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

STATE OF IDAHO,	)	
	)	NOS. 45056 & 45057
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NOS.
v.	)	CR 2015-12528 & CR 2015-12541
	)	
EZEQUIEL Z. CAMPOS,	)	
	)	
Defendant-Appellant.	)	
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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**

---

**HONORABLE JUNEAL C. KERRICK  
District Judge**

---

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## STATEMENT OF THE CASE

### Nature of the Case

Ezequiel Z. Campos appeals from the district court's Order on Motion for Discovery and PSI, PSR, Reports in the Public Defender's Office Possession. He contends the district court abused its discretion in denying this motion because it erred in concluding there was no legal authority for Mr. Campos to make the request. Mr. Campos asks this Court to vacate the district court's order denying his motion, and remand this case to the district court with instructions to consider the merits of the motion, and ultimately allow Mr. Campos access to discovery and presentence materials.

### Statement of Facts and Course of Proceedings

In Case No. 2015-12528 ("the trafficking case"), Mr. Campos was charged with trafficking in heroin and trafficking in methamphetamine. (R., pp.8-9.) In Case No. 2015-12541 ("the possession case"), Mr. Campos was charged with possession of a controlled substance. (R., pp.115-16.) Early in the trafficking case, Mr. Smith's retained counsel, John T. Bujak, filed a motion for leave to withdraw as counsel of record, stating he "recently learned he will soon lose his license to practice law in the State of Idaho." (R., p.22.) The district court granted Mr. Bujak's motion to withdraw, and Mr. Campos was represented by a public defender for the remainder of the proceedings in both cases. (R., pp.26-29, 112.)

Mr. Smith entered into a plea agreement with the State pursuant to Idaho Criminal Rule 11(f)(1)(C), agreeing to plead guilty to trafficking in lesser quantities of heroin and methamphetamine and/or amphetamine in the trafficking case, and to possession of a controlled substance in the possession case. (R., pp.156-60.) In return, the State agreed to recommend an aggregate unified sentence of fifteen years, with three years fixed, in the trafficking case, and a

commuted sentence in the possession case.<sup>1</sup> (Tr., p.1, Ls.1-10; R., pp.88-89, 134-45, 156-60.) The district court sentenced Mr. Campos to an aggregate unified term of fifteen years, with three years fixed. (R., pp.92, 150-55.) The judgments of conviction were entered on June 1, 2016, and Mr. Campos did not appeal. (R., pp.93-94, 163-64.)

On March 3, 2017, Mr. Campos filed a Motion for Discovery, and PSI, PSR, Reports in the Public Defender's Possession, supported by an affidavit. (R., pp.166-71.) Mr. Campos explained he wanted access to discovery and presentence materials to "seek further litigation in this Court and other Courts." (R., p.166.) Among other things, he stated he wanted access to documents relating to \$9,772 that was seized from him at the time of his arrest. (R., p.167; *see also* Presentence Investigation Report (PSI), pp.6, 105-09.) The district court denied Mr. Campos' motion in a written order filed March 30, 2017. (R., pp.175-78.) The district court stated, in pertinent part:

Defendant indicates that he desires to gather information for a collateral challenge to his convictions. However, Defendant has not demonstrated any applicable court rule or other authority for the relief he now seeks in these two criminal cases. Specifically, there is no authority for discovery and the provision of copies of certain documents in these two closed cases, for which the time to appeal has expired.

(R., p.176.) Mr. Campos filed a timely notice of appeal on April 12, 2017. (R., pp.179-84.) The Supreme Court entered an order conditionally dismissing Mr. Campos' appeal on May 11, 2017, but withdrew its conditional dismissal and reinstated the appeal on June 5, 2017. (R., pp.204-05.)

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<sup>1</sup> The State also agreed to dismiss charges in a consolidated misdemeanor case, Case No. 2015-12527. (*See* R., p.154.)

ISSUE

Did the district court abuse its discretion in denying Mr. Campos' motion for access to discovery and presentence materials?

## ARGUMENT

### The District Court Abused Its Discretion In Denying Mr. Campos' Motion For Access To Discovery And Presentence Materials

The district court denied Mr. Campos' motion for access to discovery and presentence materials, concluding "there is no authority for discovery and the provision of copies of certain documents in these two closed cases, for which the appeal time has expired." (R., p.176.) The district court abused its discretion in denying Mr. Campos' motion because it failed to correctly perceive the issue as one of discretion. *See State v. Hedger*, 115 Idaho 598, 600 (1989) (setting forth the standard for appellate review of a trial court's discretionary decision).

Pursuant to the Idaho Criminal Rules, a presentence report can be released to a defendant after sentencing. Idaho Criminal Rule 32 states, in pertinent part, "After use in the sentencing procedure, the presentence report must be sealed by court order, after which it cannot be opened without a court order authorizing release of the report or parts of it to a specific agency or individual." I.C.R. 32(h)(1). Thus, if a defendant desires access to his presentence report after sentencing, he should file a motion with the district court requesting such access. A defendant does not have an automatic right to a copy of his presentence report, but can obtain the report if he demonstrates a genuine need for it. *See State v. Adams*, 115 Idaho 724, 725, 769 P.2d 601, 602 (Ct. App. 1989) ("[F]ollowing sentencing a defendant does not have an automatic right to a copy of his report; rather, we believe a defendant must demonstrate a genuine need for his report to obtain court authorization for its release.") Here, the district court did not consider whether Mr. Campos had demonstrated a genuine need for his presentence report (and other presentence and discovery materials), but simply denied his motion based on its conclusion that it lacked authority to grant it.

Mr. Campos may have needed access to his discovery and presentence materials in order to seek relief from an illegal sentence pursuant to Idaho Criminal Rule 35(a); seek post-conviction relief under Idaho's version of the Uniform Post Conviction Procedures Act, I.C. § 19-4901 *et seq.*; seek *habeas corpus* relief in federal court pursuant to 28 U.S.C. § 2241 *et seq.*; and/or pursue a legal malpractice claim against his original trial counsel, who was ultimately disbarred. Where a person seeking post-conviction relief argues he was wrongfully denied access to his PSI, the Court of Appeals has found "no merit" to the argument in the absence of an attempt by the petitioner to obtain a court order for release of the PSI. *See Hays v. State*, 132 Idaho 516, 521 (Ct. App. 1999); *see also Freeman v. State*, 119 Idaho 692, 695 (Ct. App. 1991). Here, Mr. Campos tried to obtain a court order for release of the presentence and discovery materials, but the district court denied the motion without considering its merits. The district court abused its discretion, and Mr. Campos is entitled to relief.

#### CONCLUSION

Mr. Campos respectfully requests that this Court vacate the district court's Order on Motion for Discovery and PSI, PSR, Reports in the Public Defender's Office Possession, and remand this case to the district court with instructions to consider the merits of the motion, and ultimately allow Mr. Campos access to discovery and presentence materials.

DATED this 16<sup>th</sup> day of November, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16<sup>th</sup> day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

EZEQUIEL Z CAMPOS  
INMATE #74137  
IMSI  
PO BOX 51  
BOISE ID 83707

JUNEAL C KERRICK  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas