

FILED
Court of Appeals
Division III
State of Washington
2/11/2022 1:00 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
2/14/2022
BY ERIN L. LENNON
CLERK

100644-6

CASE NO. 375960

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

v.

CLARK ALLEN TELLVIK

PETITION FOR REVIEW

R.A.P. 13.4 (a)

CLARK TELLVIK

PRO-SE, P.O. BOX

769, CONNELL, WA,

99326

A. IDENTITY.

TELLVIK, asks this Court to accept review OF THE COURT OF APPEALS decision, terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION.

TELLVIK ask this Court to review his motion for reconsideration filed January 9, 2022.

The COURT OF APPEALS filed it opinion on December 21, 2021, TELLVIK filed his motion for reconsideration January 9, 2022, and the court of Appeals issued an order denying the motion for reconsideration January 13, 2022.

A copy of TELLVIKS motion for reconsideration is in the Appendix (A) pg 1-through-18, a copy of the order denying TELLVIKS Motion is in the Appendix (A) pg. 19 and a copy of the court of APPEALS decision is in the Appendix (A) 20 through 22.

C. ISSUE'S PRESENTED FOR REVIEW.

TELLVIK asks this COURT to review the ~~anay~~ analysis and the conclusion of the COURT

of Appeals's opinion filed December 21, 2021, along with the facts and actions taken by TELLVIK to avoid the Court of Appeals to reach their Analysis and then their conclusion.

These actions taken will include the motions filed by TELLVIK, motions not presented to the JUSTICES before making their conclusions and opinions. These actions were taken well before Counsel's opening brief. Counsel was well aware that these actions were made to stop Counsel the day after TELLVIK and Counsel's phone call, where Counsel stated; she had just called the prosecutor to figure out what is being appealed. See Appendix (A-A)

First TELLVIK asks this Court to review his motion for Reconsideration, pages 1-6 and the attached Appendix's A, B, C, to issue a different opinion. Specifically, the remand order already in effect, issued by CHIEF JUDGE : KORSMO almost two years ago, filed MAY 07, 2020. (Appendix B)

Focusing on that order, (assuming that order needed to be followed), it State's

" When a superior court passes on the MERITS of a C.R. 7.8 motion and "denies it" as it appears to have done here, the proper mechanism for obtaining further review is through a direct appeal. R.A.P. 2.2(a)(9), (10)."

After the state and the superior court chose NOT to ACT, the COURT OF APPEALS filed their RULING on October 30, 2020
Appendix (C)

" On May 07, 2020, this court entered an ORDER REMANDING the petition to the superior court because the transfer ORDER failed to meet the requirements of C.R. 7.8(c)(2)."

" This court directed the superior court to reconsider and/or correct its transfer order as necessary."

" Upon REMAND, it appears the superior court did NOT amend its february 18 order or enter a new order with respect to the CrR 7.8 motion. Presumably the court decided NOT to transfer this matter to be considered as a personal restraint petition."

Included with this RULING is a notice to the state and the superior court. (Appendix D)

" If objections to the RULING are to be considered (RAP 17.7) they MUST be made by way of a motion to modify in this court within 30 days from the date of this RULING." (Appendix D)

D. STATEMENT OF THE CASE.

All motions filed as Appendix's A-A for, PETITION FOR REVIEW, were filed after

Counsel hijacked TELLVIK's case, and contacted the prosecutor where they, then worked together to ask for the Court of appeals to allow another remand order that would allow the state or trial Court to have the option to forward TELLVIK's CrR 7.8 motion as a personal restraint petition after failing to act on the first remand order.

The purpose of these motions is to show this Court, TELLVIK's due diligence in attempting to stop counsel's course of action that is in conflict of R.A.P 13.4(b), (2) along with counsel's adverse effect by choosing to advance the state's interest instead of TELLVIK's. What makes this conflict of interest so obvious is, the only thing the state can do is to ask for another remand order, so why wouldn't counsel argue the order already in effect? or make any other argument, other than the one the state asked her to make! because it was the only way the trial court would be allowed

to transfer the 7.8 motion as a personal restraint petition, and that's disgusting, TELLVIK ASK this court to put a stop to it.

To allow the state and superior court the option of transferring TELLVIK'S 7.8 motion as a personal restraint petition Now, after failing to exercise their due diligence would be rewarding the superior court, state and TELLVIK'S counsel for bad behavior, it sets bad precedent by permitting the superior court to totally disregard the court of Appeals ORDER'S and RULING'S, it sends a clear message that the superior courts are not bound by the COURTS Rules, ORDER'S, and RULING'S, that only the defendants are.

E. ARGUMENT.

Because the Court of Appeals has already issued its REMAND ORDER, and the superior court has already passed on the merits, (Appendix B), and upon REMAND the superior court did not amend its order or enter

a new order with respect to the 7.8 motion, and decided NOT to transfer this matter to be considered as a personal restraint petition (Appendix C), and then passed on objecting to the RULING, (Appendix D) TELLVIK asks this COURT to accept review set out in RULE R.A.P 13.4 (b)(2)(4), and find that the COURT OF Appeals erred when it allowed the superior court the option to transfer TELLVIK'S C.R. 7.8 motion as a personal restraint petition.

F. CONCLUSION

For the reasons above TELLVIK asks this COURT TO;

1) Deny the superior court the option of transferring TELLVIK C.R. 7.8 motion as a personal restraint petition.

2.) To follow the original REMAND ORDER, and direct the superior court to follow the proper mechanism for further review under R.A.P 2.2 (a) (9), (10). (see Appendix B), or proceed as a direct Appeal.

TELLVIK asks this Court to review
Part C of the motion for reconsideration
(Pg. 11) R.A.P 13.4 (b)(4)

This issue is one of public interest
so far as TELLVIK is under a legal contract
with CRIMINAL DEFENSE SERVICES INC.

STATEMENT OF THE CASE.

As stated in the motion for reconsideration, TELLVIK was retained (pro-Bono) to cover the retainer so the Defense services could gather information to structure my brief and the investigation.

When the retainer expired TELLVIK was allowed to run a bill that could be paid at a latter time. This bill included, preparation of a brief that TELLVIK can file in the Superior Court, this bill includes STATE V. BLAKE.

Shortly after counsel (Marie Trombley) was appointed TELLVIK informed counsel that the STATE V. BLAKE was already drafted in a brief by CRIMINAL DEFENSE SERVICES

And that she had permission to discuss my case with STEPHANIE RENTERIA and ALEJANDRO HERNANDES, I included thier contact information, at the same time I gave both of these people permission to discuss my case with counsel and gave them Counsel's contact information, both STEPHANIE and ALEJANDRO from Criminal defense service's made several attempts to contact Counsel, but got no response.

Counsel was clear she understood TELLUEK on the STATE V. BLAKE issue.

Then on April 8, 2021, (the same day Counsel filed her opening brief) counsel sent a letter saying she was raising STATE V. BLAKE, TELLUEK immediately called and reminded Counsel she could not file STATE V. Blake.

During this call counsel states "well I've already filed my opening brief, and it's to late now". I told her to file a motion to strike STATE V. BLAKE. She said "it doesnt work that way". She said "you'll be getting a copy in the mail".

ARGUMENT.

DUE to the facts above and 13.4 (b) (4), TELLVIK believes this issue warrants reviewed and corrected, that a public entity, that was and is invested both personally, financially and legally, not be Stripped of the time and legal arguments by Counsel.

CONCLUSION.

- 1.) TELLVIK asks this COURT to STRIKE STATE V. BLAKE from the Record and the Court of Appeals opinion.
- 2.) or allow Counsel (Trombley) liable for the financial responsibility for the hours and resources that the CRIMINAL DEFENCE SERVICES have Invested.

I CLARK ALLEN TELLVIK, certify under penalty of perjury under the laws of Washington that the foregoing is true and correct.

DATE: 2-11-2022

DOC# 863699

Coyote Ridge correction center, P.O. Box 769

Connell, WA, 99326

Clark Tellvik

CLARK TELLVIK

PETITION FOR REVIEW

APPENDIX'S.

Appendix A-A TELLVIK MOTIONS
filed with the COURT OF APPEAL'S.

↳ MOTIONS

- 1.) Motion: For stay and abeyance of time, tolling and deadlines (2) pages
- 2.) Motion: TO STRIKE BRIEF OF APPELLANT (4) pages
- 3.) Motion: To withdraw counsel (5) pages
- 4.) Motion: To Compell the C.O.A. to treat the 7.8 motion as a direct Appeal (6) pages
- 5.) REPLY BRIEF OF APPELLANT (denied) (8) pages
- 6.) Motion: To modify Clerks Ruling and proceed pro-se DUE to conflict of interest (10) pages

THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DEVISION III

STATE OF WASHINGTON,

RESPONDENT

V.

CLARK ALLEN TELLVIK,

Appellant

CASE NO. 375960

MOTION:

For stay and abeyance
of time, tolling and
deadlines.

I CLARK TELLVIK, Appellant in the above case
No. 375960, am asking to stop all deadlines,
due dates and filings until I can get clarification
with this court, MARIE TROMBLEY (appointed counsel),
and my self on what exactly can be raised, who
can raise it, and who if anyone can get documents,
evidence, file requests for trial, "court ordered"
evidence.

2.) I have attempted to have counsel address the
October 30, 2020 notice from this court, the front
page, bottom paragraph in dark bold letters,
counsel may not know if she can address

any thing from this Courts Notice.
I'm asking for the opportunity to file and
address this issue on the C.R.B. 3.6(B) required
to enter written findings of facts and conclusion
of law.

I have included the facts that occurred in this
Case, and would ask to have this Court revisit
what I have provided.

I promise I am not trying to waste this
Courts time, it seems that im always being
told o' that's not really a issue, or you should
raise that in a PRP, I dont even know what
a PRP is, not to mention I dont know how to
argue the law, all I know is, thier's no giving
up.

Please if im not doing this stuff the right
way, could someone tell me. THANK YOU!

o ya the front pg of this Courts notice, ^{October 30, 2020} it says
"Ronelle, ext # 222, is assigned to assist you with
this case." Who is this, and how do I talk to Ronelle?

Date 3-29-2021

CASE NO. 375960

(I swear the following is true and correct to the best of
my knowledge.)

Clark TELLVIK

Clark Tellvik

Pg. 2 of 2

THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

RESPONDENT

V.

CLARK ALLEN TELLVIK,

APPELLANT

CASE NO. 3759160

MOTION TO STRIKE

BRIEF OF APPELLANT

Filed 4/8/2021

I CLARK TELLVIK, (principal), Appellant in the above case, moves to strike brief of Appellant filed by Marie J. Trombley on 4/8/2021.

STATEMENT OF RELIEF SOUGHT

TELLVIK ask this court to strike the brief filed on 4/8/2021, and allow TELLVIK 60 to 90 day continuance to file his opening brief of Appellant.

Facts relevant to motion

In TELLVIK'S motion filed 3/31/2021, TELLVIK asked this court "to stop" "ALL filings"

until Tellvik gets clarification with MARIE Trombley, (appointed counsel).

This Courts 4-9-2021 notice explains that a copy of the 3-31-2021 filing was forwarded to Trombley.

Tellvik doubts this Court waited over a week to forward the 3-31-2021 filing to Trombley.

Therefore, Trombley should have recieved Tellvik's 3-31-2021 motion before filing her brief on 4-8-2021 with this court.

If Trombley did not recieve Tellvik's motion before 4-8-2021, or if Trombley did recieve it, but did not read it, TELLVIK is still requesting this court to notify Trombley that Tellvik's motion was not denied, and was filed before her brief, on 4-8-2021, to stop all filings.

TELLVIK believes its possible Trombley did not recieve this courts 4-9-2021 notice for the simple fact that Tellvik waited 10 days for Trombley to "Contact the Appellant and address" the 3-31-2021, motion.

On 4-19-2021, Tellvik wrote Trombley and asked:
"I also recieved a notice from the C.O.A.
on 4-9-2021 that said appointed counsel will
contact me and address the question noted in
the motion I filed on 3-31-2021."

On 4-19-2021, Trombley responded: "Unfortunately,
I do not understand what you are asking."

It's seem's clear that Trombley did not recieve
this Court's notice from 4-9-2021, because
Trombley didnt even understand what I was
talking about.

It seem's Trombley did not recieve Tellvik's
motion filed on 3-31-2021, or Trombley would not
have filed any briefs after 3-31-2021.

Trombley has also tried to explaine to Tellvik,
that Tellvik's not really in a direct Appeal but
instead a "7.8 motion arguement, which is limited
to only asking for the motion to be returned to
the superior court." (4-12-2021 letter)

This Court has already done this action twice. First time was a notice filed on 4-8-2020, with a 20 day deadline, the second time was by court order by the Honorable CHIEF JUDGE: KORSMO, on May 7, 2020.

Tellvik moves to strike the "brief of Appellant" filed by Trombley on 4-8-2021

Tellvik's 3-31-2021 motion "to stop ALL filings" was filed over a week before Trombley's brief.

Tellvik moves to the principal and asks this court for a 60 to 90 day extension of time, RAP 10.8.

Tellvik is definitely not trying to waste this court's time.

Respectfully: Clark Tellvik

Dated 5-3-2021

Clark TELLVIK

Doc# 863699

THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION III

<u>STATE OF WASHINGTON,</u>	}	<u>CASE NO. 375960</u>
RESPONDENT		MOTION TO withdrawl
V.	}	counsel / and or withdrawl
<u>CLARK ALLEN TELLVIK,</u>		counsel's opening brief /
APPELLANT	}	and extension of time
		due to covid-19

I CLARK TELLVIK, am requesting this court to allow my-self to file the opening brief, and, or, decide what I want filed if anyone else is to file it.

STATEMENT OF RELIEF SOUGHT:

TELLVIK ask's to be the principal in my case, and argue what I want argued in my opening brief. There will be no S.A.G.

I am also asking for 60 days to try to start preparing, due to I am in G-A pod at coyote ridge correction center, we are on 23 hour lock down due to covid, with no access to Law Library

for the time being. We do not know when this will change.

FACTS RELEVANT to MOTION:

In this Court's May, 20, 2021 notice, it appears I need to file a motion that relates to the "representation of Counsel."

To make a long story short, Counsel and my-self were communicating well until the day she informed me she "had called the prosecutor in my case, along with this Court, to figure out what was going on with this unusual case".

To me, I would of thought the "figuring out" would of been done by motions to this court as to what was allowed to be briefed, or exactly what kind of a direct Appeal (Mr. Tellvik)

I have gotten myself into.

Counsel could of easily explained she was just going to give the prosecutor, or trial court another bite at the apple, but instead, talked about other issues I felt strongly about, going ~~out~~^{into} the opening brief. Based on our phone conversation, my

Gut told me to file a motion on 3-31-2021, explaining to this court in the motion, "to stop" "All filings"

until TELVEX gets clarification with counsel.

This was done over a week before
Counsel filed her opening brief.

Counsel decided to wait until after filing her
opening brief to tell me that I'm actually in "a
7.8 motion argument, which is limited to
only asking for the motion to be returned to
the Superior Court". (4-12-2021 Letter)

Common sense told me ~~to~~ ask, then why
doesn't the COURT OF APPEALS just return this 7.8
motion argument to the superior court.?

Because it already has, the first time was when
this court filed a notice for the superior court
to correct its mistake, and clarify what is being
transferred, it gave the trial JUDGE 20 days.
(see 4-8-2020 notice from this court.)

After the trial court refused to comply,
the Honorable CHIEF JUDGE: KORSMO, directed the
superior court to comply by issuing a court order

On May 7, 2020. In the May 7, 2020 order
JUDGE: KORSMO informed the Superior Court,
that when it passed on the merits and then
denied the CrR 7.8 motion, the proper mechanism
is R.A.P. 2.2(a)(9),(10).

JUDGE: KORSMO's order remanded and directed
the Superior Court to reconsider and/or correct
its order.

The Superior Court decided to ignore the
May 7, 2020 order.

On October 30, 2020 the Commissioner's Ruling
States: Upon remand, the Superior Court did not
amend its February 18, order or enter a new order
with respect to the CrR 7.8 motion. The court
decided not to transfer this matter to be considered
as a personal restraint petition.

going off the three court of APPEALS rulings
orders and notice, I am going to follow the
CHIEF JUDGE: KORSMO's MAY 7, 2020 order and follow
the proper mechanism R.A.P. 2.2(a)(9), (10).

The superior court has decided to pass on the merits, and ignore this court completely.

The trial court has had over a year to correct and/or reconsider its order.

I have explained everything I've wrote in this motion to counsel, she has all the same filings from this court that I have.

I have asked counsel to refile the opening brief asking for relief under R.A.P. 2.2(a)(9)(10), and to Not assist the prosecutor or the trial court by asking this court to do what it has already done multiple times.

If this court will not strike counsels opening brief, I Clark TELLVIK am requesting to dismiss Counsel and file my opening brief pro-se.

I feel there may be a conflict of interest.

Respectfully: Clark Tellvik

Clark TELLVIK

Dated May 25, 2021

Doe# 863699

Submitted a motion for relief of judgment under CrR 7.8.

JUDGE SPARKS said "I'll take it home over the weekend" and we will address it on February 18, 2020.

On February 18, TELLVIK explained to the JUDGE, the issues raised in the motion had not been addressed in trial. (RP. 26)

JUDGE SPARKS decided to "sign an order that the state prepares that denies TELLVIK's motion and forwards it to the COURT OF Appeals for a PRP so that they'll -- they'll have a chance to look at it." (RP. 26)

After taking TELLVIK'S motion home for the weekend, JUDGE SPARKS said, "I'm not passing judgment on anything that you're alleging here -- it might be all meritorious -- you might win; you might lose, I don't know. It's just not my -- my -- your asking me to decide about things I did, right?" and "but everything I do is correct you see?" (RP. 26) The court: (Laughs) RP. 26.

The court denied TELLVIK'S CrR 7.8 motion, "so I'm going to deny this, and then you take it to the COURT OF Appeals." (RP. 28)

TELLVIK asks this court to consider the fact that the first order the trial court did was deny the 7.8 motion, the court document under ORDER is deny, with transfer as a PRP as a footnote.

The trial court clearly took the position that this court should address the 7.8 motion issues. (So the trial JUDGE doesn't have to decide about things he did.) (RP. 26)

TELLVIK would ask this court to set precedent, that when the trial court gives two orders simultaneously, that the first order on the court document should stand. The trial court's conflicting order should result in favor of a defendant under the RULE OF Lenity.

Allowing the 7.8 motion to be converted to a PRP at this time would infringe on TELLVIK's right to decline to pursue the merits of his PRP to avoid becoming subject to the successive petition rule R.C.W. 10.73-140; State v. Smith 144 Wn. App. at 863-64.

The fact that the superior court considered and passed on the merits of TELLVIK's 7.8 motion issues as well as ignored this court's notice on April 08, 2020, this court's order on May 07,

2020 and this court's Ruling on October 30, 2020 are very important.

The State and the trial court are time barred from using CrR 7.8 (b).

CrR 7.8 (b) is clear that this court may relieve a party from an order or proceeding, however "The motion SHALL be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order or proceeding was entered or taken.

Has the trial court already made a determination as to whether TELLVIK made a substantial showing that he is entitled to relief?

Answer: yes

"I'm not passing judgment on anything you're alleging here -- it might be all meritorious." (RP. 26)

Would a factual hearing resolve the 7.8 motion?

Answer: yes

An evidentiary or suppression hearing could resolve the 7.8 motion. 7.8(c)(2)(ii)

Has TELLVIK satisfied the requirements of the 7.8 rule? Answer: yes

TELLVIK argues that the trial court is not going to flip-flop and re-read the same motion and make a different determination about whether the 7.8 motion issue's entitled ~~to~~ TELLVIK relief.

JUDGE: SPARK'S: "your asking me to decide about things I did right"? (RP.26)

"But everything I do is correct, you see"? (RP.26)

"So im going to deny this, and then you take it to the court of Appeals." (RP.28)

If everything the JUDGE did was correct, we wouldn't be having this conversation. (Laugh)

TELLVIK has enclosed the notice's, orders, and rulings in hopes to help. There in order.

REMEDY:

1.) THE trial court entered an order denying TELLVIK's 7.8 motion while simultaneously ordered the matter transferred to this court for determination. Here, the trial courts conflicting order should be resolved in favor of defendant TELLVIK under the Rule of Lenity.

2.) This court should proceed with TELLVIK'S Case as a direct Appeal in light of the trial court's order denying TELLVIK'S 7.8 motion, and compel Counsel to brief the issues in this direct Appeal.

3.) This court to compel the trial court to conduct a show cause hearing and conduct an evidentiary or suppression hearing to resolve the merits of the issues contained in TELLVIK'S 7.8 motion.

A show cause hearing is the remedy. 7.8(c)(3)

Dated: June 21, 2021

Respectfully: Clark Tellvik

CLARK TELLVIK

Doc# 863699

Pg. 6

NO. 37596-0-111

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

STATE OF WASHINGTON, Respondent

V.

CLARK TELLVIK, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF KITTITAS COUNTY

THE HONORABLE JUDGE SCOTT R. SPARKS

REPLY BRIEF OF APPELLANT

CLARK ALLEN TELLVIK

Appellant Doc # 863699

P.O. Box 769, Connell

Wa, 99326

I. RESTATEMENT OF RELEVANT FACTS

ON february 14, 2020 TELLVIK Was standing in front of JUDGE: SPARKS when TELLVIK submitted a motion for relief of judgment under CrR 7.8, JUDGE: SPARKS said, "I'll take it home over the weekend" and will address it on february 18, 2020.

ON february 18, TELLVIK explained to JUDGE SPARKS, the issues raised in the motion had not been addressed in trial. (RP. 26)

JUDGE SPARKS decided to: "sign an order that the state prepares that denies TELLVIKs motion and forwards it to the court of Appeals for a prp so that they'll -- they'll have a chance to look at it." (RP. 26)

After taking TELLVIKs motion home for the weekend, JUDGE: SPARKS said, "Im not passing judgment on anything that you're alleging here --- it might be all meritorious -- you might win; you might lose, I dont know. Its just not my -- my -- your asking me to decide about things I did, right?" "but everything I do is correct you see?" (RP. 26) The court: (Laughs) (RP. 26)

The Court denied TELLVIK'S CrR 7.8 motion,
* JUDGE: SPARKS: "So I'm going to deny this, and
then you take it to the COURT OF APPEALS." (RP.28)

TELLVIK asks this COURT to consider the fact
that the first order the trial court did was deny
the 7.8 motion, the court document under order
is deny, with transfer as a prp as a footnote.

The trial court clearly took the position
that this COURT should address the 7.8 motion,
(so the trial JUDGE doesn't have to decide about
things he did.) RP.26

TELLVIK asks this court to set precedent, that
when the trial court gives two orders simultane-
ously, that the first order on the court document
should stand. The trial courts conflicting
order should result in favor of a defendant
under the RULE OF LENITY.

The fact that the superior court considered
and passed on the merits of TELLVIK'S 7.8
motion issues, as well as ignored this court's
notice on April 8, 2020, this court's order on
May 7, 2020, and this court's Ruling on October
30, 2020 are very important.

The state and the trial court are time barred from using CrR 7.8 (b).

CrR 7.8 (b) is clear that this court may relieve a party from a order or proceeding, However "The motion SHALL be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order or proceeding was entered or taken."

TELLVIK argues the fact is the trial court is not going to flip-flop and re-read the same motion and make a different determination about whether the 7.8 motion issues entitled TELLVIK relief.

JUDGE: SPARKS: "your asking me to decide about things I did right?" (RP. 26) "BUT everything I do is correct, you see?" (RP. 26)

"So I'm going to deny this, and then you take it to the COURT OF APPEALS." (RP. 28)

If everything the judge did was correct we wouldn't be having this conversation.

The fact is TELLVIK satisfied the requirements of the 7.8 RULE.

The fact is the trial court has already made a determination and shown TELLVIK made a substantial showing that he is entitled to relief.

II. DISPUTED AND UNDISPUTED FACTS.

1.) The state does not dispute the fact that the trial court along with the state, read Tellvik's arguments and supporting documents, and that the trial court denied the 7.8 motion because, the court: "your asking me to decide about things I did, right?" (RP. 26) "so I'm going to deny this, and then you take it to the COURT OF APPEALS." (RP. 28)

2.) The state does not dispute the fact that the trial court failed to comply with the requirements of CrR 7.8.

3.) The state does not dispute the fact that at the time TELLVIK filed his timely motion, the superior court MUST make a factual finding under CrR 7.8 (RB. 4)

The state does not dispute that this court

Ordered the superior court to correct its order denying TELLVIKS 7.8 motion over a year ago, further more the state does not dispute the superior court ignored this COURTS may 7, 2020 order.

4.) TELLVIK disputes the state's "statement of the case" (RB pg 3, 4) that the court believed the 7.8 motion could only be addressed as a prp, (under CrR 7.8, (C), (2)) because of TELLVIKS, "statement of additional grounds," from his previous direct appeal, and because of his SAG, the court lacked jurisdiction to consider his 7.8 motion. (RB pg 4)

If the court felt it lacked jurisdiction to even consider TELLVIKS 7.8 motion, then why would the trial court take the motion home for the weekend and read it?

And of course none of this smoke and mirror's argument explains why the superior court ignored this courts may 7, 2020 order.

TELLVIK points out the state gives ~~no~~ no mention as to why they have ignored this courts April 8, 2020 notice, this courts may 7, 2020 order, and this courts RULING

on October 30, 2020.

III. ARGUMENT IN REPLY

1.) The state claims; "it is incumbent upon the superior court to consider Mr TELLVIK's timely motion and make a decision whether Mr TELLVIK has made a substantial showing that he is entitled to relief." (RB pg. 5)

The time to consider TELLVIK's motion was after the JUDGE took it home for the weekend and read it, (February 14, 2020).

On February 18, 2020 the JUDGE acknowledged he had considered TELLVIK's motion, and that there was a substantial showing that TELLVIK was entitled to relief, however, JUDGE SPARKS did not want to decide about things he did, (RP. 26) and told TELLVIK to take the motion to the COURT OF APPEALS. (RP. 28)

2.) Next the state claims; "Remand of TELLVIK's motion is required for the superior court to engage in a meaningful transfer analysis." (RB 5, 6)

Here the superior court is acting as if the HONORABLE ACTING CHIEF JUDGE: KEVIN M. KORSMO did not already issue the ORDER and REMAND over a year ago, MAY 7, 2020.

The MAY 7, 2020 order explained to the Superior court, that when the court passes on the merits of a CrR 7.8 motion and "denies it" as it has done in this case, the proper mechanism for further review is through a direct appeal. R.A.P. 2.2(a)(9)(10).

3.) The superior court appears to be trying to use CrR 7.8(b), (RB pg. 1) as a way to justify their mistake or neglect.

However, 7.8(b) is clear; [#] that this "court may relieve a party from an order or proceeding, for the following reasons:"

However "The motion SHALL be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order or proceeding was entered or taken"

TELLVIK fills that if he was the party over the 1 year rule, then 7.8(b) would NOT apply.

IV. CONCLUSION

1.) The trial court entered an order denying TELLVIK'S 7.8 motion after thorough consideration, while simultaneously ordered the matter transferred to this court for determination.

Here, the superior courts conflicting order should be resolved in favor of the defendant under the RULE OF LENITY.

2.) TELLVIK asks this court to compel the Superior Court to conduct a show cause hearing and conduct an evidentiary or suppression hearing to resolve the merits of the issues contained in TELLVIK'S 7.8 motion. 7.8 (4) (3)

3.) or, this court should proceed with TELLVIK'S case as a direct APPEAL in light of the superior court passing on ^{the} merits, and denying TELLVIK'S 7.8 motion, and follow R.A.P. 2.2(a)(9),(10).

Clark Tellvik

CLARK TELLVIK

Dated: July 7, 2021

Doc# 863699

THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION III

<u>STATE OF WASHINGTON,</u> RESPONDENT	}	CASE NO. <u>375960</u>
V.		MOTION TO MODIFY CLERK'S RULING / AND PROCEED PRO-SE DUE TO CONFLICT OF INTREST
<u>CLARK ALLEN TELLVIK,</u> APPELLANT		

IDENTITY OF MOVING PARTY:

I CLARK TELLVIK, asks this court for relief designated in part 2.

STATEMENT OF RELIEF SOUGHT:

MODIFY the Clerks ruling filed July 15, 2021, because Counsel refuses to file my timely reply brief on my behalf.

I am requesting to proceed pro-se due to multiple conflicts of intrest. I want Counsel to go away and take her opening brief with her.

FACTS RELEVANT TO MOTION:

The July 15, 2021 Clerks ruling returned my timely reply brief, the Clerk said to Contact Counsel (TROMBLEY), that Counsel will be filing my (APPELLANTS) reply brief, on my behalf if I have any. Obviously I have one, so I immediately told Counsel to file my reply brief, as I was instructed by this court.

Included is Counsel's July 19, 2021 letter that clearly refuses to file my reply to the prosecutor because she didn't author it, (basically she didn't think of it) but more importantly, Counsel and the prosecutor have communicated prior to the opening brief and have agreed on five issues they can come together on.

How ever I shouldn't be surprised, this is the same counsel that filed my opening brief eleven days after I told her not to.

Clearly Counsel disregards my interest when faced with a choice between advancing the prosecutor's and/or her

own interest. (an actual conflict of interest exists "if counsel was faced with a choice between advancing his own interest above those of his client"). HALL v. United States, 371 F.3d 969, 973 (7th Cir. 2004)

I ask this court to allow me to explain as to why my reply brief's plausible defense strategy should be pursued, and as to when Counsel's course of action, legal issues and loyalties diverged.

Counsel was appointed November 5, 2020, on February 4, 2021 Counsel and I discussed issues that we agreed should be raised, after explaining to Counsel that I, pro-se, did not file a notice of appeal on the new judgement and sentence, and that there is nothing I want raised regarding the new judgement and sentence.

The notice of appeal I filed pro-se is only on the CrR 7.8 motion, the only thing the new judgement and sentence and the 7.8 motion have in common, is they were both heard, (coincidentally) at the same hearing.

What we agreed on was that this court filed an order on May 7, 2020 that ordered the superior court to reconsider and/or correct its mistakes after denying my 7.B motion.

In this court's May 7, 2020 order, it cites R.A.P. 2.2(a)(9)(10) as the proper mechanism for obtaining further review. On February 4, 2021 Counsel and I discussed and agreed that it had been almost one year since this court's first notice on April 8, 2020 telling the superior court to correct its order, and that with no response from the superior court, that this court was correct and the only thing we could do is ask to have this case go forward as a direct appeal.

On February 9th, 2021 (just 5 days later) Counsel asked for me to call again. Counsel told me "she had spoke with the prosecutor," I said "why would you talk to the prosecutor?" Counsel said "well this is an unusual case and I needed to figure out how to proceed."

Counsel said she could no longer do what we agreed to, and that the only argument she can file is for this court to (again)

remand the 7.8 motion back to the trial court. (an actual conflict of interest occurs when counsel has inconsistent interest).

Freund v. Butterworth, 165 F.3d 839, 859 (11th cir. 1999) (en banc).

After talking to the prosecutor, Counsel did exactly what I said I was not willing to do, (an actual conflict of interest exist "if Counsel was faced with a choice between advancing his own interests above those of his client"). Hall v. United States, 371 F.3d 969, 973 (7th cir. 2004), Workman v. Cullen, 342 F.3d 1100, 1107 (10th cir. 2003), Gilbert v. Moore, 134 F.3d 642, 652 (4th cir. 1998) and (as to conflict, if there is any adverse effect on the attorneys performance, prejudice is presumed and the defendants argument prevails) Freeman v. Chandler, 645 F.3d 863, 869 (7th cir. 2011), Blake v. United States, 723 F.3d 870, 880 (7th cir. 2013).

Before Counsel was appointed I was in regular communication with a former Washington Court of Appeals JUSTICE, who is now currently a JUDGE in Spokane

County, and a Contract Attorney,
MS. JORDAN.

MS. JORDAN is actually who helped me
with putting together this 7.8 motion,
She is who helped me with this notice
of Appeal.

Back when I explained that the ^{superior} Court
did not respond to this Courts may 7, 2020
order, She believed that if they did not
respond with in one year, thier may be a
time bar issue, and at that time I would
Not ask the Court of Appeal to order another
remand, but instead ask the Court of Appeal
for what is the remedy in the may 7, 2020
order, and to continue further review
under this direct Appeal.

She said the superior Court would fight
to have the matter transfered back.

My family reached out to anothe former
COURT OF Appeals justice, Kenneth H. Kato,
who practices Law out of spokane, MR. Kato
defenitly would NOT ask for what is in
Counsels opening brief, but would need
a fee that I cant afford, Be fore he

would file a brief or reveal what he would do.

So I immediately filed a motion dated 3-29-2021, this motion is 11 days before counsel's opening brief was filed.

I told counsel, along with asked this Court to STOP ALL "Filings" on the front page of the motion.

I asked for this action "until I could get clarification with counsel on what exactly can be raised and who can raise it."

I understand I may not have done this in lawyer talk, but I just mean what my words say, I'm not trying to trick anyone when I say something.

When I told counsel not to file my opening brief almost 2 weeks before, she filed it anyway, when I got the brief, I asked her why she didn't send it to me first before filing it like we discussed, she actually wrote me a letter and said, she hadn't wrote that down in her notes.

I told counsel NOT to file anything that ask's this court to give the superior court

another chance to turn my direct Appeal into a P.R.P, the superior court has already denied, and passed on the merits of my 7.8 motion.

Once again, Counsel is now telling me that is the only remedy she can ask for.

April 12, 2021, only four days after Counsel filed her opening brief: "I'm writing in response to your most recent message after our telephone conversation on April 12, 2021 the 7.8 motion argument is limited to asking for the motion to be returned again to the superior court for a ruling."

This, I'm sure is what the prosecutor is limited to, and that is why after Counsel's and the prosecutor's phone call, this is now the only thing Counsel has agreed to do.

Counsel has told me she can't raise anything outside the 7.8 motion ~~argument~~ argument, but has raised the 2021, State v. Blake issue, this is not in the transcript, and I told Counsel I was leaving State v. Blake in my tool box so it can be used at a later time.

There is one argument in my/Counsel's opening brief I will be making, and it's NOT

the one the prosecutor and my attorney are trying to make.

Shortly after Counsel filed her opening brief that favors the prosecutor and well before the State gladly agreed to all five issues, (I bet that set precedent, the state agrees with every issue raised by counsel) I filed the motion to strike Counsel's opening brief on May 3, 2021 and requested time to file my own opening brief, following the May 3, 2021 motion Counsel wrote me by May 6, 2021 and stated "If you prefer to represent yourself without Counsel, you must file a motion with the C.O.A asking to represent yourself," so I filed a motion to withdraw Counsel / and withdraw Counsel's opening brief. On May 25, 2021. I have also sent an electronic message telling Counsel to file a motion to withdraw, and haven't heard from her since.

The Ninth circuit has articulated three factors to be used in determining whether a defendant knowingly and intelligently waives the right to Counsel, I am aware of all three factors.

I Clearly, knowingly, intelligently and unequivocally waive the right to counsel. The right to counsel embodied within the Sixth Amendment carries as its corollary the right to proceed pro-se see, e.g. U.S. v. Peppers, 302 F.3d 120, 129 (3d Cir. 2002)

(* [T]he [6th] Amendment implies a right of self-representation.) Fowler v. Collins, 253 F.3d 244, 249 (6th Cir. 2001).

I am aware of the dangers, pitfalls and disadvantages of self representation and still wish to proceed pro-se see Faretta v. California.

I CLARK ALLEN TELLVIK, certify under penalty of perjury under the laws of Washington that the foregoing is true and correct.

August 12, 2021

Doc# 863699

Coyote ridge correction

P.O. Box 769

Connell, wa, 99326

G-A-29

Clark Tellvik

CLARK TELLVIK

THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,) CASE NO. 375960

RESPONDENT)

V.)

MOTION FOR

RECONSIDERATION

CLARK ALLEN TELLVIK,) R.A.P. 12.4

APPELLANT)

CLARK, TELLVIK, the Appellant, (pro-se)
in the above entitled case, request this
Court for reconsideration of its opinion
entered on December 21, 2021.

In the conclusion this court remanded
this case to the trial court for consideration
of TELLVIK'S C.R. 7.B motion for relief
of judgment.

However, it appears that this Court's
opinion, in its Analysis, gives the trial
Court the option to transfer the C.R. 7.B
motion as a personal restraint petition.

Appendix (A) pg. 1

TELLVIK asks this COURT to Amend its opinion, and strike the option of allowing the trial court to transfer the motion as a PRP, because of the following facts and material points:

1. The Trial COURT IS TIME BARRED FROM CONSIDERING THIS OPTION.

This Court has previously issued this same remedy numerous times, and the State and trial court deliberately ignored this Courts previous orders.

a) on April 8, 2020 this Court directly notify Judge SPARKS, this Court gave SPARKS 21 days to decide wether or Not the CIR 7.8 motion must be transferred to this court as a personal restraint petition. see Appendix (A)

B) After Choosing not to respond, the ACTING CHIEF JUDGE: KEVIN M. KORSMO filed an ORDER on MAY 07, 2020, in this ORDER

the Honorable Chief JUDGE told the State along with the trial court, that

"When a superior court passes on the merits of a CrR 7.8 motion and "denies it," as it appears to have done here, the proper mechanism for obtaining further review is through a direct appeal. RAP 2.2 (a)(9), (10)."

and yet the state and the trial court still chose not to respond or conclude that TELLVICKS 7.8 motion must be transferred to this court as a personal restraint petition.

See Appendix(B)

C.) On October 30, 2020, this court filed a Commissioner's Ruling which in part states "(pg.2)" on MAY 7, this court entered an order remanding the petition to the superior court because the transfer order

failed to meet the requirements of CrR 7.8(c)(2)", it then double's down that "this court directed the superior court to reconsider and/or correct its transfer order as necessary."

1 " upon remand, it appears the superior court did not amend its February 18, order or enter a new order with respect to the CrR 7.8 motion. Presumably the court decided not to transfer this matter to be considered as a personal restraint petition." pg. 2

Included with the Commissioner's Ruling is this court notice, October 30, 2020, to the state, that notifies the state with a copy of the Commissioner's Ruling.

It states in part "if objections to the ruling are to be considered (RAP 17.7) they **MUST** be made by way of a motion to modify in this court within 30 days from the date of this ruling." see Appendix (D)

D) and TELLVIK asks this court to consider that the Brief of Respondent filed June 9, 2021, pg. 1

A. Response to Assignment of ERROR

The state is attempting to use 7.8(B). Whether the state is claiming they made a: Mistake, Inadvertence, Excusable Neglect, etc. TELLVIK would argue the state should have responded Not more than 1 year after the judgment, order, or proceeding.

To allow the state and the trial court the option of transferring TELLVIK's 7.8 motion as a personal restraint petition after failing to exercise their Due diligence would be rewarding the state for bad behavior, it sets bad precedent, permitting the state to totally disregard this courts orders and rules, which sends a clear message that the state is not bound by the courts orders, only defendants.

For the reasons stated above TELLVIK asks this court to Amend its opinion and (1) STRIKE the option in its opinion

that allows the trial court the option of transferring TELVIK's CrR 7.8 motion as a personal restraint petition, and
(2) Affirm the remand order to direct the trial court to hold a fact finding hearing on TELVIK's CrR 7.8 motion on the merits.

Grounds For Relief:

The rules of appellate procedure (RAP) allows this court the discretion to alter the rules in the interest of Justice.

Together RAP 1.2(a), 1.2(c) and RAP 18.8(a) make clear that an appellate court should liberally interpret the rules of appellate procedure and alter any provision included therein when necessary to promote justice and to consider cases and issues on their MERITS. (See) State v. ~~OLSON~~ OLSON 126 Wn.2d 315, 323, 893 P.2d 629 (1995)

(Noting the discretion provided to an appellate court in RAP 1.2(a) should normally be exercised unless there are compelling reasons not to do so.) Weeks v. Chief of Wash,

State patrol, 96 Wn. 2d 893, 896, 639
P.2d 732 (1982). (quoting RAP 1.2(a) and
observing that [a]pplying strict form would
defeat the purpose of the rules to "promote
justice and facilitate the decision of
cases on the merits."

2. TELLVIK'S NOTICE OF APPEAL DOES
NOT INCLUDE THE AMENDED JUDGEMENT
AND SENTENCE:

This Court is misapprehended
about what is being appealed, because it
has been misled.

This Court's opinion states "TELLVIK
appeals a trial court order regarding his
Motion for relief from judgment under CR 7.8."

This opinion is correct.

It then states: "He also appeals the terms
of his amended judgment and sentence."

This opinion is incorrect.

TELLVIK will include a Declaration
to show why.

I CLARK ALLEN TELLVIK, Avee's
the following:

(A) The only thing the CR 7.8 motion
and the Amended judgment and sentence
have in common is they were both heard
on the same day at the same time.

February 18, 2020 (the day my CR 7.8
motion was denied and the Amended
judgment and sentence was entered,
amending my sentence from 267.5 months
to 271.5 months.) up until October 30,
2020, I filed everything pro-se.

I would refer this Court to the October
30, 2020 Commissioners Ruling as to how
and what my Notice of appeal was filed
on. see Appendix (C)

" On February 18 the Kittitas County
Superior Court filed an Amended judgment
and sentence", " That same day, the court
entered an order denying the CR 7.8 motion "
" following remand, MR TELLVIK filed a
notice of appeal from the February 18 order "

" MR TELLER has filed a Response in which he states his appointed counsel told him she would file a notice of appeal following the hearing on his CrR 7.8 motion" This Courts May 7, 2020 remand order has nothing to do with the Amended judgment and sentence. see Appendix B

(B) October 30, 2020 this court appointed MARIE TROMBLEY. (Counsel)

On December 22, 2020 Counsel notified me she was waiting for the transcripts from the CrR 7.8 motion hearing.

Counsel recieved the transcripts on february 1, 2021 and on february 2, 2021, arranged a phone call for february 4, 2021.

During this phone call counsel said she recieved the transcripts and reached out to the Kittitas county prosecutor to see exactly what was being appealed, and then contacted this court and has straightend everything out, Counsel said your now appealing the amended judgment

and sentence.

I told counsel I have never filed my Notice of appeal on the amended judgment and sentence.

Counsel said she would send me the documents showing I had.

Counsel took a copy of the amended judgment and sentence and stapled it to my notice of appeal and sent it to me.

I immediately started filing multiple motions to this court.

They include:

- 1) 3-29-2021, Motion to stop all filings until I can get clarification with this court and Marie Trombley (counsel)
- 2) 4-8-2021, Counsel filed opening brief anyway.
- 3) 5-3-2021 Motion to strike Brief of Appellant filed by MARIE Trombley.
- 4) 5-25-2021 motion to withdraw counsel or withdraw counsel's opening brief.
- 5) 6-14-2021 Motion to modify commissioners Ruling to strike opening brief of Appellant filed by counsel.

6) 6-21-2021 Motion to compel the C.O.A to treat the 7,8 motion as a Direct Appeal or compel the trial court to conduct a show cause hearing.

7) 7-7-2021 Reply Brief of Appellant.
(Rejected)

8) 8-12-2021 Motion to modify clerks Ruling and proceed pro-se due to conflict of interest.

I CLARK ALLEN TELLVIK, Declare
Under penalty of perjury under the laws of the state of WASHINGTON that the forgoing is true and correct to the best of my knowledge and ability. RCW 9A.72.035 Clark Tellvik

C. Prior to Counsel being appointed TELLVIK retained legal services, (pro-bono).

These services included; investigative services, along with preparation of a brief that TELLVIK would be able to file.

After many hours invested and state v. Blake already incorporated into the preparation, the brief has been put on hold due to Counsel raising this issue that is outside

the record.

On April 8, 2021 counsel sent a letter stating she wanted to raise state v. Blake.

I immediately called and explained the issue was already being prepared, and I told counsel who the legal service was.

TELLVIK asks this court that due to the fact TELLVIK is already invested, prior to counsel being appointed, and due to counsel's mistake of filing anything outside the record, that this court strike state v. Blake from this opinion at this time.

Date 1-9-2022

Clark Tellvik

Doc# 863699

CLARK TELLVIK

Coyote Ridge corrections center

MOTION FOR RECONSIDERATION
APPENDIX'S.

APPENDIX - A - MOTION FOR RECONSIDERATION

Pages 1-through-12

APPENDIX - A-1, April 8, 2020 Notice

from Court of Appeals page - 13

Appendix - B MAY 07, 2020 REMAND

Order pages 14-through-15

Appendix - C October, 30, 2020

Commissioner's RULING pages 16-through-17

Appendix D October 30, 2020

30 day Notice to reply page - 18

Appendix - E January 13, 2022 order
denying motion for reconsideration page - 19

Appendix - F December 22, 2021 opinion

of the COURT OF APPEALS pages 20-through-22

Renee S. Townsley
Clerk/Administrator

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TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



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April 8, 2020

Honorable Scott R. Sparks
Kittitas County Superior Court
205 W. 5th Ave., Ste. 207
Ellensburg, WA 98926
Email

CASE # 374122
Personal Restraint Petition of: Clark Allen Tellvik
KITTITAS COUNTY SUPERIOR COURT No. 161000214

Dear Judge Sparks:

The Court received an *Order Denying Defendant's CrR. 7.8 Motion and Referring the Matter to the Court of Appeal as a PRP* on February 21, 2020 in the above referenced case. The Order denies petitioner's motion for relief of judgment filed February 14, 2020. Given petitioner's motion was denied, it is unclear what is before this Court for review.

Please provide clarification by April 29, 2020 on what is being transferred to the Court of Appeals, Division III for review. Thank you for your attention and assistance to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renee S. Townsley".

Renee S. Townsley
Clerk/Administrator

RST:jld

c: Clark Allen Tellvik
#863699
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

APPENDIX (A-1) Pg. 13

No. 37412-2-III

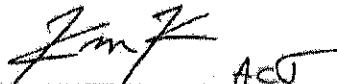
PRP of Tellvik

not require a factual hearing. Absent one of those two circumstances, the superior court may not transfer a CrR 7.8 motion for consideration as a personal restraint petition.

When a superior court passes on the merits of a CrR 7.8 motion and “denies it,” as it appears to have done here, the proper mechanism for obtaining further review is through a direct appeal. RAP 2.2(a)(9), (10).

When a superior court’s transfer order fails to meet the requirements of CrR 7.8(c)(2), this Court should remand it. *In re Pers. Restraint of Ruiz-Sanabria*, 184 Wn.2d 632, 638-39, 362 P.3d 758 (2015).

Because the transfer order does not meet the requirement of CrR 7.8(c)(2), the matter is remanded for the superior court to reconsider and/or correct its transfer order as necessary. RAP 16.8.1(c). Because this Court remands, “no filing fee will be required” by this Court. RAP 16.8.1(c).


ACJ

KEVIN M. KORSMO
ACTING CHIEF JUDGE

Pg. 15

The Court of Appeals
of the
State of Washington
Division 111

FILED
Oct 30, 2020
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,)	No. 37596-0-III
)	
Respondent,)	
v.)	COMMISSIONER'S RULING
)	
CLARK ALLEN TELLVIK,)	
)	
Appellant.)	
<hr/>		

This matter is before the Court on the Court's motion to dismiss as untimely and for failure to pay the filing fee.

In 2016, Mr. Tellvik was convicted in Kittitas County Superior Court for first degree burglary, possession of a stolen vehicle, possession with intent to deliver a controlled substance, making or having burglary tools, possession of a stolen firearm, and second degree unlawful possession of a firearm. He appealed, and this court reversed Mr. Tellvik's controlled substance conviction and the associated firearm enhancement but affirmed the remainder of his convictions. *State v. Tellvik*, 4 Wn.App.2d 1018 (2018) (unpublished). This court remanded for resentencing.

APPENDIX (C)
Pg. 16

No. 37596-0-III

On or about February 14, 2020, Mr. Tellvik filed a motion for relief from judgment pursuant to CrR 7.8(b). On February 18, the Kittitas County superior court filed an amended judgment and sentence. That same day, the court entered an order denying the CrR 7.8 motion but also ordering that the motion be transferred to this court as a personal restraint petition (case no. 37412-2-III). On May 7, this court entered an order remanding the petition to the superior court because the transfer order failed to meet the requirements of CrR 7.8(c)(2) where it denied the motion but also simultaneously transferred the motion to this court. This court directed the superior court to reconsider and/or correct its transfer order as necessary.

Following remand, Mr. Tellvik filed a notice of appeal from the February 18 order on May 26, 2020. This court set the matter on the commissioner's docket on the court's motion to dismiss for failing to timely file the notice of appeal and failing to pay the filing fee. The superior court subsequently filed an order of indigency on September 21.¹

Mr. Tellvik has filed a response in which he states his appointed counsel told him she would file a notice of appeal following the hearing on his CrR 7.8 motion in February, and the first time he realized no appeal was filed was when he received a copy of this court's May 7 order remanding the matter to the superior court. He also points out

¹ Upon remand, it appears the superior court did not amend its February 18 order or enter a new order with respect to the CrR 7.8 motion. Presumably the court decided not to transfer this matter to be considered as a personal restraint petition.

No. 37596-0-III

that once he realized his counsel never filed an appeal, he promptly filed the notice of appeal less than 30 days after the matter was remanded.

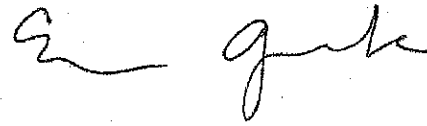
RAP 5.2(a) generally requires a party to file a notice of appeal with the trial court within 30 days after entry of the final judgment. However, this court may, on its own initiative or at the request of a party, extend the time for filing a notice of appeal where extraordinary circumstances exist to support such extension so as to prevent a gross miscarriage of justice. *See* RAP 18.8(a), (b). Strict application of RAP 18.8(b) must be balanced against a defendant's state constitutional right to appeal. *State v. Kells*, 134 Wn.2d 309, 314, 949 P.2d 818 (1998).

This Court has reviewed the circumstances and has determined that the time for filing the notice of appeal should be extended to prevent a gross miscarriage of justice. The superior court ordered that the matter was transferred to this court as a personal restraint petition (even though it also denied the motion), and thus Mr. Tellvik had no reason to believe he needed to file a notice of appeal at that time. Indeed, this court has repeatedly recognized that no appeal lies from a CrR 7.8 transfer order. Moreover, Mr. Tellvik filed his notice of appeal within 30 days of the matter being returned to the superior court. It is clear that Mr. Tellvik did not intend to waive his right to appeal under these unusual circumstances.

Pg. 17

No. 37596-0-III

Accordingly, IT IS ORDERED that the court's motion to dismiss is denied.

A handwritten signature in cursive script, appearing to read "Erin Geske".

Erin Geske
Commissioner

FILED
JANUARY 13, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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


STATE OF WASHINGTON,)	No. 37596-0-III
)	
Respondent,)	ORDER DENYING MOTION
)	FOR RECONSIDERATION.
v.)	
)	
CLARK ALLEN TELLVIK,)	
)	
Appellant.)	

THE COURT has considered appellant Clark Allen Tellvik's pro se motion for reconsideration of our December 21, 2021, opinion; and the record and file herein.

IT IS ORDERED that the appellant's motion for reconsideration is denied.

PANEL: Judges Pennell, Siddoway, and Staab

FOR THE COURT:



REBECCA L. PENNELL
Chief Judge

Appendix E

Pg. 19

Renee S. Townsley
Clerk/Administrator

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Appendix (b)

October 30, 2020

Marie Jean Trombley
Attorney at Law
PO Box 829
Graham, WA 98338-0829
marietrombley@comcast.net

Gregory Lee Zempel
Kittitas Co Pros Attorney
205 W 5th Ave Ste 213
Ellensburg, WA 98926-2887
Email

CASE # 375960
State of Washington v. Clark Allen Tellvik
KITTITAS COUNTY SUPERIOR COURT No. 161000214

This may be the only notice you will receive concerning due dates. A document filed prior to or after its due date may affect all subsequent due dates. The parties are responsible for determining adjusted due dates by reviewing the appropriate rules of appellate procedure. Failure to comply with the provisions of the rules may result in the imposition of sanctions pursuant to RAP 18.9.

Dear Counsel:

Enclosed is a copy of the Commissioner's Ruling, which was filed today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling, **November 30, 2020**. The answer, if any, to a Motion to Modify will be due **10 days** after the motion is served on the answering party. The moving party may submit a written reply to the answer to the motion to modify no later than **3 days** (excludes Saturdays, Sundays, and legal holidays) after the answer is served on the moving party. RAP 17.4(e)

Marie Trombley has been appointed appellate counsel. Ronelle, ext. #222, is assigned to assist you with this case. The time periods for compliance with the Rules of Appellate Procedure are as follows:

1. The **designation of clerk's papers** is due to be filed and served with the trial court, with a copy filed in this court, by November 30, 2020. RAP 9.6(a).

If an issue on review will pertain to a matter in which the trial court, by court rule, was required to enter written findings of fact and conclusions of law, the parties shall ensure that the findings and conclusions are entered by the trial court at least 30 days prior to the due date of Appellant's opening brief, and that the pleading is part of the appellate record for review.

If an evidentiary hearing is conducted, ab. 7 Appendix D
conclusion the court shall enter written findings of fact and Pg. 18
conclusions of law

3.6 B

2. The party seeking review must timely arrange for transcription of the report of proceedings and must file a **statement of arrangements** in this court by November 30, 2020. To comply with RAP 9.2(a), the statement should include the name of each court reporter, the hearing dates, and the trial court judge. Serve each court reporter and all counsel of record with a copy of the statement of arrangements, and provide this court with proof of service.

If the party seeking review arranges for less than all of the report of proceedings, all parties must comply with RAP 9.2(c).

If a verbatim report of proceedings will not be filed, you must notify this court, in writing, by November 30, 2020. RAP 9.2(a).

3. The **verbatim report of proceedings** must be filed with Court of Appeals, Division III, no later than 60 days after service of the statement of arrangements. The court reporter or authorized transcriptionist shall promptly serve notice of filing on all parties and shall provide a copy of the report of proceedings to the party who arranged for transcript. RAP 9.5(a).

Please note:

- 1) The Court will post public accessible briefs to the Washington Courts website.
- 2) All parties filing a brief must serve one copy of the brief on every other party and on any amicus curiae and must file proof of service with this court. RAP 10.2(h).
- 3) When preparing your brief and referring to clerk's papers, use the page numbers assigned on the index to clerk's papers. Do not refer to the Superior Court docket numbers.

4. **Appellant's brief** is due in this court 45 days after the report of proceedings is filed. RAP 10.2(a).

If the record on review does not include a report of proceedings, the appellant's brief is due 45 days after the designation of clerk's papers has been filed. RAP 10.2(a).

5. Appellant's **statement of additional grounds for review**, if any, is due 30 days after the clerk notifies appellant of the substance of RAP 10.10. If appellant requests a copy of the verbatim report of proceedings from appellant's counsel, it shall be mailed by counsel and proof of mailing filed in this court within 10 days after the request is received. RAP 10.10(e).

6. **Respondent's brief** is due in this court 60 days after service of the appellant's brief. RAP 10.2(c).

7. A **reply brief**, if any, is due 30 days after service of respondent's brief. RAP 10.2(d).

Sincerely,



Renee S. Townsley
Clerk/Administrator

RST:sd

c: Kittitas County Superior Court, via email
Clark Allen Tellvik, #863699, via email

FILED
DECEMBER 21, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 37596-0-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
CLARK ALLEN TELLVIK,)	
)	
Appellant.)	

PENNELL, C.J. — Clark Allen Tellvik appeals a trial court order regarding his motion for relief from judgment under CrR 7.8. He also appeals the terms of his amended judgment and sentence. As the parties agree, this matter must be remanded for the trial court to assess Mr. Tellvik’s CrR 7.8 motion and for resentencing.

FACTS

In 2016, a jury convicted Mr. Tellvik of first degree burglary, possession of a stolen vehicle, possession with intent to deliver a controlled substance, making or having burglary tools, possession of a stolen firearm, and second degree unlawful possession of a firearm. The jury also found firearm enhancements on the convictions for burglary, possession of a stolen vehicle, and possession with intent to deliver a controlled substance. Mr. Tellvik appealed his convictions, which this court affirmed except for a

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conviction for possession with intent to deliver a controlled substance. *State v. Tellvik*, No. 34525-4-III, slip op. at 8 (Wash. Ct. App. Jun. 14, 2018) (unpublished), https://www.courts.wa.gov/opinions/pdf/345254_unp.pdf, *rev'd in part sub nom. State v. Peck*, 194 Wn.2d 148, 161, 449 P.3d 235 (2019). The Supreme Court's decision in its consolidated review of *Tellvik* and *Peck* became final on issuance of a mandate on July 31, 2020.

On February 14, 2020, Mr. Tellvik filed a motion for relief of judgment under CrR 7.8. The motion challenged Mr. Tellvik's conviction. It was based on arguments not previously raised on appeal.

Shortly after Mr. Tellvik filed the CrR 7.8 motion, but before issuance of the Supreme Court's mandate, the trial court held a hearing to address errors in the original judgment and sentence. The errors had been brought to the court's attention by the Washington State Department of Corrections. As a result of the hearing, the trial court issued an amended judgment and sentence. The court declined to address the merits of Mr. Tellvik's CrR 7.8 motion, explaining it lacked jurisdiction because the Supreme Court had not yet mandated Mr. Tellvik's appeal back to the trial court. The court then denied Mr. Tellvik's CrR 7.8 motion and directed it to be transferred it to this court for consideration as a personal restraint petition. The petition was later remanded back to the

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trial court as its transfer order failed to meet the requirements of CrR 7.8(c)(2). *See* Order Remanding Personal Restraint Petition, *In re Pers. Restraint of Tellvik*, No. 37412-2-III (Wash. Ct. App. May 7, 2020).

On March 10, 2020, Mr. Tellvik appealed from his amended judgment and sentence and the order denying his CrR 7.8 motion. The trial court later found Mr. Tellvik to be indigent.

ANALYSIS

The issues on appeal pertain to the trial court's disposition of Mr. Tellvik's CrR 7.8 motion and the terms of the amended judgment and sentence. The parties agree Mr. Tellvik is entitled to remand regarding these issues. Thus, little discussion of the issues is necessary.

With respect to the CrR 7.8 motion, we agree with the parties that the trial court had jurisdiction to review the substance of the motion, despite the fact that a mandate had not yet been issued from the Supreme Court. Mr. Tellvik's motion was not time barred under RCW 10.73.090, and neither CrR 7.8 nor RCW 10.73.090 require a CrR 7.8 motion to be filed after a final mandate has been entered in an appeal. Therefore, the trial court should have handled Mr. Tellvik's motion pursuant to the regularly-applicable terms

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of CrR 7.8. We remand for that purpose. *See In re Pers. Restraint of Ruiz-Sanabria*, 184 Wn.2d 632, 638-39, 362 P.3d 758 (2015).

Our remand order should not be read to preordain the results of the trial court's CrR 7.8 analysis. The trial court may decide Mr. Tellvik is entitled to a fact-finding hearing or a hearing on the merits. CrR 7.8(c)(2). Or it may conclude Mr. Tellvik's motion must be transferred to this court as a personal restraint petition. *Id.* We express no opinion on these issues.

The parties also agree Mr. Tellvik is entitled to resentencing based on several errors in the amended judgment and sentence. We concur. First, Mr. Tellvik is entitled to resentencing because his offender score includes at least one conviction for simple possession of a controlled substance rendered void by the Supreme Court's decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). Second, the term of community custody imposed in relation to Mr. Tellvik's conviction for possession with intent to distribute a controlled substance (Count Three) cannot result in a total combined term (incarceration plus community custody) greater than the statutory maximum of 120 months. Former RCW 9.94A.701(9) (2010). Third, the judgment and sentence cannot include a \$200 criminal filing fee or a DNA (deoxyribonucleic acid) collection fee, as Mr. Tellvik is indigent and has already submitted a DNA sample as a result of a prior


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conviction. RCW 36.18.020(2)(h) (filing fee); RCW 43.43.7541 (DNA). Fourth, the judgment and sentence must not include references to inapplicable sentencing enhancements under RCW 9.94A.533(4)(e) and RCW 9.94.533(8)(b).

CONCLUSION

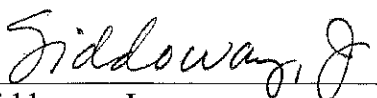
We remand to the trial court for consideration of Mr. Tellvik's CrR 7.8 motion for relief from judgment. Mr. Tellvik's sentence is reversed and we remand for resentencing pursuant to the terms of this opinion. Given our disposition of this appeal, Mr. Tellvik's motion to modify our Clerk's Ruling denying his motion to extend time to file a statement of additional grounds for review is denied as moot.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Pennell, C.J.

WE CONCUR:



Siddoway, J.



Staab, J.

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INMATE

February 11, 2022 - 1:00 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37596-0
Appellate Court Case Title: State of Washington v. Clark Allen Tellvik
Superior Court Case Number: 16-1-00021-4

DOC filing of Tellvik Inmate DOC Number 863699

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The Inmate The Inmate/Filer's Last Name is Tellvik.

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