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### State v. Abramowski Appellant's Reply Brief Dckt. 45296

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

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45296
	)	
v.	)	ADA COUNTY NO. CR-FE-2009-7512
	)	
MATHEW JOSEPH	)	REPLY BRIEF
ABRAMOWSKI,	)	
	)	
Defendant-Appellant.	)	
_____	)	

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**REPLY BRIEF OF APPELLANT**

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

---

**HONORABLE GEORGE D. CAREY  
District Judge**

---

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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	2
ISSUE PRESENTED ON APPEAL .....	3
ARGUMENT .....	4
The District Court Abused Its Discretion When It Denied Mr. Abramowski’s Requests For Expungement .....	4
A. Introduction .....	4
B. The District Court Abused Its Discretion When It Denied Mr. Abramowski’s Initial Motion For Expungement, Because The District Court Did Not Act Consistently With The Applicable Legal Standards .....	4
C. The District Court Abused Its Discretion When It Denied Mr. Abramowski’s Motion For Reconsideration, Because The District Court Did Not Act Consistently With The Applicable Legal Standards .....	6
CONCLUSION .....	8
CERTIFICATE OF SERVICE .....	8

**TABLE OF AUTHORITIES**

Cases

*State v. Turpen*, 147 Idaho 869 (2009).....4, 6

Rules

I.C.A.R. 32..... 1, 4, 5, 6

## STATEMENT OF THE CASE

### Nature of the Case

After the district court dismissed a withheld judgment against Matthew Joseph Abramowski, he requested the district court seal his case. At the hearing on the motion to seal, he also requested the district court expunge his case. The district court indicated it would grant the request for expungement if it had the legal authority, but suggested Mr. Abramowski should file a separate motion to give proper notice to the State. The district court sealed the records of the juvenile proceedings in the case, finding Mr. Abramowski had been unable to secure employment and independent living opportunities.

Mr. Abramowski then filed a motion for expungement under Idaho Court Administrative Rule 32 (Rule 32), and explained his difficulties with finding a job or housing stemmed from his criminal history being a matter of public record. The district court, with a different judge now presiding over the case, denied the motion for expungement. Mr. Abramowski filed a motion to reconsider, and at the hearing on the motion, presented additional information on his inability to secure employment and independent living opportunities because his criminal history was available to the public. The district court denied the motion to reconsider.

Mr. Abramowski appealed, asserting the district court abused its discretion when it denied his requests for expungement. In its Respondent's Brief, the State argued Mr. Abramowski did not show the district court abused its discretion in denying his requests for expungement. (*See Resp. Br.*, pp.11-22.) This Reply Brief is necessary to address certain parts of the State's arguments.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Abramowski's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court abuse its discretion when it denied Mr. Abramowski's requests for expungement?

## ARGUMENT

### The District Court Abused Its Discretion When It Denied Mr. Abramowski's Requests For Expungement

#### A. Introduction

Mr. Abramowski asserts the district court abused its discretion when it denied his requests for expungement. The district court, when it denied the initial motion for expungement, and when it denied the motion for reconsideration, did not act consistently with the applicable legal standards. The district court should have found that Mr. Abramowski's interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case would reasonably result—and had already resulted—in economic or financial loss or harm to Mr. Abramowski. *See State v. Turpen*, 147 Idaho 869, 871-72 (2009); I.C.A.R. 32(i).

#### B. The District Court Abused Its Discretion When It Denied Mr. Abramowski's Initial Motion For Expungement, Because The District Court Did Not Act Consistently With The Applicable Legal Standards

Mr. Abramowski asserts the district court abused its discretion when it denied his initial motion for expungement, because the district court did not act consistently with the applicable legal standards. The district court should have found that Mr. Abramowski's interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case would reasonably result, and had already resulted, in economic or financial loss or harm to Mr. Abramowski; namely, his inability to secure employment and independent living opportunities. *See Turpen*, 147 Idaho at 871-72; I.C.A.R. 32(i).

The State contends Mr. Abramowski “presented no evidence to support his assertion of financial loss resulting from the availability of his criminal record . . . .” (*See Resp. Br.*, pp.16-



17.) The State argues that, while the previous judge had found that Mr. Abramowski “had been unable to secure employment and independent living opportunities as a result of limitations related to [Mr.] Abramowski’s autism spectrum disorder . . . nothing about that finding actually supported [Mr.] Abramowski’s claim that his inability to obtain employment and housing was a result of his criminal record being public, rather than a result of his autism-related ‘limitations.’” (Resp. Br., p.16.)

However, at the hearing on the motion for expungement, Mr. Abramowski had reminded the district court that the previous judge had already made findings “to support an order of expungement.” (*See* Tr. June 15, 2017, p.11, Ls.12-15.) When he ordered the records from the juvenile proceedings sealed, the previous judge found, “extraordinary circumstances exist which justify that such records should be confidential. The extraordinary circumstances consist of limitations which relate to Abramowski’s autism spectrum disorder. Due to these limitations, Abramowski has been unable to secure employment and independent living opportunities that would not have similar effects on a person without such limitations.” (*See* R., p.150.)

At the hearing on the motion to seal, the previous judge stated, “[f]or the record, if I felt that I had legal authority to expunge, I would exercise discretion in this case to grant that. I think that Mr. Abramowski has earned some additional consideration from the Court and, for what it’s worth, I would exercise some discretion with that in mind.” (*See* Tr. Mar. 29, 2017, p.7, Ls.3-9.) The previous judge thereby suggested that, had the timing been different, he would have granted the motion for expungement. In other words, the previous judge would have found Mr. Abramowski’s interest in privacy predominated over the interest in public disclosure, and the dissemination of the materials related to the case would reasonably result in economic or financial harm to Mr. Abramowski. *See* I.C.A.R. 32(i). Thus, the previous judge’s findings on

the motion to seal actually indicated Mr. Abramowski had already suffered economic or financial loss or harm because of the dissemination of the materials related to the case.

The State further argues, “even accepting as true [Mr.] Abramowski’s assertions that his inability to secure employment and housing was a direct result of his criminal record being public, such did not compel a finding by the district court that “[Mr.] Abramowski’s interest in privacy predominated over the interest in public disclosure.” (*See* Resp. Br., p.17.) According to the State, “[a]lthough [Mr.] Abramowski would have liked the court to have given his assertions of economic harm more weight, he had failed [to] show that the court abused its discretion in weighing the competing interests and ultimately concluding the public interest in disclosure predominated.” (*See* Resp. Br., p.18.) This argument by the State is unremarkable, and no further reply is necessary. Thus, Mr. Abramowski would direct the Court’s attention to pages 11-15 of the Appellant’s Brief.

C. The District Court Abused Its Discretion When It Denied Mr. Abramowski’s Motion For Reconsideration, Because The District Court Did Not Act Consistently With The Applicable Legal Standards

Mr. Abramowski asserts the district court abused its discretion when it denied his motion for reconsideration, because the district court did not act consistently with the applicable legal standards. In light of the additional evidence presented in support of the motion for reconsideration, the district court should have found that Mr. Abramowski’s interest in privacy predominated over the interest in public disclosure, because the dissemination of the materials related to the case had resulted in economic or financial loss or harm to Mr. Abramowski. *See Turpen*, 147 Idaho at 871-72; I.C.A.R. 32(i).

The State argues, “the additional evidence [Mr.] Abramowski presented in support of his motion for reconsideration did not actually support his claim that he had been denied meaningful

employment and housing due to the availability of his criminal record . . . .” (*See* Resp. Br., p.20.) The State argues, “[a]lthough the witnesses on his behalf speculated that [Mr.] Abramowski’s difficulties were due to the fact that his criminal record was available to the public, neither witness could definitively testify that [Mr.] Abramowski had been denied employment and housing due to his criminal record.” (*See* Resp. Br., p.19.)

As discussed by the State (*see* Resp. Br., p.20), the letter from the housing organization stated that the decision to decline Mr. Abramowski’s application for an apartment “was based on information obtained from previous landlords or references listed on your application for housing and/or credit bureau report or criminal history reports.” (R., p.178.) But Mr. Abramowski’s mother testified that his only previous landlords were his parents, and she had not provided any information to support a denial; his references were from his church; and he did not have a credit history of which she was aware. (*See* Tr. July 19, 2017, p.20, Ls.7-18, p.24, L.20 – p.26, L.6.) Thus, rather than constitute speculation, his mother’s testimony led to the logical conclusion that Mr. Abramowski’s criminal history report was the only reason the housing organization denied his apartment application. (*See* Tr. July 19, 2017, p.26, Ls.7-9.)

The State additionally argues Mr. Abramowski did not show the district court abused its discretion in denying the motion for reconsideration, because the district court “perceived its decision as discretionary, applied the correct legal standards, and exercised reason in concluding [Mr.] Abramowski’s privacy interest was outweighed by the interest in public disclosure.” (*See* Resp. Br., p.22.) This argument by the State is unremarkable, and no further reply is necessary. Thus, Mr. Abramowski would direct the Court’s attention to pages 15-17 of the Appellant’s Brief.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Abramowski respectfully requests this this Court vacate the district court's order denying the motion for expungement, as well as the district court's order denying the motion for reconsideration, and remand his case to the district court for further proceedings.

DATED this 13<sup>th</sup> day of September, 2018.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of September, 2018, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

BPM/eas