FILED
Apr 20, 2016
Court of Appeals
Division I
State of Washington

FILED
MAY 11 2016
WASHINGTON STATE
SUPREME COURT

SUPREME COURT NO. 93115-1

NO. 73155-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TARAILLE CHESNEY,

Petitioner.

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

The Honorable Timothy A. Bradshaw, Judge

PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION 1

B. ISSUES PRESENTED FOR REVIEW 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED 4

THIS COURT SHOULD ACCEPT REVIEW BECAUSE THE COURT OF APPEALS' DECISION CONFLICTS WITH THE CRIMINAL RULES, RAP 7.2(e), AND THIS COURT'S DECISION IN FRIEDLUND. 4

E. CONCLUSION 8

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

In re Detention of LaBelle
107 Wn.2d 196, 728 P.2d 138 (1986) 7

State v. Agee
89 Wn.2d 416, 573 P.2d 355 (1977) 7

State v. Chesney
No. 73155-6-I, filed February 29, 2016 1

State v. Friedlund
182 Wn.2d 388, 341 P.3d 280 (2015) 1, 2, 3, 5, 6, 7, 8

State v. Garvin
166 Wn.2d 242, 207 P.3d 1266 (2009) 7

State v. Greco
57 Wn. App. 196, 787 P.2d 940 (1990) 4

State v. Head
136 Wn.2d 619, 964 P.2d 1187 (1998) 4

State v. Hescock
98 Wn. App. 600, 989 P.2d 1251 (1999) 5

State v. Vailencour
81 Wn. App. 372, 914 P. 2d 767 (1996) 4

RULES, STATUTES AND OTHER AUTHORITIES

CrR 3.5 .... 1, 2

CrR 3.6 .... 1, 2, 3, 4, 6, 7

CrR 6.1 .... 1, 2, 3, 4, 6

RAP 7.2 .... 1, 2, 3, 6

TABLE OF AUTHORITIES (CONT'D)

Page

RAP 13.4 3

RCW 9.94A.535 5

RCW 9.94A.585 6

Sentencing Reform Act 3, 5

CONST. art. 1, § 22 8

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Taraille Chesney, the appellant below, asks this Court to grant review of the court of appeals' unpublished decision in State v. Chesney, No. 73155-6-I, filed February 29, 2016 (Appendix A). The court of appeals denied Chesney's motion for reconsideration on April 20, 2016 (Appendix B).

B. ISSUES PRESENTED FOR REVIEW

CrR 3.6(b) mandates that, after an evidentiary hearing on a motion to suppress, the trial court "shall enter written findings of fact and conclusions of law." CrR 6.1(d) likewise requires entry of written findings of fact and conclusions of law after a bench trial. The trial court failed to enter written CrR 3.6(b) and 6.1(d) findings and conclusions until after Chesney filed his opening brief on appeal. The court of appeals refused to remand, concluding RAP 7.2(e) did not apply and Chesney failed to show prejudice from the belatedly entered findings.

Does the court of appeals' decision conflict with RAP 7.2(e), the plain language of CrR 3.6(b) and 6.1(d), as well as this Court's decision in State v. Friedlund, 182 Wn.2d 388, 341 P.3d 280 (2015)?

C. STATEMENT OF THE CASE

The State charged Chesney with one count of unlawful possession of cocaine. CP 1-5. The trial court held CrR 3.5 and 3.6 hearings on the

parties' motions, and made rulings adverse to Chesney on both. RP 62-63, 70-75; CP 10-14, 29-32. The court entered written findings of facts and conclusions of law pursuant to CrR 3.5, but did not enter any written CrR 3.6 findings and conclusions. CP 29-32.

Chesney then waived his right to a jury trial and agreed to a stipulated facts bench trial. RP 95-98; CP 15-18. The court found Chesney guilty, relying in part on the testimony, findings, and conclusions from the CrR 3.5 and 3.6 hearings. RP 98-99; CP 15-16. The court did not enter any written CrR 6.1(d) findings and conclusions following the bench trial.

Chesney appealed, arguing the trial court's failure to comply with CrR 3.6(b) and CrR 6.1(d) required remand for entry of written findings of fact and conclusions of law. CP 45. Thereafter, the State requested the trial court enter written findings. The trial court did so on August 21, 2015, without requesting permission to do so from the court of appeals under RAP 7.2(e). Br. of Resp't, Appendix A. The State then designated these belated written findings as supplemental clerk's papers. CP 69-90. In its response brief, the State argued these findings were properly before the court of appeals and remand was therefore unnecessary. Br. of Resp't, at 2-4.

Chesney asserted the trial court lacked authority to enter belated findings and conclusions under RAP 7.2(e) and this Court's decision in Friedlund. Reply Br., at 1-2. Chesney accordingly asked the Court of

Appeals to vacate the belatedly entered findings and remand to the trial court for proper entry of written findings and conclusions. Reply Br., at 2.

The court of appeals rejected Chesney's argument, holding the State "properly supplemented the appellate record." Opinion, at 4. The court concludes "findings and conclusions may be submitted and entered even while an appeal is pending if the defendant is not prejudiced by the belated entry of findings." Opinion, at 2. The court reasoned "no effective relief is available to Chesney" because "the trial court would enter the same findings and conclusions" on remand. Opinion, at 4.

The court of appeals acknowledged this Court held in Friedlund that "[b]ecause the trial court failed to obtain our permission prior to entering its written findings, entering the findings violated RAP 7.2(e)." Opinion, at 3-4 (quoting Friedlund, 182 Wn.2d at 396). The court of appeals nevertheless believed Friedlund was "inapposite" because the Friedlund Court "based its conclusion on the unique policy concerns underlying the Sentencing Reform Act (SRA)." Opinion, at 4.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

THIS COURT SHOULD ACCEPT REVIEW BECAUSE THE COURT OF APPEALS' DECISION CONFLICTS WITH THE CRIMINAL RULES, RAP 7.2(e), AND THIS COURT'S DECISION IN FRIEDLUND.

The court of appeals' decision is in direct conflict with RAP 7.2(e), the plain language of CrR 3.6(b) and CrR 6.1(d), and this Court's decision in Friedlund. This Court's review is warranted under RAP 13.4(b)(1). Further, timely entry of written findings of fact and conclusions of law after suppression hearing and after a bench trial safeguards a criminal defendant's right to appeal and allows for meaningful appellate review. This Court's review is therefore also warranted under RAP 13.4(b)(3) and (b)(4), because this is a significant question of constitutional law and an issue of substantial public interest.

After an evidentiary hearing on a motion to suppress, the trial court "shall enter written findings of facts and conclusions of law." CrR 3.6(b) (emphasis added). Likewise, a trial court sitting as the trier of fact must enter written findings of fact and conclusions of law: "In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated." CrR 6.1(d) (emphasis added); accord State v. Head, 136 Wn.2d 619, 622-26, 964 P.2d 1187 (1998). The trial court and the prevailing party share

the responsibility to see that appropriate findings are entered. See State v. Vailencour, 81 Wn. App. 372, 378, 914 P. 2d 767 (1996).

"Without comprehensive, specific written findings, the appellate court cannot properly review the trial court's resolution of the disputed facts and its application of the law to those facts." State v. Greco, 57 Wn. App. 196, 204, 787 P.2d 940 (1990). The court's oral findings are not binding and cannot replace written findings. Head, 136 Wn.2d at 622; State v. Hescock, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). A defendant should not "be forced to interpret an oral ruling in order to appeal his or her conviction." Head, 136 Wn.2d at 624. Thus, the proper remedy is to vacate the judgment and sentence and remand to the trial court for entry of written findings and conclusions. Id. at 624-26.

In Friedlund, this Court considered two consolidated appeals in which the trial courts made oral findings but failed to enter written findings articulating the reasons for imposing an exceptional sentence. 182 Wn.2d at 391-92. When a trial court imposes an exceptional sentence, the SRA "requires the court to 'set forth the reasons for its decision in written findings of fact and conclusions of law.'" Id. at 394 (emphasis in original) (quoting RCW 9.94A.535).

The Friedlund Court concluded that even where a trial court makes comprehensive oral findings, failure to enter written findings "ignores the

plain language of the statute." Id. Lack of written findings "also deprive[s] defendants of the finality accorded by the inclusion of written findings in the court's formal judgment and sentence." Id. Therefore, this Court held, "[t]he remedy for a trial court's failure to enter written findings of fact and conclusions of law is to remand the case for entry of those findings and conclusions." Id. at 395.

In Friedlund's case, the trial court entered belated written findings, several months after the supreme court accepted review. Id. at 393, 395. But RAP 7.2(e) limits the superior court's authority to modify a criminal judgment. Id. The rule "explicitly requires the superior court to obtain permission from the appellate court before making any determination that would 'change a decision then being reviewed by the appellate court.'" Id. at 395-96 (quoting RAP 7.2(e)). A trial court's belated entry of findings "alters the decision under review." Id. at 396. As such, this Court held "the trial court lacked authority to enter its findings under RAP 7.2(e)" without first obtaining the appellate court's permission. Id. at 395.

In reaching this conclusion, this Friedlund court explained "[a] contrary holding would deprive Friedlund of his right to appeal." Id. RCW 9.94A.585(2) gives defendants the right to appeal an exceptional sentence. Id. Given the belated entry of findings, "Friedlund had no opportunity to appeal the written findings undergirding his exceptional sentence." Id. This

Court accordingly denied the State's motion to supplement the record with the trial court's belatedly entered findings. Id.

The reasoning and rule of Friedlund apply with equal force to CrR 3.6(b) and CrR 6.1(d) findings. A court's written findings essentially define the scope of appellate review. This Court has explained:

> The purpose of the requirement of findings and conclusions is to insure the trial judge "has dealt fully and properly with all the issues in the case before he decides it and so that the parties involved and this court on appeal may be fully informed as to the bases of his decision when it is made."

In re Detention of LaBelle, 107 Wn.2d 196, 218-19, 728 P.2d 138 (1986) (quoting State v. Agee, 89 Wn.2d 416, 421, 573 P.2d 355 (1977)). Written findings ensure "meaningful review." Id. at 218.

Indeed, when reviewing the denial of a CrR 3.6 motion, an appellate court must determine whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Likewise, it makes no sense to actually enforce the written findings requirement with regard to exceptional sentences but not with bench trials. Just like an exceptional sentence, a criminal defendant has the right to appeal his conviction after a bench trial. RAP 2.2(a). Like the petitioners in Friedlund, Chesney was effectively deprived "of his right to appeal" without written findings. Friedlund, 182 Wn.2d at 396.

"In criminal prosecutions the accused shall have . . . the right to appeal in all cases." WASH. CONST. art. 1, § 22. The criminal rules require trial courts to enter written findings after a suppression hearing and after a bench trial for a reason: to enable appellate review. Without those findings, a criminal defendant's ability to challenge a trial court's decision is severely hampered, burdening his or her right to appeal. The court of appeals' decision cannot be sustained in light of Friedlund.

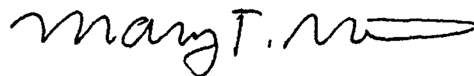
E. CONCLUSION

Chesney respectfully requests that this Court grant review, apply the rule of Friedlund, vacated the belatedly entered findings, and remand to the trial court for proper entry of the written findings.

DATED this 20th day of April, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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Appendix A

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 FEB 29 AM 10: 5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,	)	NO. 73155-6-I
v.	)	DIVISION ONE
TARAILLE DUJUAN CHESNEY,	)	UNPUBLISHED OPINION
Appellant.	)	FILED: February 29, 2016

LAU, J. — Taraille Chesney appeals his conviction on one count of cocaine possession following a stipulated facts bench trial. He contends the trial court failed to timely enter written findings of fact and conclusions of law following a CrR 3.6 hearing and a bench trial under CrR 6.1. We conclude that Chesney suffered no prejudice from the court's entry of delayed findings of fact and conclusions of law. We affirm the judgment and sentence.

FACTS

On December 26, 2013, Taraille Chesney was charged on one count of violating the Uniform Controlled Substances Act for possession of cocaine. Before trial, the trial court granted the State's CrR 3.5 motion and denied Chesney's CrR 3.6 motion.

Chesney then waived his right to a jury trial and agreed to a bench trial on stipulated facts. The trial court found Chesney guilty as charged and sentenced him to a 6-month residential treatment-based alternative to be followed by 24 months of community custody. At sentencing, the trial court filed its written findings of fact and conclusions of law for the CrR 3.5 hearing. Chesney appealed the judgment and sentence, arguing the trial court failed to enter written findings of fact and conclusions of law after the CrR 3.6 hearing and the bench trial. The trial court submitted its written findings and conclusions under CrR 3.6 and CrR 6.1(d) while the appeal was pending.

ANALYSIS

Chesney asks us to remand for proper entry of written findings and conclusions. We decline to grant this relief because he shows no prejudice from the trial court's delayed entry of its findings and conclusions.

Both CrR 3.6(b) and CrR 6.1(d) require the trial court to enter written findings of fact and conclusions of law. CrR 3.6(b), 6.1(d); see also, State v. Head, 136 Wn.2d 619, 621–22, 964 P.2d 1187 (1998). Typically, "the failure to enter written findings of fact and conclusions of law . . . requires remand for entry of written findings and conclusions." Head, 136 Wn.2d at 624. Because the trial court eventually entered written findings of fact and conclusions of law, remand is unnecessary here. Although the practice of submitting late findings of fact and conclusions of law is disfavored, findings and conclusions may be submitted and entered even while an appeal is pending if the defendant is not prejudiced by the belated entry of findings. State v. McGary, 37 Wn. App. 856, 861, 683 P.2d 1125 (1984). "We will not infer prejudice . . . from delay in entry of written findings of fact and conclusions of law." Head, 136 Wn.2d

at 625. Rather, "a defendant might be able to show prejudice resulting from the lack of written findings and conclusions where there is strong indication that findings ultimately entered have been 'tailored' to meet issues raised on appeal." Head, 136 Wn.2d at 624–25.

Chesney has failed to show any prejudice here. He never argues that the trial court's untimely findings were tailored to address issues on appeal. Further, we note that the language of the trial court's findings is consistent with its oral rulings following both the CrR 3.6 hearing and the bench trial under CrR 6.1. See State v. Cannon, 130 Wn.2d 313, 329–30, 922 P.2d 1293 (1996) (finding no prejudice when late-filed findings and conclusions were consistent with the trial court's oral ruling). The trial court found Chesney guilty based on a stipulated facts trial. Under these circumstances, Chesney cannot show prejudice and is therefore not entitled to appellate relief.

In his reply brief, Chesney argues that the trial court lacked the authority to submit its untimely findings and conclusions because it never sought the permission of this court under RAP 7.2(e). RAP 7.2(e) ("If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision."). Chesney relies on State v. Friedlund, 182 Wn.2d 388, 341 P.3d 280 (2015). In Friedlund, the court held that the "entry of written findings is essential when a court imposes an exceptional sentence" and remanded for entry of written findings. Friedlund, 182 Wn.2d at 393–94. The court denied pending motions to supplement the record with the trial court's belated findings, stating that "[b]ecause the trial court failed to obtain our

permission prior to entering its written findings, entering the findings violated RAP 7.2(e)." Friedlund, 182 Wn.2d at 396.

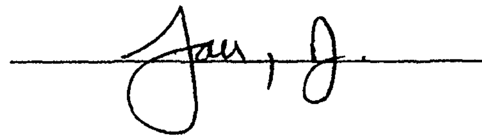
Unlike this case, Friedlund addressed "whether an on-the-record oral ruling may substitute for written findings when a trial court imposes an exceptional sentence . . . outside the standard range for an offense." Friedlund, 182 Wn.2d at 390. The court based its conclusion on the unique policy concerns underlying the Sentencing Reform Act (SRA). For example, the court stated that "[w]ithout written findings, the Sentencing Guidelines Commission and the public at large could not readily determine the reasons behind exceptional sentences, greatly hampering the public accountability that the SRA requires." Friedlund, 182 Wn.2d at 395. Further, the court noted that permitting the parties to supplement the record with late-filed findings would deprive the defendant his right to appeal an exceptional sentence under RCW 9.94A.585(2). Friedlund is inapposite.

Finally, Chesney's appeal is arguably moot because remand would serve no purpose. See Snohomish v. State, 69 Wn. App. 655, 660, 850 P.2d 546 (1993) (An appeal is moot if the court can no longer provide effective relief). Here, the State obtained written findings and conclusions under CrR 3.6 and CrR 6.1 and properly supplemented the appellate record with those findings and conclusions. On remand, the trial court would enter the same findings and conclusions. Therefore, no effective relief is available to Chesney.

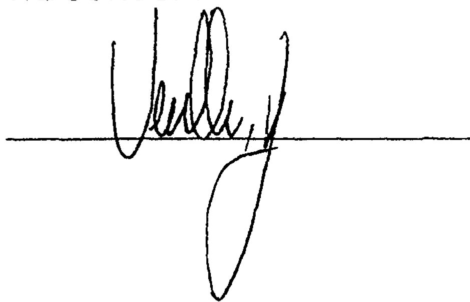
No. 73155-6-I/5

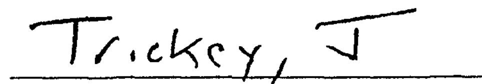
CONCLUSION

We affirm the judgment and sentence.



WE CONCUR:





Appendix B

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STATE OF WASHINGTON
2016 APR 20 AM 11: 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

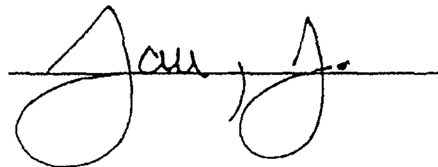
STATE OF WASHINGTON, Respondent, v. TARAILLE DUJUAN CHESNEY, Appellant.	)	NO. 73155-6-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Taraille Chesney has filed a motion for reconsideration of the court's opinion filed on February 29, 2016. The panel has determined that the motion should be denied; therefore, it is

ORDERED that the motion for reconsideration is denied.

Dated this 20th day of April 2016.

FOR THE PANEL:



IN THE SUPREME COURT OF HE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. TARAILLE CHESNESY, Petitioner.	)))))))))	SUPREME COURT NO. ______ COA NO. 73155-6-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20TH DAY OF APRIL 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] TARAILLE CHESNESY
DOC NO. 887283
WASHINGTON CORRECTIONS CENTER
P.O. BOX 900
SHELTON, WA 9858

SIGNED IN SEATTLE WASHINGTON, THIS 20TH DAY OF APRIL 2016,

x Patrick Mayovsky

NIELSEN, BROMAN & KOCH, PLLC

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