68734-4

68734-4

NO. 68734-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RAMONE ECHOLS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LORI KAY SMITH

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Appellate counsel should be permitted to withdraw from a case where there is no basis for a good faith argument on review. The trial court did not err in denying the defendant's motion to correct his judgment and sentence because the sentence originally imposed was proper. There are no issues that could potentially be raised on review. Should appellate counsel be permitted to withdraw from the case?

2. The record before the trial court, including the original Judgment and Sentence, the special verdict form and the defendant's failure 17 years ago to object to the sentence imposed, established the sentencing court's original intention and gave the trial court the authority to correct the Judgment and Sentence to reflect that intention. Did the trial court properly refer to that record in ruling on Echols's motion to correct his judgment and sentence?

3. The Criminal Rules, specifically CrR 7.8, give the trial court the authority to correct clerical errors in the record. Did Echols have the right to have his motion to correct his judgment and sentence heard by a different judge?

4. Scrivener's errors, or clerical mistakes, may be corrected without vacating the original Judgment and Sentence; the defendant's presence is not required for such a correction. Did the trial court properly deny Echols's motion to correct the original Judgment and Sentence without transporting him to the courthouse for a hearing?

B. STATEMENT OF THE CASE

The statement of facts presented in the Motion to Withdraw and Brief Referring to Matters in the Record Which Might Arguably Support Review accurately summarizes the proceedings, and the State adopts that summary here. The following additional facts are incorporated:

Neither Echols nor his counsel objected at the time of sentencing to the enhanced sentencing range, or to the sentence imposed, as being unwarranted by the jury's verdicts. *See* RP (9/22/95).

C. ARGUMENT

1. THIS COURT SHOULD PERMIT COUNSEL TO WITHDRAW BECAUSE THERE ARE NO NON-FRIVOLOUS ISSUES TO BE RAISED.

RAP 18.3(a)(2) provides, in relevant part:

> If counsel appointed to represent an indigent defendant [in a criminal case] can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent. The motion shall identify the issues that could be argued if they had merit and, without argument, include references to the records and citations of authority relevant to the issues.

That procedure has been invoked in this case.

Counsel for the State has reviewed the prosecutor's file, the appellant's brief, the court file, and the transcripts in this case. The potential issues set forth in appellant's brief, as discussed below, demonstrate the lack of merit of these issues under the facts of the case. Accordingly, the State concurs in appellate counsel's motion to withdraw and requests dismissal of the appeal.

2. THE TRIAL COURT DID NOT ERR IN DENYING ECHOLS'S MOTION TO CORRECT HIS JUDGMENT AND SENTENCE BECAUSE THE SENTENCE ORIGINALLY IMPOSED WAS PROPER.

As noted in Echols's statement of the case, above, he was convicted of Murder in the First Degree in August 1995. The jury also returned a special verdict form finding that Echols was armed with a deadly weapon. CP 68. Based upon an offender score of 1, his sentencing range for Murder 1 was 250-333 months. CP 69. However, because the jury also found that he was armed with a deadly weapon, which added 12 months to his sentence, Echols's proper sentencing range was 262-345 months. CP 7, 38, 69. He was sentenced within the standard sentencing range, to 340 months in prison. CP 8. Neither he nor his counsel at the time disputed that sentencing range. *See* RP (9/22/95).

The failure to check the special verdict form box on the Judgment and Sentence clearly was a scrivener's error. It is undisputed that the jury answered "yes" to the deadly weapon interrogatory on the special verdict form. Moreover, the Judgment and Sentence itself utilized the enhanced sentencing range of 262-345 months, which reflected inclusion of the deadly weapon finding. The trial court thus did not err in denying Echols's motion

to correct the original judgment and sentence because the sentence originally imposed was proper.

The Criminal Rules give the trial court the authority to correct clerical errors in the record. In particular, CrR 7.8 provides as follows:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

CrR 7.8(a). "A clerical mistake is one that when amended would correctly convey the intention of the court based on other evidence." *State v. Priest*, 100 Wn. App. 451, 456, 997 P.2d 452 (2000) (citing to *Presidential Estates Apartment Assoc. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996) (involving the civil rule counterpart to CrR 7.8(a)).

Here, the error was not, as Echols claims, imposing a sentence based upon a standard sentencing range of 262-345 months in prison. The clerical error was merely the failure to check the special verdict form box on the Judgment and Sentence. Amending that clerical error would convey the intention of the trial court to sentence Echols within the proper standard range of 262-345 months.

3. THE TRIAL COURT PROPERLY REFERRED TO THE RECORD IN RULING ON ECHOLS'S MOTION TO CORRECT HIS JUDGMENT AND SENTENCE.

As noted immediately above, CrR 7.8 gives the trial court the authority to correct clerical errors in the record. In turn, the trial court may refer to the entire record in correcting clerical errors. In *Priest*, 100 Wn. App. 451, for example, the Court of Appeals held that the trial court could correct a clerical error so long as the correction "correctly convey[s] the intention of the court based on other evidence." *Id.* (emphasis added). In *Priest*, that "other evidence" was "the verbatim report [that] clearly show[ed] the sentencing court did not intend to have Mr. Priest register as a sex offender." *Id.* at 456. *See also State v. Davis*, 160 Wn. App. 471, 478-79, 248 P.3d 121, 123-24 (2011) (citing to *Priest* and noting that a court may correct a clerical mistake at any time).

In *State v. Snapp*, 119 Wn. App. 614, 82 P.3d 252 (2004), a prosecution for violating a no-contact order, the defendant objected on appeal to the trial court's requirement that he complete a batterer's treatment program and have no contact with his victim until approved by his care provider. The defendant "assert[ed] that the trial court did not include these provisions in the initial judgment and sentence and, therefore, lost the authority to amend the

judgment to include these conditions." *Id.* at 626. The Court of Appeals disagreed, citing to CrR 7.8 and noting the following:

> A trial court may correct a clerical error in the judgment and sentence document. . . . To determine whether an error is clerical or judicial, we look to 'whether the judgment, as amended, embodies the trial court's intention, as expressed in the record at trial.' If it does, then the amended judgment should either correct the language to reflect the court's intention or add the language the court inadvertently omitted. . . .
>
> Here, . . . the trial court reviewed the clerk's minutes . . . and found that the treatment program was intended to be included. Because the record establishes the court's original intention to include this provision, its omission was a clerical error and the trial court had the authority to correct the judgment and sentence document to reflect its original intention.

Id. at 626-27 (citing to and quoting *State v. Klump*, 80 Wn. App. 391, 397, 909 P.2d 317 (1996), and *Presidential*, 129 Wn.2d at 326; emphasis added).

Priest and *Snapp* thus establish that the trial court may look to "other evidence" and the case record to satisfy itself that the correction requested is appropriate. In the present case, the "other evidence" could not be more compelling: the special verdict form that answered "Yes" to the question "Was the defendant, Ramone Depar Echols, armed with a deadly weapon at the time of the commission of the crime?" The subsequent omission of a

checkmark from the box 2.1(a) on the Judgment and Sentence, memorializing the special jury verdict/finding that the defendant was armed with a deadly weapon when he committed Murder in the First Degree, was merely a clerical error.

The record before the trial court, including the original Judgment and Sentence, the special verdict form and Echols's failure 17 years ago to object to the sentence imposed, establishes the sentencing court's original intention and gave the trial court the factual basis to correct the Judgment and Sentence to reflect that intention.[1]

4. ECHOLS HAD NO RIGHT TO HAVE HIS MOTION TO CORRECT THE JUDGMENT AND SENTENCE HEARD BY THE ORIGINAL TRIAL JUDGE.

Echols noted his motion to correct the judgment and sentence before the Honorable Ann Schindler, the trial judge who sentenced him in 1995, at the King County Courthouse in Seattle. He objects to his motion being heard by the Honorable Lori Kay Smith at the Maleng Regional Justice Center in Kent and, further,

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[1] In fact, Echols concedes that he "did not challenge the underlying conviction, nor did he claim that the jury failed to return a Special Verdict." Sub. 102; CP 100 (Defendant's Objection and Reply to State's Memorandum in Opposition to Defendant's Motion to Modify/Correct Judgment and Sentence, at 1; emphasis added).

he claims that the reassignment of judge and location was done without giving him an opportunity to object.

Echols cites to CrR 5.1 regarding the requirement that venue in a criminal case lies in the county where the offense was committed. However, both the King County Courthouse in Seattle and the Maleng Regional Justice Center in Kent are located in King County, where the crime occurred.

Echols also claims that his motion was improperly assigned to Judge Smith without affording him an opportunity to object.[2] However, he cites to no authority in support of this claim. As a result, this Court should disregard it entirely. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments unsupported by citations to authority or persuasive reasoning will not be considered on appeal).

5. THE TRIAL COURT DID NOT ERR BY DENYING ECHOLS'S MOTION TO CORRECT THE JUDGMENT AND SENTENCE WITHOUT TRANSPORTING HIM TO THE KING COUNTY COURTHOUSE FOR A HEARING.

Echols's counsel's Motion to Withdraw refers to the possibility that the trial court's actions in denying his underlying

[2] The original trial judge, the Honorable Ann Schindler, now sits on the Washington State Court of Appeals.

motion to correct the judgment and sentence required that his original sentence be vacated and that he be resentenced, for which he had a right to be present. However, Washington law is clear that clerical mistakes may be corrected without vacating the original Judgment and Sentence, and that the defendant's presence is not required for such a correction. As discussed above, the trial court has the authority under CrR 7.8 to correct "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission[.]" CrR 7.8(a). Washington law further "permits correction of purely clerical mistakes in judgments and sentences in criminal cases without the necessity or expense of resentencing." *State v. Danley*, 9 Wn. App. 354, 354-55, 513 P.2d 96, 97 (1973) (citing *State v. Jones*, 67 Wn.2d 506, 408 P.2d 247 (1965)).

In *Jones*, the Judgment and Sentence erroneously failed to indicate that a vagrancy count against the defendant had been dismissed; in fact, the Judgment and Sentence stated on its face that the defendant had been convicted of the dismissed charge. In determining that "[t]hese errors should be corrected to make the

judgment and sentence conform to the proceedings," *id.* at 507-08, the Washington Supreme Court concluded that "[t]hese recitals being formal and apparently not affecting the validity of the judgment and sentence may, on notice to the defendant, be corrected by the trial court without its vacating the judgment and sentence." *Id.* at 513.

It therefore was not necessary to transport Echols to address his motion or for the trial court to correct the clerical error in the original judgment and sentence. Echols's claim is completely without merit.

D. CONCLUSION

For the foregoing reasons, the potential issues raised by Echols's counsel in the Motion to Withdraw and Brief Referring to Matters in the Record Which Might Arguably Support Review are clearly without merit and would not support an arguable claim on appeal. After an independent review of the record in this case, the State could not identify any other potential issues for review. Thus, the State agrees that there are no non-frivolous issues presented.

The State respectfully requests that counsel's motion to withdraw be granted and that this appeal be dismissed.

DATED this 17 day of January, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer J. Sweigert, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. RAMONE ECHOLS, Cause No. 68734-4-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Betty A. Huddleston
Name

1/17/13
Date

Done in Seattle, Washington