NO. 47229-5-II

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

---

STATE OF WASHINGTON,

Respondent,

v.

SEAN ALLEN THOMPSON,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-00973-9

---

# BRIEF OF RESPONDENT

---

TINA R. ROBINSON
Prosecuting Attorney

JOHN L. CROSS
Deputy Prosecuting Attorney

614 Division Street
Port Orchard, WA 98366
(360) 337-7174

| SERVICE | | |
|---|---|---|
| | Sarah N. Hrobsky<br>1511 Third Avenue, Suite 701<br>Seattle, Wa 98101<br>Email: sally@washapp.org;<br>wapofficemail@washapp.org | This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically*. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.<br>DATED November 3, 2015, Port Orchard, WA  <br>**Original e-filed at the Court of Appeals; Copy to counsel listed at left.**<br>**Office ID #91103 kcpa@co.kitsap.wa.us** |

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### FEDERAL COURT CASES



### STATE COURT CASES

## STATUTORY AUTHORITIES

## I. COUNTERSTATEMENT OF THE ISSUES

1. No court has held that imposition of a life without the possibility of parole sentence based upon a judicial finding by a preponderance of the evidence that the person has two prior most serious offenses violates the person's jury trial right or the person's due process rights.

2. Treating prior convictions as sentencing factors rather than elements does not violate equal protection.

3. The Persistent Offender Accountability Act sentence of life without the possibility of release does not violate state and federal constitutional protection from cruel or cruel and unusual punishment.

## II. STATEMENT OF THE CASE

### A. PROCEDURAL HISTORY

Sean Allen Thompson was charged by information filed in Kitsap County Superior Court with assault in the first degree on September 13, 2013. CP 1. A first amended information was filed on April 9, 2014 changing the charge to assault in the second degree. CP 25. Both informations recited that if the defendant had been twice convicted of a "most serious offense" the penalty in the present case is life in prison without the possibility of parole. CP 25.

Trial of the matter commenced on December 2, 2014. RP

(12/2/14) 135. At trial, the defense asserted proposed instructions on the lesser offense of assault in the forth degree and instructions on self-defense. The trial court gave these instructions in its charge to the jury. CP 107-113.

On December 12, 2014, the jury returned a verdict of guilty to the charge of assault in the second degree. CP 117. The jury found that Thompson had recklessly inflicted substantial bodily harm. CP 118.

A sentencing hearing was held on February 2, 2015. RP (2/2/15) 1-54. The state presented the testimony of sergeant Keith Hall a Kitsap County Sheriff's officer employed as jail records management system administrator. Id. at 3. Sergeant Hall established the identity of Thompson with regard to his prior offenses. Certified copies of the judgment and sentence from Thompson's two previous convictions for most serious offenses were presented to the court. CP 136 (assault in the second degree entered 9/20/07 (certification appears at CP144)); CP 147 (robbery in the second degree entered 9/24/04 (certification appears at CP 155)). Each of these two documents recited that the crime of conviction constituted a "most serious offense." (assault in the second degree j and s at CP 143; robbery in the second degree j and s at CP 154). The trial court pronounced a sentence of life without possibility of parole. CP 172.

## B. FACTS

On August 29, 2013, Thompson was drinking heavily with his friend Brock Nye and a girl. RP (12/8/14) 277-78. Thompson had known Nye for a long time. Id. Having been caught in the rain, the three changed clothes and where drinking and hanging out in Nye's bedroom. RP (12/8/14) 280.

In the bedroom, Nye was "fooling around" with the girl. RP (12/8/14) 282. Thompson "was trying to jump into it" by pulling the girl away and making out with her as well. RP (12/8/14) 282-83. Nye withdrew not wanting to engage in a "three-way." Id. In another room, Thompson approached Nye and they began to argue. RP (12/8/14) 286. Nye told Thompson he was being rude and vulgar and "that's when he struck me," throwing "a left and a right and landed on my face." RP (12/8/14) 286.

Nye tried to take Thompson to the ground in an attempt to protect valuable knickknacks in the home. RP (12/8/14) 290. But Thompson threw him to the ground. Id. After that, Nye could not remember what happened. RP (12/8/14) 291. He awoke with his hands covered in blood and his "head was split open." RP(12/8/14) 292. He was covered with a lot of blood and his finger was broken. RP (12/8/14) 297. There was a "golf ball-sized knot" on his forehead. RP (12/8/14) 305.

Nye also had "bar rail" impression bruising on his back that he

identified as consistent with fire place utensils at his house. RP (12/8/14) 307-08. He had staples in his head wound for two to three weeks. RP (12/8/14) 309.

Police responded to the house. Nye exclaimed to Thompson in the presence of responding police that Thompson had hit him with a shovel. RP (12/9/14) 489. The police found Nye with blood on his clothing and "all over the front of him." RP (12/9/14) 470. Thompson did not appear to be injured. RP (12/9/14) 491. Despite his later claim of lack of memory, Nye recounted being assaulted with a fireplace shovel to responding officers. RP (12/9/14) 510-11. He described the attack as "He [Thompson] relentless. He just kept going." RP (12/9/14) 512. He described his broken finger as a defensive wound. RP (12/9/14) 514. Thompson was arrested. RP (12/9/14) 515.

## III. ARGUMENT

### A. NO COURT HAS HELD THAT SENTENCING PROCEDURES UNDER POAA VIOLATE CONSTITUTIONAL JURY TRIAL AND DUE PROCESS RIGHTS.

Thompson argues that the procedure undertaken by the trial court

in sentencing him violate his rights to jury trial and due process of law. He argues that it was error for the trial court to follow well established, constitutional procedures that do not include submitting the question of his prior offenses to a jury along with the beyond a reasonable doubt standard of proof. He asserts that because the priors increase both minimum and maximum term of the sentence, they must, again, be decided by a jury beyond a reasonable doubt. This claim is without merit because no court has so held. In fact, both Washington and federal cases have consistently held the opposite.

As to Washington authority, the Supreme Court has recently addressed and rejected the same claims Thompson asserts. In *State v. Witherspoon,* 180 Wn.2d 875, 329 P.3d 888 (2014), the court considered whether a persistent offender sentence was either cruel or cruel and unusual and whether the previous strike offenses should be proven to a jury beyond a reasonable doubt. Id. at 882.

With regard to the jury trial issue, it appears that Thompson's argument is the same as Witherspoon's argument. First, the court noted that the seminal case of *Apprendi v. New Jersey* held that "*other than the fact of prior conviction,* any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and

proved beyond a reasonable doubt." Id. at 891-93[1](emphasis by the court) *quoting Apprendi*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). Second, the court found that the next case in this line of cases, *Blakely v. Washington,* 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), did not change the *Apprendi* holding. The court found that "[n]owhere in *Blakely* did the Court question *Apprendi's* exception for prior convictions or the propriety of determinate sentencing schemes." Id. Thus neither *Apprendi* nor *Blakely* supports Thompson's claim.

Similarly, the *Witherspoon* court rejected the argument that *Alleyne v. U.S.*, ___U.S.___, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013) changes the result. Id. The court said

> Like *Blakely*, nowhere in *Alleyne* did the Court question *Apprendi's* exception for prior convictions. It is improper for us to read this exception out of Sixth Amendment doctrine unless and until the United States Supreme Court says otherwise. Accordingly, Witherspoon's argument that recent United States Supreme Court precedent dictates that his prior convictions must be proved to a jury beyond a reasonable doubt is unsupported.

Id. Thus, Thompson's argument is similarly "unsupported."

But the *Witherspoon* court went on to review its own precedent on this point. The court noted that it has long held that "the POAA does not violate state or federal due process by not requiring that the existence of prior strike offenses be decided by a jury." Id. *citing State v. Manussier*,

[1] The WestlawNext screen skips from page 891 to 893 with no notation of page 892.

129 Wn.2d 652, 682-83, 921 P.2d 473 (1996) *cert. denied 520 U.S. 1201, 117 S.Ct. 1563, 137 L.Ed.2d 709 (1997)*. Moreover, "we have repeatedly held that the right to jury determinations does not extend to the fact of prior conviction for sentencing purposes." Id. Here, the court cited to *State v. McKague*, 172 Wn.2d 802, 803, 262 P.3d 1225 (2011), and the list of prior cases so holding: *State v. Thiefault*, 160 Wn.2d 409, 418, 158 P.3d 580 (2007); *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 256-57, 111P.3d 837 (2005); *State v. Smith*, 150 Wn.2d 135, 143, 75 P.3d 934 (2003) *cert. denied*, 541 U.S. 909, 124 S.Ct. 1616, 158 L.Ed.2d 256 (2004).

This list of continuous holdings contrary to Thompson's claim may be supplemented by another similar list found in *State v. Wheeler*, 145 Wn.2d 116, 34 P.3d 799 (2001). The first post-*Apprendi* case decided by the Washington Supreme Court rejected a claim like Thompson's claim. There, the court cited *State v. Manussier, supra at 682, State v. Rivers*, 129 Wn.2d 697, 712, 921 P.2d 495 (1996), and *State v. Thorne*, 129 Wn.2d 736, 779-84, 921 P.2d 514 (1996), observing that "[t]hese companion cases hold that prior convictions used to prove that a defendant is a persistent offender need not be charged in the information, submitted to the jury, or proved beyond a reasonable doubt." 145 Wn.2d at 120. This because "traditional factors considered by a judge in determining the

appropriate sentence, such as prior criminal history, are not elements of the crime." Id. All these cases, then, show that Washington law on this point has been settled for nearly twenty years.

But Thompson asserts that this court should abandon or ignore this well-settled rule. He argues that dissents and *dicta* from the federal cases warrant this approach. Thompson's argument stumbles on *Almendarez-Torres v. U.S.*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). There, a significant increase in sentence was authorized if a deported alien, prosecuted for returning, had been previously deported "subsequent to conviction for commission of an aggravated felony." Id. at The Supreme Court held that

> We conclude that the subsection is a penalty provision, which simply authorizes a court to increase the sentence for a recidivist. It does not define a separate crime. Consequently, neither the statute nor the Constitution requires the Government to charge the factor that it mentions, an earlier conviction, in the indictment.

Id. at 226-27. The court noted that a contrary holding would raise unfairness issues because "the Government would be required to prove to the jury that the defendant was previously deported subsequent to a conviction for commission of an aggravated felony." Id. at 234-35. And, "[a]s this Court has long recognized, the introduction of evidence of a

defendant's prior crimes risks significant prejudice." Id. But the presence of the prior aggravated felony "is neither presumed to be present, nor need to be proved to be present, in order to prove commission of the relevant crime." Id. at 241. Thus, "it involves one of the most frequently found factors that affects sentencing—recidivism." Id.

The *Wheeler* court was aware of *Almendarez-Torres* and that the holding there had been criticized in *Apprendi*. 145 Wn.2d at 122-24. The *Wheeler* court noted, as does Thompson here, that Justice Thomas' vote in the 5-4 *Amendarez-Torres* decision might change in the future. However, "[n]o court has yet extended *Apprendi* to hold that sentence enhancements based on the fact of prior convictions are unconstitutional." Id. at 123. Now, fourteen years after *Wheeler* and seventeen years after *Almendarez-Torres*, that statement is still true.

Nor does Thompson's attempt to distinguish *Almendarez-Torres* change the result. The core holding—that recidivism is a sentencing factor that need not be pled and thus proven to a jury beyond a reasonable doubt—has never been reversed. First, that Thompson did not expressly admitted his previous most serious crimes makes little conceptual difference: the same were proven to the trial court by certified copy of the judgment and sentences from those cases. CP That being the case, it is difficult to see, and Thompson advances no argument explaining, why a

jury would reach a different result. The Washington Supreme Court has endorsed this procedure. *See e.g. State v. Smith, supra at 143* ("A certified copy of a judgment and sentence is highly reliable evidence.") Second, that the case considered the sufficiency of the indictment and not the jury trial right is similarly of no consequence since the cases, and Thompson, speak of *Almendarez-Torres* as an exception to *Apprendi* and its progeny. Moreover, if the opposite holding obtained and it was required that the recidivism fact be pled as an element, that element would then require a jury finding beyond a reasonable doubt. Third, it is simply incorrect to assert that the trial court makes an exceptional finding of "most serious offense." The trial court does decide that the priors exist but it is the legislature that has defined those particular prior convictions as "most serious offenses."

As to the "maximum *permissive* sentence" argument (at 9), the cited passage ("523 U.S. at 245") entails a discussion of another case, *McMillan v. Pennsylvania,* 477 U.S. 79, 106 S.Ct. 2411, 91 L.ED.2d 67 (1986), and the difference in analysis that may attend consideration of mandatory minimum sentences and statutory maximum sentences. The court held that such distinction does "not make a determinative difference here." 523 U.S. at 245. And neither does this distinction make a difference in the present case.

Thompson fails to assert any authority that the trial court erred in sentencing him under the POAA without a jury finding of his priors. He was lawfully sentenced and this claim fails.

### B. TREATING PRIOR OFFENSES AS SENTENCING FACTORS RATHER THAN ELEMENTS DOES NOT VIOLATE EQUAL PROTECTION.

Thompson next claims that the POAA sentencing scheme violates equal protection. Because such sentences have an obvious relation to a liberty interest, Thompson believes that the POAA should be reviewed by application of strict scrutiny. This claim is without merit because it has long been settled that the POAA is subject to rational basis review and does not violate equal protection.

The question was raised in *State v. Manussier, 129 Wn.2d 652, 659, 921 P.2d 473 cert. denied 520 U.S. 1201, 117 S.Ct. 1563, 137 L.Ed.2d 709 (1997)*. There, the court held

> When a physical liberty interest alone is involved in a statutory classification, this court applies the deferential rational relationship test. Under that test, the challenged law must rest upon a legitimate state objective, and the law must not be wholly irrelevant to achieving that objective. The burden is on the party challenging the classification to show that it is 'purely arbitrary'. The rational basis test requires only that the means employed by the statute be rationally related to a legitimate State goal, and not that the means be the best way of achieving that goal. "[T]he Legislature has broad discretion to determine what the public interest demands and what measures are necessary to secure and protect that interest."

129 Wn.2d at 673(internal quotation and citation omitted). Further,

> Because persons convicted of three "most serious offenses" under RCW 9.94A.120(4) do not constitute a suspect or semisuspect class, and because physical liberty is an important, but not a fundamental, right, the proper standard of review in this case is rational basis review. Applying that standard, we conclude Initiative 593 does not violate the equal protection clauses.

Id. at 673-74. Thus, Thompson must overcome this holding and prove that the POAA classification is purely arbitrary in order to prevail. This he has not done.

Thompson instead claims that there is no sufficient governmental interest in sentencing under the POAA. But in *Manussier*, the court said

> The initiative's goal of improved public safety, stated clearly in RCW 9.94A.392, is a legitimate state objective. And while the offenses included in the enumerated list of crimes in RCW 9.94A.030(21) may be at least debatable, they nevertheless comprise an arguably rational, and not arbitrary, attempt to define a particular group of recidivists who pose a significant threat to the legitimate state goal of public safety. Initiative 593 easily passes rational basis scrutiny and does not, therefore, violate either the federal or state equal protection clauses.

129 Wn.2d at. There is, then, governmental interest in POAA sentencing that "easily passes rational basis scrutiny" contrary to Thompson's assertion that there is none.

Cases that discuss the manner of proving prior convictions that are elements of the charged offense are unhelpful to Thompson. See *State v.*

*Roswell, 165 Wn.2d 186, 196 P.3d 705 (2008).* First, the *Roswell* case does not raise an equal protection claim. The focus of that case is whether or not a prior conviction that is in fact an element may be bifurcated from the other elements and tried separately to the trier of fact beyond a reasonable doubt. Second, the court noted the distinction between the two sorts of facts in issue—one that is an element and one that is a sentencing factor—and explained

> a defendant charged with felony communication with a minor for immoral purposes can never be convicted of that crime if the State is unable to prove that the defendant has a prior felony sexual offense conviction. Roswell's prior felony sexual offense conviction was an element of the crime charged.

165 Wn.2d at 194. In Thompson's case, second degree assault is a felony as charged and no additional element is necessary to define a separate felony offense. Moreover, this principled distinction is in no sense arbitrary. The fact that Thompson had two prior most serious offense convictions played no part at all in his conviction for his third such offense. Those convictions go to punishment only, not guilt as does the conviction used in *Roswell.*

The Court of Appeals so found in *State v. Langstead,* 155 Wn.App. 448, 228 P.3d 799 (2010). Langstead received a POAA sentence after conviction for robbery when the state proved multiple prior convictions for robbery (on separate occasions). Id. at 451-52. Among his arguments

on appeal was the assertion that equal protection is violated because on crimes elevated to felony by the prior conviction, that element must be proved to a jury beyond a reasonable doubt while under the POAA this is not the case. Id. at 453. The holding there is directly applicable here:

> The State mentions unlawful possession of a firearm as another example of a crime defined to include a prior conviction as an element. See RCW 9.41.040(1)(a). Offenders convicted of this crime are likewise rationally distinguished from recidivists like Langstead in that there would be no crime at all if there were no prior conviction.
>
> We conclude recidivists whose conduct is inherently culpable enough to incur a felony sanction are, as a group, rationally distinguishable from persons whose conduct is felonious only if preceded by a prior conviction for the same or a similar offense. We reject Langstead's equal protection challenge.

Id. at 456-57. At each turn, the legislative distinction between elements that actually define a crime and factors that apply solely to sentencing have been upheld. Thompson cites no case to the contrary and his claim of equal protection violation fails.

### C. THE PERSISTENT OFFENDER ACCOUNTABILITY ACT SENTENCE DOES NOT VIOLATE CONSTITUTIONAL PROTECTIONS FROM CRUEL OR CRUEL AND UNUSUAL PUNISHMENT.

Thompson next claims that his POAA sentence is cruel under Washington Constitution Article 1, section 14 or cruel and unusual under the Eight Amendment. Brief of Appellant at 17. He claims that these

constitutional provisions apply because his POAA sentence is "disproportionate to the crime." Id. This claim is without merit because the POAA has repeatedly been upheld on such challenges and because Thompson was not a juvenile when he committed all three of the crimes necessary for the sentence.

Thompson begins by quoting *dictum* from *State v. Thorne*, 129 Wn.2d 736, 921 P.2d 514 (19960 *abrogated on other grounds by Blakely v. Washington*, 542 U.S. 296 (2004) found in a footnote at page 773. But the *Thorne* court went on to consider the four-part test enunciated in *State v. Fain, 94 Wn.2d 387, 617 P.2d 720 (1980)* for determining whether or not a particular sentence is cruel. 129 Wn.2d at 772-73. Under the *Fain* test, the *Thorne* court held that the POAA did not impose a "grossly disproportionate" sentence in that case. Id. at 776.

More recently, the court in *State v. Witherspoon, supra,* engaged in the same analysis of a POAA sentence. 180 Wn.2d at 887. First the court noted that article 1, section 14 provides greater protection than the Eight Amendment because it bars cruel instead of cruel and unusual punishment. Id. The court then considered each *Fain* factor in turn.

First, the Supreme Court considered the nature of the offense. Id. at 888. It noted that Witherspoon's offense of robbery "includes the threat of violence against another person." Id. (emphasis added). In *Witherspoon*

this "threat" of violence was enough. In the present case, Thompson in fact committed an offense that is not only a most serious offense but is legislatively categorized as a violent crime. See RCW 9.94A.030(38). Here, there was no mere threat of violence against another; Thompson beat a man bloody with a fireplace shovel. Thompson complains that the state lightened its burden of proof by amending to assault in the second degree instead of maintaining the original charge of assault in the first degree charge. Appellant's Brief at 19. But he makes no argument that the legislature saw recklessly inflicting substantial bodily harm in an assault as somehow less culpable than assaulting another while intending the same. At bottom, Thompson's conviction was for violent behavior. Moreover, his predicate offenses include both another assault in the second degree (violent) and robbery second degree (which includes the same threat of violence as Witherspoon's robbery second degree).

Second, the legislative purpose of the Act, "deterrence of criminals who commit three most serious offenses and the segregation of those criminals from the rest of society" is not directly challenged by Thompson. 180 Wn.2d at 888; *see Manussier* holding quoted *supra* at 10. Instead he argues that failure to consider his relative youth is contrary to that legislative purpose. Appellant's Brief at 22-23. He cites a case that disapproves life without release sentences for nonhomocide offenses

committed by juvenile offenders. *Graham v. Florida,* 560 U.S. 130 S.Ct. 2011, 176 L.E2d 825 (2010). There, the Court's Eighth Amendment analysis was completely driven by consideration of juveniles and juvenile sentencing. Moreover, the case does not foreclose life sentences for juveniles; the case strikes down the "without parole" piece:

> The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.

560 U.S. at 82. This narrow holding gives no support to Thompson's position. *See Witherspoon, supra* at 890 ("*Graham* and *Miller* unmistakenly rest on the differences between children and adults and the attendant propriety of sentencing children to life in prison without possibility of release.")

As Thompson concedes, he was twenty and twenty-two years of age respectively when he committed his two predicate most serious offenses. Appellant's Brief at 22. He was twenty-nine when he committed his third. At no time that Thompson was amassing the requisite convictions underlying his POAA sentence was he a juvenile and subject to the jurisprudence of, or the consideration given to, juvenile sentencing.

Third, Thompson correctly notes that the *Witherspoon* court, in considering the *Fain* factor of comparing punishment in other jurisdictions, found that a second degree robbery conviction would warrant a "three-strikes" sentence in only four other jurisdictions. 180 Wn.2d at 888. This factor, then, militates in favor of a finding of disproportionality but "this factor alone is not dispositive." Id. Further, it should be noted that Thompson does not receive his sentence for an isolated instances of robbery in the second degree. As the *Manussier* court observed, it is that conviction "along with the fact of appellant's repetition of serious criminal conduct" that warrants the sentence.

Finally, it is the fact of the aggregate of most serious offense behavior underlying the sentence that Thompson attempts to sidestep in his argument of the forth *Fain* factor—comparison with punishment for other offenses in Washington. Appellant's Brief at 24. The reference to Ridgeway's sentence being the same is analytically inapt. The present Governor's position notwithstanding, the possible maximum sentence in Ridgeway's case was death. And, assuming for argument that Ridgeway's history does not include two prior sentencing occasions for most serious offenses, Ridgeway would not qualify for sentencing under the POAA. The sentencing of Thompson and Ridgeway may end in the same place but were arrived at by different procedures serving different, albeit similar,

policies.

In W*itherspoon,* the holding on this factor makes the same point:

> In Washington, all adult offenders convicted of three "most serious offenses" are sentenced to life in prison without the possibility of release under the POAA. In State v. Lee, we held that a life sentence imposed on a defendant convicted of robbery and found to be a habitual criminal was not cruel and unusual punishment. Id. at 714, 921 P.2d 495 (citing State v. Lee, 87 Wash.2d 932, 558 P.2d 236 (1976)). In that case, this court held, " 'Appellant's sentence does not constitute cruel and unusual punishment. The life sentence *889 contained in RCW 9.92.090 is not cumulative punishment for prior crimes. The repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty for the crime.' " Id. at 714–15, 921 P.2d 495 (quoting Lee, 87 Wash.2d at 937, 558 P.2d 236). In Washington, "most serious offenses," including robbery, carry with them the sentence of life in prison without the possibility of release when the offender has a history of at least two other similarly serious offenses.

180 Wn.2d at 888-89. At bottom, "[t]his court has repeatedly held that a life sentence after a conviction for robbery is neither cruel nor unusual." Id. at 889. Thompson cites no authority to the contrary.

Here, then, as in the cases that have considered the issue, the POAA sentence passes the *Fain* test. Thompson has failed to distinguish himself or his sentence from any other recidivist sentenced under the Act. His cruel punishment claim fails.

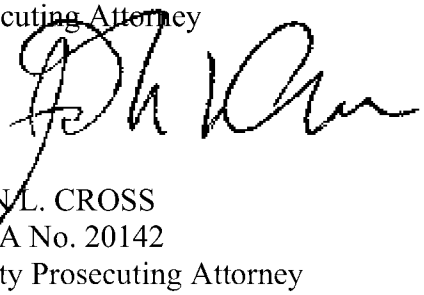
## IV. CONCLUSION

For the foregoing reasons, Thompson's conviction and sentence should be affirmed.

DATED November 3, 2015.

Respectfully submitted,

TINA R. ROBINSON
Prosecuting Attorney



JOHN L. CROSS
WSBA No. 20142
Deputy Prosecuting Attorney

Office ID #91103
kcpa@co.kitsap.wa.us

# KITSAP COUNTY PROSECUTOR

## November 03, 2015 - 2:27 PM

**Transmittal Letter**

Document Uploaded: 5-472295-Respondent's Brief.pdf

Case Name: State of Washington v Sean Allen Thompson
Court of Appeals Case Number: 47229-5

**Is this a Personal Restraint Petition?** Yes ■ No

## The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

**Comments:**

No Comments were entered.

Sender Name: Marti E Blair - Email: mblair@co.kitsap.wa.us

A copy of this document has been emailed to the following addresses:

sally@washapp.org