

Court of Appeal Cause No.  
77678-9-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
Respondent,

v.

BOBBY D. COLBERT,  
Appellant.

PETITION FOR REVIEW

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2018 JUN 22 AM 11:29

Bobby D. Colbert, pro se  
Stafford Creek Corr. Center  
191 Constantine Way  
Aberdeen, WA 98520

A. Identity of Appellant.

Bobby Colbert asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this motion.

B. Court of Appeals Decision.

The Court of Appeals ORDER DENYING MOTIONS TO MODIFY AND DISMISSING APPEAL was filed on June 4, 2018. A copy of the decision is in the Appendix A.

C. Issues Presented for Review.

1. Did The Court of Appeals Erroneously Dismiss The Direct Appeal On A Basis Beyond The Scope Of Review ?

a. Did The Court Of Appeals Erroneously Dismiss The Direct Appeal Without Affording Appellant Representation By Counsel ?

D. Statement of the Case.

No statement of Arrangements filed.

## E. Argument Why Review Should Be Accepted.

### 1. Colbert Has A Right To An Appeal.

The Court of Appeals order states "Colbert failed to provide any coherent explanation of how he was injured in a legal sense by the trial court's order granting the relief he requested."

The order departs from the usual course of judicial proceedings because the Rules of Appellate Procedure provide that:

The appellate court will, at the instance of the appellant, review the decision designated in the notice of appeal. RAP 2:4(a)

On appeal of a CrR 7.8 motion to vacate a judgment, the "scope is limited to the trial court's exercise of its discretion in deciding the issues that were raised by the motion."

In re Codwallader, 155 Wash. 2d 867, 880, 123 P.3d 456, 462 (2005). See also State v. Gant, Ill. Wn. App. 875, 881, 46 P.3d 832 (2002).

The relevant facts are :

A) Colbert is entitled to this appeal as a matter of right. RAP 2.1(a)(1) ;

B) The trial court order is appealable regardless of whether it was granted or denied. RAP 2.2(a)(10);

C) And the Court of Appeals accepted review upon the timely notice of appeal. RAP 2.1.

The only cognizable issue before the Court of Appeals was whether the trial court abused its discretion in entering the order. State v. Tarrer, 140 Wn. App. 166, 169, 165 P.3d 35 (2007) is distinguishable from the facts of Colbert's case.

As an aggrieved appellant, Colbert submitted claims of constitutional violations in a Statement of Additional Grounds for Review. However, the Court of Appeals did not address any of these issues.

Additionally, the Court of Appeals dismissed the appeal without reviewing the record or a narrative of the proceedings.

a. Colbert Has A Right To Counsel.

The standard of review to determine whether a defendant was constructively denied his right to counsel is a mixed question of law and fact that is reviewed de novo. Due process guarantees the right to effective assistance of counsel on direct appeal. Evitts v. Lucey, 469 U.S. 387, 83 L.Ed. 2d 821, 105 S.Ct. 830 (1985).

Also, Colbert is provided a right to counsel on direct appeal pursuant to CrR 3.1(b)(2). "A complete denial of counsel on appeal can never be harmless error and prejudice is automatically presumed." Penon v. Ohio, 488 U.S. 75, 102 L.Ed. 2d 300, 109 S.Ct. 346 (1988).

F. Conclusion.

Colbert respectfully requests this Court remand this matter to the jurisdiction of the Court of Appeals to reinstate the direct appeal.



Bobby Colbert

6-18-18

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

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 BOBBY COLBERT, )  
 )  
 Appellant. )  
\_\_\_\_\_ )

No. 77678-9-1

ORDER DENYING  
MOTIONS TO MODIFY AND  
DISMISSING APPEAL

Appellant Bobby Colbert has moved to modify the commissioner's February 7, 2018 ruling regarding the basis for his appeal and the commissioner's April 23, 2018 ruling denying his emergency motion for release. The State of Washington has filed answers to both motions, and appellant has filed replies. We have considered the motions under RAP 17.7 and have determined that both motions should be denied.

Colbert seeks review of that part of a trial court order that imposed a fixed term of community custody, the specific relief he requested. "Only an aggrieved party may seek review by the appellate court." RAP 3.1. To be aggrieved for purposes of appellate review, a party "must have a present substantial interest in the subject matter of the appeal and he must be aggrieved 'in a legal sense.'" State v. Tarrer, 140 Wn. App. 166, 169, 165 P.3d 35 (2007).

In response to the commissioner's request, Colbert failed to provide any coherent explanation of how he was injured in a legal sense by the trial court's order granting the

No. 77678-9-1/2

relief he requested. Accordingly, we dismiss the appeal. See State v. Tarrer, 140 Wn. App. at 170.

Now, therefore, it is hereby

ORDERED that the motions to modify are both denied. It is further

ORDERED that the appeal is dismissed.

Done this 4<sup>th</sup> day of June, 2018.

Mauro, A.C.J.

Trickey, J.

Specina, J.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2018 JUN -4 -AH 9:34