

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

|                      |   |                      |
|----------------------|---|----------------------|
| STATE OF IDAHO,      | ) |                      |
|                      | ) | CASE NO: CR-01-17363 |
| Plaintiff,           | ) |                      |
|                      | ) | ORDER DENYING        |
| vs.                  | ) | STATE'S MOTIONS      |
|                      | ) | TO DISMISS           |
| JOSEPH ALLEN MANLEY, | ) |                      |
|                      | ) |                      |
| Defendant.           | ) |                      |
| _____                | ) |                      |

At a hearing held on May 3, 2002, the State moved to dismiss this action. Idaho Criminal Rule 48 governs motions to dismiss. Whether to dismiss a criminal action pursuant to I.C.R. 48 is committed to the Court's discretion. *State v. Burchard*, 123 Idaho 382, 848 P.2d 440 (Ct. App. 1993).

Idaho Criminal Rule 48(b) provides: "When a court dismisses a criminal action upon its own motion or upon the motion of any party under this rule, it shall state in the order of dismissal its reasons for such dismissal." This

rule unambiguously requires a trial court to explain its reasoning in the order of dismissal. **State v. Keetch**, 134 Idaho 327, 1 P.3d 828 (Ct. App. 2000).

In this case, the State first moved to dismiss without prejudice by an oral motion, but refused to offer any reason for the proposed dismissal. Failure to state grounds precludes the Court from dismissing this action because the State has not provided any explanation of how dismissal "will serve the ends of justice and the effective administration of the court's business" as required by I.C.R. 48(b)(2). Further, if the Court were to grant the dismissal it could not make the requisite findings as required by I.C.R. 48(b). The Court therefore denies the State's motion to dismiss without prejudice.

The State later submitted a written motion to dismiss with prejudice based upon double jeopardy. The Defendant stipulated to dismissal with prejudice. The State presented its motion after the Court already had denied the Defendant's motion to dismiss based upon double jeopardy.

Under common law, power to dismiss a criminal charge was subject to the sole discretion of the prosecutor. See, e.g., **Manning v. Engelkes**, 281 N.W.2d 7 (Iowa 1979); **State v. Kenyon**, 270 N.W.2d 160 (Wis. 1978). The common law rule has been modified, however, by Idaho statutes and the Idaho

Rules of Criminal Procedure. Under I.C. § 19-3505, the "entry of a nolle prosequi is abolished, and neither the attorney-general nor the prosecuting attorney can discontinue or abandon a prosecution for a public offense except as provided in the last section." The "last section" refers to I.C. § 19-3504 which provides:

The court may, either of its own motion or upon the application of the prosecuting attorney, and in the furtherance of justice, order an action or indictment to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes.

Thus, under I.C. § 19-3505 the authority to dismiss does not belong with the prosecutor, but it is within the Court's discretion to grant or deny such a motion under both I.C. § 19-3504 and I.C.R. 48. See, e.g., **State v. Caswell**, 121 Idaho 801, 828 P.2d 830 (1992) (narcotics agent did not have authority to bind State to alleged promise that charges would be dismissed because only district court has authority to dismiss felony charges).

The Court can grant the State's motion to dismiss only if dismissal is "in the furtherance of justice" or if dismissal "will serve the ends of justice and the effective administration of the court's business." I.C. § 19-3504; I.C.R. 48.

When there is no valid reason supporting the decision to dismiss, a dismissal cannot be upheld. **State v. Hayes**, 108 Idaho 556, 700 P.2d 959 (Ct. App. 1985). For the reasons set forth in the Court's order denying Defendant's motion to dismiss, Defendant's right against double jeopardy has not been violated. It is in the public interest that justice be served. The State has not demonstrated that dismissal will serve the ends of justice or the effective administration of the court's business. The State's motion to dismiss with prejudice is denied.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of May, 2002.

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**James R. Michaud**  
**District Judge**

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, or faxed, this \_\_\_\_\_ day of May, 2002, to:

Mark Jones  
Boundary County Prosecuting Attorney  
Courthouse Mail  
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District Court Secretary/Deputy Clerk