

SERVICE Marie J. Trombley
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A copy of this document delivered electronically.
I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED January, 2023
Port Angeles, WA *Marie J. Trombley*
Original e-filed at the Supreme Court

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,)
) No. 1016409
Respondent,)
) STATE'S MOTION TO
v.) SUPPLEMENT THE RECORD ON
) APPEAL
LARISA DIETZ,)
)
Appellant.)

I. IDENTITY OF MOVING PARTY

The respondent, STATE OF WASHINGTON, asks this Court for the relief designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

The State respectfully moves the Court for permission to supplement the record on review as permitted by RAP 9.10 in order to aid this Court's review of a central issue presented for review by the Appellant. The State requests to supplement the record with the Clallam County Superior Court's written findings of fact and conclusions of law on the aggravating factor filed on Sept. 2, 2022 and attached herein.

ERROR! REFERENCE SOURCE NOT
FOUND.TO SUPPLEMENT RECORD;
PAGE 1 OF 4



Mark B. Nichols, Prosecuting Attorney
Appeals Unit
223 East 4th Street, Suite 11
Port Angeles, WA 98362-3015

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III. FACTS RELEVANT TO MOTION

Dietz filed a petition for review claiming that the trial court did not file Findings of Fact and Conclusions of Law justifying an exceptional sentence (FF and CL) as required by RCW 9.94.535. This claim was not addressed on appeal. In the petition for review, Dietz requests that the matter be remanded to the trial court for entry of writing FF and CL.

The Trial court signed and filed the FF and CL on Sept. 2, 2022. Deitz’ appellate counsel was not aware of this when filing the current petition for review.

IV. GROUNDS FOR RELIEF AND ARGUMENT

“If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, . . . on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits” RAP 9.10.

Here, Dietz raised the failure of the trial court to file written FF and CL justifying an exceptional sentencing in the petition for review. Dietz attempted to raise this issue below in a motion for a supplement brief. The Court of Appeals denied Dietz’ motion to file a supplemental brief and, with it, the attempt to raise the issue. Therefore, this issue was not addressed below.

Moreover, the issue is moot and the requested remand is unnecessary because the trial court already filed the FF and CL on Sept. 2, 2022. Therefore, supplementing the record to include the FF and CL would assist this Court in deciding whether review of this



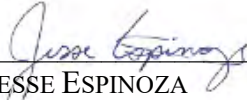
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issue should be granted or if the issue is moot.

Therefore, the State moves the Court to permit the State to supplement the record as requested above.

DATED January 27, 2023.

MARK B. NICHOLS,
PROSECUTING ATTORNEY


JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

DECLARATION

I, JESSE ESPINOZA, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

Dietz’ appellate counsel contacted me via email on May 21, 2022, to inquire how long it would take for the parties and trial court to file written findings of fact and conclusions of law justifying an exceptional sentence (FF and CL). Counsel also asked that the findings be forwarded to her after the FF and CL were filed.

A couple days later on, May 23, 2022, appellate counsel filed Dietz’ opening brief with the Court of Appeals, Div. 2, but did not assign error to the trial court’s failure to file written FF and CL in its opening brief. Also on that date, I notified trial counsel for the State of the issue regarding the FF and CL.

On June 21, 2022, the trial prosecutor notified appellate counsel via email that her intent was to prepare the proposed FF and CL for Dietz’ trial counsel’s review that very



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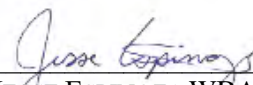
week and then to submit them to the trial court for entry. The State provided the proposed FF and CL to Dietz' trial counsel and they were signed as of July 8, 2022 but not yet filed. The hearing for filing of the FF and CL was delayed because Dietz' trial counsel took a vacation.

On Aug. 8, 2022, Dietz' appellate counsel filed a motion in the Court of Appeals, Div. 2, to supplement the Dietz' opening brief raising the issue of the absent FF and CL. The motion was denied by the commissioner on Aug. 18, 2022, and then denied by the panel on Sept. 30, 2022.

Meanwhile on Aug. 22, 2022, the State filed a notice of issue in the trial court for entry of an agreed order on FF and CL. The trial signed and filed the FF and CL on Sept. 2, 2022. Dietz' appellate counsel was not aware of this when filing Dietz' current petition for review.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 27th day of January, 2023, at Port Angeles, Washington.



JESSE ESPINOZA WBA#40240
Deputy Prosecuting Attorney



FILED
CLALLAM CO CLERK
2022 SEP -2 P 2:09
NIKKI BOTNEN

19-1-00438-05
FNFLC 165
Findings of Fact and Conclusions of Law
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IN THE SUPERIOR COURT FOR CLALLAM COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

LARISA DIETZ,

Defendant.

APPENDIX 2.4

NO. 19-1-00438-05

FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON AGGRAVATING FACTOR
(RCW 9.94A.535(3)(b))

THIS MATTER came before the court on September 13, 2021 for sentencing following jury trial. The plaintiff appeared by and through Clallam County Prosecuting Attorney, Mark B. Nichols, by his chief criminal deputy, Michele Devlin, and his deputy Sarah C. Woolman, the Defendant appeared in person and by and through her attorney, Karen Unger., The Court makes the following findings and conclusions as to the aggravating factor pursuant to RCW 9.94A.535(3)(b):

I. FINDINGS OF FACTS

- A. This matter came before the court on June 16 through July 2, 2021, for a jury trial.
- B. At the close of all the evidence in the case, the jury entered a verdict of guilty as to Count I, Attempted Murder in the Second Degree.
- C. The jury made a finding that the defendant was armed with a deadly weapon at the time of the offense.



Record Certification: I Certify that the electronic copy is a correct copy of the original on the date filed in this office, and was taken under the Clerk's direction and control.

Clallam County Clerk, by mm Deputy # pages: 5

FINDINGS OF FACT AND CONCLUSIONS
OF LAW ON AGGRAVATING FACTOR
RCW 9.94A.535(3)(b)

PROSECUTING ATTORNEY
OF CLALLAM COUNTY
Clallam County Courthouse
223 East Fourth Street
Port Angeles, Washington 98362
(360) 417-2469

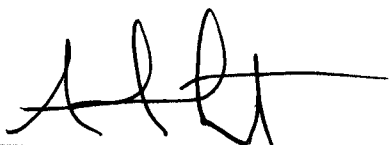
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- 1 D. The jury also made a finding that the defendant knew or should have known that the
2 victim in this matter was particularly vulnerable or in capable of resistance.
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4 E. Based on the evidence and testimony in the trial, the Court finds that the victim, Mr.
5 McGowan, was either wheelchair bound or reliant upon a walker to assist him in his
6 mobility, and that made him vulnerable to the type of attack that occurred.
7
8 F. The Defendant's standard sentencing range on Count I is 108-183 months incarceration.
9
10 G. The Court imposed 160 months incarceration on Count I prior to considering the
11 aggravating circumstance pursuant to RCW 9.94A.535(3)(b).
12
13 H. The Court also imposed the additional 24 month deadly weapon enhancement as found
14 by the jury pursuant to RCW 9.94A.825 and 9.94A.533.

15 CONCLUSIONS OF LAW

16 The Court accepts the jury's finding of the aggravating circumstance that Mr. McGowan
17 was a particularly vulnerable victim pursuant to RCW 9.94A.535(3)(b). Based on the jury
18 finding the aggravating circumstance and in light of the evidence and testimony, the Court finds
19 a basis for an exceptional sentence above the standard range. The Court hereby imposes an
20 additional 24 months incarceration on Count I. The Defendant's total term of incarceration shall
21 be 208 months.
22

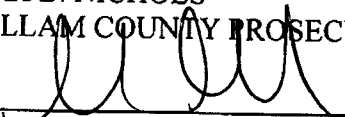
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24 Dated this 2nd day of June, 2022.

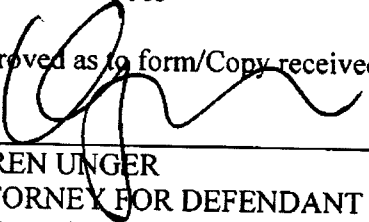
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28 JUDGE OF THE SUPERIOR COURT

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Presented by

MARK B. NICHOLS
CLALLAM COUNTY PROSECUTING ATTORNEY

By: 
SARAH C. WOOLMAN
DEPUTY PROSECUTING ATTORNEY
WSBA #45863

Approved as to form/Copy received

KAREN UNGER
ATTORNEY FOR DEFENDANT
WSBA NO.

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

19-1-00438-05
SPV 129
Special Verdict Form
10806081



STATE OF WASHINGTON,
Plaintiff,
vs.
LARISA DIETZ,
Defendant.

NO. 19-1-00438-05

SPECIAL VERDICT FORM 3

FILED
CLALLAM COUNTY
JUL 02 2021 4:52 PM
NIKKI BOTNEN CLERK

We, the jury, return a special verdict by answering as follows:

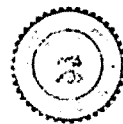
QUESTION 2:

Was the defendant, Larisa Dietz, armed with a deadly weapon at the time of the
commission of attempted murder in the second degree in count I?

ANSWER: YES (Write "yes" or "no")

DATED this 2 day of July, 2021.

Presiding Juror



Record Certification: I Certify that the electronic copy is a
correct copy of the original on the date filed in this office
and was taken under the Clerk's direction and control.
Clallam County Clerk, by DM Security # 1

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IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

19-1-00438-05
SPV 127
Special Verdict Form
10806043



STATE OF WASHINGTON,
Plaintiff,

vs.

LARISA DIETZ,
Defendant.

NO. 19-1-00438-05

SPECIAL VERDICT FORM 1

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CLALLAM COUNTY
JUL 02 2021 4:55
no
NIKKI BOTNEN CLERK

We, the jury, having found the defendant guilty of attempted murder in the second degree as charged in count I, return a special verdict by answering as follows:

QUESTION 1:

Did the defendant know, or should the defendant have known, that the victim was particularly vulnerable or incapable of resistance?

ANSWER: YES (Write "yes" or "no")

DATED this 2 day of July, 2021.

Presiding Juror

Report Certification: I Certify that the electronic copy is a true and correct copy of the original on the date filed in this office and was taken under the Clerk's direction and control.
Clallam County Clerk, by DM Deputy #pages: 1

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CLALLAM COUNTY DEPUTY PROSECUTING ATTORN

January 27, 2023 - 12:00 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,640-9
Appellate Court Case Title: State of Washington v. Larisa Jean Dietz
Superior Court Case Number: 19-1-00438-9

The following documents have been uploaded:

- 1016409_Motion_20230127115917SC597788_3377.pdf
This File Contains:
Motion 1 - Supplement Clerks Papers
The Original File Name was Dietz - 1016409 - Motion to Supplement the Record combined.pdf

A copy of the uploaded files will be sent to:

- marietrombley@comcast.net
- valerie.marietrombley@gmail.com

Comments:

Sender Name: Jesse Espinoza - Email: jespinoza@co.clallam.wa.us

Address:

223 E 4TH ST STE 11

PORT ANGELES, WA, 98362-3000

Phone: 360-417-2301

Note: The Filing Id is 20230127115917SC597788