69802-8

69802-8

NO. 69802-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOHN JACKSON, JR.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HAYDEN

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Defense counsel must actually and substantially assist his client in deciding whether to plead guilty. Jackson offered no evidence that he acted in self-defense beyond his own bare assertions; his counsel accordingly advised him, based on counsel's knowledge of the expected evidence, that Jackson would not likely prevail on a claim of self-defense. The trial court found that Jackson received effective assistance of counsel and that no manifest injustice had occurred when Jackson pleaded guilty. Has Jackson failed to show that the trial court erred?

2. A sentencing court may not impose a period of community custody that, when combined with the period of incarceration, results in a sentence that exceeds the statutory maximum sentence. The statutory maximum sentence for attempted assault in the first degree is 120 months; Jackson was sentenced to 120 months of incarceration along with 36 months of community custody. Should this Court accept the State's concession of error and remand for the trial court to correct the term of community custody?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant John Jackson, Jr. was charged by Information along with his co-defendant Vincent Pettie with one count of assault in the first degree.[1] CP 1-3. In a trial that was expected to last two weeks, Jackson pleaded guilty on the morning after the first day of trial testimony to attempted assault in the first degree and felony harassment. 1RP[2] 76, 131. That afternoon, Pettie pleaded guilty to burglary in the second degree and assault in the third degree. 1RP 153, 159. After pleading guilty, both defendants brought motions to withdraw their pleas. 2RP 3. As a basis to withdraw his plea, Jackson claimed that he had received ineffective assistance of counsel. 2RP 5-6. Pettie told the court that he had pleaded guilty because Jackson did so. 2RP 13-16. After multiple hearings, the trial court denied both defendants' motions. 2RP 3; 3RP 4.

At sentencing, the court imposed an agreed-upon exceptional sentence of 150 months of incarceration for Jackson. CP 32; 4RP 5.

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[1] Pettie has also appealed; the Brief of Respondent was filed on October 3, 2013 (No. 69697-1-I). This Court may want to link these cases for consideration.

[2] There are 3 volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (Sept. 10, 11, and 12, 2012); 2RP (Oct. 5, 2012); and 3RP (Dec. 12, 2012).

2. SUBSTANTIVE FACTS

The Certification for Determination of Probable Cause, Prosecutor's Case Summary, and Declaration of Deputy Prosecuting Attorney described the underlying facts of the charges.[3] CP 2-5, 93-95. In August of 2011, Jackson rented two rooms in a boarding house managed by Anthony Narancic. CP 4. Jackson was subsequently evicted, and Narancic retained Jackson's $800 deposit due to extensive damage caused to the rooms by police entering the apartment pursuant to a search warrant. CP 4, 93; 1RP 47. Jackson made several threatening phone calls to Narancic demanding his deposit "or I'm going to get you." CP 4. In the calls, Jackson referred to himself as a "gangster" and said: "Don't mess with me, or I'm going to get you." CP 4.

Narancic invited Jackson to come to his office to discuss the deposit. CP 93. Fearing for his safety during this meeting, Narancic contacted the police and requested a "stand-by," but Jackson did not appear on that day. CP 93-94. The following

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[3] Jackson stipulated that the court could consider the facts set forth in the Certification for Determination of Probable Cause and Prosecutor's Summary for purposes of the sentencing hearing. CP 40. After Jackson filed the motion to withdraw his guilty plea, the trial prosecutor submitted a declaration to the court detailing the State's anticipated evidence at trial. CP 93-95.

morning, October 4, 2011, Jackson offered a building tenant fifty dollars to call him once Narancic arrived in his office. CP 93-94. The tenant later called Jackson to let him know that Narancic was in his office. CP 94.

Narancic was seated in his office talking to two building tenants when Jackson and Pettie rushed in. CP 2, 94. Using a metal club covered in a sock, Jackson repeatedly struck Narancic on the head and shoulders. CP 4. The two building tenants in Narancic's office saw Jackson begin to strike Narancic and fled to a nearby room. CP 94. When Narancic attempted to get out of his chair, Pettie held him down while Jackson continued to hit Narancic with the metal club. CP 4. While hitting Narancic with the club, Jackson repeatedly told Narancic that he would kill him. CP 94. Jackson and Pettie then ran out of the office and got into Pettie's car. CP 4. As they were leaving, Jackson yelled back at Narancic, "I'm a gangster; I'll fucking kill you."

Jackson was later located by police while he was hiding in a storage unit. CP 4, 94. Jackson admitted to getting into a tussle with Narancic, but stated that "[i]t was a fair fight." CP 4. As a result of the assault, Narancic sustained a fractured skull and lacerations to his head and left ear. CP 5. He required 13 staples

for the cuts to his head and additional stitches to reattach his ear. CP 5. Narancic also suffered memory loss, as well as an injury to his wrist sustained while trying to shield himself from Jackson. CP 94.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY DENIED JACKSON'S MOTION TO WITHDRAW HIS PLEA OF GUILTY.

Jackson claims that the trial court should have allowed him to withdraw his guilty plea because his trial counsel did not inform him of the shifting burden of proof for a claim of self-defense. As a result, Jackson argues, he was denied effective assistance of counsel and his plea was thus involuntary. This argument should be rejected. The trial court properly denied Jackson's motion finding that Jackson voluntarily pleaded guilty and received effective assistance of counsel where there was no evidence to support a claim of self-defense beyond Jackson's own bare assertions. In any event, Jackson cannot show prejudice, as the court rejected the credibility of Jackson's claim that he would not have pleaded guilty but for counsel's allegedly deficient performance.

a. Relevant Facts.

Jackson and his co-defendant, Pettie, were both charged with assault in the first degree when their trial began. CP 1; 1RP 3. During pretrial hearings, each defendant confirmed his intended defense: Jackson planned to raise self-defense, and Pettie planned to raise defense of others. 1RP 42, 43. Pettie's trial counsel explained that Pettie would claim that he *came to the aid of the victim*, Narancic, during the assault and *attempted to separate Jackson from Narancic as Jackson assaulted Narancic.* 1RP 43. Over Jackson's objection, the court ruled that Jackson's threat to Narancic was admissible in its entirety. 1RP 66-67. As a result, Narancic was expected to testify that Jackson told him, "I'm a gangster; I'm going to fucking kill you." 1RP 66-67.

After a day of trial testimony, the prosecutor informed the court that Jackson wished to reopen plea negotiations, and she requested a recess to negotiate with Jackson. 1RP 131. After the recess, Jackson pleaded guilty to attempted assault in the first degree and felony harassment. 1RP 131. In his statement on plea of guilty, Jackson admitted to the assault and implicated Pettie in it. 1RP 135-36. Jackson also admitted that he threatened to kill Narancic. CP 37; 1RP 135-36.

At the conclusion of the plea colloquy, the court asked Jackson if he was satisfied with the legal representation provided by his trial counsel and Jackson responded that he was. 1RP 138. Jackson then confirmed to the court that he was pleading guilty because pleading guilty allowed him to benefit from a lower sentence than he would have faced if convicted of assault in the first degree. 1RP 138. Pursuant to the plea agreement, both parties were asking the court to impose an agreed-upon exceptional sentence of 180 months of incarceration. CP 30. Based on Jackson's offender score, he previously had faced a standard range sentence of 240-318 months for the crime of assault in the first degree. CP 94.

After Jackson pleaded guilty, Pettie indicated that he was also potentially interested in pleading guilty. 1RP 150. The court again recessed to allow the parties to negotiate. 1RP 153. After the recess, Pettie pleaded guilty to burglary in the second degree and assault in the third degree, offenses that allowed Pettie to avoid a "third strike." 1RP 153.

Following their guilty pleas, Jackson and Pettie both brought motions to withdraw their pleas. 2RP 5. At first, Jackson claimed ineffective assistance of counsel, asserting that: 1) his trial counsel

never asked him what happened, 2) Jackson was in a stupor during his own plea colloquy, and 3) his attorney never discussed his case with him, "never once." 2RP 8-10. Pettie stated that he had pleaded guilty because Jackson pleaded guilty and that "changed [his] perspective of the case." 2RP 4-5.

After new counsel was appointed for Jackson, Jackson abandoned his original assertions and claimed for the first time that, although he informed his original attorney that he had acted in self-defense, he and his attorney "never discussed self-defense." CP 63. Jackson stated that he was not informed "about the state's burden if I testified that I acted to defend myself." CP 63. Jackson also claimed that if he would have been aware of the State's burden of proof, he would not have pleaded guilty. CP 64.

At trial and during the plea process, Jackson was represented by Daniel Felker. CP 47-50, 90-91. In two declarations, Felker detailed his efforts in representing Jackson. CP 47-50, 90-91. In their initial meeting, Jackson "described his participation in the incident, indicating that he acted in self defense." CP 48. Felker "discussed the defense of self-defense... discussed [Jackson's] right to testify and [Felker] was aware of the likely substance of [Jackson's] testimony if he decided to testify at

trial." CP 90. Felker and Jackson did not discuss "the shifting burden of proof from the defense to the State when self defense is raised." CP 49. Felker further described his preparation of the case and discussions with Jackson:

> I reviewed the entire discovery, visited the scene of the crime and interviewed many of the State's witnesses. I had two different investigators assigned, who worked many hours on the case. I was familiar with the facts of the case and the evidence that the State would likely present. Approximately a month before trial, after I had interviewed the victim and the State's witnesses and conducted an independent investigation and evaluation of the case, Mr. Jackson asked me for my opinion on the strength of his possible defense. Based upon everything I knew, including what Mr. Jackson discussed with me, I told him that he had "a really tough case," as I did not think Mr. Jackson could avoid conviction by raising self-defense. I advised Mr. Jackson that if the prosecutor was willing to make a reasonable plea offer that he should consider it.
>
> On the third day of trial, when Mr. Jackson announced to me and the State that he wanted to plead guilty to an offer of 180 months, which had been discussed with [the prosecutor] the previous day. The parties then engaged in formal plea negotiations for the first time. Based on my evaluation of the State's case, taking into consideration Mr. Jackson's proffered defense of self-defense and my knowledge of his intended testimony, I believe that Mr. Jackson's plea was in his best interests and would save him many years in prison.

CP 90-91.

After receiving written briefing from both parties and declarations from Jackson, Felker, the prosecutor, and Jackson's new counsel, the court heard argument from both parties on Jackson's motion to withdraw his guilty plea. CP 47-71, 81-95; 3RP 1- 20. The court denied Jackson's motion and found that no manifest injustice had occurred. CP 100; 3RP 35. The court found that Jackson "has never identified any evidence that he acted in self-defense" and that "[t]here was substantial evidence that [Jackson] did not act in self-defense and was the first aggressor." CP 99; 3RP 29, 33, 35.

The court found that Jackson received effective assistance of counsel and "appropriate advice" from Felker. CP 100; 3RP 33. The court determined that Felker's statements in his declaration were credible and that Felker:

> [D]iscussed self-defense with the defendant, discussed the defendant's potential testimony with the defendant, and conveyed to the defendant that while he could assert self-defense, the State would easily disprove that assertion. While Mr. Felker may not have used the exact verbage of a 'shifting burden of proof,' Mr. Felker did convey to the defendant that he would not be successful in escaping conviction by claiming self-defense.

CP 99-100.

The court dismissed the truthfulness of Jackson's statements to the court: "I find that much of what he says is not at all credible." CP 99; 3RP 33. Importantly, the court rejected Jackson's claim that he would not have pleaded guilty but for Felker's allegedly deficient performance and found that Jackson "has failed to credibly prove that he was prejudiced by any alleged deficient performance." CP 100. The court concluded that Jackson's arguments to withdraw his guilty plea were a "sham" motivated by "buyer's remorse." 3RP 34.

b. Jackson Received Effective Assistance Of Counsel.

A court must allow a guilty plea to be withdrawn if withdrawal is necessary to correct a manifest injustice. CrR 4.2(f). There are four possible indicia of a "manifest injustice": (1) the denial of effective counsel, (2) the plea was not ratified by the defendant, (3) the plea was involuntary, or (4) the plea agreement was not kept by the prosecution. State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974). While generally the trial court's decision to allow a defendant to withdraw a guilty plea is reviewed for abuse of discretion, claims of ineffective assistance of counsel are reviewed

de novo because they present mixed questions of law and fact. State v. A.N.J., 168 Wn.2d 91, 109, 225 P.3d 956 (2010).

A criminal defendant has a constitutional right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The Sixth Amendment promises only the right to effective counsel; it "does not guarantee the right to perfect counsel[.]" Burt v. Titlow, 571 U.S. ___, 2013 WL 5904117 at *7 (Nov. 5, 2013). The benchmark for judging a claim of ineffective assistance of counsel is whether counsel's conduct "so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686.

The defendant bears the burden of establishing ineffective assistance of counsel. Id. at 687. The inquiry in determining whether counsel's performance was constitutionally deficient is whether counsel's assistance was reasonable considering all the circumstances. Id. at 688. In claims of ineffective assistance of counsel, counsel should be "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable judgment." Titlow, 571 U.S. *6 (quoting Strickland, 466 U.S. at 690).

To prevail on a claim of ineffective assistance of counsel, the defendant must meet *both* prongs of a two-part standard: (1) counsel's representation was deficient, meaning it fell below an objective standard of reasonableness based on consideration of all the circumstances (the performance prong); and (2) the defendant was prejudiced, meaning there is a reasonable probability that the result of the proceeding would have been different (the prejudice prong). Strickland, 466 U.S. at 687; State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If the court decides that either prong has not been met, it need not address the other prong. State v. Garcia, 57 Wn. App. 927, 932, 791 P.2d 244 (1990).

The Strickland test applies to claims of ineffective assistance in the plea process. In re Personal Restraint of Peters, 50 Wn. App. 702, 703, 750 P.2d 643 (1988). To satisfy the "performance" prong the defendant must show that his counsel failed to "actually and substantially assist his client in deciding whether to plead guilty." State v. McCollum, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997). In order to satisfy the "prejudice" requirement, the defendant must show that, but for counsel's alleged errors, he would not have pleaded guilty and would have

insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). A bare allegation that a defendant would not have pleaded guilty under the circumstances is insufficient to establish prejudice under the Strickland test. In re Personal Restraint of Peters, 50 Wn. App. 702, 708, 750 P.2d 643 (1988).

Where the alleged error of counsel is a failure to advise the defendant of a potential defense to the crime charged, the resolution of the "prejudice" inquiry will depend largely on whether the defense likely would have succeeded at trial. Hill, 474 U.S. at 59. The prediction of the outcome of a possible trial should be made objectively, without regard for the "idiosyncrasies of the particular decisionmaker." Id. at 59-60.

In order for a guilty plea to be accepted as knowing, voluntary, and intelligent, the accused must be apprised of the nature of the charge against him. In re Personal Restraint of Montoya, 109 Wn.2d 270, 278, 744 P.2d 340 (1987). At a minimum, the defendant must be aware of the acts and of the requisite state of mind in which they must be performed to

constitute a crime. Id. at 278; State v. Osborne, 102 Wn.2d 87, 93, 684 P.2d 683 (1984); see United States v. Frye, 738 F.2d 196, 199 (7th Cir. 1984) (remanded for evidentiary hearing where defendant did not admit to intent to steal, an essential element of the crime).

Before pleading guilty, a defendant should be made aware of possible defenses, at least where the defendant makes known facts that might form the basis of such defenses. Frye, 738 F.2d at 199. A claim of self-defense is available only if the defendant offers some *credible evidence* tending to prove that defense. State v. Haydel, 122 Wn. App. 365, 370, 95 P.3d 760 (2004). Where there is no evidence that would support a claim of self-defense, the trial court does not have an obligation to inform a defendant of the burden of proof for self-defense. Montoya, 109 Wn.2d at 280.

Jackson fails to meet his burden on both prongs of the Strickland test. First, Jackson cannot show deficient performance because his attorney actually and substantially assisted him in deciding whether to plead guilty. Jackson's counsel provided reasonable advice based on his knowledge of the strength of the evidence against Jackson, Jackson's intended testimony, and counsel's own professional judgment. CP 90-91. Given the totality of the circumstances, counsel's advice was reasonable and, as

counsel noted, likely resulted in Jackson serving fewer years in prison. CP 91.

Neither can Jackson prevail on the "prejudice" prong. Jackson cannot show that but for his counsel's allegedly deficient advice, the result of the proceeding would have been different. Although Jackson claims that he would not have pleaded guilty, his bare assertion is not sufficient to satisfy the "prejudice" prong. In re Peters, 50 Wn. App. at 708. Moreover, the trial court specifically rejected this assertion in finding that Jackson failed to credibly prove that he was prejudiced by his counsel's advice. CP 99 (Finding of Fact 3), CP 100 (Conclusion of Law 2); 3RP 33-34. Credibility determinations are for the trial court and are not reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Crucial to the resolution of the "prejudice" inquiry here, Jackson's claim of self-defense, viewed objectively, would not have succeeded at trial. The trial court found that Jackson's counsel "credibly represented" that Jackson "could not have successfully claimed that he acted in self-defense." CP 99 (Finding of Fact 5). Additionally, the court found, "There was substantial evidence that

the defendant did not act in self-defense and was the first aggressor." CP 99 (Finding of Fact 6).

The court's findings are objectively bolstered by the facts where there is no *credible* evidence to support a claim that Jackson acted in self-defense.[4] Jackson made several threatening phone calls to Narancic before the assault. CP 93; 3RP 31. Jackson offered a tenant money in exchange for information on when Narancic would be in his office. CP 94; 3RP 31. Jackson then arrived at Narancic's office with a metal club and Pettie. CP 94; 3RP 30-31. Two people were with Narancic when Jackson arrived; they saw Jackson begin to strike Narancic before they fled from the room. CP 94. Jackson repeatedly struck Narancic in the head using a metal pipe and while threatening to kill him. CP 90; 3RP 30-31. Narancic required staples to close wounds on his head and stitches to reattach his ear. CP 5. Narancic's wrist was also injured from trying to shield himself from Jackson. CP 94.

There is no evidence that Narancic was armed or that he engaged in any threatening behavior. Indeed, Jackson's co-defendant was expected to testify that he was trying to defend

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[4] In order to raise self-defense, there must be some evidence that the defendant reasonably believed he was about to be injured and that the defendant used no more force than necessary to prevent the injury. RCW 9A.16.020(3); State v. Kyllo, 166 Wn.2d 856, 863, 215 P.3d 177 (2009).

Narancic from Jackson during the assault – not that Jackson was trying to defend himself from Narancic. 1RP 43. Although Jackson points to his own claims that he acted in self-defense,[5] beyond his bare assertions, there is no evidence that would have made a credible self-defense claim available for Jackson. Viewed objectively, it is inconceivable that Jackson would have prevailed on a claim of self-defense at trial.

Jackson's attempt to distinguish his case from Montoya and Haydel is unpersuasive. In Montoya, the defendant claimed that his guilty plea was involuntary because he was never informed of the burden of proof on the issue of self-defense. 109 Wn.2d at 279. Montoya told police that although he could not remember exactly what happened, he was defending himself. Id. The court found that there was no potential evidence to support a claim of self-defense and found Montoya's bare assertion unpersuasive. Id. at 280. Bare assertions by the defendant are not sufficient to require that the defendant be informed of the shifting burden of proof for self-defense. Id. Because Montoya's claim of self-defense was only supported by his own bare assertions,

[5] After fleeing from Narancic's office after the assault and upon being located while hiding in a storage unit, Jackson told a police officer that he got into a tussle with Narancic, but said it was "a fair fight." CP 4.

the court held that there was no obligation to inform him of the burden of proof for self-defense. Id. at 279-80. Like in Montoya's case, Jackson's claim of self-defense is based on no more than his own bare assertions, and thus there was no obligation to inform him of the burden of proof for self-defense.

Similarly, in Haydel, this Court found that there was no need to advise the defendant on the burden of proof for self-defense where there was no evidence of self-defense. 122 Wn. App. at 371.[6] Although Haydel indicated that he was planning to claim self-defense if his case proceeded to trial, this Court found that there was no evidence of self-defense. Id. This Court also noted that Haydel was aware of the State's burden for a claim of self-defense because his defense counsel had informed him of that burden prior to his plea. Id. As in Haydel, there is no evidence to

[6] Jackson cites Haydel for the proposition that: "When there are facts that might support the basis of a self-defense claim, the defendant should be made aware of the state's burden to disprove the offense beyond a reasonable doubt, once the defendant has offered some evidence to support the defense." Brief of Appellant at 16. However, in Haydel this Court did not reach the issue of whether Haydel needed to be informed of the State's burden to disprove self-defense. Rather, this Court simply held that "Haydel's rights were fully protected" where there was no evidence to support a claim of self-defense, in any event, Haydel's counsel had informed him of the State's burden of proof. Id. at 371-72.

support Jackson's claim of self-defense, and thus there was no requirement to advise Jackson of the burden of proof for self-defense. Although there was no requirement for Jackson to be so informed, the record shows that Jackson's counsel discussed the defense of self-defense with Jackson and "appropriately" advised him that he "had a really tough case," and likely could not avoid conviction by raising self-defense. CP 90; 3RP 33. Moreover, based on Felker's declaration, the court found that Felker "discussed self-defense with the defendant, discussed the defendant's potential testimony with the defendant, and conveyed to the defendant that while he could assert self-defense, the State would easily disprove that assertion." CP 99-100 (Finding of Fact 7).

Jackson received effective assistance of counsel and he pleaded guilty knowingly, voluntarily, and intelligently. The trial court did not err in finding that no manifest injustice occurred when Jackson pleaded guilty, and in denying his motion to withdraw his guilty plea. This Court should affirm his convictions.

2. THE STATE CONCEDES THAT JACKSON WAS IMPROPERLY SENTENCED TO A PERIOD OF COMMUNITY CUSTODY THAT, TOGETHER WITH THE PERIOD OF INCARCERATION, EXCEEDS THE STATUTORY MAXIMUM.

Jackson correctly claims that he was sentenced to a period of community custody which, when combined with the period of incarceration, exceeds the statutory maximum sentence. The State concedes this error and requests that this case be remanded for the trial court to strike the term of community custody.

The length of the term of community custody in a case such as this one is governed by statute:

> The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

RCW 9.94A.701(9).

In State v. Boyd, the Washington Supreme Court held that, based on this statute, a trial court cannot impose a period of community custody that, when combined with the period of incarceration, results in a sentence that exceeds the statutory maximum sentence. 174 Wn.2d 470, 275 P.3d 321 (2012). Additionally, the trial court, not the Department of Corrections, is

required to reduce the term of community custody to avoid a sentence that exceeds the statutory maximum. Id.

Jackson was sentenced to the maximum sentence of 120 months for attempted assault in the first degree. Thus, no term of community custody may be imposed, in order not to exceed the statutory maximum. This case should be remanded to the trial court to correct the term of community custody.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Jackson's convictions. The State also asks this Court to remand this case to the trial court to strike the term of community custody.

DATED this 21 day of November, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana M. Nelson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JOHN JACKSON, JR., Cause No. 69802-8 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 20 day of November, 2013

Name
Done in Seattle, Washington