

No. 94715-5
COA No. 48655-5-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JONATHAN WATSON,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

RESPONSE TO PETITION FOR REVIEW

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I. IDENTITY OF THE RESPONDENT.

The State of Washington, by and through its attorney, Joseph J.A. Jackson, Deputy Prosecuting Attorney for Thurston County, asks this Court to deny review of the Court of Appeals decision terminating review in State v. Watson, No. 48655-5-II.

II. COURT OF APPEALS OPINION.

The Court of Appeals affirmed Watson's conviction of one count of first degree robbery of a financial institution and possession of methamphetamine. The Court of Appeals also affirmed the sentence of life in prison without the possibility of release.

III. ISSUE PRESENTED FOR REVIEW.

1. Whether the Court of Appeals correctly determined that Watson's out of conviction was legally and factually comparable to a Washington State Strike offense.

IV. STATEMENT OF THE CASE.

For purposes of this response, the State accepts Watson's substantive and procedural facts of this case. The State further relies on the facts as presented in the Court of Appeals opinion, State v. Watson, No. 48655-5-II at 1-5.

V. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED.

This Court will accept review when the decision of the Court of Appeals conflicts with a decision of the Supreme Court, RAP 13.4(b)(1), conflicts with another decision of the Court of Appeals, RAP 13.4(b)(2), raises a significant question of law under the Washington or the United States Constitutions, RAP 13.4(b)(3), or involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). The decision at issue does not conflict with decisions of the Supreme Court and other decisions of the Court of Appeals, as detailed below.

There is no need for a review because the case the petitioner cites to, In re Pers. Restraint of Lavery, 154 Wn.2d 249, 111 P.3d 837 (2005), is not contradictory to the current holding of the Court of Appeals in this case. The defendant in Lavery, was convicted of second degree robbery in 1998, and sentenced to life in prison under the Persistent Offender Accountability Act. Id., at 252. The State argued the defendant's prior conviction for federal bank robbery was comparable to the crime of second degree robbery in Washington, which constitutes a strike offense. Id. The defendant's first Personal Restraint Petition (PRP) was dismissed

in February of 2002. Id. at 253. However his position that the federal conviction was not a strike offense under Washington law was “vindicated when, on February 19, 2004, the Court of Appeals issued its opinion in State v. Freeburg, 120 Wn.App 192, 84 P.3d 292, review denied, 152 Wn.2d 1022 (2004). State v. Lavery 154 Wn.2d. at 253. State v. Freeburg, was a significant change in the law. State v. Lavery, 154 Wn.2d at 260-61. It held that “federal bank robbery is not legally comparable to the crime of robbery in Washington.” Id. at 253. The defendant’s argument was accepted and his sentence vacated, Id., because “[u]nder Freeburg [his] federal bank robbery conviction was not necessarily a strike offense and he, therefore, may not have been properly sentenced to life in prison without parole. Id. at 260.

1. The Court of Appeals correctly determined that Watson’s out of state conviction was legally and factually comparable to a Washington State strike offense.

In this case, the Court of Appeals relied on State v. Thieffault, 160 Wn.2d 409, 158 P.3d 508 (2007), which was decided two years after Lavery. In Thieffault, the Court followed a two part test for determining comparability. First, the sentencing court determines whether the out of state offense is legally comparable, which

requires consideration of “whether the elements of the offense are substantially similar to the elements of the Washington offense.” State v. Thieffault, 160 Wn.2d at 415. If the court finds that the elements of the out-of-state offense are broader than the Washington statute, the sentencing court then must determine whether the offense is factually comparable, requiring the court to consider, “whether the conduct underlying the offense would have violated the comparable Washington statute.” Id.


The Court of Appeals properly applied the test in Thieffault, holding, “Regardless of whether the Utah robbery statute is legally comparable to our Washington Statute, we conclude that Watson’s conduct in the Utah robbery would have violated Washington’s robbery statute.” State v. Watson, No. 48655-5-II, at 10. The Court of Appeals decision correctly applied the facts to the law and was not inconsistent with either State v. Thieffault or In re Pers. Restraint of Lavery. Neither the test in Thieffault nor the decision of the Court of Appeals in this case conflict with the narrow holding of Lavery, where the Court focused specifically on the federal bank robbery statute and the State’s concession that the record was insufficient to demonstrate comparability. Lavery, 154 Wn.2d at 253-254.

VI. CONCLUSION.

Review of the instant case is not supported by RAP 13.4(b); the decision of the Court of Appeals does not conflict with other decisions of the Court of Appeals and the Supreme Court, and does not raise a significant question of law under the Constitutions of both Washington and the United States. The State respectfully asks this Court to deny review of the Court of Appeals decision affirming the respondent's conviction.

Respectfully submitted this 25 day of July, 2017.

JON TUNHEIM
Prosecuting Attorney



Joseph J.A. Jackson, WSBA# 37306
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CERTIFICATE OF SERVICE

I certify that I served a copy of the Response to Petition for Review on the date below as follows:

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AND VIA E-MAIL

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

Dated this 25th day of July, 2017, at Olympia, Washington.



CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

July 25, 2017 - 4:25 PM

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