

**SUMMARY STATEMENT**  
*Jason Kelley Smith v. State of Idaho*  
Docket Nos. 49369/50442

In these consolidated cases, Jason Kelley Smith appeals from the district court's denial of his pro se motion for extension of time and removal of counsel (Docket No. 49369). Smith also appeals from the district court's order denying his pro se Idaho Rule of Civil Procedure 60(b)(6) motion and motion to alter or amend judgment under I.R.C.P. 59(e) (Docket No. 50442). Specifically, Smith contends that the district court erred by refusing to consider the pro se motions on their merits because he was represented by counsel.

The district court ruled it "cannot consider" the pro se motion for extension because Smith was represented by appointed counsel. Smith, again pro se, filed an amended petition. The district court struck the amended petition under Idaho Rule of Civil Procedure 12(f)(1). While that dismissal was on appeal, Smith moved, pro se, for relief from the judgment under I.R.C.P. 60(b)(6), claiming that his post-conviction counsel was ineffective and had abandoned him. Again, the district court ruled it could not consider the pro se motion while he was represented by counsel.

The Court of Appeals held that Smith failed to show error because he was appointed post-conviction counsel and could not file pro se motions while he was represented. Specifically, the Court of Appeals held that pursuant to I.R.C.P. 11.3, there are two ways in which a represented party may proceed without an attorney. First, the party desiring to proceed without counsel may file a notice of substitution of counsel indicating he will be representing himself, but the attorney being replaced must sign the notice. I.R.C.P. 11.3(a)(1). Second, an attorney may withdraw pursuant to I.R.C.P. 11.3(b) by filing a motion to withdraw, setting the motion for a hearing, and providing notice to all parties. I.R.C.P. 11(3)(b)(1). If the attorney is granted leave to withdraw pursuant to I.R.C.P. 11.3(b), the party may proceed without counsel. Consequently, Smith failed to appropriately proceed pro se and therefore the district court did not err in denying his pro se motions when he was represented by counsel.

\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared  
by court staff for the convenience of the public.\*\*\*