No. 100685-3
COA No. 53296-4-II
Consolidated with No.53329-4-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN MICHAEL SANCHEZ
Appellant.

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

The Honorable Chris Lanese, Judge
Cause No. 17-1-01676-34

ANSWER TO PETITION FOR REVIEW

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A. ISSUES PERTAINING TO REVIEW

1. Whether Sanchez has demonstrated that review of the Court of Appeals decision finding affirming the trial court's finding that Sanchez could not demonstrate a manifest injustice to withdraw his plea because he had forfeited his right to counsel is warranted under RAP 13.4.

2. Whether Sanchez has demonstrated that review of the Court of Appeals finding that the trial court denied a CrR 7.4 motion, not a CrR 7.8 motion, and thereby declining to review issues raised based on CrR 7.8, is appropriate under RAP 13.4

B. STATEMENT OF THE CASE

For purposes of this brief, the State incorporates by reference the Statement of the Case in the Brief of Respondent filed on July 23, 2020, incorporated by reference herein, with the following additional procedural history from the Court of Appeals decision. In the direct appeal, the petitioner John M. Sanchez argued that the trial court lacked jurisdiction and abused its discretion by denying his request for a competency

evaluation, denying his post-plea motions, and ordering an exceptional sentence. In an unpublished opinion, the Court of Appeals affirmed Sanchez's convictions but remanded for correction of the offender score and resentencing. State v. Sanchez, Unpublished Opinion, No 53296-4-II.

The Court of Appeals affirmed the trial court's finding that Sanchez had forfeited his right to counsel by conduct. *Id.* at 20. The Court of Appeals also found that the trial court properly denied Sanchez's motion for arrest of judgment under CrR 7.4 and declined to consider the motion under CrR 7.8. Sanchez now seeks review of those decisions.

C. ARGUMENT

A petition for review will be accepted by this 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 a published 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.

RAP 13.4(b).

1. The decision of the Court of Appeals finding that Sanchez forfeited his right to counsel was specific to the facts of this case and consistent with the precedent in this State.

Sanchez argues that this Court should accept review of the Court of Appeals finding that Sanchez forfeited his right to counsel because it involves a significant question of constitutional law and involves an issue of substantial public interest. The State does not argue that the right to counsel is not a significant question of constitutional law, but it is an issue that has significant guidance from the Court of Appeals and this Court. Moreover, the issue is very fact specific, making this petition for review noticeably limited to this case, rather than of substantial public interest. As such, the State asks that this Court deny review of the issue.

"A court may find that a defendant has forfeited his or her right to counsel after having engaged in 'extremely dilatory conduct' or 'extremely serious misconduct'." State v. Afeworki, 189 Wn.2d at 345, United States v. Thomas, 357 F.3d 357, 362 (3rd Cir. 2004). When defense counsel Strophy was allowed to withdraw, he cited a breakdown in communications with his client and angry and derogatory language and past and new threats towards him, indicating a belief that the conduct had created a conflict of interest as it "creates an issue of divided loyalties and places us in an adversarial position." CP 411-413. Strophy indicated "based on his aggressive language, past and new threats, and his demeanor towards me, I no longer feel comfortable meeting with him in the manner that would be necessary to prepare a case for trial." RP 412. This was despite the fact that Judge Price had previously warned Sanchez that he could not threaten his counsel. RP (5/10/19) 10-11.

Sanchez continued to engage in dishonest and manipulative behavior, arguing that Strophy was allowed to withdraw due to manifest error during his request to relinquish his pro se status. RP (8/24/18) 16. As Judge Lanese later noted, Sanchez continued in a pattern and practice designed to delay the proceedings, including refusing to be brought to court, even for hearings that he scheduled, refusing to speak with his counsel, being abusive to his counsel and continuing to threaten his counsel. RP (1/9/19) 37-38, RP 5-6, 41-43, 218-219. On January 9, 2019, the trial court stated that Sanchez, "may try to take certain actions to create certain conflicts," had flip-flopped repeatedly in his request for pro se status and appeared to be "making such requests in an attempt to manipulate and control the proceedings." RP (1/9/19) 37-38.

The record that Mr. Quillian provided only added to that finding, demonstrating a complete refusal to work with his trial counsel, continued abusive behavior toward his trial counsel, and an apparent intent to delay the proceedings through his

abuse. The trial court's finding that Sanchez's abusive and dilatory behavior was so extreme as to be inconsistent with the right to counsel and to constitute a forfeiture of the right to counsel is supported by Sanchez's conduct leading up to that moment throughout the proceedings. RP 41-43. Sanchez engaged in the exact manipulation of the right to counsel for the purpose of delay and disruption of trial that was discussed in DeWeese 117 Wn.2d 369, 379, 816 P.2d 1 (1991).

Sanchez's conduct at trial only further demonstrated his intent to delay the proceedings. RP 217. Even when Sanchez litigated his motion to withdraw his plea, he was attempting to manipulate the proceedings to accomplish his goals. 3 RP 24, 28, 29, 30, 51. The trial court did not abuse its discretion by finding that Sanchez had forfeited his right to counsel. As such, it was Sanchez's actions that caused him to be pro se. There was no manifest injustice in the plea process.

The Court of Appeals noted

> Sanchez's tactics were so dilatory that two and a half years elapsed between his arrest and guilty plea. The trial court repeatedly found that Sanchez was actively delaying proceedings. Sanchez refused to appear for at least 13 hearings; even after the trial court ordered that future refusals would constitute voluntary waiver of his right to attend pretrial proceedings. He filed bar complaints against at least three attorneys and sought court orders to force his lawyers to pursue frivolous actions. He threatened lawsuits against at least two attorneys and did file a malpractice lawsuit on the eve of trial to force attorney five's withdrawal. He also made threats of physical and financial harm against attorney five and an investigator. His behavior extended beyond the dilatory conduct that merited forfeiture of the right to counsel in *E.P.* and *A.G.* and bears notable similarity to the defendant in *Thomas*.

Unpublished Opinion, at 21 (internal citations omitted). Under the unique facts of this case, the Court of Appeals correctly applied existing law regarding forfeiture of counsel. As such, there was no manifest injustice in the plea process. Sanchez has not provided a basis upon which this Court should accept review of this issue.

2. Sanchez has not provided a basis upon which this Court should accept review of the Court of Appeals decision to not consider his CrR 7.8 motion on appeal.

Following his plea of guilty, Sanchez filed a motion to withdraw his guilty plea and a motion for arrest of judgment. The trial court considered the motion on July 2, 2019. 3 RP 13;[1] CP 182-188. At the start of his argument, Sanchez mentioned that he had filed a separate CrR. 7.8 modified judgment, and stated, "Ultimately what it's - - what it's pertaining to is a proposed order that was trying to - - well, if it could be met rather than a complete arrest or complete withdrawal, this would fix a lot of the issues with a modification of judgment with a couple of the things that I mentioned in the motion." 3 RP 22. The trial court indicated that it had not received the proposed modification and allowed Sanchez to present arguments verbally. 3 RP 22. During his arguments, Sanchez made it clear that he was not truly arguing CrR 7.8, but attempting to get the trial court to accept a

[1] The verbatim report of proceedings from June 5, 2019, and July 2, 2019, appear in a single volume which the State designated as 3 RP in the original brief of Respondent.

modification of his sentence rather than rule on his withdrawal and arrest of judgment motions. During the hearing, Sanchez repeatedly indicated that a modification of sentence could be done instead of a withdrawal of his plea. 3 RP 24, 28, 29, 30, 51, Sanchez argued, "I also have five different appeals that have to do exactly this. If my modified judgment is accepted, the majority of those appeals go away and it would make frugal use." 3 RP 29. Sanchez indicated the purpose of his motion, stating, "I'm willing to still do a conviction, but there's some things that just need to be tailored a little bit." 3 RP 40.

In response, the prosecutor noted, "just for the record, the State is not in agreement to any modification of the negotiated resolution in this case, nor is the State in agreement to any modification of the judgment and sentence that was issued in this case." 3 RP 68. The prosecutor then indicated that Sanchez failed to meet his burden to withdraw his plea and noted, "his motion for arrest of judgment – the State's position is that rule does not apply as there was no jury verdict in this

case." 3 RP 68-69. The trial court denied the motion pursuant to both CrR 4.7 and CrR 7.8. 3 RP 75-78. 2 CP 238-239. Sanchez focused his rebuttal argument on CrR 7.4. 3 RP 69-73. The trial court addressed the motion for arrest of judgment and withdrawal of plea, noting, "It is filed as a single motion, but technically there are two requests with two different standards that have been presented in this motion." 3 RP 74. The trial court denied the motion for arrest of judgment stating, "the Court does not believe that Criminal Rule 7.4 concerning arrest of judgments applies in the context of a plea resolving a case rather than a verdict or some other decision," and "even if arrest of judgment did apply in these circumstances, the Court stands by its prior determination at the time it accepted the plea that there is a sufficient factual basis for the plea." 3 RP 74-75.

The trial court then ruled on the motion to withdraw guilty plea finding that Sanchez had not met his burden of demonstrating a manifest injustice. 3 RP 76-77. The Court of Appeals noted that "Sanchez's written motion below was a CrR

7.4 motion, not a CrR 7.8 motion." Unpublished Decision, at 22. The Court of Appeals noted that "Sanchez does not contest the trial court's denial of the motion under CrR 7.4" and "declined to address Sanchez's arguments based on CrR 7.8." *Id*. at 22-23. Sanchez's oral argument to the trial court regarding CrR 7.8 was more akin to an attempt to negotiate a different resolution than a true motion under CrR 7.8. The Court of Appeals did not err in finding that the motion and ruling considered by the trial court was not based in CrR 7.8. There is no basis upon which this Court should grant review.

Moreover, as argued in the Brief of Respondent, Sanchez's arguments based on due process and fundamental fairness were without merit, even if Sanchez had made them in a proper CrR 7.8 motion. "Criminal defendants have a due process right to a fair trial by an impartial judge." In re Pers. Restraint of Swenson, 158 Wn. App. 812, 818, 244 P.3d 959 (2010), Wash. Const. Art. 1, § 22, U.S. Const. Amends. VI,

XIV. Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing. Matter of Dependency of A.E.T.H., 9 Wn. App.2d 502, 517, 446 P.3d 667 (2019).

A trial court also has a right and obligation to ensure that "elementary standards of proper conduct" not be disregarded. State v. Deweese, at 380, citing Illinois v. Allen, 397 U.S. 337, 343-44, 25 L.ed 353, 90 S.Ct. 1057 (1970). The manner of maintaining order in the courtroom is within the trial court's discretion. Burgess v. Towne, 13 Wn. App. 954, 960, 538 P.2d 559 (1975).

Sanchez's argument that the trial court aligned himself with the State ignores several portions of the record. The trial court's inquiry with Deputy Snyder, quickly revealed that Snyder made no observations that supported Sanchez's

contention that he was sick. RP 121-22.[2] The trial court's comments in regard to Sanchez's physical condition were based on the record as a whole and the trial court's observations of Sanchez throughout the proceedings. RP 167-168. As argued throughout this brief, Sanchez repeatedly engaged in abusive and dilatory behaviors that were recognized by the trial court. The trial court's actions in regard to those behaviors do not constitute an alignment with the State, but rather are part of the trial court's duty to control the courtroom and proceedings.

The trial court did not limit the time that Sanchez had to consider the plea offer. The trial court stated that court would reconvene at 4:20, and "at that time I will either be accepting a change of plea or I will be receiving information that is not going to happen at all *or yet*, and then we will bring the jury over." RP 263 (emphasis added). The trial court in no way

[2] The motions in limine, trial, and change of plea occur in two sequentially paginated volumes which were collectively referenced as RP in the Brief of Respondent and are so referenced herein.

limited the time that Sanchez could consider the offer, rather, the trial court properly noted that jury selection would continue if Sanchez was not yet in a position to accept the State's offer. There was no indication that a plea could not have occurred the following day.

Additionally, during the plea, the trial court properly informed Sanchez that the trial court must be convinced that any plea is knowingly, voluntary and intelligently made. RP 269. In so doing, the trial court was protecting Sanchez's rights. An objective review of the records reveals exactly what the trial court stated, "being a judge presiding over any trial is exceedingly difficult," and even more difficult when a party works against the case with the purpose of delay and actively attempts to create potholes at every part of the trial. RP 159-160. However, as the record as a whole demonstrates that the trial court did what he could to protect Sanchez's rights, as the trial court stated, "I will never hold anything against Mr. Sanchez personally or otherwise. I will honor and do my best,

as is my sworn duty, to honor everyone's rights, especially a criminal defendant's." RP 160.

The record does not support a due process violation or a violation of the appearance of fairness doctrine when the reasonable observer "knows and understands all of the relevant facts." State v. Solis-Diaz, 187 Wn.2d 535, 540, 387 P.3d 703 (2017), citing, Sherman v. State, 128 Wn.2d 164, 206, 905 P.2d 355 (1995).

As the Court of Appeals noted, however, the issue before the trial court was Sanchez's CrR 7.4 motion. There is no basis upon which this Court should accept review of the decision of the Court of Appeals.

D. CONCLUSION

For the reasons stated herein, the State respectfully requests that this Court deny review.

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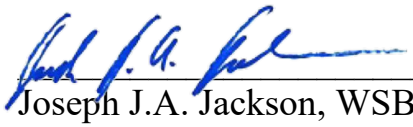
portions exempted from the word count, in compliance with RAP 18.17.

Respectfully submitted this 25th day of March 2022.



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DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Supreme Court, for Washington, which will provide service of this document to the attorneys of record. I also personally placed in the mail a true and correct copy of the State's Answer to Petition for Review.

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I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: March 25, 2022

Signature: 

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

March 25, 2022 - 12:27 PM

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