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### C&M Investment Group, Ltd. v. Campbell Appellant's Reply Brief Dckt. 44719

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IN THE SUPREME COURT OF THE STATE OF IDAHO

C&M INVESTMENT GROUP, LTD., and  
KARLIN HOLDINGS LIMITED  
PARTNERSHIP,

Plaintiffs/Petitioners/Respondent,

NEIL DAVID CAMPBELL, individually,

Defendant/Respondent/Appellant

and

PHILIP RICHARD POWERS, individually;  
POWERS INVESTMENTS AND  
MANAGEMENT, INC., S.A., a  
corporation; GUANANA GRIS, S.A., a  
corporation; PROTECCION FORESTAL  
DE TECA, S.S., A corporation; and DOES 1  
through 50 inclusive,

Defendants.

SUPREME COURT NO. 44719

**APPELLANT'S REPLY BRIEF**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the  
County of Blaine.

Honorable Robert J. Elgee, District Judge, Presiding.

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**II.  
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**III.  
ARGUMENT IN REPLY TO RESPONDENT’S BRIEF**

**1. ARGUMENTS IN REPLY TO WHETHER THE DISTRICT COURT ERRED  
IN SENTENCING MR. CAMPBELL TO JAIL WITHOUT HONORING HIS RIGHT  
AGAINST SELF INCRIMINATION AS PROVIDED FOR BY IRCP 75(i)(2).**

**A. INTRODUCTION AND RELEVANT FACTS.**

The relevant facts of this case are the District Court required Campbell to take the stand and testify against himself in a contempt of court case containing 24 counts of contempt seeking the imposition of a Criminal Sanction. Campbell was found guilty of 13 counts of contempt of court seeking a Criminal Sanction and not guilty of 11 counts of contempt of court seeking a Criminal Sanction. 10 counts of contempt of court seeking a Civil Sanction were pursued by Respondents, with 8 of those 10 counts dismissed during their closing argument. 34 counts of contempt of court seeking a Criminal Sanction and 2 counts of Contempt of Court seeking a Civil Sanction were submitted to the District Court for decision.

Campbell was sentenced to 65 days in jail (5 x 13) as a Criminal Sanction. His right

against self-incrimination was not honored by the District Court.

It is against this factual back drop that Respondents argue the combined nature of the case made the District Court's decision to violate Campbell's right against self-incrimination and impose a Criminal Sanction of 65 days in jail permissible, and that the Criminal Sanction imposed by the District Court was harmless error.

### **B. STANDARD OF REVIEW.**

Idaho Rule of Civil Procedure 75(i)(2) sets forth the rights required to impose a Criminal Sanction and in relevant part states,

**“(i) Nonsummary Proceedings; Trial. . . . (2) Trial Rights Required to Impose a Criminal Sanction.** The court cannot impose a criminal sanction following a trial unless the respondent was provided the following rights: . . . (D) the privilege against self-incrimination, . . .” *IRCP 75(i)(2)*.

“We exercise free review over the issues of law decided by the district court to determine whether it correctly stated and applied the applicable law.” *State of Idaho Department of Health and Welfare v. Slane*, 155 Idaho 274, 276 (2013)

“This Court exercises free review over questions regarding the interpretation of the Idaho Rules of Civil Procedure.” *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 294 P.3d 1111, 1115 (2013).

“Idaho Appellate Rule 11(a)(4) allows a direct appeal from an order of contempt. Thus, we review an appeal from an order of contempt the same as any other appeal’ . . . . We review the sanction imposed upon a finding of contempt for an abuse of discretion.” *Carr v. Pridgen*, 157 Idaho 238, 242 (2014).

“To determine whether the district court abused its discretion, this Court asks: (1) Whether the trial court correctly perceived this issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.” *Duspiva v. Fillmore*, 154 Idaho 27, 35 (2013).

**C. IDAHO RULE OF CIVIL PROCEDURE 75(i)(2) CONTAINS NO EXCEPTIONS PERMITTING THE IMPOSITION OF A CRIMINAL SANCTION FOR CASES POSSESSING CONTEMPT OF COURT COUNTS SEEKING BOTH CIVIL SANCTIONS AND CRIMINAL SANCTIONS.**

C&M Investment Group, LTD and Karlin Holdings Limited Partnership (collectively “Respondents”) first attempt to argue that since they choose to pursue Contempt of Court counts seeking the imposition of a Criminal Sanction and a Civil Sanction in the same case, Neil Campbell (hereinafter “Campbell”) is no longer entitled to his privilege against self-incrimination. They go to immense efforts to point out that the civil contempt counts were factually distinct from the criminal contempt counts, and rely repeatedly on the District Court’s statement making this finding. Respondent’s ignore both IRCP 75(i)(2) and *State of Idaho Department of Health and Welfare v. Slane*, 155 Idaho 274.

Respondents’ Brief attempts to frame the issue as follows, “this, of course, makes for a different case than the ones to which Campbell relies, namely trials of factually related civil and criminal counts” *Respondent’s Brief*, Page 1.

Idaho Rule of Civil Procedure 75(i)(2) in relevant part states,

**“(i) Nonsummary Proceedings; Trial. . . (2) Trial Rights Required to Impose a Criminal Sanction.** The court cannot impose a criminal sanction following a trial

unless the respondent was provided the following rights: . . . (D) the privilege against self-incrimination, . . .” *IRCP 75(i)(2)*.

There is no ambiguity in the language of Idaho Rule of Civil Procedure 75(i)(2)(D).

While Respondents would very much like to add to the language of IRCP 75(i)(2), its current language defeats their argument.

IRCP 75(i)(2) does not state the court cannot impose a criminal sanction following a trial *which only seeks the imposition of a criminal sanction (added hypothetical language)* unless the respondent was provide the following rights: . . . (D) the privilege against self-incrimination.

Respondents have cited no authority for their argument the right against self-incrimination disappears in contempt cases containing counts of contempt of court seeking to impose both a Civil Sanction and a Criminal Sanction in the same case. As discussed above, Respondents ignore IRCP 75(i)(2). Respondents also ignore and disregard the guidance provided by the Idaho Supreme Court which states,

“[I]f *both* civil and criminal relief are imposed in the same proceeding, then the ‘criminal feature of the order is dominant and fixes its character for purposes of review.’ . . . **A court can impose a criminal contempt sanction in nonsummary contempt proceedings only if the contemnor has been afforded the federal constitutional rights applicable to criminal contempt of court (Emphasis Added).** . . . The father has not contended on appeal that he was not afforded the constitutional rights applicable to criminal contempt proceedings” *State of Idaho Department of Health and Welfare v. Slane*, 155 Idaho 274, 277.

Under IRCP 75(i)(2), the District Court did not possess the ability to impose a Criminal Sanction once it required Campbell to take the stand and testify against himself. The fact that

both Criminal Sanctions and Civil Sanctions were sought in the same trial does not change the language of IRCP 75(i)(2). Simply put, Campbell was not afforded his constitutional right against self-incrimination applicable to criminal contempt proceedings when he was forced to take the witness stand. This eliminated the District Court's ability to impose a Criminal Sanction.

**D. IMPOSITION OF AN ILLEGAL SENTENCE IS PREJUDICIAL AND AFFECTS A SUBSTANTIAL RIGHT OF CAMPBELL.**

The Respondents' next argue that the District Court's imposition of a 65 day jail sentence has harmless error and is not prejudicial. This argument seems absurd on its face when the language of IRCP 75(i)(2)(D) cited above is considered along with the fact Campbell is facing 65 days in jail. The imposition of a Criminal Sanction of a 65 day jail sentence given the right against self-incrimination in IRCP 75(i)(2) is prejudicial.

"Unless an error affects a substantial right of a party, the error does not constitute grounds for reversal." *State v. Watkins*, 148 Idaho 418, 420 (2009). "What is an error affecting a substantial right is not defined by the Rules of Evidence, but must be determined on a case-by-case basis." *State v. Goerig*, 121 Idaho 108, 111 (App. 1991).

The 65 day jail sentence was an illegal sentence under Idaho law.

"For the purpose of Rule 35, an illegal sentence is one in excess of a statutory provision or otherwise contrary to applicable law. *United States v. Huss*, 520 F.2d 598 (2d Cir. 1975). It is self-evident that this determination involved a legal question on which we exercise free review. . . . Furthermore, unlike a legal but allegedly excessive sentence, an illegal sentence may be corrected 'at any time.'"



*State v. Lee*, 116 Idaho 515, 516 (App. 1989).

As Campbell has discussed above, once the District Court disregarded his constitutional right against self-incrimination, it lost its ability to impose a Criminal Sanction consisting of 65 days in jail. That makes the 65 day jail sentence illegal as it is contrary to applicable law, IRCP 75(i)(2)(D). This illegal sentence may be corrected at any time, which eliminates Respondents' harmless error argument.

The District Court's error in this case consisted of sentencing Campbell to 65 days in jail after refusing to honor his constitutional right against self-incrimination.. Mr. Ritzau objected when Campbell was called to the stand to notify the District Court of the requirements of 75(i)(2)(D) and avoid a waiver issue. If the District Court had decided to NOT impose a Criminal Sanction at the sentencing hearing, then its sentence would not be erroneous regardless of its ruling requiring Campbell take the stand. It is the imposition of a Criminal Sanction after failing to honor Campbell's right against self-incrimination, not its ruling requiring he take the stand which was erroneous, prejudicial, and harmful error which affected a substantial right.

#### **IV. CONCLUSION**

For these reasons presented herein, Campbell asks the Court to vacate the District Court's decision imposing a Criminal Sanction of 65 days in jail. Since Campbell was not provided his right against self-incrimination, a Criminal Sanction can not be imposed in this case.

RESPECTFULLY SUBMITTED this 9 day of March, 2018.

NEIL DAVID CAMPBELL

By Neil David Campbell  
Neil David Campbell, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of March, 2018, I served a true and correct copy of the within and foregoing document upon the following attorneys for Appellant:

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By transmitting copies by email.

By depositing copies of the same with Federal Express for overnight delivery.

Neil Campbell  
Neil Campbell