

9-5-2008

State v. Turpen Respondent's Brief Dckt. 34994

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
vs.)
)
GARY L. TURPEN,)
)
Defendant-Appellant.)

NO. 34994

FILED - COPY
SEP - 5 2008
Supreme Court _____ Court of Appeals _____
Entered on ATS by: _____

BRIEF OF RESPONDENT

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

HONORABLE D. DUFF MCKEE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Gary L. Turpen appeals from the district court's appellate decision affirming the magistrate's order denying his "Motion To Expunge Criminal Record," by which he sought expungement of "the 2003-2004 criminal records" in his case "reflecting the arrest, filing and acquittal by jury upon a misdemeanor charge of Sexual Exploitation by a Medical Care Provider."

Statement Of The Facts And Course Of The Proceedings

Turpen was charged with, but acquitted of, sexual exploitation of a medical care provider. (R., pp.6-7, 38.) Approximately two years after the jury returned its verdict, Turpen filed a motion requesting expungement of the "2003-2004 criminal records" in his case. (R., pp.39-40.) In the affidavit filed in support of his motion, Turpen averred, in relevant part:

6. The continued existence of those records constitutes a personal and professional embarrassment to me and is an unaddressed "injury of character" which I wish to remedy. I am a state licensed Doctor of Dental Surgery, practicing my profession here in Boise for the past 16 years, and in Utah for 1 year before that. I am a husband, father of one son and am active in my church. I am now in the process of restoring my practice from the loss of business, patients and income which I suffered because of these allegations and the attendant publicity.

My citizenship and reputation in the community are among the most valuable assets I possess. Therefore, because the administrative expungement remedy^[1] is only partial, I request this Court's order to complete the process.

¹ Turpen pursued and received the expungement relief available pursuant to I.C. § 67-3004(10). (R., pp.41-42.)

(R., p.42.)

The magistrate denied Turpen's motion concluding there was no statutory basis for expungement. (R., p.49.) Turpen also directed the magistrate's attention to a Fourth District appellate decision in State v. Koebbe, Case No. H0501216, issued by the Honorable Duff McKee, in which the court held there is "inherent jurisdiction, under the equitable power of the court, to right a wrong if such can be established" if the defendant showed "the police action giving rise to the creation of the 'record' was unjustified from the outset, and that it would be unjust and inequitable for the 'record' to 'continue.'" (R., p.50.) Upon concluding Turpen failed to show "that the police action giving rise to the record was unjustified," the magistrate found no "legal basis for granting the relief requested." (R., p.50.) Turpen appealed to the district court. (R., pp.51-53.)

On appeal, the district court affirmed the magistrate's ruling, concluding expungement was not appropriate. (R., pp.63-67.) Turpen timely appealed to this Court. (R., pp.69-71.)

ISSUES

Turpen states the issues on appeal as:

1. DOES THE COURT'S RECENT DECISION IN STATE V. PARKINSON PRECLUDE THE FINDING OF AN INHERENT JUDICIAL AUTHORITY TO EXPUNGE?
2. SHOULD THE ACQUITTAL AUTOMATICALLY ENTITLE DR. TURPEN TO THE EXPUNGEMENT OF RECORDS IN THIS CASE?
3. DO THE RULINGS IN THE KOEBBE AND TURPEN CASES ENTITLE DR. TURPEN TO THE EXPUNGEMENT OF RECORDS IN THIS CASE?
4. SHOULD THE RULINGS IN THE KOEBBE AND TURPEN CASE [sic] BE MODIFIED OR CLARIFIED TO ALLOW THE EXPUNGEMENT OF RECORDS FOR A BROADER CLASS OF PROPERLY SITUATED DEFENDANTS?
5. SHOULD THIS COURT ADOPT THE "BEST" REASONED APPROACH BY USING A "BALANCING TEST" FOR COMPARING PUBLIC AND PRIVATE INTERESTS IN CONSIDERING SOME EXPUNGEMENTS?
6. IS DR. TURPEN A PROPER APPLICANT FOR EXPUNGEMENT RELIEF UNDER A BALANCING TEST?

(Appellant's brief, p.6 (capitalization original).)

The state wishes to rephrase the issue on appeal as:

Should this Court reject Turpen's request for relief since Idaho courts have neither statutory nor inherent authority to expunge all records relating to a defendant's criminal case?

ARGUMENT

Idaho Courts Have Neither Statutory Nor Inherent Authority To Expunge All Records Relating To A Defendant's Criminal Case

A. Introduction

Turpen asks this Court to determine, as a matter of first impression, that Idaho courts have inherent authority to expunge all records relating to a defendant's criminal case and to set forth the standards governing such authority. (Appellant's brief, pp.12-26.) Turpen further asks this Court to conclude he is entitled to expungement of all records relating to his case. (Appellant's brief, pp.26-27.) Because Idaho courts have neither statutory nor inherent authority to expunge all records of a defendant's criminal case, Turpen is not entitled to relief.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, ___, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145

Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

"Questions regarding a court's jurisdiction present issues of law requiring free review." Fix v. Fix, 125 Idaho 372, 375, 870 P.2d 1331, 1334 (Ct. App. 1993) (citing Lockhart v. Department of Fish and Game, 121 Idaho 894, 895, 828 P.2d 1299, 1300 (1992)).

C. Idaho Courts Do Not Have Statutory Authority To Expunge All Records Relating To A Criminal Case

There are only two Idaho statutes that provide for expungement - I.C. § 20-525A and I.C. § 67-3004. Idaho Code § 20-525A allows for expungement of a juvenile's record under certain circumstances. Because Turpen is not a juvenile, he cannot obtain the benefits of I.C. § 20-525A, nor does he claim otherwise.

Idaho Code § 67-3004(10) provides for expungement of a "fingerprint and criminal history record taken in connection with [an] incident" when a person "who was arrested or served a criminal summons" was (1) not subsequently "charged by indictment or information within one (1) year of the arrest or summons," or (2) "acquitted of all offenses arising from an arrest or criminal

summons.” Turpen has already received the benefits of expungement pursuant to this section. (Appellant’s brief, p.13; R., pp.41-42, ¶ 4.)

Turpen nevertheless claims he is entitled to further expungement of records relating to his case. As an “example” of what records Turpen desires to have expunged, he cites “the District Court’s own register of actions,” which “exists for public access on the first floor of the Ada County Courthouse.” (Appellant’s brief, p.4.) Turpen’s motion for expungement also indicated a desire to expunge records “maintain[ed]” by “local agencies” “relat[ing] to the charge upon which [he] was found ‘Not Guilty.’” (R., p.42.) There is, however, no statutory authority entitling Turpen to the type of expungement he seeks.

As recently explained by the Idaho Supreme Court in State v. Parkinson, 144 Idaho 825, ___, 172 P.3d 1100, 1102 (2007), “Idaho law authorizes no type of expungement of a criminal record for adult offenders other than that authorized in I.C. § 19-2604.” Idaho Code § 19-2604 is not a true expungement statute, but only “allows the court to dismiss [a] case against [a] defendant if he complies with all the terms and conditions of his probation.” Id. at ___, 172 P.3d at 1103. “[T]he statute does not require or authorize the complete expungement of all records and references to the charge.” Id. The Court further noted that had the legislature intended to provide “more extensive expungement authority . . . it would have so provided.” Id. at ___, 172 P.3d at 1102 n.2. Thus, the Court in Parkinson concluded it was not required “to take further actions, such as eliminating each and every reference to the case in an official record.” Id. at ___, 172 P.3d at 1103.

Because Turpen was acquitted, I.C. § 19-2604 does not apply to his case. Moreover, because Idaho law does not authorize any other “type of expungement of a criminal record for adult offenders,” Parkinson, 144 Idaho at ___, 172 P.3d at 1102, Turpen is not entitled to any further relief regarding the expungement of records relating to his criminal case.

D. Idaho Courts Do Not Have Inherent Authority To Expunge All Records Relating To A Criminal Case

Turpen acknowledges the Court’s holding in Parkinson, but argues the Court’s opinion in that case does not foreclose the opportunity for expungement because, he asserts, the Court’s reference to “Idaho law” in Parkinson “means only ‘Idaho statutes.’” (Appellant’s brief, p.13.) Although the Court in Parkinson did not explicitly address the question of inherent authority, there is no reason to conclude, as Turpen does, that the Court’s conclusion no “Idaho law” other than I.C. § 19-2604 authorizes “expungement of a criminal record for adult offenders,” was limited to statutory law simply because the case involved the interpretation of a statute. Indeed, the Court’s statement in Parkinson that if the legislature intended to provide “more extensive expungement authority” relating to adult criminal records, it could have done so, 144 Idaho at ___, 172 P.3d at 1102 n.2, indicates a belief that the authority to expunge is purely statutory and not within the inherent authority of the courts. A review of Idaho precedent recognizing the scope of the inherent authority of courts supports this proposition.

While Idaho appellate courts have recognized district courts have inherent authority to take certain actions,² they have never recognized inherent authority to expunge all criminal records, much less articulated any standards by which such authority should be exercised. Rather, the types of inherent authority recognized by Idaho's appellate courts generally relate to powers that "inherently arise from the nature of the judicial system and the necessity of the courts to carry out its judicial functions." Talbot v. Ames Construction, 127 Idaho 648, 651, 904 P.2d 560, 563 (1995); accord Scruggs v. United States, 929 F.2d 305, 306 (7th Cir. 1991) ("a court's 'inherent' powers concern the management of *judicial* business") (emphasis original). The authority to expunge does not "arise from the nature of the judicial system" nor is it necessary to a court's ability to "carry out its judicial functions." Rather, the ability to expunge, the parameters and standards applicable to expungement, see e.g., I.C. § 20-525A, and the legal

² For example, district courts have inherent authority to "incur and order paid all such expenses as are necessary for the holding of court and the administration of the duties of courts of justice," Twin Falls County v. Cities of Twin Falls and Filer, 143 Idaho 398, 146 P.3d 664 (2006) (emphasis omitted), "assess sanctions for bad faith conduct against all parties appearing before it," State v. Rogers, 143 Idaho 320, 322, 144 P.3d 25, 27 (2006), "delineate issues for trial," Edmunds v. Kraner, 142 Idaho 867, 136 P.3d 338 (2006), "compel obedience with their lawful orders," In re Weick, 142 Idaho 275, 278, 127 P.3d 178, 181 (2005), "instruct a jury on lesser included offenses," State v. Rae, 139 Idaho 650, 653, 84 P.3d 586, 589 (Ct. App. 2004), "reopen cases under certain circumstances," State v. Griffith, 140 Idaho 616, 618, 97 P.3d 483, 485 (Ct. App. 2004), "impose consecutive sentences," State v. Murillo, 135 Idaho 811, 814, 25 P.3d 124, 127 (Ct. App. 2001), or suspend a sentence, State v. Branson, 128 Idaho 790, 792, 919 P.2d 319, 321 (1996), "impose silence, respect, and decorum, in their presence, and submission to their lawful mandates," Talbot v. Ames Construction, 127 Idaho 648, 651, 904 P.2d 560, 563 (1995), and "dismiss an action for failure to comply with an order of the court," Perry v. Perkins, 73 Idaho 4, 245 P.2d 405 (1952).

effect thereof, are policy decisions best made by the legislature, see Parkinson, 144 Idaho at ____, 172 P.3d at 1102 n.2.

Turpen's reliance on federal cases in support of his claim of inherent authority to afford him the relief he seeks is misplaced. Although some federal courts have recognized an "equitable power to expunge," they have "unanimously observed that it is a narrow power, appropriately used only in extreme circumstances." United States v. Smith, 940 F.2d 395, 396 (9th Cir. 1991) (citing cases). "Extreme circumstances" result when a conviction was unlawful or invalid or obtained through government misconduct. Smith, 940 F.2d at 396; United States v. Pinto, 1 F.3d 1069, 1070 (10th Cir. 1993). More importantly, however, four circuits have recently concluded federal courts have no jurisdiction to consider an expungement motion that is based solely on equitable grounds. United States v. Coloian, 480 F.3d 47, 52 (1st Cir. 2007); United States v. Meyer, 439 F.3d 855, 860 (8th Cir. 2006); United States v. Crowell, 374 F.3d 790 (9th Cir. 2004) (citing United States v. Sumner, 226 F.3d 1005, 1014 (9th Cir. 2000)); United States v. Dunegan, 251 F.3d 477, 479-80 (3rd Cir. 2001); but see United States v. Flowers, 389 F.3d 737, 739 (7th Cir. 2004).

Thus, even if this Court concludes district courts have inherent authority to expunge a criminal record similar to the authority recognized by the federal courts, Turpen could not invoke such authority because his motion was based purely on equitable grounds. (R., pp.39-42.) Indeed, Turpen acknowledges on appeal that the criminal proceeding against him was an "appropriate exercise in American jurisprudence." (Appellant's brief, p.7; see also Appellant's brief, p.9

(acknowledging there was probable cause to charge him with a crime and that there was no "police misconduct" or "prosecutorial misjudgement".)

Further, even if this Court concludes a district court's inherent authority encompasses consideration of an expungement request based solely on equitable grounds, the court's authority would not extend to records maintained by the executive branch. The Idaho Supreme Court has previously recognized this limitation. Parkinson, 144 Idaho at ____, 172 P.3d at 1104 (citing Janik, 10 F.3d at 472). Thus, to the extent Turpen is seeking expungement of any records other than judicial records, he is not entitled to relief.

Because Idaho courts have neither statutory nor inherent authority to expunge all records relating to a criminal case, Turpen has failed to establish error in the denial of his Motion to Expunge Criminal Record.

CONCLUSION

The state respectfully asks this Court to affirm the district court's appellate decision affirming the magistrate's order denying Turpen's Motion to Expunge Criminal Record.

DATED this 5th day of September 2008.

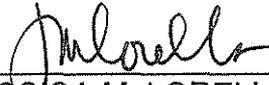


JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of September, 2008, I caused two true and correct copies of the foregoing BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

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Attorney at Law
1130 East State Street
Boise, Idaho 83712



JESSICA M. LORELLO
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

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Plaintiff-Respondent,)	NO. 34994
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STATEMENT OF THE CASE

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Turpen was charged with, but acquitted of, sexual exploitation of a medical care provider. (R., pp.6-7, 38.) Approximately two years after the jury returned its verdict, Turpen filed a motion requesting expungement of the "2003-2004 criminal records" in his case. (R., pp.39-40.) In the affidavit filed in support of his motion, Turpen averred, in relevant part:

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My citizenship and reputation in the community are among the most valuable assets I possess. Therefore, because the administrative expungement remedy¹ is only partial, I request this Court's order to complete the process.

¹ Turpen pursued and received the expungement relief available pursuant to I.C. § 67-3004(10). (R., pp.41-42.)

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6. IS DR. TURPEN A PROPER APPLICANT FOR EXPUNGEMENT RELIEF UNDER A BALANCING TEST?

(Appellant's brief, p.6 (capitalization original).)

The state wishes to rephrase the issue on appeal as:

Should this Court reject Turpen's request for relief since Idaho courts have neither statutory nor inherent authority to expunge all records relating to a defendant's criminal case?

ARGUMENT

Idaho Courts Have Neither Statutory Nor Inherent Authority To Expunge All Records Relating To A Defendant's Criminal Case

A. Introduction

Turpen asks this Court to determine, as a matter of first impression, that Idaho courts have inherent authority to expunge all records relating to a defendant's criminal case and to set forth the standards governing such authority. (Appellant's brief, pp.12-26.) Turpen further asks this Court to conclude he is entitled to expungement of all records relating to his case. (Appellant's brief, pp.26-27.) Because Idaho courts have neither statutory nor inherent authority to expunge all records of a defendant's criminal case, Turpen is not entitled to relief.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, ___, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145

Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

"Questions regarding a court's jurisdiction present issues of law requiring free review." Fix v. Fix, 125 Idaho 372, 375, 870 P.2d 1331, 1334 (Ct. App. 1993) (citing Lockhart v. Department of Fish and Game, 121 Idaho 894, 895, 828 P.2d 1299, 1300 (1992)).

C. Idaho Courts Do Not Have Statutory Authority To Expunge All Records Relating To A Criminal Case

There are only two Idaho statutes that provide for expungement - I.C. § 20-525A and I.C. § 67-3004. Idaho Code § 20-525A allows for expungement of a juvenile's record under certain circumstances. Because Turpen is not a juvenile, he cannot obtain the benefits of I.C. § 20-525A, nor does he claim otherwise.

Idaho Code § 67-3004(10) provides for expungement of a "fingerprint and criminal history record taken in connection with [an] incident" when a person "who was arrested or served a criminal summons" was (1) not subsequently "charged by indictment or information within one (1) year of the arrest or summons," or (2) "acquitted of all offenses arising from an arrest or criminal

summons.” Turpen has already received the benefits of expungement pursuant to this section. (Appellant’s brief, p.13; R., pp.41-42, ¶ 4.)

Turpen nevertheless claims he is entitled to further expungement of records relating to his case. As an “example” of what records Turpen desires to have expunged, he cites “the District Court’s own register of actions,” which “exists for public access on the first floor of the Ada County Courthouse.” (Appellant’s brief, p.4.) Turpen’s motion for expungement also indicated a desire to expunge records “maintain[ed]” by “local agencies” “relat[ing] to the charge upon which [he] was found ‘Not Guilty.’” (R., p.42.) There is, however, no statutory authority entitling Turpen to the type of expungement he seeks.

As recently explained by the Idaho Supreme Court in State v. Parkinson, 144 Idaho 825, ___, 172 P.3d 1100, 1102 (2007), “Idaho law authorizes no type of expungement of a criminal record for adult offenders other than that authorized in I.C. § 19-2604.” Idaho Code § 19-2604 is not a true expungement statute, but only “allows the court to dismiss [a] case against [a] defendant if he complies with all the terms and conditions of his probation.” Id. at ___, 172 P.3d at 1103. “[T]he statute does not require or authorize the complete expungement of all records and references to the charge.” Id. The Court further noted that had the legislature intended to provide “more extensive expungement authority . . . it would have so provided.” Id. at ___, 172 P.3d at 1102 n.2. Thus, the Court in Parkinson concluded it was not required “to take further actions, such as eliminating each and every reference to the case in an official record.” Id. at ___, 172 P.3d at 1103.

Because Turpen was acquitted, I.C. § 19-2604 does not apply to his case. Moreover, because Idaho law does not authorize any other “type of expungement of a criminal record for adult offenders,” Parkinson, 144 Idaho at ___, 172 P.3d at 1102, Turpen is not entitled to any further relief regarding the expungement of records relating to his criminal case.

D. Idaho Courts Do Not Have Inherent Authority To Expunge All Records Relating To A Criminal Case

Turpen acknowledges the Court’s holding in Parkinson, but argues the Court’s opinion in that case does not foreclose the opportunity for expungement because, he asserts, the Court’s reference to “Idaho law” in Parkinson “means only ‘Idaho statutes.’” (Appellant’s brief, p.13.) Although the Court in Parkinson did not explicitly address the question of inherent authority, there is no reason to conclude, as Turpen does, that the Court’s conclusion no “Idaho law” other than I.C. § 19-2604 authorizes “expungement of a criminal record for adult offenders,” was limited to statutory law simply because the case involved the interpretation of a statute. Indeed, the Court’s statement in Parkinson that if the legislature intended to provide “more extensive expungement authority” relating to adult criminal records, it could have done so, 144 Idaho at ___, 172 P.3d at 1102 n.2, indicates a belief that the authority to expunge is purely statutory and not within the inherent authority of the courts. A review of Idaho precedent recognizing the scope of the inherent authority of courts supports this proposition.

While Idaho appellate courts have recognized district courts have inherent authority to take certain actions,² they have never recognized inherent authority to expunge all criminal records, much less articulated any standards by which such authority should be exercised. Rather, the types of inherent authority recognized by Idaho's appellate courts generally relate to powers that "inherently arise from the nature of the judicial system and the necessity of the courts to carry out its judicial functions." Talbot v. Ames Construction, 127 Idaho 648, 651, 904 P.2d 560, 563 (1995); accord Scruggs v. United States, 929 F.2d 305, 306 (7th Cir. 1991) ("a court's 'inherent' powers concern the management of *judicial* business") (emphasis original). The authority to expunge does not "arise from the nature of the judicial system" nor is it necessary to a court's ability to "carry out its judicial functions." Rather, the ability to expunge, the parameters and standards applicable to expungement, see e.g., I.C. § 20-525A, and the legal

² For example, district courts have inherent authority to "incur and order paid all such expenses as are necessary for the holding of court and the administration of the duties of courts of justice," Twin Falls County v. Cities of Twin Falls and Filer, 143 Idaho 398, 146 P.3d 664 (2006) (emphasis omitted), "assess sanctions for bad faith conduct against all parties appearing before it," State v. Rogers, 143 Idaho 320, 322, 144 P.3d 25, 27 (2006), "delineate issues for trial," Edmunds v. Kraner, 142 Idaho 867, 136 P.3d 338 (2006), "compel obedience with their lawful orders," In re Weick, 142 Idaho 275, 278, 127 P.3d 178, 181 (2005), "instruct a jury on lesser included offenses," State v. Rae, 139 Idaho 650, 653, 84 P.3d 586, 589 (Ct. App. 2004), "reopen cases under certain circumstances," State v. Griffith, 140 Idaho 616, 618, 97 P.3d 483, 485 (Ct. App. 2004), "impose consecutive sentences," State v. Murillo, 135 Idaho 811, 814, 25 P.3d 124, 127 (Ct. App. 2001), or suspend a sentence, State v. Branson, 128 Idaho 790, 792, 919 P.2d 319, 321 (1996), "impose silence, respect, and decorum, in their presence, and submission to their lawful mandates," Talbot v. Ames Construction, 127 Idaho 648, 651, 904 P.2d 560, 563 (1995), and "dismiss an action for failure to comply with an order of the court," Perry v. Perkins, 73 Idaho 4, 245 P.2d 405 (1952).

effect thereof, are policy decisions best made by the legislature, see Parkinson, 144 Idaho at ____, 172 P.3d at 1102 n.2.

Turpen's reliance on federal cases in support of his claim of inherent authority to afford him the relief he seeks is misplaced. Although some federal courts have recognized an "equitable power to expunge," they have "unanimously observed that it is a narrow power, appropriately used only in extreme circumstances." United States v. Smith, 940 F.2d 395, 396 (9th Cir. 1991) (citing cases). "Extreme circumstances" result when a conviction was unlawful or invalid or obtained through government misconduct. Smith, 940 F.2d at 396; United States v. Pinto, 1 F.3d 1069, 1070 (10th Cir. 1993). More importantly, however, four circuits have recently concluded federal courts have *no* jurisdiction to consider an expungement motion that is based solely on equitable grounds. United States v. Coloian, 480 F.3d 47, 52 (1st Cir. 2007); United States v. Meyer, 439 F.3d 855, 860 (8th Cir. 2006); United States v. Crowell, 374 F.3d 790 (9th Cir. 2004) (citing United States v. Sumner, 226 F.3d 1005, 1014 (9th Cir. 2000)); United States v. Dunegan, 251 F.3d 477, 479-80 (3rd Cir. 2001); but see United States v. Flowers, 389 F.3d 737, 739 (7th Cir. 2004).

Thus, even if this Court concludes district courts have inherent authority to expunge a criminal record similar to the authority recognized by the federal courts, Turpen could not invoke such authority because his motion was based purely on equitable grounds. (R., pp.39-42.) Indeed, Turpen acknowledges on appeal that the criminal proceeding against him was an "appropriate exercise in American jurisprudence." (Appellant's brief, p.7; see also Appellant's brief, p.9

(acknowledging there was probable cause to charge him with a crime and that there was no “police misconduct” or “prosecutorial misjudgement”).)

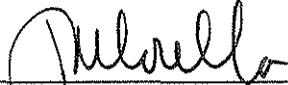
Further, even if this Court concludes a district court’s inherent authority encompasses consideration of an expungement request based solely on equitable grounds, the court’s authority would not extend to records maintained by the executive branch. The Idaho Supreme Court has previously recognized this limitation. Parkinson, 144 Idaho at ____, 172 P.3d at 1104 (citing Janik, 10 F.3d at 472). Thus, to the extent Turpen is seeking expungement of any records other than judicial records, he is not entitled to relief.

Because Idaho courts have neither statutory nor inherent authority to expunge all records relating to a criminal case, Turpen has failed to establish error in the denial of his Motion to Expunge Criminal Record.

CONCLUSION

The state respectfully asks this Court to affirm the district court’s appellate decision affirming the magistrate’s order denying Turpen’s Motion to Expunge Criminal Record.

DATED this 5th day of September 2008.



JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of September, 2008, I caused two true and correct copies of the foregoing BRIEF OF APPELLANT to be placed in the United States mail, postage prepaid, addressed to:

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