73155-6

FILED
July 28, 2015
Court of Appeals
Division I
State of Washington

NO. 73155-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TARAILLE CHESNESY,

Appellant.

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

The Honorable Timothy A. Bradshaw, Judge

BRIEF OF APPELLANT

MARY T. SWIFT
Attorney for Appellant

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it failed to enter written findings of fact and conclusions of law pursuant to CrR 3.6(b).

2. The trial court erred when it failed to enter written findings of fact and conclusions of law pursuant to CrR 6.1(d).

Issues Pertaining to Assignments of Error

1. Did the trial court err by failing to enter written findings of fact and conclusions of law following a CrR 3.6 suppression hearing?

2. Did the trial court err by failing to enter written findings of fact and conclusions of law following a stipulated facts bench trial as required by CrR 6.1(d)?

B. STATEMENT OF THE CASE

The State charged Taraille Chesney with one count of Violation of the Uniform Controlled Substances Act, chapter 69.50 RCW, for unlawfully possessing cocaine. CP 1-5. The trial court held CrR 3.5 and CrR 3.6 hearings on the parties' motions, and made rulings adverse to Chesney on both. RP 62-63, 70-75; CP 10-14, 29-32. The court entered written findings of facts and conclusions of law pursuant to CrR 3.5, but did not enter any written CrR 3.6 findings and conclusions. CP 29-32.

Chesney thereafter waived his right to a jury trial and agreed to a stipulated facts bench trial. RP 95-98; CP 15-18. The trial court

"confirm[ed] the Stipulation that there is proof beyond a reasonable doubt as to all elements of the charged offense." RP 99. The court relied in part on the testimony, findings, and conclusions from the CrR 3.5 and 3.6 hearing in finding Chesney guilty. RP 98-99; CP 15-16. The court did not enter any written CrR 6.1(d) findings and conclusions following the bench trial.

The court sentenced Chesney to a six-month residential treatment-based special drug offender sentencing alternative (DOSA) and 24 months of community custody following treatment. CP 38. Chesney appeals. CP 45.

C. ARGUMENT

THE COURT'S FAILURE TO COMPLY WITH CrR 3.6(b) AND CrR 6.1(d) REQUIRES REMAND FOR ENTRY OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

After a hearing on a motion to suppress evidence, the trial court "shall enter written findings of facts and conclusions of law." CrR 3.6(b). Likewise, a trial court sitting as the trier of fact must enter written findings of fact and conclusions of law:

> In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

CrR 6.1(d); accord State v. Head, 136 Wn.2d 619, 622-26, 964 P.2d 1187 (1998). The trial court and the prevailing party share the responsibility to see

that appropriate findings and conclusions are entered. See State v. Vailencour, 81 Wn. App. 372, 378, 914 P. 2d 767 (1996).

"Without comprehensive, specific written findings, the appellate court cannot properly review the trial court's resolution of the disputed facts and its application of the law to those facts." State v. Greco, 57 Wn. App. 196, 204, 787 P.2d 940 (1990); accord State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996). The court's oral findings are not binding and cannot replace written findings and conclusions. Head, 136 Wn.2d at 622; State v. Hescock, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). The appellate court should not have to comb through oral rulings to determine if appropriate findings were made, nor should an appellant be forced to interpret oral rulings. Head, 136 Wn.2d at 624. Thus, the proper remedy is to vacate the judgment and sentence and remand to the trial court for entry of written findings and conclusions. Id. at 624-26; State v. Denison, 78 Wn. App. 566, 572, 897 P.2d 437 (1995).

The trial court properly entered written CrR 3.5 findings and conclusions, but failed to enter written CrR 3.6 findings and conclusions following the hearing on Chesney's motion to suppress evidence. See CP 29-32 (CrR 3.5 findings and conclusions).

Likewise, the trial court failed to enter written findings and conclusions after the stipulated facts bench trial, as required by CrR 6.1(d).

After finding Chesney guilty, the trial court explained: "I conclude and I can confirm the Stipulation that there is proof beyond a reasonable doubt as to all elements of the charged offense. I've indicated all those conclusions by adding my signature to that of the parties on the final page of the document." RP 99. The court signed the stipulation, finding "the defendant's stipulation to facts and waiver of jury trial to be knowingly, intelligently and voluntarily made." CP 18. But the stipulation does not contain any of the court's findings of fact or conclusions of law. Furthermore, CrR 6.1(d) expressly requires the findings and conclusions to be "separately stated." Signing the stipulation is therefore insufficient to constitute written findings and conclusions under CrR 6.1(d).

Although remand is the typical remedy, the Head court recognized the possibility that reversal may be appropriate where the individual can show actual prejudice resulting from the absence of findings and conclusions or following remand for entry of the same. 136 Wn.2d at 624-25. Chesney therefore requests this Court remand for entry of written findings of fact and conclusions of law, and reserves the right to offer further argument depending on the content of any written findings. Id. at 625-26.

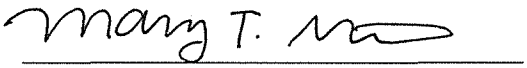
D. CONCLUSION

This Court should vacate the judgment and sentence and remand to the trial court for entry of written findings and conclusions.

DATED this 28th day of July, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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TARAILLE CHESNESY,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF JULY, 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] TARAILLE CHESNESY
NO. 215015288
KING COUNTY JAIL
500 5TH AVENUE
SEATTLE, WA 98104

SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF JULY, 2015.

X Patrick Mayovsky