



FILED
AUG 02, 2016
Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

No. 34203-4-III

Respondent,

vs.

MOTION FOR
WITHDRAWAL

ALFRED EARLE BROWN,

(RAP 18.3)

Appellant.

1. **Identity:** This Motion is filed by Andrea Burkhardt, attorney of record for the Appellant.
2. **Relief Sought:** Appointed counsel for Appellant requests permission to withdraw pursuant to RAP 18.3(a)(2).
3. **Facts Relevant to Motion:** On April 8, 2016, Andrea Burkhardt was appointed to represent Appellant Alfred Earle Brown on appeal from the Felony Judgment and Sentence entered on February 4, 2016. In reviewing the case for appealable issues, counsel for Appellant took the following actions:
 - a. Read and reviewed the verbatim report of proceedings from the motion hearings of January 8, 2016, January 15, 2016, and January 22, 2016; the

1 pretrial hearing and guilty plea of January 25, 2015; and the sentencing
2 hearing of February 4, 2016;

- 3 b. Read and reviewed all of the clerk's papers;
- 4
- 5 c. Researched all pertinent legal issues and conferred with other attorneys
- 6 concerning legal and factual bases for appellate review;
- 7
- 8 d. Wrote to Appellant explaining the procedure and reason for this motion, and
- 9 informing him of his right to file a pro se supplemental brief; and
- 10 e. Served Appellant with a copy of this motion.

11 4. Grounds for Relief Requested: RAP 18.3(a) allows counsel appointed to
12 represent an indigent defendant to withdraw if counsel can find no basis for a
13 good faith argument on review and sets forth the procedures to be followed in
14 making such a motion. Further due process requirements are established by
15 *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 811 (1963) and
16 explained in *State v. Theobald*, 78 Wn.2d 184, 470 P.2d 188 (1970).

17 5. Memorandum of Matters in the Record that Might Arguably Support Review:

18 a. Potential Assignments of Error

- 19 i. Involuntary waiver of *Miranda* rights
- 20
- 21 ii. Involuntary guilty plea
- 22
- 23 iii. Ineffective assistance of counsel
- 24
- 25 iv. Sentence outside the standard range
- 26 v. Statements at sentencing by persons other than the victim

1
2 **b. Statement of the Case**

3 Alfred Brown was charged with two counts of assault in the second degree –
4 domestic violence as a persistent offender. CP 22-23. At a pretrial hearing, the State's
5 law enforcement witness testified that he was dispatched to a report of assault. RP 27.
6 He made contact with Joann¹ Brown, Alfred's mother, and observed bruising on her
7 face, arms, and neck. RP 22, 27-29. Joann told him that Alfred had assaulted her, but
8 she initially told the doctor she fell down the stairs. RP 30. She explained that she was
9 afraid Alfred would kill her if she told the doctor what actually happened. RP 31. Joann
10 appeared to be frightened and expressed concern about Alfred getting out of jail,
11 reporting that he would kill her if he found out she told the police what happened. RP
12 32.
13

14
15 Alfred was then arrested on an outstanding felony warrant and handcuffed. RP
16 23-24. The arresting officer observed that Alfred was highly intoxicated and obtained a
17 PBT reading of .419; he was too drunk to be booked into the jail and was taken to the
18 hospital instead. RP 23, 34, 40. While the officer attempted to read the *Miranda*
19 warnings, Alfred continually interrupted. RP 24-25. The officer then asked Alfred about
20 Joann's injuries, and Alfred replied that she fell down the stairs. RP 25.
21

22 At a 3.5 pretrial hearing, Alfred testified that he recalled being read his *Miranda*
23 rights and understood them. RP 45. However, he did not know police were accusing
24 him of anything other than violating his probation. RP 45. Alfred described the police
25

26

¹ Since the Appellant and his mother share the same last name, this motion will refer to them by their first names to avoid confusion. No disrespect is intended.

1 questioning as an attempt to bully him and said that he would have invoked his rights if
2 he had felt guilty. RP 46-47. He testified that he felt coerced because “[w]hen
3 somebody accuses you of something, you answer back.” RP 48. He denied being too
4 intoxicated to know what was going on. RP 52.

5
6 The trial court found that Alfred voluntarily spoke to the police and his statement
7 would be admissible. RP 53. Subsequently, Alfred entered an *Alford* plea to an
8 amended information charging him with assault in the third degree and harassment. CP
9 28, 29. During the colloquy with the court, Alfred acknowledged that he had reviewed
10 the guilty plea statement with his attorney and he understood it. RP 61. He stated that
11 he felt the circumstances were coercive, but he was making a conscious decision to
12 plead guilty on the advice of his attorney and he was entering the guilty plea freely and
13 voluntarily. RP 62. The trial court reviewed the terms of the plea agreement with the
14 State, which was for a maximum term of 60 months on each count, to run consecutive,
15 as an exceptional sentence, and a separate case would be dismissed. Brown
16 acknowledged that he agreed to the exceptional sentence recommendation. RP 63.

17
18 At sentencing, the court heard and reviewed victim impact statements from
19 Joann, Marilyn Brown (Alfred’s sister), and Sarah Lancaster, a family friend. RP 69-73.
20 The State explained that the initial charge would have been Alfred’s third strike offense,
21 and advised the court that the parties’ agreement was for a maximum sentence outside
22 the standard range on both offenses, run consecutively for a total of 120 months. RP
23 74. Alfred’s attorney confirmed the agreement to the court and requested that the court
24 consider allowing Alfred to communicate with Joann in writing or over the phone. RP
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1 75-76. He also confirmed that he reviewed the statement and the notices with Alfred,
2 who signed that he understood them. RP 77. Alfred exercised his right of allocution
3 and informed the court that while there had been lots of procedural mistakes and lies
4 presented, his objective was to reconcile with his mother. RP 77-80.
5

6 The trial court followed the agreement and imposed an exceptional sentence
7 upward and imposed only mandatory legal financial obligations. RP 80-81. The court
8 declined to permit contact with Joann and entered a no-contact order for five years. RP
9 84; CP 62. Brown then timely appealed. CP 64.

10 c. Authorities Pertaining to Potential Assignments of Error

11 i. Involuntary waiver of *Miranda* rights

- 12 • *State v. Reuben*, 62 Wn. App. 620, 625, 814 P.2d 1177
13 (1991)
- 14 • *Townsend v. Sain*, 372 U.S. 293, 307, 83 S. Ct. 745, 9
15 L.Ed.2d 770 (1963), *overruled on other grounds by Keeney*
16 *v. Tamayo-Reyes*, 504 U.S. 1, 112 S. Ct. 1715, 118 L.Ed.2d
17 318 (1992)

18 ii. Involuntary guilty plea

- 19 • *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23
20 L.Ed.2d 274 (1969)
- 21 • *Wood v. Morris*, 87 Wn.2d 501, 554 P.2d 1032 (1976)
- 22 • *State v. Perez*, 33 Wn. App. 258, 260-61, 654 P.2d 708
23 (1982)
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iii. Ineffective Assistance of Counsel

- *Missouri v. Frye*, __ U.S. __, 132 S. Ct. 1399, 182 L.Ed.2d 379 (2012)
- *Laffler v. Cooper*, __ U.S. __, 132 S. Ct. 1376, 182 L.Ed.2d 398 (2012)
- *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010)
- *State v. James*, 48 Wn. App. 353, 739 P.2d 1161 (1987)
- *State v. Edwards*, 171 Wn. App. 379, 294 P.3d 708 (2012)

iv. Sentence outside the standard range

- *In re Breedlove*, 138 Wn.2d 298, 979 P.2d 417 (1999)

v. Statements at sentencing by persons other than the victim

- *State v. Lindahl*, 114 Wn. App. 1, 56 P.3d 589 (2002)

For the foregoing reasons, counsel for the Appellant respectfully requests that the court grant the motion pursuant to RAP 18.3(a)(2).

Respectfully submitted this 2nd day of August, 2016.


Andrea Burkhart, WSBA #38519
Attorney for Appellant

CERTIFICATE OF MAILING

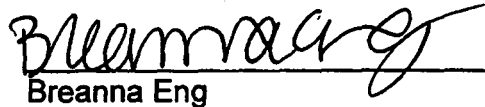
I hereby certify under penalty of perjury under the laws of the State of Washington that on the 2nd day of August, 2016, pursuant to prior agreement of the parties, I served a true and correct copy of the foregoing Motion for Withdrawal by e-mail to the following:

David B. Trefry
David.Trefry@co.yakima.wa.us

And by first class U.S. mail, postage prepaid, to the following

Alfred Earle Brown, DOC #801659
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

SIGNED this 2nd day of August, 2016 at Walla Walla, Washington.


Breanna Eng

BURKHART & BURKHART, PLLC

August 02, 2016 - 2:30 PM

Transmittal Letter

Document Uploaded: 342034-Motion for Withdrawal.pdf
Case Name: State of Washington v. Alfred Earle Brown
Court of Appeals Case Number: 34203-4
Party Respresented: Alfred Earle Brown, Appellant
Is This a Personal Restraint Petition? Yes No
Trial Court County: ____ - Superior Court # ____

Type of Document being Filed:

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- Motion for Discretionary Review
- Motion: Other
- Response/Reply to Motion: ____
- Brief
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- Affidavit of Attorney Fees
- Cost Bill / Objection to Cost Bill
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Comments:

Motion for Withdrawal

Sender Name: Andrea J Burkhart - Email: Andrea@BurkhartAndBurkhart.com