

66416-6

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No. 66416-6-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Interest of:  
CHRISTOPHER RUST  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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REPLY BRIEF OF APPELLANT

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COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION ONE

**TABLE OF CONTENTS**

A. ARGUMENT..... 1

    THE TRIAL COURT'S CONTEMPT SANCTION  
    DEPRIVED MR. RUST OF DUE PROCESS AND  
    VIOLATED HIS RIGHT TO A JURY TRIAL..... 1

B. CONCLUSION ..... 4

## TABLE OF AUTHORITIES

### **United States Constitution**

U.S. Const. amend. XIV .....	1
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### **Washington Supreme Court**

<u>In re Dependency of A.K.</u> , 162 Wn.2d 632, 174 P.3d 11 (2007).....	3
<u>Keller v. Keller</u> , 52 Wn.2d 84, 323 P.2d 231 (1958) .....	2
<u>King v. Department of Soc. and Health Servs.</u> , 110 Wn.2d 793, 756 P.2d 1303 (1988) .....	2
<u>State v. Boatman</u> , 104 Wn.2d 44, 700 P.2d 1152 (1985) .....	1, 2

### **Washington Court of Appeals**

<u>In re the Interst of M.B.</u> 101 Wn.App. 425, 3 P.3d 780 (2000).....	2
--	---

### **United States Supreme Court**

<u>Hicks ex rel. Feiock v. Feiock</u> , 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988) .....	2
<u>In re Oliver</u> , 333 U.S. 257, 68 S.Ct. 499, 509, 92 L.Ed. 682 (1948).	3
<u>International Union, United Mine Workers of America v. Bagwell</u> , 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) .....	3
<u>Pounders v. Watson</u> , 521 U.S. 982, 117 S.Ct. 2359, 138 L.Ed.2d 976 (1997) .....	3

A. ARGUMENT

THE TRIAL COURT'S CONTEMPT SANCTION  
DEPRIVED MR. RUST OF DUE PROCESS AND  
VIOLATED HIS RIGHT TO A JURY TRIAL.

As argued in Mr. Rust's initial brief, the Fourteenth Amendment Due Process Clause does not permit the imposition of a punitive contempt sanction without first affording Mr. Rust the procedural protections of a normal criminal trial including a jury. The State's response rests upon the mistaken view that if a trial court relies upon its summary contempt authority it is free to impose punitive contempt sanctions without affording the contemnor the due process protections of a criminal trial. Brief of Respondent at 5-6.

Courts have recognized three separate grounds on which a court may rely in exercising its contempt authority: (1) civil contempt; (2) criminal contempt; and (3) the court's inherent contempt authority. State v. Boatman, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985). Mr. Rust does not question a trial court's authority to respond to contumacious behavior that occurs in the court room. That authority is well established. However, caselaw is quite clear that the court's response must satisfy the dictates of due process. As this Court recognized

. . . due process prohibits a court from using either statutory or inherent power to justify its actions if the contempt sanctions are themselves punitive, unless the contemnor is afforded criminal due process protections, including the safeguards of a criminal trial.

In re the Interest of M.B. 101 Wn.App. 425, 453, 3 P.3d 780 (2000).

It is well established

there are two basic categories of contempt orders: coercive and punitive. If a contempt order is coercive, then the final written order must contain a purging clause. If a contempt order is punitive, then the contemnor is entitled to the opportunity to be tried by a jury

Boatman, 104 Wn.2d at 48. And,

[a]lthough a court has statutory as well as inherent power to impose a civil contempt sanction, it may not impose a criminal contempt sanction unless the contemnor has been afforded those due process rights extended to other criminal defendants.

(Internal citation omitted) King v. Department of Soc. and Health Servs., 110 Wn.2d 793, 800, 756 P.2d 1303 (1988), (citing inter alia, Keller v. Keller, 52 Wn.2d 84, 86, 323 P.2d 231 (1958); Hicks ex rel. Feiock v. Feiock, 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988)).

The Supreme Court has made clear the requirements of due process and a jury trial apply equally to instances in which a trial purports to rely on its inherent contempt authority to impose a

punitive sanction. International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 832-33, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994). Thus, contrary to the State's claim it does not matter whether the court is relying upon statutory authority or its inherent authority, a punitive contempt sanction may not be imposed with the protections of a criminal trial. In re Dependency of A.K., 162 Wn.2d 632, 646, 174 P.3d 11 (2007).

The State next contends the court's actions were justified under the "summary contempt exception" Brief of Respondent at 7-8. However, that exception is extraordinarily limited.

We have held the summary contempt exception to the normal due process requirements, such as a hearing, counsel, and the opportunity to call witnesses, "includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public."

(Emphasis added.) Pounders v. Watson, 521 U.S. 982, 988, 117 S.Ct. 2359, 138 L.Ed.2d 976 (1997) (citing In re Oliver, 333 U.S. 257, 275, 68 S.Ct. 499, 509, 92 L.Ed. 682 (1948)); see also, Bagwell, 512 U.S. at 833 (this authority "becomes less justifiable

once a court leaves the realm of immediately sanctioned, petty direct contempts.”).

As is clear this exception is dependent upon the need for immediate punishment to vindicate the court’s authority. But here, the punishment imposed was not immediate. Indeed far from it, Mr. Rust will not serve that sanction for years to come; upon completion of the 75-month sentence imposed in August 2010. That the punishment will be delayed by years readily illustrates it was not necessary to immediately vindicate the court’s authority. In the absence of immediate punishment, the sanction cannot be justified as a necessary summary contempt.

Here, Mr. Rust was not afforded a jury trial or any trial at all. The court, nonetheless, imposed a punitive contempt sanction. That sanction must be dismissed.

B. CONCLUSION

This Court must reverse and dismiss the contempt sanction in this case.

Respectfully submitted this 16<sup>th</sup> day of September 2011.



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GRÉGOR Y C. LINK – 25228  
Washington Appellate Project – 91052

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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IN RE THE INTEREST OF

CHRISTOPHER RUST,

Appellant.

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NO. 66416-6-I

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16<sup>TH</sup> DAY OF SEPTEMBER, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

KRISTIN RELYEA  
KING COUNTY PROSECUTING ATTORNEY  
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KING COUNTY COURTHOUSE  
516 THIRD AVENUE, W-554  
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U.S. MAIL  
 HAND DELIVERY  
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**SIGNED** IN SEATTLE, WASHINGTON THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2011.

X \_\_\_\_\_



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