

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48049

STATE OF IDAHO,	)
	) <b>Filed: July 8, 2021</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Melanie Gagnepain, Clerk</b>
v.	)
	) <b>SUBSTITUTE OPINION</b>
<b>TYLER SHAWN CLAPP,</b>	) <b>THE COURT’S PRIOR OPINION</b>
	) <b>DATED JUNE 2, 2021, IS</b>
<b>Defendant-Appellant.</b>	) <b>HEREBY WITHDRAWN</b>
	)
	) <b>THIS IS AN UNPUBLISHED</b>
	) <b>OPINION AND SHALL NOT</b>
	) <b>BE CITED AS AUTHORITY</b>
	)

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Melissa Moody, District Judge.

Order denying motion to dismiss, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

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Before GRATTON, Judge; BRAILSFORD, Judge;  
and MELANSON, Judge Pro Tem

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PER CURIAM

Tyler Shawn Clapp appeals from the district court’s order denying his motion to dismiss his conviction for driving under the influence (DUI) under Idaho Code § 19-2604(1). We affirm.

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

Clapp pled guilty to felony DUI in 2003. The district court imposed a five-year sentence with two years determinate, retained jurisdiction for 180 days, and apparently placed Clapp on

probation thereafter.<sup>1</sup> In 2019, Clapp filed a pro se motion to dismiss the 2003 conviction pursuant to I.C. § 19-2604(1). In support, Clapp asserted he had “successfully completed the five year term of probation without incident or violation.” The court entered an order stating that it had not received any input on Clapp’s motion from his probation officer and that it would not take any action on Clapp’s motion until it received that input.

More than a year later Clapp, who was then represented by counsel, submitted another motion to dismiss under I.C. § 19-2604(1). In support, Clapp asserted again that he had completed probation without a violation, submitted his probationary history from February 2006 to July 2008, and stated he intended to supplement this history with additional records. Before Clapp submitted any additional information, however, the district court denied the motion finding no good cause to grant Clapp’s request. In support, the court noted Clapp had twice been convicted of DUI after his probation in this case had expired--once in 2010 and once in 2020.<sup>2</sup>

Clapp timely appeals.

## II.

### STANDARD OF REVIEW

A ruling on a motion under I.C. § 19-2604 “rests within the discretion of the district court.” *State v. Mowrey*, 134 Idaho 751, 753, 9 P.3d 1217, 1219 (2000). When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards

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<sup>1</sup> There is no order placing Clapp on probation in this case, although there is an order revoking his probation in another, apparently unrelated, case. Providing a sufficient record to substantiate the appeal is Clapp’s responsibility. *See Powell v. Sellers*, 130 Idaho 122, 127, 937 P.2d 434, 439 (Ct. App. 1997) (“It is the responsibility of the appellant to provide a sufficient record to substantiate their claims on appeal.”). The district court’s order denying Clapp’s motion to dismiss, however, indicates he was on probation in this case, and we assume the court is correct. *See id.* (ruling appellate court will not presume error on incomplete record).

<sup>2</sup> Neither the 2010 nor the 2020 conviction is in the appellate record. Clapp, however, does not dispute these convictions in this appeal. Moreover, providing a sufficient record to substantiate the appeal is Clapp’s responsibility. *See Powell*, 130 Idaho at 127, 937 P.2d at 439 (“It is the responsibility of the appellant to provide a sufficient record to substantiate their claims on appeal.”). Thus, we assume the district court’s recitation of Clapp’s post-probationary DUI convictions is correct. *See id.* (ruling appellate court will not presume error on incomplete record).

applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

### III. ANALYSIS

On appeal, Clapp requests this Court to vacate the district court’s order denying his motion to dismiss his 2003 felony DUI conviction under I.C. § 19-2604(1). This provision applies to a defendant: (1) whose sentence has been suspended or who has received a withheld judgment; (2) whose felony sentence has been commuted; (3) who was not sentenced to the custody of the board of correction; (4) who successfully completed a drug or mental health court program; or (5) whose misdemeanor sentence did not require county jail service or was suspended. Clapp’s motion specifically requests relief under subsection (1)(b)(i), which provides for relief if a defendant, who meets one of the above criteria, completed probation without violating the terms of probation:

- (b) Upon application of the defendant and upon satisfactory showing that:
  - (i) The court did not find, and the defendant did not admit, in any probation violation proceeding that the defendant violated any of the terms or conditions of any probation that may have been imposed;

. . . .

the court, if convinced by the showing made . . . that there is good cause for granting the requested relief, may 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)(b)(i). Meanwhile, the relief I.C. § 19-2604(2) provides is more limited and only allows a defendant who received a suspended sentence after a period of retained jurisdiction and complied with all probationary terms to move to amend a judgment of conviction from a felony to a misdemeanor. *Id.*

We hold that the district court did not abuse its discretion when denying Clapp’s motion to dismiss under I.C. § 19-2604(1). On appeal, Clapp acknowledges he does not qualify for relief under subsection (1) because the district court initially retained jurisdiction in this case. Further, while subsection (2) may provide relief in cases, such as this case, where the court suspended the sentence after a period of retained jurisdiction, Clapp did not seek relief under subsection (2), and is mindful of *State v. Gonzalez*, 165 Idaho 95, 99, 439 P.3d 1267, 1271 (2019). In *Gonzalez*, the Idaho Supreme Court ruled that it will not hold that a trial court erred in “making a decision on an issue or a party’s position on an issue that it did not have the

opportunity to address. To be clear, both the issue and the party's position on the issue must be raised before the trial court for it to be properly preserved for appeal." *Id.* at 99, 439 P.3d at 1271.

#### **IV.**

#### **CONCLUSION**

Clapp sought relief under I.C. § 19-2604(1), which is inapplicable because the district court retained jurisdiction in this case. Clapp failed to request relief under I.C. § 19-2604(2). Accordingly, the court did not abuse its discretion when denying Clapp's motion to dismiss his 2003 conviction, and we affirm that denial.