

RECEIVED
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Washington State
Supreme Court

NO. 95290-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DERICK OWUSU,

Petitioner.

PETITION FOR REVIEW

DERICK OWUSU

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A. IDENTITY OF PETITIONER

Derick Owusu asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

The Court of Appeals, Division One, in a direct Appeal decided that the trial court did not abuse its discretion in denying Mr. Owusu's motion for a continuance to prepare for trial (in Cause no. 12-1-02366-9). The Court of Appeals decision was filed on October 2, 2017. A copy of the decision is in the Appendix at pages A-1 through 8.

C. ~~STATEMENT OF THE ISSUES~~ ISSUES PRESENTED FOR REVIEW

1. In ruling a continuance motion, trial courts may consider the maintenance of orderly procedure. Additionally, the question of witness unavailability is one of fact to be determined by the judge. The prosecutor opposed Mr. Owusu's motion for continuance by claiming witness unavailability. However, the prosecutor could not give details, on the record, of which of its witnesses would be unavailable. Did witness unavailability exist in the maintenance of orderly procedure?

2. Appellate courts examine cases individually

to determine whether defendant was granted reasonable amount of time for trial preparation. The prosecutor charged Owusu with three separate causes involving multiple counts: 12-1-02366-9; 13-1-14221-6; 14-1-02092-5. The trial court granted Owusu two continuances: Owusu then defended the 2014 cause resulting in acquittal and prepared a motion to dismiss the 2013 cause which was granted. Owusu's third continuance motion to prepare for the 2012 cause, trailing behind, was denied. Did the Court of Appeals properly judge the 2012 cause continuance denial?

3. The U.S. Const. amend. VI and Wash. Const. art. I § 22 guarantee an accused right to compel witness attendance. The prosecutor accused Owusu of using the identity of Terrell Wells to purchase a vehicle. Owusu obtained a witness statement from Wells refuting the allegation. The prosecutor then claimed it could not find Wells to testify, although Wells was in State's custody. Owusu's motion to compel Well's attendance was refused. Did not the trial court deprive Owusu of the right to compulsory process?

D. STATEMENT OF THE CASE

On April 15, 2015, the State charged Mr. Owusu with three counts of identity theft in cause no. 12-1-02366-9. CP 86-87. Mr. Owusu was arraigned and pled, "not guilty." Id.

Additionally, on May 30, 2015, the State falsely charged Mr. Owusu with another count of identity theft, in cause no. 13-1-14221-6. CP 45-85. Herein, the Bellevue Police Department, Detectives Richard Newell and James Lindquist, contacted Mr. Owusu for interrogation. CP 47. They alleged a black male attempted to pass forged checks at a Bank of America branch. CP 49. Mr. Owusu refused questioning without an attorney present. CP 47. Det. Newell then threatened him and said, "If you don't wanna talk, we'll file as many cases as we can on you." CP 47 ¶ 1. Additionally, Det. Lindquist sent an e-mail to BOA saying, "We have a suspect and want to be able to file everything we can on him. He is in jail right now and I am working on doing a rush file." CP 47 ¶ 2; CP 61. Accordingly, Det. Lindquist accused Mr. Owusu of two counts of forgery and authored a probable cause certificate that he compared Mr. Owusu's Department of License photo

to the surveillance images of the suspect and "they definitely appeared to be the same person." CP 50-51. On the contrary, the suspect was not Mr. Owusu. Id. See also R.T. April 16, 2015 at 244-45.

On July 22, 2014, the State's attorney, Lindsey M. Grieve, moved the court and joined this information as count four to this cause (no. 12-1-02366-9).¹ R.T. July 22, 2014 at 20.

Additionally, on July 30, 2014, Ms. Grieve, falsely charged Mr. Owusu with Assault in the Third Degree, on a police officer, in cause no. 14-1-02092-5. Herein, the BPD Officer Benjamin T. Richey alleged, "Derick grabbed onto my genitals."

The trial for this cause was originally scheduled for May 21, 2014. CP 18. However, it was continued several times, upon requests by the prosecutor and court appointed counsel. See Br. of Resp't at 3 ¶ 2. Mr. Owusu objected to each continuance, but the court granted the requests. Id.

On October 30, 2014, Mr. Owusu moved the court for self-representation. CP 43-44. The Chief Judge,

¹Upon filing this information, the State amended it from forgery to identity theft in the first degree.

presiding the omnibus hearings granted it. CP 44.

The State then proceeded to try Mr. Owusu on the assault cause. R.T. Feb. 4, 2015 at 33 line 11-13. "And I'll tell this court I think I grossly underestimated the assault in the third degree length based on the defendant's pretrial motions." Id. at 39 line 5-10. After Mr. Owusu made several pretrial motions, Judge Carol Schapira found that Ms. Grieve's and Officer Richey's assault on a police officer was entirely falsified, suppressed that statement, and the jury found Mr. Owusu not guilty. Id.; R.T. April 10, 2015 at 49 line 11-12.

On February 4, 2015, the parties convened for the omnibus hearing. R.T. Feb. 4, 2015 at 33. Concerning discovery, Judge Rogers had issued two orders for the jail to download three compact disks of discovery onto a laptop for Mr. Owusu to review: for this cause and for the assault case. Id. at 34. "That case is a very simple one as far as discovery. The present case ... has much more voluminous discovery," said Ms. Grieve. Id. at 34 line 2-4. The facility failed to allow Mr. Owusu to review the discovery. Id.; 35; 36. Supp. CP ___ (Sub. No. 118, Order Authrz. Def. Use Laptop, filed November 17, 2014).

Therefore, Judge Rogers continued the trial date (in this cause) for April 15, 2015. Id. at 37 line 25; 38 line 1. However, he noted:

We probably need to have a hearing in March just to see where we are in terms of Mr. Owusu's preparation.

I wouldn't necessarily expect you to be completely finished when we have the next hearing, but it would give me an opportunity to get an update from you, Mr. Owusu, about where you stand.

Id. at 38 line 1-7. Accordingly, Judge Rogers scheduled the omnibus hearing for "March 20 at 2 o'clock" to inquire into Mr. Owusu's trial preparation. Id. ^{at line 14-17.} _A

The Judge also scheduled a hearing for April 3.

"That really is the day where all parties call ready, if they are ready." Id. at line 20-22. However, on March 20 and April 3, Judge Rogers became unavailable. Supp. CP __ (Sub. No. 137, Order to Continue Omnibus Hearing, filed April 3, 2015); R.T. April 15, 2015 at 81 line 7-15.

On April 10, 2015, Mr. Owusu was taken before a different Judge, Dean S. Lum. R.T. April 10, 2015 at 47.² Mr. Owusu requested a continuance until

²The transcript erroneously reflects that this hearing was held by Judge Rogers. See R.T. April 10, 2015 at 1. This hearing was otherwise held by Judge Lum. See Br. of Resp't at 6 n. 6.

April 10, due to the prosecutor's late disclosed discovery and for more time to prepare.

MR. OWUSU: I will be respectfully requesting a continuance at this time. I just finished up trial on a case earlier this week which was on wednesday.

JUDGE LUM: Okay.

MR. OWUSU: Upon reviewing the discoveries, there were several falsified charges. I believe that the State conceded to dismiss one of the counts.³

JUDGE LUM: Right. I saw that.

MR. OWUSU: There is still ... additional counts that I ... need to devote more time to and file the briefings. My whole time in the past few months was devoted towards the trial that was just completed.

JUDGE LUM: The assault trial?

MR. OWUSU: Yes..

. . . .

And in fact, I was found not guilty.

. . . .

I believe a continuance is absolutely necessary at this time.

R.T. April 10, 2015 at 48 line 20-25; 49; 50.

³Judge Rogers had also scheduled a hearing on March 113 for Mr. Owusu to serve the Motion to Dismiss (the 2013 cause, joined as count four) to the State. See R.T. Feb. 4, 2015 at 43-44. After the service, the State moved to dismiss without any dispute. CP 45-85; R.T. April 15, 2015 at 56-67.

Ms. Grieve, claiming she would have witness unavailability through May, opposed. Id. at 50. In spite of that, Ms. Grieve, failed to identify, on the record, which of her witnesses may be unavailable. Id. Judge Lum, however, denied Mr. Owusu's motion in the maintenance of orderly procedure, finding:

I respect that you've worked hard on your cases. I know you have, you know....

But I think that there are some issues that you know are coming up that I think its -- its time for you to go ahead and file your motions and get ready to go to trial.

Id. at 51.

On April 15, 2015, the parties appeared before Judge Regina S. Cahan for trial assignment. R.T. April 15, 2015 at 55. Mr. Owusu, again, requested a continuance (Id. at 55), due to the State's late disclosed discovery and for more time to prepare. Id. at 59-60. The State, again, objected on the same ground. Id. at 58 line 21-25. Although, the State, again, failed to provide details of which of its witnesses may have been unavailable on the record. Id. Judge Cahan, however, denied the continuance by reasoning, "I understand that there

will be witness problems if we continued it further." Id. at 60 line 18-19.

The case was assigned to Judge Palmer Robinson for trial. Id. at 62. Upon appearing, again, Mr. Owusu requested a continuance for trial preparation. And, for the court to compel the attendance of a material witness to testify on his behalf. R.T.

April 16, 2015 at 274 line 21-25; 275. Judge

Robinson denied the requests. R.T. April 15, 2015 at 81 line 7-18; R.T. April 16, 2015 at 274-75.

The jury found Mr. Owusu guilty on the remainder three counts. CP 170-72. The Court of Appeals affirmed the trial court's ruling. Mr. Owusu petitions this Court for review.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

I.

THE COURT OF APPEALS DECISION AFFIRMING THE TRIAL COURT'S RULING DENYING MR. OWUSU'S MOTION FOR CONTINUANCE TO PREPARE FOR TRIAL IS IN CONFLICT WITH THE SUPREME COURT DECISIONS AND COURT OF APPEALS DECISIONS AS PROVIDED IN RAP 13.4(b)(1); (2).

The Rules of Appellate Procedure 13.4(b)(1); (2), provides that a petition for review will be accepted by the Supreme Court, (1) If the decision of the Court of Appeals is in conflict with a deci-

sion of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of the Court of Appeals. As discussed below, because the Court of Appeals decision is in conflict with the Supreme Court's decisions and Court of Appeals decisions, this Court is respectfully asked to grant Mr. Owusu's petition.

A) THE TRIAL COURT'S DENIAL OF THE MOTION WAS ABUSE OF DISCRETION, BECAUSE THE STATE FAILED TO PROVIDE THE JUDGE WITH DETAILS OF WITNESS UNAVAILABILITY; THE COURT OF APPEALS DECISION AFFIRMING WAS CONTRARY TO LAW.

Ms. Grieve did not provide the judges with facts to find witness unavailability. Consequently, the trial court abused its discretion.

The decision to grant or deny a continuance rests within the sound discretion of the trial court. State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004); State v. Adamski, 111 Wn.2d 574, 761 P.2d 621 (1988). Therefore, the Supreme Court reviews a trial court's decision to deny a motion for continuance under an abuse of discretion standard. State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995).

As this Court has noted: Judicial discretion is a composite of many things, among which conclusions

are drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. State ex rel. Clark v. Hogan, 49 Wn.2d 457, 303 P.2d 290 (1956). Where the decision or order of the trial court is a matter of discretion, this Court reverses on review "on a clear showing of abuse of discretion that is discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Mackay v. Mackay, 55 Wn.2d 344, 347 P.2d 1062 (1959); State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995).

Applying these principles, Judges Lum's and Cahan's rulings, by reason of witness unavailability, was an untenable finding of fact. The State had provided the judges with no details of which of its witnesses may be unavailable. This Court have held that the question of witness unavailability is one of fact to be determined by the trial judge. See State v. Allen, 94 Wn.2d 860, 866, 621 P.2d 143 (1980).⁴ Accordingly, Judges Lum and Cahan could

⁴Allen, 94 Wn.2d at 866, remains a valid point of law. Although, State v. Allen, 94 Wn.2d 860, 621

not have found that witness unavailability existed without the prosecutor detailing, on the record, which of her witnesses may be unavailable. Additionally, Judge Robinson's ruling, based upon Judge Cahan's ruling, was abuse of discretion. Finally, the decision affirming is in conflict with Allen, 94 Wn.2d at 866.

B) THE DECISION THAT THE TRIAL COURT PROPERLY DENIED THE MOTION BECAUSE MR. OWUSU "HAD PREVIOUSLY BEEN GRANTED TWO CONTINUANCES" WAS ARBITRARY.

The Court of Appeals erroneously decided that the trial court allowed Mr. Owusu sufficient time to prepare. See Opinion No. 73657-4-I at 1 ¶ 2; 2 ¶ 4-5. That on December 22, 2014 Owusu successfully requested a continuance until late February (Id. at 2); and, in early February, Owusu was granted a month and a half in order to review electronic discovery and conduct additional research. Id. However, the existing circumstances, discussed below, reveals that the trial court had allowed Mr. Owusu insufficient time to prepare for this particular case.

P.2d 143 (1980), overruled in part as stated in State v. Rattana Keo Phuong, 174 Wn. App. 494, 299 P.3d 37 (2013).

The Court of Appeals have held that there is no Fifth or Sixth Amendment mechanical test regarding what constitutes a reasonable time to prepare a case; each case must be examined individually to determine whether the defendant has been given sufficient time to prepare for effective legal representation. State v. Anderson, 23 Wn. App. 445, 448-49, 597 P.2d 417 (1979); State v. Eller, 84 Wn.2d 90, 96, 524 P.2d 242 (1974). In exercising discretion to grant or deny a continuance trial courts may consider factors including surprise.... Eller, 84 Wn.2d at 95. Applying these principles, The decision was arbitrary and conflicting.

First, when Mr. Owusu was granted the continuance until February 23 to prepare, he was then surprised with late discovery:

THE STATE: I ... wanted to inform the court, as we began trial in front of Judge Schapira ... Mr. Owusu brought a motion to dismiss based on discovery not reaching him in the jail.⁵ It was the first time the State learned that even though you [Judge Rogers] signed a -- an order for the jail to put compact disks of discovery a laptop ... the disks were never actually

⁵The trial before Judge Schapira involved the assault on a police officer charge which the officer and the prosecutor framed Mr. Owusu by peculiarly falsified fact: "Derick grabbed onto my my genitals."

loaded onto a laptop. So there has been a delay both for the -- case in front of Judge Schapira, and that also affects this case as there were three disks of discovery.

R.T. Feb. 4, 2015 at 35-36; Supp. CP __ (Sub. No. 118, Order Authrz. Def. Use Laptop, filed November 17, 2014). Accordingly, the February 4 continuance, to prepare for trial in this cause, was thwarted to review discovery for the assault case and voluminous discovery from this cause as surprise. See State v. Oughton, 26 Wn. App. 74, 79-80, 612 P.2d 812 (1980) (Court of Appeals holding Defendant was entitled to reasonable amount of time to prepare rebuttal to State's late disclosed evidence when the prosecutor introduced surprised testimony and the trial court's failure to do so denied defendant of his right to a fair and unbiased trial). Mr. Owusu was entitled to that third continuance, as reasonable amount of time, to prepare rebuttal to the prosecutor's late disclosed discovery involving three separate cause numbers. Emphatically, the State said, "the present case ... has much more voluminous discovery." R.T. Feb. 4, 2015 at 34 line 3-4.

Second, during the time between February 4 and

April 15 Mr. Owusu conducted research to resume the assault case pretrial that was recessed by late discovery. R.T. Feb. 4, 2015 at 36 line 10-13. Simultaneously, Mr. Owusu conducted legal research and prepared the motion to dismiss the 2013 cause which the BPD Detectives threatened: "we want to be able to file as many cases as we can on him" and framed Mr. Owusu. CP 47; 62.

Third, Owusu's access to the law library for legal research was scant. "I'm only granted four hours a week." R.T. Feb. 4, 2015 at 36 line 14-23. Owusu sought to obviate the need for the continuance by filing a motion. Id. at line 17-21; Supp. CP ___ (Sub. No. ___, Motion to Increase Legal Hours, filed January 29, 2015). Appendix B. But the prosecutor called the jail's attorney to oppose and it was denied. Id. "So my access to the workstation is very limited, and that is just tending to slow my progress here." R.T. Feb. 4, 2015 at 36 line 21-23.

There were three separate causes to which Mr. Owusu had to prepare. Moreover, the prosecutor surprised Mr. Owusu with late discovery. But the

trial court refused Mr. Owusu the third continuance, as reasonable amount of time, to prepare for this cause. The decision was inconsistent with Anderson, supra; and Oughton, supra.

II.

THE TRIAL COURT DENIED MR. OWUSU THE RIGHT TO COMPULSORY PROCESS WHICH PRESENTS A SIGNIFICANT QUESTION OF LAW UNDER THE WASHINGTON AND U.S. CONSTITUTION AS PROVIDED IN RAP 13.4(b) (3); ~~ALTHOUGH THE ISSUE WAS NOT RAISED IN THE COURT OF APPEALS, THIS COURT HAVE JURISDICTION.~~

RAP 13.4(b)(3) provides that a petition for review will be accepted by the Supreme Court, if a significant question of law under the Constitution of Washington and U.S. is involved.

In reviewing a decision of the Court of Appeal, the Supreme Court is generally limited to questions presented before and determined by that court and to claims of error directed to that court's resolution... Wood v. Postelthwaite, 82 Wn.2d 387, 510 P.2d 1109 (1973).

Exceptions to the foregoing rules respecting issues initially raised on appeal are generally stated in Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 621, 465 P.2d 657 (1970). They include matters going to ... invasion of fundamental constitution-

al rights. As this Court stated:

[I]n a case involving deprivation of life or liberty, the court will notice errors appearing upon the record which deprived the accused of substantial means of enjoying a fair and impartial trial, although exceptions were preserved, or the question is imperfectly presented.

McCann, 77 Wn.2d at 622.

A) THE TRIAL COURT DEPRIVED MR. OWUSU THE U.S. CONST. AMENDMENT VI AND WASH. CONST. ART. I § 22 RIGHT TO COMPULSORY PROCESS WHEN IT REFUSED TO COMPELL THE ATTENDANCE OF A MATERIAL WITNESS WHO'S TESTIMONY WOULD HAVE VINDICATED MR. OWUSU.

In count I, the State charged Mr. Owusu with identity theft in the first degree. CP 86. The State alleged that on August 31, 2011 Mr. Owusu used the identity of Terrell Wells to purchase a vehicle. Id. Additionally, the State alleged that Deputy Robert Nishimura, obtained a statement from Mr. Wells that he did not purchased this vehicle. CP 169.

However, Mr. Owusu obtained a witness statement from Terrell Wells stating under oath:

On or about 8/31/11, I Terrell Dominique Wells/Hudson, In Fact did purchase a 2000 s type Silver Jaguar bearing Washington License Plate No. 680-XML from Autos Only Burien Lot.

. . . .

I did not give Detective Robert Nishimura a witness statement as to regarding these allegations.

. . . .

Under penalty of perjury - under the laws of the State of Washington, I, Terrell Dominique Wells, certify that the foregoing is true and correct.

4/13/15

Seattle, WA

CP 167-68. Consequently, the State no longer wanted to bring Mr. Wells at the trial; previously, the State had served Mr. Wells with a subpoena to testify. See CP ___ (Sub. No. 145, State's Trial Memorandum (Page 2, Witness # 10), filed April 15, 2015). Now, before the court, it said, "We have been entirely unsuccessful in reaching him." R.T. April 15, 2015 at 239 line 7-15.

Shortly before the trial, however, the State had booked Mr. Wells in custody. Id. at 143; R.T. April 16, 2015 at 158 line 22-25; 159 line 1-7. Coincidentally, Mr. Owusu was housed in the same unit as Mr. Wells. Id. Whereby, Mr. Owusu obtained that statement from Mr. Wells. Id.

Mr. Owusu moved the court (Judge Robinson presiding) for an order compelling the witness to appear and testify:

MR. OWUSU: And, Your Honor, I move for an order compelling all the State's witnesses to be brought forward, especially, Terrell Wells.

THE COURT: Well, they have to prove their case beyond a reasonable doubt.

MR. OWUSU: Yes, and --

THE COURT: But I'm not going to tell them who they have to call in order to do that.

MR. OWUSU: And the State was telling me before we recessed that they're having trouble getting uphold of Terrell Wells.

THE COURT: Yeah.⁶

MR. OWUSU: And I'm emphasizing the importance of Terrell Wells being here because his statement to this very prosecution is contrary.

R.T. April 16, 2015 at 274 line 21-25; 275. From the foregoing, Mr. Owusu (1) made a motion to compel the witness' appearance; and (2) Judge Robinson refused it. Consequently, Mr. Owusu was convicted and sentenced.

Both the United States Constitution and Washington State Constitution guarantee an accused the right to compulsory process to compel the attendance of witnesses.... U.S. Const. amend. VI; Wash. Const. art. I § 22 (amend 10); State v.

⁶Judge Robinson learned that Mr. Wells was in the State's custody. After looking up the information on her computer, she stated: "Okay. If Terrell Wells testifies for whomever, the fact that he has a pending theft charge in Seattle Municipal Court is not admissible and nobody should ask him about that." R.T. April 16, 2015 at 275 line 16-19.

Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996).
The allowance of compulsory process to aid in the
defense ... rests largely in the discretion of the
trial court to be disturbed only on a showing that
the accused has been prejudiced by the denial.
State v. Edwards, 68 Wn.2d 246, 412 P.2d 747 (1966).
See also RCW 10.52.040 (witnesses on behalf of the
State, or of the defendant ... may be compelled to
appear and testify in open court if they have been
subpoenaed....).

The trial court deprived Mr. Owusu of the right
to compulsory process that is promised by the con-
stitution. Mr. Wells was material to Mr. Owusu's
defense. Notably, compelling Mr. Wells attendance
would not have disrupted the court's orderly pro-
cedure. Edwards, 68 Wn.2d at 255. Mr. Wells was
already in the State's custody.

F. CONCLUSION

For the reasons stated above, Petitioner
respectfully requests this Court to accept review
of the lower courts decisions, reverse his convic-
tion, and remand the proceeding to the trial court
for Petitioner to plead anew.

Dated this 17th day of May, 2018.


DERICK OWUSU

DECLARATION OF SERVICE

I, Derick Owusu, declare that, on May 17, 2018, I deposited the foregoing Petition for Review, or a copy thereof, in the internal mail system of Stafford Creek Corrections Center and made arrangements for postage addressed to:

Amy R. Meckling
Senior Deputy PA
516 Third Avenue, W554
Seattle, WA 98104

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated at Aberdeen, WA on May 17, 2018.



DERICK OWUSU

APPENDIX A

APPENDIX A

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
DERICK OWUSU,
Appellant.

DIVISION ONE

No. 73657-4-I

UNPUBLISHED OPINION

FILED: October 2, 2017

FILED
COURT OF APPEALS, DIV 1
STATE OF WASHINGTON
2017 OCT -2 AM 9:51

DWYER, J. — Derick Owusu appeals from the judgment entered on a jury's verdicts finding him guilty of three counts of identity theft in the first degree. On appeal, Owusu contends that three trial court judges erred by denying his request for a continuance of the trial date. Owusu also contends that the sentencing court erred by imposing sentences to be served consecutively to the sentences imposed on convictions in another cause.

We conclude that the judges properly exercised their discretion in denying Owusu's continuance requests because he had previously been granted two continuances, he had repeatedly requested continuances on the ground that he was not prepared for trial, and the State's witnesses would not have been available had the trial been further continued. We further conclude that Owusu does not carry his burden of showing that the prior convictions at issue are facially invalid. Accordingly, we affirm.

This matter involves one of four criminal causes filed against Owusu. In this cause (No. 12-1-02366-9), Owusu was charged in May 2012 and arraigned in May 2013. Trial was originally scheduled for May 2014. The original trial date was continued several times upon requests by the State and Owusu's counsel.

During this time, Owusu sought to represent himself and, in October 2014, with trial scheduled for early December, his request was granted.

In early December, the State requested a continuance of the trial date until late January 2015 due to witness unavailability. Owusu, appearing on his own behalf, acknowledged that he was not then prepared to go to trial. The trial court granted the State's request and continued the trial date to January 26, 2015.

Nearly three weeks later, Owusu requested a trial continuance until late February in order to allow himself "more time to prepare for trial." The trial court granted his request and set a new trial date of February 23, 2015.

Then, in early February, Owusu again requested that the trial be continued, asking for a "month and a half" in order to review electronic discovery in a format that he could access while in jail and to allow him to conduct additional research. The State interjected that its witnesses might not be available if the trial was scheduled for late April. The trial court granted Owusu a two-month continuance, to April 15.

On April 10, five days before trial, the parties appeared before the Honorable Dean S. Lum for an omnibus hearing. At the beginning of the hearing, Owusu requested another continuance—again for two months—until June 10.

He claimed to have discovered "falsified charges" while reviewing discovery and stated that "the cases seem very complex" and that "none of my briefings for the other counsel" were "filed or even prepared."¹

The State indicated that it was prepared to go to trial on April 15, that it anticipated that the trial would last one and a half weeks, and that, if the trial was continued until May, its witnesses would be unavailable that month.

Judge Lum denied Owusu's request, stating:

Mr. Owusu, actually, we've known each other for a long time, actually.² And so I respect the fact that, you know, you are interested in cases, obviously, and, you know, I respect that. I respect that you've work[ed] hard on your cases. I know you have, you know? And so you and I always had a good relationship, you know. Obviously, I wish we would -- wish we had met under different circumstances, but, you know, you and I, I think, have a good relationship. So I respect the -- the fact that you -- you know, you do want more time.

But I think there are some issues that, you know, are coming up that I think it's -- it's time for you to go ahead and file your motions and get ready to go to trial.

Five days later, on April 15, the parties appeared before the Honorable Regina S. Cahan for trial assignment. Owusu again moved for a continuance, stating that he had not had time to prepare for the trial and that he wished to subpoena the State's witnesses.³ The State replied that all 25 of its anticipated

¹ Around this time, Owusu was representing himself in the trial for cause number 14-1-02092-5 SEA, which had been continued until early April 2015 in order to give Owusu additional time to prepare. That trial lasted four days.

² Judge Lum was the trial court judge assigned to preside over the trial in another of Owusu's causes, No. 14-1-01308-2 SEA, occurring in October 2014.

³ Owusu also argued to Judge Cahan that a continuance was necessary because he had been in trial for the "past two months." As mentioned, Owusu represented himself during the trial on cause number 14-1-02092-5 SEA and the trial therein lasted only four days—rather than two months—and Owusu had been given a two-month continuance prior thereto in order to prepare for that trial.

witnesses were currently available on the scheduled trial date and that any further delay would result in not all of its witnesses being available.

After reviewing Judge Lum's notes, Judge Cahan stated:

All right. I'm going to deny the motion. This needs to go out for trial. This is going out for trial today. This has been continued, repeatedly, and I don't see -- I don't hear any good cause basis to continue it again.

....
And I understand that there would be witness problems if we continued it further. And by the notes, it's been continued for months. So this is one of the issues when you go pro se. This is what -- you know, at some point, you got to go to trial and you got to be prepared. So I am -- I am denying the continuance.

The parties then reported to the Honorable Palmer Robinson for trial. Owusu again requested a continuance, stating that he was not prepared for the trial, that he needed to subpoena the State's witnesses, and that he required an expert witness. Judge Robinson asked Owusu whether this was the same argument that he had made to Judge Cahan. Owusu acknowledged that it was.

Judge Robinson denied Owusu's request, explaining, "I'm not going to revisit . . . Judge Cahan's ruling on essentially the same facts."

The State proceeded to try Owusu, upon amended information, on three counts of identity theft in the first degree. The jury returned verdicts finding Owusu guilty as charged. The court imposed standard-range sentences to run consecutively to the sentences imposed on convictions in another of Owusu's causes in King County Superior Court (No. 14-1-01308-2 SEA).

Owusu now appeals.

II

Owusu contends that the trial court erred by denying his requests for a continuance. We disagree.

In criminal cases, "the decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court." State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004) (citing State v. Miles, 77 Wn.2d 593, 597, 464 P.2d 723 (1970)). Thus, we review a trial court's decision to deny a motion for a continuance under an abuse of discretion standard. Downing, 151 Wn.2d at 272 (citing State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995); Skagit Ry. & Lumber Co. v. Cole, 2 Wash. 57, 62, 65, 25 P. 1077 (1891)). We will not disturb the trial court's decision unless the appellant "makes 'a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" Downing, 151 Wn.2d at 272-73 (alterations in original) (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

"In exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of orderly procedure." Downing, 151 Wn.2d at 273 (citing State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974); RCW 10.46.080; CrR 3.3(f)). Additionally, good faith is an essential component of an application for a continuance. State v. Edwards, 68 Wn.2d 246, 258, 412 P.2d 747 (1966). "If it is manifest that the request for recess or continuance is designed to delay, harry, or obstruct the orderly process of the trial, or to take the prosecution by

surprise, then the court can justifiably in the exercise of its discretion deny it."

Edwards, 68 Wn.2d at 258.

Pro se litigants are held to the same standards as attorneys. State v. Bebb, 108 Wn.2d 515, 524, 740 P.2d 829 (1987).

Owusu has not demonstrated that the trial court rulings were "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Downing, 151 Wn.2d at 272-73 (quoting Carroll, 79 Wn.2d at 26). First, Owusu has not shown that Judge Lum erred by denying his third request for a continuance. By the time that Owusu submitted his third request for a continuance on April 10, Owusu had been representing himself for nearly six months. (The trial date had been continued twice at Owusu's request—for a total of five months—for the stated purpose of allowing him to review discovery, conduct research, and prepare his filings.) Moreover, Owusu's request was made a mere five days before trial was scheduled to begin, the State was prepared for trial, the State's 25 witnesses were available for trial, and some of the State's witnesses were unavailable the following month. Furthermore, Owusu's stated reason was—again—that he was not prepared for trial. Because Owusu's third request for a continuance would have disrupted the orderly process of the trial (particularly by creating witness availability problems) and was premised on the same or similar ground as had been his prior requests, Judge Lum did not err by denying his request.

Second, Owusu does not show that Judge Cahan erred by denying his fourth request for a continuance. As stated by Judge Cahan after reviewing

Judge Lum's notes, Owusu had previously received multiple continuances and there would be issues with witness availability if the trial date were further continued. Judge Cahan did not abuse her discretion by denying Owusu's continuance request.

Third, Owusu does not demonstrate that Judge Robinson improperly denied his fifth request for a continuance. Rather, Judge Robinson properly denied Owusu's request on the ground that it was made on the same basis as the request that had been denied earlier that day by Judge Cahan. Judge Robinson did not abuse her discretion by, essentially, adopting Judge Cahan's reasoning as her own.

There was no error.

III

Owusu next contends that the sentencing court erred both by imposing sentences to be served consecutively to the sentences imposed on to the convictions in cause number 14-1-01308-2 SEA and by considering the prior convictions in calculating his offender score at sentencing in this cause. The trial court erred, he contends, because the convictions in the prior cause were entered in violation of his right to self-representation. Owusu's claim fails.

To challenge a prior conviction at a subsequent sentencing, a defendant must demonstrate that the challenged conviction is constitutionally invalid on its face. State v. Ammons, 105 Wn.2d 175, 187-88, 713 P.2d 719, 718 P.2d 796 (1986). A collateral attack of this type is limited because "[t]he defendant has available, more appropriate arenas for the determination of the constitutional

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validity of a prior conviction." Ammons, 105 Wn.2d at 188. Indeed, "[t]he defendant must use established avenues of challenge provided for post-conviction relief." Ammons, 105 Wn.2d at 188.

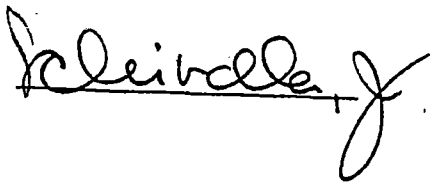
Owusu has failed to carry his burden of demonstrating that the challenged prior convictions are facially invalid. The record before us does not contain any documents relating to those convictions and there is no indication that the convictions "without further elaboration evidence[] infirmities of a constitutional magnitude." Ammons, 105 Wn.2d at 188.

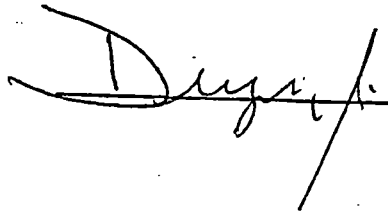
Moreover, pursuant to our decision in State v. Owusu, No. 72851-2-1, slip op. (Wash. Ct. App. Oct. 2, 2017), Owusu does not establish that the convictions in cause number 14-1-01308-2 SEA were entered in violation of his right to self-representation.

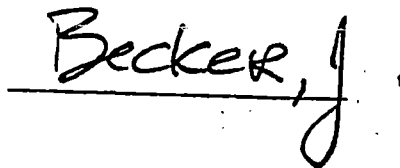
There was no error.

Affirmed.

We concur:







APPENDIX B

APPENDIX B

APPENDIX B

BEST AVAILABLE IMAGE POSSIBLE

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JAN 29 2015
SUPERIOR COURT CLERK
BY NICHOLAS REYNOLDS
DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

State of Washington
Plaintiff/Petitioner,

vs.

Derrick Owusu
Defendant/Respondent.

NO. 14-1-02092-5

SEA
 KNT

Δ Motion to Increase Legal Fees is attached.

85

SUPERIOR COURT OF WASHINGTON
IN KING COUNTY

DERICK OMUSU
Defendant.
Vs.

No. 12-1-02366-9 SEA
14-1-02092-5 SEA

State of Washington
Plaintiff.

MOTION TO INCREASE
DEFENDANT'S LEGAL
WORKSTATION HOURS/EX PARTE

That the Pro Se defendant, sincerely lack adequate
^{for} time legal research. For the advocacy impact, I respectfully re-
quest this Court to permit; increasing my legal workstation
hours.

DATED by me this 29th day of January, 2015.

DERICK OMUSU
Defendant, Pro Se.

Owusu

C.

43/H1-A100

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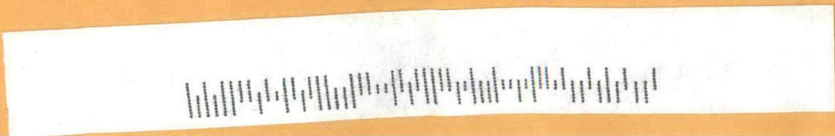
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Daniel A. [unclear] 5.22.2018 1932

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