

Date- April 11, 2023
FILED
Court of Appeals

FILED
SUPREME COURT
STATE OF WASHINGTON
4/12/2023
BY ERIN L. LENNON
CLERK

COURT OF APPEALS STATE OF WA
Division II
State of Washington
DIVISION TWO NO. 56603-6-II
4/12/2023 8:00 AM

STATE OF WASHINGTON

Respondent,

v.

EDWARD JAMES STEINER

Appellant

PETITION FOR REVIEW
FOR
SUPREME COURT OF
WASHINGTON STATE

Pro-se

EDWARD J. STEINER
W.S.P.
1313 N. 13th Ave.
Walla Walla, WA. 99362
(509) 525-3610

(I)

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IDENTITY OF PETITIONER NO. 56603-6-II

Edward J. Steiner, Pro se, Respectfully moves the court for Petition for Review to WASHINGTON SUPREME COURT for Review.

CITATION OF COURT OF APPEALS DECISION

On 1-31-2023 the Court of Appeals Div II rejected my Appeal by Kevin A. March and Lucie R. Bernheim, except for the LFO'S. They also did not consider my S.A.G., that is very important to case NO. 56603-6-II. I found out through a ^A letter by Kevin around 2-14-2023 that he will not be helping me anymore, because he see's no wrong doing.

I also filed Motion For Reconsideration - Div. II on 2-15-2023 case no. 56603-6-II. That motion was denied on 3-15-2023. The copies are in the Appendix.

I Edward J. Steiner, Pro se asks the Court for review of Appeal as Whole and S.A.G., to the Washington Supreme Court, also the Petition for Review,

ISSUES PRESENTED FOR REVIEW

- ① The transcripts of the proceeding by Clallam County Superior Court are falsified and plainly unreasonable.
- ② Prosecution Misconduct.
- ③ CrR 3.5 - Defendant not given chance to take stand,
- ④ Ineffective Counsel.
- ⑤ Challenge to verbatim Report of Proceedings.
- ⑥ Witness allowed notes. Defendant not allowed notes or chalkboard.
- ⑦ Video, Audio, recordings and evidence.
- ⑧ Statement of Additional Grounds.

Statement of Case NO. 56603-6-II

FACTS

On August 22, 2021 - Sunday approx. 1600^(HRS)
La Push police officer Brent Kempster came in-
to the Lonesome Creek Store in La Push, WA. He
stood behind me at an angle of about 10 feet,
The store workers kept acting like they were
busy. This went on for 10 minutes, while I waited
patiently for some service with my credit card in
my hand. I could see Brent Kempster moving in
by me in my peripheral vision.

He did not identify himself, but said I was tres-
passing. He told me to put my hands behind my back
and then spun me around from my left arm and pun-
ched me twice in the sternum with a handcuff key.
Mr. Kempster then tripped me and got on top of me with
what seemed he was getting sexual gratification out of it,
And just kept putting most all of his weight on me.

Kempster then handcuffed me in the store and had me sit
on a log for two hours until transport arrived and took
pictures of my injuries.

The trial took place in November 2021. At the re-sched-
uled 3.5^{RP-32} hearing (same day as trial) I was not given the
chance to take the stand.

STATEMENT of CASE No. 56603-6-II

FACTS

At trial the prosecutor knowingly presented false evidence and also coached witnesses^{RP at 23} and allowed Kempster notes. I was denied notes and a chalkboard so I could draw out the scene of what really happened and other camera placements, RP at 25; and also some of that page is not verbatim.

My lawyer did not object to anything except flipping a pancake on juror instruction. And he also made other weirdo comments to jury selection, RP 96, 98, 99.

Mr. Commercee also admits his poor behavior this morning at RP at 110. Then at RP-page 165 just out of the blue sky Juror 58 from Honduras is interrupted (for a sidebar, off the record) and jurors 41 and higher are dismissed from this trial and I did want juror 58 because she was the only black lady in the whole court.

During the trial (Ancillary) I passed a note for Mr. Commercee to bring a few important things up on closing and all he did is write back on the note "know one cares Ed-listen to the argument."

I Edward J. Steiner Petition the court for review,

Argument

NO. 56603-6-II

S.A.G.

My Statement of Additional Grounds Should be highly considered because of all the falsified information. The court report is not verbatim and the recordings don't agree with the court report. The court does not get a clear ~~but~~ but distorted view of what happened in the Clallam Co. Court. Therefore the Court of Appeals opinion could have turned out different, Appeal-Rules 2, 3(b), (d) (1-4); (16.4)-(C)(2), (6), (7) state this is not appropriate.

My S.A.G. contains pages 1-25. I pin point most of the mistakes in the S.A.G. They also state Kempster changed jobs during Court proceedings in Clallam Co, which is totally false amongst many other things that are false and fabricated in. The recordings the court has to the Court report do not match up. Kevin March is highly mistaken. The prejudices all through the S.A.G. are very evident, and make it clear that it could have a different outcome.

Prosecution Misconduct

Mr. Roberson #50852 knowingly presented false evidence. The clothing in the video does ^{RP 220} not match. The video and pictures taken at the scene are in contrast to each other. This is exculpatory.

(5)

Argument

NO. 56603-6-II

Even if the government unwittingly presents false evidence a defendant is entitled to a new trial "if there is a reasonable probability that (without the evidence) the result of the proceedings would have been different," *Endicott*, 869 F.2d at 455 (citing:

When a prosecutor knows of "new, credible, and material evidence creating a reasonable likelihood" that a convicted defendant is innocent of the offense which defendant was convicted he or she has a duty to disclose the evidence - Under RPC 3.8; RPC 3.8(g); RPC 3.8-(g)(1); RPC 3.8(g)(2) cmt. Mr. Roberson #50952 also knew of the false testimony the witnesses committed by perjury. Due process requires the timely disclosure of all material evidence "possessed by the prosecution that is favorable to the defense,

United States v. Bagley, 473 U.S. 667, 678-80, 87 L. Ed. 2d 481, 105 S. Ct. 3375 (1985). Reviewing the record in its entirety, we find a reasonable probability that the result would have been different had the government not presented Officer Sheldon's false testimony. Young is therefore entitled to a new trial, whether or not the prosecutor knew Sheldon's testimony was false and whether or not Officer Sheldon committed perjury or was simply mistaken.

Prosecution Misconduct may deprive a defendant of his constitutional right to a fair trial. Prosecutorial Misconduct is ground for reversal if "the prosecuting attorney's conduct was

(6)

Argument

NO. 56603-6-II

both improper and prejudicial (citing *State v. Gregory*, 158 Wn. 759, 858, 147 P.3d 1201 (2006)). Mr. Roberson #50952 knew that the video tapes from the store are tampered and fabricated and that witnesses were coached and perjured themselves on the stand and also that there is more video evidence and that they all as a whole perjured themselves by saying in court that the outside cameras did not work, RP 274. The Petition should be accepted under provisions RAP 13.4(b)(1-4).

Ineffective Counsel

Mr. Charlie Commeree #31403. Denied 6th Amendment right to effective counsel. Mr. Commeree did no background checks. Mr. Commeree did not propose any jury instructions, RP 276. Mr. Commeree did not object to anything throughout, except flipping a pancake RP 277 on jury instruction. He also did not hire or find an investigator. He did not bring up that my clothing was different as a fact. He Mr. commeree did not bring up the fact that there is no record of any paramedics at the scene, RP 220, 221, 223. Mr. commeree #31403 should have brought up the facts on closing and also that it is impossible to spit on someone with a mask on, and why the outside cameras that are all on the same system didn't work, were all this supposedly happened, RP 274. This counsel's Mr. commeree, severely deficient performance along with counsel's unprofessional errors has prejudiced my case and the result of the proceeding would

①

Argument

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have been different. "A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal."

Defendants convictions were improper under Sixth Amendment Wash. Const. art. 1 § 22 because her attorney only objected once during trial, which resulted in the jury considering highly prejudicial ~~trial~~ inadmissible evidence, and the appellate court did not properly evaluate counsel's performance, State v. Vazquez, 198 Wn 2d 239. Mr. Steiner's Petition for Review should be accepted under the provisions of RAP 13.4(b)-(4) for the Supreme Court of Washington.

At the 3.5 hearing - same day as trial Mr. Commerce did not review my right to testify RP 32. AT RP 32, 33 Kempster never said, I'm in between apartments right now like 75% or more of the verbatim court report is false.

Insufficient Counsel RAP 13.4(b)(1-4). Insufficient court reporting by (Tammy Wooldridge - Colibus Transcribing Service - ~~2521~~ 2521 Columbus Avenue - Port Angeles, WA. 98362), RAP 13.4(b)(1-4); Prosecutor Misconduct 13.4(b)(1-4). These are all established in the Pro Se Petition, Statement of additional Grounds, and the appeal as a whole. When there are conflicts between divisions of the Court of Appeals, they are resolved by review before the Washington Supreme Court; It is for the Supreme Court to settle the law when Court of Appeals decisions are in conflict.

CONCLUSION No. 56603-6-II

Mr. Edward J. Steiner Pro-se, was denied his right to a fair trial due to insufficient counsel by Charlie Commerce #31403, flagrant and ill-intentioned prosecutorial misconduct by Mr. Matthew Roberson #50952, also false court reporting by Tammy Woodridge - Columbus Transcribing Service,

I am seeking immediate release, reversal or a new trial, and with all honesty should be carried out in a court of law. I was given a furlough - RP-183 at trial and they know I will come back if necessary for the re-trial.

Dated this day of April 11th 2023

Respectfully Submitted

Edward J. Steiner Pro-se



W.S.P.

1313 N. 13th Ave.

Walla Walla, WA 99362

Pro-se

(9)

Appendix

No. 56603-6-II

(A-N)

Prosecutorial Misconduct § 5.32

§ 5.15

RPC 3.8

USCS Const. Amend. 6th

USCS Const. Amend. 14th

Wash. Const. art 1 § 22

RAP 13.4(b)(1-4)

(A)



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Kevin A. March
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February 7, 2023

Edward Steiner
DOC No. 393543
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1313 N 13th Ave
Walla Walla, WA 99362

State v. Edward Steiner, Court of Appeals No. 56603-6-II

Dear Mr. Steiner:

Enclosed is the Court of Appeals decision in your case. The court rejected almost all the arguments raised in the case and agreed only to strike the community custody supervision fee. The court also rejected all the arguments you raised in the statement of additional grounds for review. Thus, aside from striking the community custody supervision fee, we have lost the appeal.

There are two options for you to seek further review of the case. I do not believe further review of the case is warranted and therefore I will not be seeking further review on your behalf.

The first option is to file a motion for reconsideration of the Court of Appeals decision. The motion for reconsideration is due 20 days after the opinion, or by February 20, 2023. Motions for reconsideration are appropriate where you believe the Court of Appeals has misapprehended or overlooked a factual or legal matter. Because I do not believe the Court of Appeals have overlooked or misapprehended any fact or law, I will not be filing a motion for reconsideration. If you wish to file a motion for reconsideration, you should do so in the Court of Appeals.

The second option is to file a petition for review in the Washington Supreme Court. A petition for review is due 30 days after the opinion or 30 days after the order denying a motion for reconsideration. Currently, the petition for review is due March 2, 2023. The Supreme Court criteria for granting review are conflicts between the Court of Appeals decision and other Court of Appeals or Supreme Court decision, a matter of constitutional law, or an issue of public interest. Because I do not believe your case

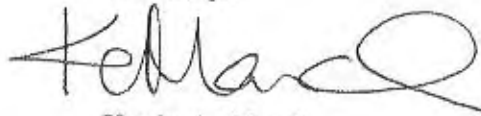
E. Steiner
February 6, 2023
Page 2

meets any criterion, I do not intend to file a petition for review. If you wish to file a petition for review, you should file it in the Court of Appeals by the deadline.

Please also note that if you wish to pursue remedies in federal court by filing a habeas corpus petition, you must "exhaust" your state court remedies. To exhaust state court remedies, you must ask the state's highest court—the Washington Supreme Court in our state—to review your case. If you do not do so, then you are not permitted to file for federal habeas relief.

I am sorry we could not bring you a better result in the appeal. If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin A. March". The signature is fluid and cursive, with a large loop at the end.

Kevin A. March
Attorney at Law

Enclosure

January 31, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

EDWARD JAMES STEINER,

Appellant.

No. 56603-6-II

UNPUBLISHED OPINION

MAXA, J. – Edward Steiner appeals his convictions of third degree assault – law enforcement officer and felony harassment. The convictions arose out of an incident in which Steiner threatened and spit on a police officer. Steiner argues that the prosecutor engaged in misconduct during opening statement and closing argument and challenges the trial court’s imposition of community custody supervision fees as a legal financial obligation (LFO). He also asserts 37 grounds for relief in a statement of additional grounds (SAG).

We hold that (1) the prosecutor’s statements during opening statement and closing argument were not improper; (2) as the State concedes, the community custody supervision fees should be stricken from the judgment and sentence; and (3) we reject or decline to consider Steiner’s SAG claims. Accordingly, we affirm Steiner’s convictions, but we remand for the trial court to strike the community custody supervision fees from the judgment and sentence.

FACTS

On August 22, 2021, La Push police officer Brent Kempster arrived at the Lonesome Creek Store on the Quileute reservation in Clallam County as part of his normal patrol. An intoxicated person with alcohol by his side was at the store, and a store employee informed Kempster that the person had been intoxicated and at the store over the past two days. The intoxicated person later was identified as Steiner.

Kempster approached Steiner and informed him that it was illegal to be intoxicated in public. Steiner responded aggressively, calling Kempster a derogatory term and threatening to assault and kill him. Once it became apparent that Steiner would not cooperate, Kempster told Steiner that he was permanently trespassed from the reservation. Eventually Steiner and Kempster left the store. Steiner then spit on Kempster's face. Kempster informed Steiner that he was being detained, but Steiner fought against being handcuffed and tried to spit on Kempster again.

Steiner was charged with third degree assault of a law enforcement officer and felony harassment against a criminal justice participant.

The trial took place in November 2021. The trial court scheduled a CrR 3.5 hearing for the first day of trial to address the admissibility of Steiner's statements. Kempster testified at the hearing.

At trial, the prosecutor stated during opening statement that "[t]his case really comes down to one person's decision to show contempt, to show his frustration, to show his annoyance, his anger, what have you, at being contacted by a law enforcement officer." Report of

No. 56603-6-II

Proceedings (RP) at 191. The prosecutor also stated that Steiner used derogatory slurs and threatened Kempster because he was an officer. Steiner did not object to these comments.

The prosecutor repeated this theme during closing argument, stating that the case “boils down to the contempt of [sic] disrespect, disregard, for the rule of law, a disregard for an officer just out doing his job.” RP at 298. Steiner did not object to this statement.

The jury found Steiner guilty of third degree assault – law enforcement officer and felony harassment. At sentencing, the trial court found Steiner to be indigent and stated that only mandatory LFOs would be imposed. However, the community custody section of the judgment and sentence required Steiner to pay supervision fees as determined by the Department of Corrections.

Steiner appeals his convictions and challenges the imposition of community custody supervision fees.

ANALYSIS

A. PROSECUTORIAL MISCONDUCT

Steiner argues that the prosecutor committed misconduct in his opening statement and closing argument by attempting to inflame and to evoke an emotional response from the jury. We disagree.

To prevail on a claim of prosecutorial misconduct, a defendant must show that the prosecutor’s conduct was both improper and prejudicial in the context of all the circumstances of the trial. *State v. Zamora*, 199 Wn.2d 698, 708, 512 P.3d 512 (2022). A prosecutor cannot use arguments to inflame the jury’s passions or prejudices. *In re Pers. Restraint of Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012). However, the prosecutor is given wide latitude to assert

reasonable inferences from the evidence. *State v. Slater*, 197 Wn.2d 660, 680, 486 P.3d 873 (2021).

When the defendant fails to object at trial, a heightened standard of review requires the defendant to show that the conduct was “ ‘so flagrant and ill intentioned that [a jury] instruction would not have cured the [resulting] prejudice.’ ” *Zamora*, 199 Wn.2d at 709 (quoting *State v. Loughbom*, 196 Wn.2d 64, 70, 470 P.3d 499 (2020)).

Here, Steiner contends that the prosecutor’s statements encouraged the jury to focus on the broader social idea that police officers face aggression, disrespect, and contempt rather than focusing on the evidence presented. He claims that the statements were improper and constituted an inflammatory theme.

However, the prosecutor’s opening statement referenced only *Steiner’s* contempt for law enforcement, not the general public’s contempt. The prosecutor emphasized “one person’s” – Steiner’s – “decision to show contempt,” RP at 191. And the prosecutor’s statement in closing argument that the case “boils down to the contempt of [sic] disrespect, disregard, for the rule of law, a disregard for an officer just out doing his job,” RP at 298, clearly referred specifically to Steiner.

Further, the State’s theory was that Steiner’s contempt for law enforcement provided the motive behind the conduct that led to his assault and harassment charges. And the prosecutor could infer from the evidence that Steiner showed contempt for Kempster because he was a police officer.

The prosecutor's statements regarding Steiner's contempt were not inflammatory and were based on reasonable inferences from the evidence. Accordingly, we hold that the prosecutor's statements did not constitute misconduct.¹

B. COMMUNITY CUSTODY SUPERVISION FEES

Steiner argues, and the State concedes, that the community custody supervision fees should be stricken from the judgment and sentence. We agree.

When the trial court intends to impose only mandatory LFOs, discretionary community custody supervision fees should not be imposed. *State v. Bowman*, 198 Wn.2d 609, 629, 498 P.3d 478 (2021). Here, the trial court stated that it would impose only mandatory LFOs. This statement is inconsistent with the imposition of discretionary community custody supervision fees. Accordingly, we remand for the trial court to strike the community custody supervision fees from the judgment and sentence.

C. SAG CLAIMS

1. Challenge to Verbatim Report of Proceedings

Steiner asserts in multiple requests for relief that the verbatim report of proceedings submitted to this court in fact were not verbatim: 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 20, 21, 22, 23, 24, 29, 32, and 34. However, he does not explain how the alleged errors in transcribing the trial proceedings prejudice him on appeal. Therefore, we cannot consider these claims. RAP 10.10(e).

¹ Even if the prosecutor's statements were improper, Steiner waived his challenge by failing to object. He cannot show that the alleged misconduct was so flagrant and ill-intentioned that a jury instruction could not have cured any prejudice.

2. CrR 3.5 Hearing Claims

In requests for relief 1, 2 and 32, Steiner argues that the CrR 3.5 hearing was heard on the same day as trial and therefore did not give him a chance to prepare or testify. We disagree.

CrR 3.5(a) and (b) require the trial court to hold or set the time for the hearing at the time of the pretrial hearing and to inform the defendant that he may testify at the hearing. The trial court scheduled the CrR 3.5 hearing for the first day of trial at the pretrial hearing, four days before the trial date. During the CrR 3.5 hearing, the trial court informed Steiner of his right to testify at the hearing. We conclude that the procedure for a CrR 3.5 hearing was properly followed.

3. Claims Outside the Record

Steiner asserts throughout his SAG that the verbatim reports of the CrR 3.5 hearing and the trial were falsified, video evidence from the store was fabricated, tampered with, and/or destroyed, the jury and witnesses were tampered with, the witnesses committed perjury during their testimonies, and that three to four jurors had been used in some of his previous trials. He also claims that he received ineffective assistance of counsel because defense counsel did not address these concerns and that there was prosecutorial misconduct because the State was involved with these concerns. These claims were asserted in the following requests for relief: 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37.

But these assertions rely entirely on matters outside the record. As a result, we cannot consider them on direct appeal. *State v. Alvarado*, 164 Wn.2d 556, 569, 192 P.3d 345 (2008).

These assertions are more properly raised in a personal restraint petition. *Id.* Therefore, we decline to consider these claims.

4. Ineffective Assistance of Counsel

Steiner makes several additional ineffective assistance of counsel claims. In request for relief 8, Steiner claims that defense counsel was ineffective for failing to include him in the jury selection. In requests for relief 17, 35, and 36, Steiner claims that defense counsel ignored a note he wrote during closing argument. In request for relief 35, Steiner claims that defense counsel was ineffective for failing to ask the witnesses specific questions regarding the security cameras and for not performing background checks on the witnesses. And in request for relief 36, Steiner claims that defense counsel was ineffective for failing to hire an investigator, for not interviewing all of the witnesses, and for not attempting to receive certain video footage.

In requests for relief 30 and 34, Steiner claims ineffective assistance of appellate counsel. He requests new appellate counsel because he alleges that they did not properly prepare for his appeal.

All these ineffective assistance of counsel claims rely on matters outside of the record. Therefore, we decline to consider them. *Alvarado*, 164 Wn.2d at 569.

5. Vague Claims

In request for relief 14, Steiner questions how Kempster could be recalled to testify after he had been excused from his subpoena. But he does not explain why this was improper. In request for relief 19, Steiner asserts that there is no jury instruction 5 in the record. But he does not explain how this affected his trial or his appeal. In request for relief 26, Steiner asserts that a

defendant is denied due process when the trial court record is insufficient for appellate review. But he does not explain how the trial court record was insufficient here.

Under RAP 10.10(c), we will not consider a SAG “if it does not inform the court of the nature and occurrence of alleged errors.” Accordingly, we decline to address these claims.

6. ER 612 Claim

In request for relief 5, Steiner claims that he should receive a new trial or dismissal because Kempster was allowed to refer to his notes during his testimony at the CrR 3.5 hearing and Steiner was denied the use of his notes during trial. We disagree.

ER 612 allows a witness to use a writing to refresh their memory for the purpose of testifying. But first, the trial court must ensure that the witness needs to refresh their memory, that opposing counsel has the right to examine the writing, and that the witness is not being coached. *State v. McCreven*, 170 Wn. App. 444, 475, 284 P.3d 793 (2012). A witness is not coached if they use the writing to aid their own memory, and not to supplant it. *Id.*

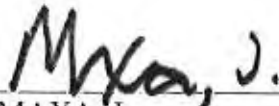
At the CrR 3.5 hearing, Kempster was providing testimony about Steiner being verbally assaultive and he needed to refer to his report in order to refresh his memory. When Steiner was denied the use of his notes, he had asked to bring them up with him to the stand generally. Steiner did not want to use the notes to refresh his memory in response to a specific question. We conclude that there was no error.

CONCLUSION

We affirm Steiner’s convictions, but we remand for the trial court to strike the imposition of community custody supervision fees from the judgment and sentence.

No. 56603-6-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, J.

We concur:



VELJACIC, J.



PRICE, J.

March 15, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 56603-6-II

Respondent,

v.

**ORDER DENYING
MOTION FOR RECONSIDERATION**

EDWARD JAMES STEINER,


Appellant.

Appellant Edward Steiner moves for reconsideration of the court's January 31, 2023 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Veljacic, Price

FOR THE COURT:



MAXA, P.J.



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Kevin A. March
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March 15, 2023

Edward Steiner
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Washington State Penitentiary
1313 N 13th Ave
Walla Walla, WA 99362

State v. Edward Steiner, Court of Appeals No. 56603-6-II

Dear Mr. Steiner:

Enclosed is a copy of the Court of Appeals' order denying your motion for reconsideration. If you wish to seek further review of your case in the Washington Supreme Court, you must file a petition for review in the Court of Appeals within 30 days of the order denying reconsideration. As noted in my previous letter, I will not file a petition for review on your behalf.

If you have any questions or concerns, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin A. March', written in a cursive style.

Kevin A. March
Attorney at Law

Enclosure



INMATE

April 12, 2023 - 6:00 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 56603-6
Appellate Court Case Title: State of Washington, Respondent v. Edward James Steiner, Appellant
Superior Court Case Number: 21-1-00239-6

DOC filing of STEINER Inmate DOC Number 393543

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The Inmate The Inmate/Filer's Last Name is STEINER.

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