked authority to grant him relief. (R., p.93.) Mr. Oldenburg asserts that the district court erred by denying his motion.

ISSUE

Did the district court err by denying Mr. Oldenburg's unopposed motion to seal his criminal case file?

## ARGUMENT

### The District Court Erred By Denying Mr. Oldenburg’s Unopposed Motion To Seal His Criminal Case File

#### A. Introduction

Mr. Oldenburg asserts that he was entitled to have his criminal case file sealed pursuant to I.C. § 67-3004(10) and that the district court therefore erred by denying his motion.

#### B. The District Court Erred By Denying Mr. Oldenburg’s Unopposed Motion To Seal His Criminal Case File

Mr. Oldenburg submits that, because all his charges were dismissed in this case, he was entitled to have his court file sealed. Statutory interpretation must begin with the plain meaning of the words of the statute, construed as a whole, with each word given its plain, usual, and ordinary meaning where the terms are not specifically defined by statute. *See, e.g., State v. Neal*, 159 Idaho 439, 444 (2015). Statutes also must be construed by the court so that “effect is given to their provisions, and no part is rendered superfluous or insignificant.” *Id.* (quoting *Friends of Farm to Mkt. v. Valley Cnty.*, 137 Idaho 192, 197 (2002)).

If the plain language of the statute is unambiguous, then courts are bound to follow the statute as written, even if—in the court’s view—the results of such a plain meaning may be socially unwise or result in an absurd result. “If the statute as written is socially or otherwise unsound, the power to correct it is legislative and not judicial.” *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 893 (2011) (quoting *In re Estate of Miller*, 143 Idaho 565, 567 (2006)); *see also State v. Montgomery*, 163 Idaho 40, 44 (2017) (applying these principles to the interpretation of criminal statutes). When the legislature changes the language of a statute, the courts presume that “they intended to change the application or meaning of the statute.” *State v.*

*Leavitt*, 153 Idaho 142, 146 (2012) (quoting *Woodvine v. Triangle Dairy, Inc.*, 106 Idaho 716, 721 (1984)).

Prior to 2018, I.C. § 67-3004(10) provided:

(10) Any person who was arrested or served a criminal summons and who *subsequently was not charged by indictment or information within one (1) year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department.*

*See* I.C. 67-3004 (2017) (emphasis added).

Under the previously existing version of the statute, only criminal defendants who were either not formally charged within one year, or who were actually acquitted of the charged offenses, could petition for relief. Moreover, that relief was limited to expungement of police records relating to the offense. Prior to the 2018 amendments to I.C. § 67-3004, the sealing of a criminal case file could only be done pursuant to I.C.A.R. 32(i). *See State v. Turpen*, 147 Idaho 869, 871-872 (2009).

Against this backdrop, the legislature changed the provisions of I.C. § 67-3004 in 2018 with the specific aim of providing an avenue for a broader category of defendants to be able to seal their underlying criminal case file than was provided under I.C.A.R. 32. I.C. § 67-3004(10) now provides:

Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons, or *who has had all charges dismissed*, may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department and *may have the official court file thereof sealed*. This provision shall not apply to any dismissal granted pursuant to section 19-2604(1), Idaho Code.

I.C. § 67-3004(10) (emphasis added).



This change expanded the scope of those eligible for relief to “any person” who has had their charges dismissed (other than by a withheld judgment), and further expanded the nature of the relief available to include the sealing of the court file. Under the plain terms of the current version of I.C. § 67-3004(10), Mr. Oldenburg is among those persons who has had his criminal charges dismissed, and therefore falls within the category of one entitled to relief.

The statute does include the term “may” — a term that often connotes discretion or choice when such language is directed at a trial court. But this term takes on a different meaning where “may” operates to confer a right or benefit upon a defendant, rather than to provide options to a court. In such circumstance, reading this word in the context of the statute as a whole, it refers instead to something being provided as an entitlement to the defendant

With regard to the language of statutes, the Supreme Court of Iowa fairly recently noted that the “word ‘may’ can mean ‘shall,’ but the word ‘shall’ does not mean ‘may.’” *See State v. Klawonn*, 609 N.W.2d 515, 521 (Iowa 2000). This legal meaning for the word “may” comes into play when the context of the word makes it apparent that such a meaning is intended. It also can arise when the rights of individual persons depend upon the exercise of the court’s power. *See, e.g., Washington County v. Davis*, 258 S.W. 324, 325-326 (Ark. 1924); *James v. Dexter*, 112 Ill. 489, 491 (Ill. 1884); *Larson v. Marsh*, 14 N.W.2d 189, 191-192 (Neb. 1944) (“[W]here a public officer has been clothed by statute with the power to do an act which concerns the public interest or the rights of third persons, the execution of that power may be insisted on as a duty, although the wording of the statute is permissive merely and not peremptory.”).

Another example of “may” connoting an entitlement within the Idaho statutes themselves can be found within I.C. § 19-5307(1), which empowers the trial court to impose a civil judgment upon a criminal defendant for certain types of convictions, but further sets out that, “A

defendant may appeal a fine created under this section in the same manner as any other aspect of a sentence imposed by the court.” Despite the fact that the term “may” frequently implies discretion, no one would argue that the use of the term “may” renders it discretionary with the trial court as to whether to permit a defendant their appeal. Instead, this language connotes a grant of a right or entitlement to the defendant—it is the use of the term “may” that includes having permission or being free to take a certain action.

Here, the district court agreed with Mr. Oldenburg on a number of points. First, the court concluded that Mr. Oldenburg indeed had all the charges in this case dismissed and that phrase “all charges dismissed” meant the charges “arising from the arrest in the specific case at issue and not all other charges in all cases pending at the same time.” (R., p.96.) Further, the court concluded that the “court file thereof” referred to the entire court file of the incident and was not limited to “the fingerprint and criminal history record taken in connection with the incident” that might be contained in the court record. (R., p.96.) Further, the court concluded that the term “may” did not appear to impart discretion, and therefore “§ 67-3004(10) appears to give [Mr. Oldenburg] a right to have his Court file sealed.” (R., p.96.) Mr. Oldenburg agrees with these points.

However, the district court then concluded that it lacked the power to grant relief. (R., pp.97-98.) The court determined that the “department” — in this case, the Idaho State Police, may adopt rules necessary to implement the provisions of this chapter, and that the department had indeed adopted such rules. (R., p.97 (citing I.C. § 67-3003(2) and IDAPA 11.10.02.021).) However, the district court noted that, pursuant to I.C. § 67-3003(2), “rules relating to information maintained and reported by the court shall be made after consultation with the Idaho supreme court.” (R., p.97.) The court concluded that, because the department had

not adopted any rules in consultation with the Supreme Court, “the Court does not believe this Court has been given any authority to seal records by means of I.C. § 67-3004(10).” (R., p.97.)

The district court then concluded that because the department does not have authority over court records, Mr. Oldenburg “cannot obtain the relief he requests from the Department.” (R., p.98.) The court then held, “where another branch of government has the authority over such documents, the Court does not believe the 2018 nine-word addition to § 67-3004(10) is self-executing — that is, without providing for a specific mechanism by which to exercise the right, a district court is without the power to craft one.” (R., p.98.)

The district court erred. First, Mr. Oldenburg agrees that the department does not have authority over court records, but this is irrelevant. Mr. Oldenburg did not file his motion with the department or seek to have the department seal his records – he filed his motion in district court, asking the district court to seal his records.<sup>1</sup> Further, the district court was incorrect that there needed to be a specific mechanism by which to exercise the right beyond the statute.

Idaho Code § 67-3003(2) provides, “the department may adopt rules necessary to implement the provisions of this chapter. Rules relating to information maintained and reported by the court shall be made after consultation with and approval by the Idaho supreme court.” Any adopted rules must be “necessary to implement the provisions of this chapter.” I.C. § 67-3003(2). No such rules are necessary. The district court correctly concluded that Mr. Oldenburg qualified for relief pursuant to the statute, and that the statute was non-discretionary. (R., p.96.) Thus, if Mr. Oldenburg qualifies for relief, there is nothing for the district court to do except to grant his motion. Mr. Oldenburg submits that the statute is self-executing — if a defendant meets the requirement of the statute, the court must grant relief. The court does not need a rule to

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<sup>1</sup> Mr. Oldenburg had already requested that the department expunge his records to the extent that it could, which was granted by the department. (R., p.71.)

delineates its discretion, for instance. The court's duty is simply to grant the motion, and the district court recognized that I.C. § 67-3004(10) gave Mr. Oldenburg a substantive right to have his file sealed.

Furthermore, at least one district court has found it has authority pursuant to the statute to grant relief. In *State v. Clapp*, 168 Idaho 67 (Ct. App. 2020), the defendant sought to seal his underlying criminal case file under the provisions of I.C.A.R. 32(i). *Id.* at 69. On appeal, in arguing that the trial court erred in failing to grant Mr. Clapp's I.C.A.R. 32 motion to seal, Mr. Clapp sought to invoke the recent amendments to I.C. § 67-3004(10). *Id.* The Court of Appeals held that the claim was not preserved but stated the following:

Second, and notwithstanding the fact that Clapp's argument is not preserved, the public policy reflected in I.C. § 67-3004(10)'s amendment is wholly unrelated to Clapp's I.C.A.R. 32(i) motion. Clapp's argument in regard to I.C. § 67-3004(10) does not support Clapp's position that the district court erred by denying his I.C.A.R. 32(i) motion to seal his record. *Although Clapp may have a viable opportunity to seal his record under a separate statute, Clapp has failed to carry his burden to seal the record under I.C.A.R. 32(i).*

*Id.* at 73 (emphasis added).

Following his appeal, Mr. Clapp filed a motion to seal the court file, which was granted.<sup>2</sup>

(R., p.76.) The district court in *Clapp* stated,

Defendant supplied a final order dated April 8, 2020, from the Idaho state police finding that Defendant is entitled to have his Idaho criminal history report regarding the crimes charged in this case expunged. The order directed that the Defendant's "Idaho Criminal History Record and fingerprint card," relating to the charges in this case, be expunged. The Defendant now requests that his court record be sealed.

Given that Defendant has obtained expungement of his fingerprint and criminal history record through the Idaho state police, and the State does not object, the Court HEREBY ORDERS that the filings in this case be SEALED pursuant to Idaho Code § 67-3004(10).

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<sup>2</sup> The district court took judicial notice of this order. (R., p.93.)

(R., p.77.) Thus, the Court of Appeals has recognized that defendants may have a “viable opportunity” to have their cases sealed, and the district court in *Clapp* recognized its authority to seal the records pursuant to Idaho Code § 67-3004(10).

Finally, to the extent that there is a conflict between I.C. § 67-3004(10) and I.C. § 67-3003(2), the more recently enacted statute controls. *See, e.g., State v. Gamino*, 148 Idaho 827 (Ct. App. 2010) (“[W]e conclude that sections 20-222 and 19-2602 cannot be harmonized with respect to the time limitation for initiating probation revocation proceedings and that section 20-222 prevails because it is the more recent legislative enactment.”) The prior version of I.C. § 67-3004(10), which I.C. § 67-3003(2) would reference, made no reference to the sealing of the court file. Thus, this new statute, which is nondiscretionary and provides a defendant with a right to have his file sealed in certain circumstances, controls over any prior statute requiring an agreement between the department and Court. Mr. Oldenburg therefore submits that the district court erred by denying his unopposed motion.

#### CONCLUSION

Mr. Oldenburg requests that the district court’s order denying his motion to seal his case file be reversed and this case remanded for an order sealing the case file.

DATED this 9<sup>th</sup> day of June, 2022.

/s/ Justin M. Curtis  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9<sup>th</sup> day of June, 2022, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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