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SUPREME COURT NO. 96805-5
C.O.A. No. 50837-1-II
Cowlitz Co. Cause NO. 17-1-00287-6

**SUPREME COURT OF STATE OF
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

DENIIS J. JENKINS, JR.,

Petitioner.

**AMENDED RESPONSE TO PETITION FOR
REVIEW**

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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Eric H. Bentson, Deputy Prosecuting Attorney, Cowlitz County Prosecuting Attorney's Office.

II. COURT OF APPEALS' DECISION

The Court of Appeals correctly decided this matter. The Respondent respectfully requests this Court deny review of the January 3, 2019, Court of Appeals' opinion in *State of Washington vs. Dennis Jenkins, Jr.*, Court of Appeals No. 50837-1-II.

III. ISSUE PRESENTED FOR REVIEW

Does Jenkins' petition conflict with a prior decision of the Court of Appeals under RAP 13.4(b)(2) or raise a significant question of constitutional law under RAP 13.4(b)(3) when the trial court did not force Jenkins to represent himself against his will?

IV. STATEMENT OF THE CASE

Austin Bass owned a house at 517 27th Avenue in Longview. RP 123 (5/18/2017).¹ Inside his home, Bass had a Samsung flat screen

¹ The verbatim report of proceedings provided by Jenkins contains three parts labeled: Volume I, Volume II, and Supplemental Verbatim Report of Proceedings. Volume I contains the first day of trial on May 18, 2017. Volume II contains the readiness hearing on May 11, 2017, the second day of trial and sentencing on May 19, 2017, and the signing of the judgment and sentence on May 25, 2017. The Supplemental Verbatim Report of Proceedings contains an earlier hearing on April 27, 2017. Due to the unusual sequence of the transcripts provided, citation to the record will include the date of the part of the record referenced.

television set mounted on the wall. RP 134 (5/18/2017). With the television he also had a Blu-Ray player, an “Apple TV” device, and several cords. RP 134-36 (5/18/2017). Bass also kept Kirkland brand toilet paper inside the house. RP 136 (5/18/2017). Bass left for a work trip and did not give permission to anyone to enter his home. RP 132, 137-38 (5/18/2017).

Just before 4:30 a.m., on March 2, 2017, while Bass was still out of town, his neighbor, Jeffrey Sturdevant, was walking home. RP 79-80, 132, 138 (5/18/2017). Sturdevant observed a person on a bicycle in the alley. RP 81-82 (5/18/2017). Sturdevant then observed Jenkins exiting the garage to Bass’s house pulling a bicycle and carrying Bass’s television. RP 82-83, 85-87, 134-35 (5/18/2017). Sturdevant observed the back door of Bass’s house was open. RP 83 (5/18/2017). Jenkins put the television on his shoulder and rode his bicycle down the alley. RP 83-84 (5/18/2017). Sturdevant called police and reported what he had seen. RP 85 (5/18/2017).

Officer Nicholas Woodard of the Longview Police Department observed two men on bicycles, with one of them carrying a “large-screen TV,” headed east. RP 97-98 (5/18/2017). The first man crossed in front of his patrol vehicle followed by Jenkins carrying Bass’s flat screen television on his shoulder. RP 103, 107, 109, 135 (5/18/2017). Officer Woodard activated his emergency lights, and Jenkins placed the television and bicycle down. RP 105-06 (5/18/2017). Jenkins was arrested; on his person

he had six rolls of Kirkland toilet paper, Bass's BluRay player, his Apple TV device, his cords, and a ceramic sparkplug end on a lanyard. RP 107-08, 135 (5/18/2017). Police responded to Bass's house and discovered Bass's back door had been pried open, and his television had been removed from its wall mount. RP 144-48, 168 (5/18/2017).

Jenkins was charged with Residential Burglary and Making or Having Burglar Tools. RP 14 (5/18/2017). Just before trial, at his readiness hearing on April 27, 2017, Jenkins' attorney told the court Jenkins wished to represent himself. RP 3 (4/27/2017). This exchange then occurred:

THE DEFENDANT: Your Honor, may I speak on the record, please?

THE COURT: As long as you understand right now you are represented by an attorney and anything you say can be used against you, so just understand that.

DEFENDANT: Okay. I – I've asked this lawyer numerous times for paperwork so I can adequately go through my case and he denies me with my paperwork. He told me that because I want it, that I'm not entitled to it, and I just – I'm not ready for trial, and I told him that I would like to sign my rights to a fast and speedy and he told me that doesn't matter, I'm not going to ask for a continuance. We're going to trial on the 4th. I feel pressured by him.

I'd like a different, attorney, if that's possible. I just don't feel that he's adequate Counsel for me. We seem to butt heads and I just – if I could have a different attorney I'd appreciate it. I just – I feel pressured by him. Yesterday he came to see me, told me that I had ten minutes to sign a plea agreement, I just didn't feel comfortable with that, I just – I feel pressured and I'd rather have a different attorney. I'd like to seek a different attorney.

THE COURT: So a couple of things that I will address. First off, the idea that you waive speedy trial doesn't necessarily mean that the Court will grant a continuance. I understand the State is ready to proceed to trial and so at this – this point, Mr. DeBray, do you feel like things have broken down to a point that you can no longer communicate with your client?

MR. DEBRAY: No, not at all.

THE COURT: Okay. So, Mr. Jenkins, you don't have a right to just pick and choose. Mr. DeBray is a very skilled attorney, he knows what he's doing. From any observations I've ever had of him, and I understand sometimes that may not be – he may tell you things you don't want to hear –

THE DEFENDANT: Yes.

THE COURT: -- but that's his job.

THE DEFENDANT: And I appreciate that. I'm not trying to pick and choose, I just – I honestly feel that he doesn't have my best interests at heart. I just – when we – when we have conversations they're short and we don't seem to see eye to eye. Like I said, I just – I don't feel that he's adequate counsel for me. We just – I don't honestly think – we just don't seem to get along. From the beginning it seemed like we didn't. Well, I asked him for the paperwork for my discovery over a month ago and he just tells me just no way that I – he says unnecessary work for him to provide that for me, I just – I just don't feel that –

THE COURT: So –

THE DEFENDANT: -- he's adequate for me. I would just – I'd like to have a different attorney, if that's possible.

THE COURT: Mr. DeBray, do you have anything you'd wish to say?

MR. DEBRAY: Only that in this particular representation, I opted not to follow the Court Rule and go through the redactions process and seek approval from the Court of the Prosecutor. Rather, I opted just to go to the jail and read discovery to my client.

THE COURT: So Mr. Jenkins, what I'm hearing is that Mr. DeBray is following the Court Rules that talk about discovery and what be provided and what can't be provided to you. So again, it may not be what you want to hear or what you like, but again, it's his job to tell you like it is and not just what you want to hear.

So I'm not hearing that there is any breakdown in communication. It may be that you butt heads. It may be that you don't agree with each other, and at the same time that doesn't mean that it's to the point where Mr. DeBray can no longer represent you. That's not what I'm hearing.

So with that, I will not be substituting any attorney for Mr. DeBray.

MR. DEBRAY: Do you wish to ask the Judge to be allowed to represent yourself?

THE DEFENDANT: Yes. Yes, I wish – I wish to represent myself in this matter, then.

RP 3-6 (4/27/2017).

After Jenkins asked to represent himself, the court administered the following colloquy:

THE COURT: So you understand that if you cannot afford to pay for an attorney, or you can only partially pay the cost of an attorney and can't – an attorney is appointed for you at public expense. You understand that?

THE DEFENDANT: Yes.

THE COURT: And have you ever studied the law?

THE DEFENDANT: No.

THE COURT: Have you ever represented yourself or any other Defendant in a criminal action?

THE DEFENDANT: I have not, Your Honor.

THE COURT: Do you know that the crimes that you are charged with, which appears to be residential burglary, making or having burglary tools, you understand that?

THE DEFENDANT: I do.

THE COURT: And then you know if you represent yourself you're on your own? The Court cannot tell you how you should try your case, even advise you as to how to try your case. You understand that?

THE DEFENDANT: I do.

THE COURT: Do you understand you have the right to have your guilt decide by a jury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And a jury consists of twelve people chosen from the community. Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: Are you familiar with the Rules of Evidence?

THE DEFENDANT: Not in particular, Your Honor.

THE COURT: Do you know that the Rules of Evidence govern what evidence may or may not be introduced at trial and in representing yourself you must abide by those rules. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you familiar with the Rules of Criminal Procedure?

THE DEFENDANT: No.

THE COURT: Do you know that those rules govern the way in which a criminal action is tried in this Court. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you know that if you decide to take the witness stand you must present your testimony by asking questions of yourself? You cannot just take the stand and tell your story, you must proceed question by question through your testimony. Do you understand that?

THE DEFENDANT: I do, Your Honor.

THE COURT: So at this point why do you want to represent yourself?

THE DEFENDANT: Because I – I just – I honestly feel that – that Mr. DeBray does not have my best interest at heart and I just – I mean, I don't know how to represent myself through the procedures, but I just – I feel pressured by him and I just – I don't know. I just...

RP 6-8 (4/27/2017).

After hearing Jenkins equivocate regarding representing himself, the court denied his request, determining that from what he had told the court his desire was for a different attorney, not to represent himself. RP 8-9 (4/27/2017). Although the State was prepared to proceed to trial the following week, the court granted Jenkins' request for a continuance. RP 9-11 (4/27/2017). The court did this to provide Jenkins with the opportunity

to consult with his attorney about how to proceed. RP 9 (4/27/2017). The court also informed Jenkins that after consulting with his attorney, he could renew the request to represent himself at a later time stating: “And if at that point you’re still facing the same feeling and the same issue, you can certainly bring this back up before the Court again.” RP 9 (4/27/2017).

At Jenkins’ next readiness hearing, on May 11, 2017, the court stated the trial would begin on May 18, 2017. RP 3 (5/11/2017). Jenkins asked the court if he could speak, and the court allowed him to. RP 4 (5/11/2017). The following exchange then took place:

THE DEFENDANT: My last court date, I – I asked for a new attorney, because DeBray and I, we have a lot of issues – well, I actually have a lot of issues. I haven’t gotten any paperwork; I am not ready for this trial.

I’ve got a Motion here I’d like to file with you, if possible, for a new attorney. It’s due process, Sixth Amendment.

I’ve also filed a Bar complaint against him with the Washington State Bar. Fortunately – or, not fortunately, Judge Haan, I think is her name, she said we were to have a couple of weeks for me to iron things out or whatever. I haven’t seen him but one time, he came to me the next day, told me all the deals are off the table that we were going to trial, that was all he had to say to me.

I still feel the same as I did, then. I’m just asking the Court for a different attorney because I feel that he does not have my best interests at heart.

THE COURT: Okay, so I was just taking a look at the notes from back on February – or on April 27th when you mentioned the discussion about representing yourself and the Court denied – denied the request, and said that you were to continue to be represented by Counsel.

So, are you asking to represent yourself?

THE DEFENDANT: No, I'm asking for a – for a different attorney, because I don't – I don't know the laws, per se –

RP 4-5 (5/11/2017).

After Jenkins informed the court that he did not want to represent himself, the court inquired into his request for a new attorney. RP 5-8 (5/11/2017). The court confirmed that Jenkins and his attorney had reviewed discovery together. RP 5-6 (5/11/2017). The court also confirmed that despite their disagreements, Jenkins and his attorney were able to effectively communicate with each other. RP 7 (5/11/2017). The court asked Jenkins' attorney whether Jenkins' filing of a bar complaint against him would pose any issues in representing him. RP 7 (5/11/2017). Jenkins' attorney said it would not. RP 7 (5/11/2017). Because Jenkins was able to communicate with his attorney, had reviewed discovery, and there were no issues raised that would cause his attorney to be unable to represent him, the court denied Jenkins' request for a new attorney. RP 9 (5/11/2017). The case proceeded to trial and the jury found Jenkins guilty of Residential Burglary and Making or Having Burglar Tools. RP 77 (5/19/2017).

Jenkins' appealed. The Court of Appeals affirmed Jenkins' conviction for Residential Burglary and reversed his conviction for Making or Having Burglar Tools. Slip Opinion at 11. The Court of Appeals rejected

Jenkins' argument that the trial court abused its discretion by denying his equivocal—and later abandoned—request to represent himself. Slip Opinion at 8-9. Jenkins' now petitions this Court for review.

V. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS' DECISION

Because Jenkins' petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Jenkins argues that the Court of Appeals decision is in conflict with another decision of the Court of Appeals and involves a significant question of law under the Constitution of the State of Washington or of the United States under RAP 13.4(b)(2) and (3). He does not claim any grounds under RAP 13.4(1) or (4). Jenkins claims that he made an unequivocal request to represent himself that was denied. However, this is not what occurred. Jenkins' initial request was equivocal. Rather than immediately grant the request, the court told Jenkins he should consult with his attorney further

about how to proceed. Importantly, the court also told him he could renew his request at a later time. Later, before the case proceeded to trial the court asked Jenkins' if he desired to represent himself; he unequivocally told the court he did not. Thus, the entirety of the record shows Jenkins was initially equivocal in his request, was given more time to decide, was later asked if he still desired to represent himself, and he unequivocally told the court he did not. Accordingly, his petition does not meet any of the criteria required for review under RAP 13.4(b).

A. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH ANOTHER COURT OF APPEALS' DECISION OR PRESENT A SIGNIFICANT QUESTION OF CONSTITUTIONAL LAW BECAUSE JENKINS DID NOT MAKE AN UNEQUIVOCAL REQUEST TO REPRESENT HIMSELF.

The trial court did not abuse its discretion by not forcing Jenkins to represent himself when, after a colloquy, he was equivocal about wanting to do so, and then later he informed the court that did not want to represent himself. The Washington Supreme Court has stated: “[B]oth the United States Supreme Court and this court have held that courts are required to indulge in ‘every reasonable presumption’ against a defendant’s waiver of his or her right to counsel.” *State v. Madsen*, 168 Wn.2d 496, 504, 229 P.3d 714 (2010) (citing *In re Det. of Turay*, 139 Wn.2d 379, 396, 986 P.2d 790 (1999) (quoting *Brewer v. Williams*, 430 U.S. 387, 404, 97 S.Ct. 1232,

51 L.Ed.2d 424 (1977)). Jenkins claims he was denied the right to self-representation. However, after the court informed him of the risks of self-representation through a colloquy, Jenkins was equivocal as to whether he wanted to represent himself. RP 8 (4/27/2017). Later, when asked if he still desired to represent himself, Jenkins told the court he did not. RP 5 (5/11/2017). Because, after being properly informed, Jenkins abandoned his request to represent himself, the Court did not abuse its discretion when it did not force Jenkins to represent himself against his will.

While criminal defendants have the right to represent themselves, *Madsen*, 168 Wn.2d at 503 (citing Wash. Const. art. I, § 22; *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)), this right is not absolute. *State v. Vermillion*, 112 Wn.App. 844, 851, 51 P.3d 188 (2002) (citing *In re Richardson*, 100 Wn.2d 669, 674, 675 P.2d 209 (1983)). “The right to proceed pro se is neither absolute nor self-executing.” *Madsen*, 168 Wn.2d at 504 (citing *State v. Woods*, 143 Wn.2d 561, 586, 23 P.3d 1046 (2001)). A court should indulge in every reasonable presumption against a defendant’s waiver of his or her right to counsel. *Id.* A trial court’s denial of a request for self-representation is reviewed for abuse of discretion. *State v. Breedlove*, 79 Wn.App. 101, 106, 900 P.2d 586 (1995).

The trial court’s discretion is vital because there is “a tension between a defendant’s autonomous right to choose to proceed without

counsel and a defendant's right to adequate representation." *State v. DeWeese*, 117 Wn.2d 369, 376, 816 P.2d 1 (1991). This tension can create a "heads I win, tails you lose' proposition for the trial court." *Id.* at 377 (quoting *State v. Imus*, 37 Wn.App. 170, 179-80, 679 P.2d 376 (1984) (citing *People v. Sharp*, 7 Cal.3d 448, 462 n.12, 499 P.2d 489, 103 Cal.Rptr. 233 (1972), *cert. denied*, 410 U.S. 944, 93 S.Ct. 1380, 35 L.Ed.2d 610 (1973))). "If the court too readily accedes to the request, an appellate court may reverse, finding an ineffective waiver of the right to counsel. But if the trial court rejects the request, it runs the risk of depriving the defendant of his right to self-representation." *Id.* "To limit baseless challenges on appeal, courts have required that a defendant's request to proceed pro se be stated unequivocally." *Id.*

"[A] defendant's request to proceed pro se must be both timely and stated unequivocally." *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997) (emphasis in original). A "motion to proceed pro se must be timely, or it is relinquished and left to the discretion of the trial judge." *State v. Barker*, 75 Wn.App. 236, 240-41, 881 P.2d 1051 (1994) (citing *DeWeese*, 117 Wn.2d at 377). When a demand for self-representation is accompanied by a motion to continue and is made shortly before a trial or hearing is about to commence, the right of self-representation "depends on the facts of the particular case with a measure of discretion reposing in the trial court." *See*

id. at 241. “Even when a request is unequivocal a defendant may still waive the right of self-representation by subsequent words or conduct.” *Vermillion*, 112 Wn.App. at 851 (citing *State v. Luvene*, 127 Wn.2d 690, 699, 903 P.2d 960 (1995)).

In addition to being timely and unequivocal, a defendant’s request for self-representation must be voluntary, knowing, and intelligent. *See Madsen*, 168 Wn.2d at 504 (citing *Faretta*, 422 U.S. at 835; *State v. Stegall*, 124 Wn.2d 719, 881 P.2d 979 (1994)). Once a defendant raises the issue of self-representation, “the trial court should assume responsibility for assuring that decisions regarding self-representation are made with at least minimal knowledge of what the task entails.” *City of Bellevue v. Acrey*, 103 Wn.2d 203, 210, 691 P.2d 957 (1984). Rather than simply allowing the defendant to forfeit his or her right to counsel without considering the consequences,

‘[a] judge must investigate as long and as thoroughly as the circumstances ... demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility.’

Id. (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 723-24, 68 S.Ct 316, 92 L.Ed. 309 (1948)).

When a defendant asserts a desire for self-representation, instead of immediately permitting the defendant to proceed pro se, “a colloquy on the

record is the preferred means of assuring that defendants understand the risks of self-representation.” *Id.* at 211. “An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the accused’s comprehension of the offer and capacity to make the choice intelligently and understandably has been made.” *State v. Chavis*, 31 Wn.App. 784, 789, 644 P.2d 1202 (1982). “Even if a request is unequivocal, timely, voluntary, knowing, and intelligent, a court may defer on ruling if the court is reasonably unprepared to immediately respond to the request.” *Madsen*, 168 Wn.2d at 504.

Here, not only was Jenkins’ request to represent himself untimely and equivocal, but he later told the court he did not want to represent himself. The trial court did not abuse its discretion by performing a colloquy prior to granting this request, giving Jenkins additional time to consider how he wanted to proceed, and not forcing Jenkins to represent himself against his will. Because the court had the responsibility to “investigate as thoroughly as the circumstances ... demand[ed],”² once Jenkins asked to represent himself it was incumbent upon the court to consider the circumstances carefully to ensure this was actually Jenkins’

² *Acrey*, 103 Wn.2d at 210 (quoting *Von Moltke*, 332 U.S. at 723-24).

desire. For this reason, it was noteworthy that Jenkins did not make this request until after he was denied his request for a new attorney and only raised the issue at his attorney's prodding. Further, his initial request showed hesitation. When his attorney asked him if he wished to represent himself, Jenkins stated: "Yes. Yes, I wish – I wish to represent myself in this matter, then." RP 6 (4/27/2017). As the record shows, Jenkins stuttered as he communicated this request, and his use of the word "then" indicates he was only making this request as a consequence of having been denied a request for a new attorney.

Rather than immediately finding Jenkins had waived his constitutional right to counsel, the court conducted a colloquy to ensure Jenkins understood the risks of self-representation. Because it appeared Jenkins' request was based on his frustration with not being given a new attorney, this colloquy was necessary to ensure he was knowingly, intelligently, and voluntarily waiving his constitutional right to counsel. After the court advised Jenkins of the risks of self-representation, it asked Jenkins why he wished to represent himself. At this point, Jenkins became even more equivocal, stating:

Because I – I just – I honestly feel that – that Mr. DeBray does not have my best interest at heart and I just – I mean, I don't know how to represent myself through the procedures, but I just – I feel pressured by him and I just – I don't know. I just...

RP 8 (4/27/2017). Jenkins demonstrated his nervousness by repeating “I just” five times in his response. He also told the court he did not know how to represent himself and did not know why he wanted to do so. Because after the colloquy Jenkins was equivocal as to whether or not he wanted to represent himself, at this point it would have been error for the court to find Jenkins had waived his right to counsel.³

Instead, the court wisely gave Jenkins more time to consider if this was the course of action he wished to take. The court denied his request, at that time, because Jenkins was not communicating that he actually desired to represent himself. However, this denial was not necessarily permanent. The court continued the trial, despite the State’s desire to proceed, and gave Jenkins the opportunity to discuss the matter further with his attorney. The court informed Jenkins that if he later still desired to represent himself, he could “certainly bring this back up before the Court again.” RP 9 (4/27/2017). By denying Jenkins’ equivocal request until he had more time to consider his decision, the court made sure Jenkins had the benefit of counsel while he was considering this decision. The court’s deferral was

³ Jenkins’ brief fails to consider Jenkins’ equivocation after having been advised of the dangers of self-representation through a colloquy. In contrast, the trial court did consider his equivocation after the colloquy and then rendered an appropriate ruling.

appropriate as “a court may defer on ruling if the court is reasonably unprepared to immediately respond to the request.”⁴

Later, at his next readiness hearing, the court specifically asked: “So, are you asking to represent yourself?” RP 5 (5/11/2017). Jenkins then told the court he was not.⁵ Thus, even if Jenkins’ earlier request had been unequivocal, his later statement that he did not wish to represent himself demonstrated his intent to “waive the right of self-representation by subsequent words or conduct.”⁶ To force Jenkins to represent himself at this point would have made his self-representation involuntary.

Moreover, Jenkins’ request was untimely. He did not ask to represent himself until the readiness hearing for a trial that was scheduled for the following week. RP 3 (4/27/2017). The request was made after Jenkins had told the court he was “not ready for trial” and wanted a continuance. RP 3 (4/27/2017). Because the request to represent himself was made shortly before the trial was to commence and was accompanied by a request for a continuance, the decision on whether to grant this request depended “on the facts of the particular case with a measure of discretion reposing in the trial court.”⁷

⁴ *Madsen*, 168 Wn.2d at 504.

⁵ Jenkins’ brief fails to mention that on May 11, 2017, when the court asked Jenkins if he wished to represent himself, he informed the court he did not.

⁶ *Vermillion*, 112 Wn.App. at 851 (citing *Luvone*, 127 Wn.2d at 699).

⁷ *Barker*, 75 Wn.App. at 241.

The trial court considered the manner in which the request was brought about—only after Jenkins was denied a new attorney. After conducting a colloquy, it inquired as to why the request was being made. In response, Jenkins equivocally communicated he was doing so only because he desired a different attorney. When it was obvious that this was not a decision Jenkins was entering thoughtfully, the court denied the request to give him more time to consider whether this was the manner in which he wanted to proceed. Had Jenkins later requested to represent himself, there would have been greater clarity that his decision to waive his right to counsel was knowing and intelligent. Under these circumstances, when Jenkins made the untimely request, the court did not abuse its discretion in denying it until he had more time to consider whether or not this was how he wanted to proceed.

Because Jenkins' request to represent himself was untimely and equivocal the court did not abuse its discretion in denying this request. Further, because after the colloquy Jenkins did not express a desire to represent himself, had the court granted his earlier request to represent himself his waiver of his right to counsel would not have been knowing and intelligent. Finally, because Jenkins later told the court he did not want to represent himself, forcing him to do so would have made his self-representation involuntary. Accordingly, the trial court did not abuse its

discretion when it did not force Jenkins to represent himself. Thus, Jenkins' petition does not involve a significant question of constitutional law.

Further, the Court of Appeals' decision does not conflict with its decision in *Breedlove*. In *Breedlove*, Breedlove "at first did not clearly and unequivocally ask to proceed pro se" but at a later date he "refined his petition into an unequivocal request that the court allow him to 'proceed as pro se counsel[.]'" 79 Wn. App. at 108. Thus, while both Breedlove and Jenkins' initial requests were equivocal, at a later date, Breedlove made an unequivocal request, while at a later date, Jenkins fully abandoned his request when the court inquired. As such, the Court of Appeals' decision was not in conflict with another decision of the Court of Appeals.

VI. CONCLUSION

Because the petition does not meet any of the considerations governing acceptance of review under RAP 13.4(b), it should be denied.

Respectfully submitted this 22nd day of April, 2019.



Eric H. Bentson, WSBA #38471
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

Michelle Sasser certifies the Amended Response to Petition for Review was served electronically via portal to the following:

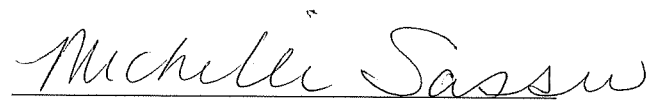
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Olympia, WA 98504

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington April 22nd, 2019.


Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

April 22, 2019 - 4:02 PM

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