

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2010

ADEL ORTIZ,

Petitioner,

v.

CASE NO. 5D10-674

MAIAA RAMOS,

Respondent.

/

Opinion filed March 29, 2010

Petition for Writ of Habeas Corpus,  
A Case of Original Jurisdiction.

Adel Ortiz, Orlando, *pro se*.

No Appearance for Respondent.

PER CURIAM.

Adel Ortiz seeks habeas corpus relief after being sentenced to 179 days for civil contempt, in failing to pay court ordered child support. We agree, grant the petition, and vacate the order of contempt.

In his petition, as with many that this Court receives from Orange County, Ortiz argues that he does not have the present ability to pay the purge amount set for his release and the trial court failed to make the appropriate findings that he has the present ability to pay the purge set at \$8,599.96. This amount is the total of Petitioner's child support arrears, as set forth in the order of contempt. No response was filed with this Court to refute Ortiz's assertions.

The order of contempt rendered by the trial court in this case generally sets forth that the failure to pay child support was willful and Ortiz has the present ability to pay

the full arrears amount. Unfortunately, the Orange County trial court used a form order (Judgment and Sentence for Contempt) that fails to provide any factual support for those findings. The order of contempt must also set forth a "recital of facts" on which these findings are based. Fla. Fam. L. R. P. 12.615(d)(1). It is further obligatory, in the event of a purge amount being set, to set forth in a "separate affirmative finding" that the contemnor has the present ability to comply with the purge and to present the "factual basis" to support that finding. Fla. Fam. L. R. P. 12.615(e). The order in this case does not satisfy these requirements. Therefore, we grant the petition for writ of habeas corpus, ordering that Ortiz be immediately released.

**PETITION GRANTED**

PALMER, EVANDER and COHEN, JJ. concur.