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December 22, 2017

## Press Release - For Immediate Release

Defendant's Name: David Hernandez  
Age: 19  
City and State of residence: South Sioux City, NE  
Criminal File Number: 15-103  
Date of Offense: March 7, 2016  
Date of Indictment: March 30, 2016  
Date of Arraignment: May 9, 2016  
Offense(s) Charged: Ct.1: Possession of Marijuana, 22-42-6, (F6)  
Ct.2: Ingestion, 22-42-15, (M1)  
Change of Plea Date: August 29, 2016  
Convicted of: Ct.1: Possession of Marijuana, 22-42-6, (F6)  
Date of Sentencing: August 29, 2016  
Officer: Police Chief Richard Headid – North Sioux City Police Dept.  
Defense Attorney: Tom Frieberg  
Prosecutor: Alexis Tracy

Probation Violation Date: October 2016  
Probation Violations: Failed to make appointments;  
Failed to make drug testing appointments;  
Failure to inform Court Services of employment changes  
Failure to make regular payments

Initial Appearance on PV: November 17, 2017  
Admission Date: November 17, 2017  
Disposition Date: November 17, 2017  
Defense Attorney: Sam Nelson  
Prosecutor: Jerry A. Miller

### **Original Case Synopsis:**

On March 7, 2016, North Sioux City Chief of Police, Richard Headid, stopped a vehicle that failed to dim the headlights. The vehicle was driven by Humberto Garcia. The vehicle pulled into his residence prior to stopping. Chief Headid could smell the very strong odor of burnt marijuana coming from Garcia's vehicle. Garcia advised that his brother-in-law, David Hernandez had been smoking marijuana prior Garcia picking up David Hernandez in Sioux City, IA. A pat-down of Garcia resulted in the discovery of brass knuckles. A large bag of marijuana weighing 3.8 ounces, was found in the Garcia vehicle. A criminal record search identified that Garcia had three separate dealings with law enforcement involving drugs. Hernandez admitted to knowing possession of the marijuana that was found. Garcia provided a urine sample that tested

positive for marijuana (THC) at 1,158 ng/ml. Hernandez provided a urine sample that tested positive for marijuana (THC) at 1,373 ng/ml.

**Probation Violation Synopsis:**

The Defendant has failed to remain in contact with his Nebraska Probation Officer. The Defendant ignored calls and texts from his Court Services Officer during the months of November and December 2016. The Defendant's last contact with his Court Services Officer was 10/27/16. The Defendant missed mandatory drug testing appointments on 11/05/16, 12/04/16, 12/05/16, 12/07/16, 12/19/16, 12/21/16, 12/22/16 and 12/27/16. The Defendant left his employment at Burnight Glass on 11/7/16, and did not inform his Court Services Officer of his changed employment status. The Defendant has failed to make monthly payments toward his financial obligations. On January 12, 2017 the Defendant's balance at the Clerk of Courts was One hundred and Fifty-nine (\$159.00) Dollars.

**Probation Violation Dispositional Synopsis:**

AS TO THE CHARGE of Ct. 1, Possession of Marijuana, a violation of SDCL 22-42-6, a class 6 felony, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant's Suspended Imposition of Sentence shall be REVOKED and that the Defendant shall serve **2 (two)** years in the South Dakota State Penitentiary. It is further ORDERED that the EXECUTION of the **2 (two)** year sentence shall be SUSPENDED upon the Defendant satisfying the following terms and conditions set by this Court. The Court did not give the Defendant credit for the time previously spent on probation and has Ordered that the Defendant's probation shall be restarted. It is further ORDERED that the Defendant shall be placed on supervised probation for **2 (two)** years and must satisfy the following terms and conditions:

IT IS FURTHER ORDERED that the Defendant is placed on probation for **2 (two)** years. Defendant shall sign the standard probation agreement with court services and shall obey all conditions imposed by court services even though those conditions may not have been specifically set out by the court. Defendant shall execute a wage assignment form if requested to do so by court services.

IT IS FURTHER ORDERED, that the Defendant shall be imprisoned in the Union County Jail for the term of **120 (One-Hundred and Twenty)** days, with **4 (Four)** days credit for time served. The remaining **116 (One-Hundred and Sixteen)** days shall be served as follows [Checked Boxes]:

1. **116 (One-Hundred and Sixteen)** days to be served shall beginning **Immediately**;

2. The Defendant shall be granted work release, release for treatment, and/or a furlough for an evaluation to secure treatment.

IT IS FURTHER ORDERED that the execution of the sentence is suspended upon the following terms and conditions [Checked Boxes]:

1.  Defendant shall obey all federal, state, tribal and local laws and be a good law-abiding citizen in all respects.
2.  Defendant shall pay all fines, costs, restitution, and attorney's fees as ordered by the court. Defendant shall work out a payment schedule with court services, and if requested by court services, Defendant shall execute a wage assignment form.
3.  Defendant shall not consume nor possess any alcoholic beverages of any kind, and Defendant shall not enter establishments where the sale of alcoholic beverages is the primary business.
4.  Defendant shall not consume, purchase, possess, or distribute marijuana, nor controlled drugs or substances of any kind, and Defendant shall not be present where such substances are being used. Defendant shall also not possess drug paraphernalia. Verification of any prescribed medication must be provided by Defendant to court services.
5.  Defendant shall submit to urinalysis, breath or blood testing at any time requested to do so by Defendant's court services officer or law enforcement officer and Defendant shall be responsible for the costs of that testing.
6.  Defendant, and Defendant's person, residence, vehicles and personal property, shall be subject to random search and seizure by any court services officer or law enforcement officer upon reasonable suspicion that Defendant is violating any provision of this court's order or of any probation agreement.
7.  Defendant shall obtain a chemical dependency evaluation and comply with the evaluator's and the court's services officer's recommendations for treatment and aftercare.
8.  Throughout the entire period of probation, Defendant shall enroll in and comply with the terms of the 24/7 Sobriety Program as set up through the Union County Sheriff's office or as directed by your Court Service Officer and submit to testing in the form of twice daily PBTs (24/7) program) or by SCRAM equipment, and the Drug Patch, and Defendant shall pay all costs of such programs. Court services may discontinue or restart these programs at

their discretion.

9.  Defendant shall enroll in and successfully complete counseling , MRT, etc. as required by court services.
10.  Defendant shall and obtain a GED.
11.  Defendant shall maintain regular full-time employment, unless attending an approved educational opportunity or a training program.
12.  Defendant shall not participate in games of chance or enter establishments where gambling is present.
13.  Defendant shall perform \_\_\_\_\_ hours of community service to be completed by \_\_\_\_\_.
14.  Defendant shall have no contact with the victim, \_\_\_\_\_.
15.  Defendant shall write a letter of apology to the victim, \_\_\_\_\_, which letter shall be approved by court services.

IT IS FURTHER ORDERED that the Defendant shall pay the **previously ordered** amounts to the Union County Clerk of Courts (209 East Main Street, ~ Suite 230, Elk Point, SD 57025): Court Ordered Obligations including previous Court Costs of One Hundred Four (\$104.00) Dollars; Prosecution Costs in the amount of Ten (\$10.00) Dollars; and Costs payable to (South Dakota Drug Control Fund, 1302 East Highway 14, Suite 5, Pierre, SD 57501) in the amount of Forty-Five (\$45.00) Dollars; and **New Prosecution Costs of \$18.48** (Eighteen Dollars and Forty-Eight Cents) for transportation costs as county prosecution costs.

IT IS FURTHER ORDERED that the Defendant shall pay the following amounts Ordered by the Court – To the Union County Auditor (209 East Main Street, ~ Suite 200, Elk Point, SD 57025): **New Court-Appointed Attorneys Fees** in the amount of **\$141.00 (One Hundred Forty-One Dollars)**; and **previous Court Appointed Attorneys Fees** in the amount of **\$446.20 (Four-Hundred and Forty-Six and Twenty Cents)**, thus totaling Six Hundred and Fifteen Dollars and Sixty-Eight Cents (\$615.68). It is further ORDERED that Union County is awarded a Judgment for said Court-Appointed Attorney Fees and Prosecution Costs in this matter.

**Criminal History:**

This is David Hernandez’s first probation violation on his first career felony offense. The Court revoked Hernandez’s suspended imposition of sentence. Hernandez’s file will now remain a public record.