

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Feb 07, 2014, 9:28 am
BY RONALD R. CARPENTER
CLERK

No. 89536-8

RECEIVED BY E-MAIL

SUPREME COURT
OF THE STATE OF WASHINGTON

JAMES BYRON HOLCOMB,
et al.,

Appellants,

v.

ASSIGNED JUDGE FOR THE
KITSAP COUNTY DISTRICT
COURT, et al.,

Respondents.

RESPONDENTS' ANSWER
TO HOLCOMB'S MOTIONS
FOR VARIOUS AND
ALTERNATIVE RELIEF

I. IDENTITY OF RESPONSIVE PARTIES

Respondents Kitsap County District Court, Kitsap County Health District, and Kitsap County (Respondents) hereby answer the Appellant Holcomb's Motions for Various and Alternative Relief, filed on January 23, 2014.

II. RELEVANT FACTS

Mr. Holcomb submitted a Motion for Discretionary Review with this Court in early November 2013 naming only the Kitsap County District Court, the Kitsap County Health District and Kitsap County. The Court identified the motion as properly being a Petition for Review and

required Mr. Holcomb to pay the filing fee. On December 9, 2013, the Court received the filing fee, but no change to the Petition naming additional parties. Respondents timely filed an answer to the Petition on January 9 and did not file any cross-claims or name additional parties. In a letter dated January 23, 2014, this Court set a tentative consideration date for the Petition on March 4, 2014 alongside this motion.

III. ARGUMENT

To begin, Respondents believe that Mr. Holcomb's Motions, at best, are premature. They are certainly the most unique and for which no precedent appears to exist. The Motions are premature because Mr. Holcomb has not satisfied any of the grounds for accepting review under RAP 13.4(b), as explained in Respondents' Answer to Holcomb's Petition for Review. The Petition itself must thus be denied, leaving no need for the motions or representation of the court of appeals.

Even if the Court grants the Petition, it is doubtful that the court of appeals or any panel thereof needs representation before this Court. First, Mr. Holcomb's Petition names only the three Respondents identified above. Neither the court of appeals nor any panel thereof, however, was named.

Second, claims of judicial misconduct have arisen in other appellate cases and yet none of those cases appear to have involved an

attorney on behalf of the lower court. In *State v. Knotek*,¹ for example, defendant Knotek claimed that the trial court committed judicial misconduct by failing to call a recess when she was “upset” and “under duress,” and ignored the fact that she did not admit guilt when entering an Alford plea.² In *Knotek*, no attorney represented the trial court.³ Instead, the court of appeals evaluated the allegations by reviewing the record and the claims against the burden of proof required of the movant in such instances, and found that Knotek “failed to allege sufficient facts to support her contention or to prompt additional review of her claim.”⁴

Such is the case here. Not only has Mr. Holcomb failed to assert any credible facts that could even begin to cross the line to judicial misconduct, the record does not support his claims. And, even if the record did support his claims, this Court is fully capable of reviewing the record and applying the relevant law.⁵ Mr. Holcomb’s Petition asserts two claims of judicial misconduct: the alleged failure of the court of appeals to serve the decision upon him and the court of appeals’ allegedly erroneous

¹ *State v. Knotek*, 136 Wn. App. 412, 149 P.3d 676 (Div. 2, 2006).

² *Id.* at 433.

³ See also *State v. Ford*, 171 Wn.2d 185, 250 P.3d 97 (2011), in which no attorney represented the trial court when the defendant asserted claims of improper judicial interference.

⁴ *Knotek*, 136 at 433.

⁵ Courts review challenged factual determinations under a substantial evidence test and where no facts are challenged courts review errors of law de novo and apply the law to the facts. *Cedar River Water and Sewer Dist. v. King County*, 178 Wn.2d 763, 777, 315 P.3d 1065 (2013).


citations to the record. With regard to service, admittedly these facts uniquely occur after the court of appeals' decision and are not established at the trial court level; however, this Court still is capable of reviewing "the record" as established in the letter from the court of appeals in Exhibit B to Mr. Holcomb's Petition. Similarly, with regard to the opinion's citations to the record, the written opinion and the record established below speak for themselves. Representation by a non-party is thus not warranted.

IV. CONCLUSION

For the reasons above, Mr. Holcomb's Motions for Various and Alternative Relief are premature and unnecessary. They should be denied.

RESPECTFULLY SUBMITTED this 7th day of February, 2014.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney



Lisa J. Nickel, WSBA No. 31221
Attorney for Respondents
614 Division Street, MS-35A
Port Orchard, WA 98366
(360) 337-4974

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served in the manner noted a copy of the following upon designated counsel:

Respondents' Answer to Holcomb's Motion for Various and Alternative Relief

James Byron Holcomb
9596 Green Spot Place NE
Bainbridge Island, W A 98110

Via U.S. Mail
 Via Fax:
 Via Hand Delivery
 Via Legal Messenger
 Via E-mail: bylaw@aol.com

Signed at Port Orchard, Washington this 7th day of February, 2014.



Laurie A. Hughes

OFFICE RECEPTIONIST, CLERK

From: Laurie Hughes <lhughes@co.kitsap.wa.us>
Sent: Friday, February 07, 2014 9:25 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: bylaw@aol.com
Subject: James Byron Holcomb v. Assigned Judge for the Kitsap County District Court - Supreme Court No. 89536-8
Attachments: Respondent's Answer to Mtn for Various and Alt Relief.pdf

Attached please find for filing, Respondent's Answer to Holcomb's Motions for Various and Alternative Relief.

Case Name:
James Byron Holcomb, et al

v.

Assigned Judge for the Kitsap County District Court

Case No.:
Supreme Court No. 89536-8

Filed by:
Lisa J. Nickel, WSBA No. 31221
(360) 337-4974
LNickel@co.kitsap.wa.us