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COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2013 JAN -3 PM 1:19

STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON

Respondent,

v.

Clinton A. Prather

No. 43437-7-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

Appellant.

I, CLINTON A. PRATHER, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND

On the original PRP submitted to this court, the acting Chief Judge dismissed the petition stating that evidence of operability is not required and cited state vs. Raleigh, 157 Wn.App.728,735-36, 238 P.3d 1211 (2010), review denied. 170 Wn.2d. 1029 (2011) Closer inspection of Raleigh will show that it relies on RCW 9.41.010(1) "Antique Firearm" definition, not RCW 9.41.010 (7) "Firearm Definition" as is prescribed for firearm enhancements. This is clearly overlooked but makes all the difference. Also it states that "the investigating Officers testimony was sufficient to prove operability." How? A uniformed Officer had zero proof that the shotgun was operable. He only speculated. The burden of proof is not met by assumptions. Failure to submit any evidence whatsoever of operability fails to meet the standard of proof to qualify for a firearm enhancement.

Ultimately, the Petitioner seeks review of this firearm enhancement issue by the same court that was the basis for the original PRP. Petitioner requests that the Division II panel of judges get to see this appeal and compare firearm enhancement issue with their 2010 decision in state vs. Pierce, 155 Wn. App. 701 230 p.3d 237 (2010) and see that though an unproven, untested "firearm" may convict for an underlying crime, it must indeed be operable to qualify for an enhancement. And if it can be made to be operable, it should at least be proven so in some manner.

DATE:

12/30/12

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