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Washington State
Supreme Court

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DONNY JAMES ST. PETER,

Petitioner.

PROPOSED

PETITION FOR REVIEW

Donny J. St. ~~Peter~~ Peter

AHCC

PO Box 2047

Airway Heights, WA 99001

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WA Cases

State v. Kirkman, 159 Wn.2d 919, 926,
155 P.3d 125 (2007)

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State v. LAMAR, 180 Wn.2d 576, 583, 327 P.3d
46 (2014)

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State v. O'Hara, 167 Wn.2d 91, 99 217 P.3d
756 (2009)

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State v. Scott, 110 Wn.2d 682, 686 757
P.3d 472 (1988)

2

State v. Wood Corp, 138 Wn.2d 595, 602,
980 P.3d 1257 (1999)

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Other Cases

People v. Collins, 17 Cal.3d 687, 693, 552
P.3d 743, 131 Cal. Rptr. 782 (1976)

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RAP

RAP 16.8(1)(c)

SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of:

No.

DONNY JAMES ST. PETER,
Petitioner,

PETITION FOR DISCRETIONARY
REVIEW

I. Identity of Petitioner

DONNY JAMES ST. PETER, Petitioner Pro Se, (Mr. St. Peter), requests this Honorable Court for a meaningful analysis and a ruling on his Petition for Review. See RAP 16.8(1)(c).

II. Citation to Court of Appeals Decision

On January 9, 2018, the Court of Appeals, Div. III, affirmed the conviction of Mr. St. Peter for 3rd Degree

theft, attempted 3rd Degree theft, and two counts second degree Burglary, citing that this court previously rejected in three other cases, that the jury must be instructed to deliberate only when all 12 jurors are assembled in the jury room.

On February 1, 2018, the Court of Appeals, Div. III Chief Judge granted an order dismissing the Motion for Reconsideration.

III. Issue Presented for Review

AN ERRONEOUS INSTRUCTION TO THE JURY IS A MANIFEST ERROR AFFECTING THE CONSTITUTIONAL RIGHT TO A JURY TRIAL AND UNANIMOUS VERDICT. SEE STATE V. SCOTT, 110 Wn.2d, 682, 686 757 P.2d 492 (1988); STATE V. O'HARRA, 167 Wn.2d 91, 99 217 P.3d 756 (2009). DID THE STATE ERR AND ABUSE ITS DISCRETION WHEN IT DID NOT INSTRUCT THE JURY THAT IT HAD TO DELIBERATE ONLY WHEN ALL 12 JURORS ARE PRESENT NOR WERE ALL 12 JURORS PRESENT?

IV. Statement of the Case

Mr. St. Peter was charged March 7, 2016 with

3rd degree theft, attempted 3rd degree theft and 2 counts of 2nd degree burglary. When the trial was over the state did not tell the jury that they must deliberate only when all 12 are present in the jury room, on the standard Washington pattern criminal jury instruction. He was found guilty on all counts.

V. Argument

THE STATE ERRED AND ABUSED ITS DISCRETION WHEN A ERRONEOUS JURY INSTRUCTION CAUSED A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT.

Where an allegation on appeal is that the defendant's right to a fair ^{trial} were denied the court will look at the unpreserved allegation of a constitutional violation. After determining that the unpreserved error is of constitutional magnitude, this court must determine if it is manifest error, which requires a showing of actual prejudice. To demonstrate this, there must be a plausible showing by the defendant that the error had consequences in the trial of the case.

Here, the first error was the State did not inform the jury that it must deliberate only when

All 12 Jurors are present in the jury room. This is manifest and the error is truly of constitutional dimension. State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007) (citing State v. WWD Corp., 138 Wn.2d 595, 602, 980 P.2d 1257 (1999)).

Second, All 12 Jurors were not present when the jury was deliberating. The requirement that 12 persons reach a unanimous verdict is not met unless those 12 reach their consensus through deliberations which are the common experience of all of them. It is not enough that 12 Jurors reach a unanimous verdict if 1 Juror has not had the benefit of the deliberation of the other 11.

State v. Lamar, 180 Wn.2d 576, 583, 327 P.3d 46 (2014) (quoting People v. Collin, 17 Cal. 3d 687, 693, 552 P.2d 742, 131 Cal. Rptr. 782 (1976)). This was actual prejudice. The State says there are no facts suggesting this did not occur, but, the State did not show anything to prove this did not happen.

VI. Conclusion

First do not hold the Petitioner to the standard of an Attorney. Mr. St. Peter has no legal

training and request liberal interpretation of the law.

Being that the State has not shown that his constitutional rights were not violated by the jury not deliberating with all 12 jurors, this shows reasonable doubt in the State's case and Mr. St. Peter's case should be dismissed and he should be remanded for a new trial.

DATED this 23rd day of March, 2018

Donny St. Peter

Donny J. St. Peter

Certificate of Service

I, Donny St. Peter, placed a copy of the Motion for Discretionary Review in the Mail at AHCC and mailed to:

Ottawa County Prosecutor's Office
PO Box 1130
Ottawa, WA 98840-1130

Dated this 23rd of March, 2018.

Donny St. Peter

Donny J. St. Peter

FILED
JANUARY 9, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 34854-7-III
)	(consolidated with
Respondent,)	No. 34855-5-III)
)	
v.)	
)	PUBLISHED OPINION
DONNY JAMES ST. PETER,)	
)	
Appellant.)	

PENNELL, J. — A jury convicted Donny James St. Peter of several felonies.

On appeal, Mr. St. Peter argues the trial court failed, sua sponte, to instruct the jury that it must deliberate only when all twelve jurors are assembled together in the jury room.

We affirm.

FACTS

The facts of Mr. St. Peter’s case are not pertinent to the arguments on appeal. In brief, the trial judge issued standard Washington pattern criminal jury instructions at the close of trial. No exceptions were taken by either party. Jury deliberations lasted less than an hour. The jury then rendered guilty verdicts on all crimes charged.

ANALYSIS

Mr. St. Peter argues he was denied his constitutional right to a unanimous verdict when the trial court failed to instruct the jury that it must deliberate only when all twelve jurors are assembled together in the jury room. Because Mr. St. Peter did not raise this issue at the time of trial, our review turns on whether Mr. St. Peter can establish a “manifest error affecting a constitutional right” as contemplated by RAP 2.5(a)(3).

Mr. St. Peter has not met the applicable standard for appellate review of an unpreserved error. Although Mr. St. Peter had a constitutional right to ensure all 12 jurors participated in deliberations, *State v. Lamar*, 180 Wn.2d 576, 580, 584-85, 327 P.3d 46 (2014), there are no facts suggesting this did not occur. To establish manifest error, “[t]he defendant must make a plausible showing that [an alleged] error” affected his or her rights at trial and “resulted in actual prejudice, which means that the claimed error had practical and identifiable consequences in the trial.” *Id.* at 583. No such showing has been made. Mr. St. Peter’s speculation that a juror may have left the jury room during deliberations or that a postverdict jury poll could have revealed a nonunanimous verdict¹ is insufficient to warrant review under RAP 2.5(a)(3).


¹ Mr. St. Peter declined the trial court’s offer to have the jury polled.

Nos. 34854-7-III; 34855-5-III
State v. St. Peter

Our court has rejected arguments identical to the ones raised by Mr. St. Peter in at least three unpublished decisions: *State v. Tucker*, No. 33714-6-III (Wash. Ct. App. Oct. 25, 2016) (unpublished), https://www.courts.wa.gov/opinions/pdf/337146_unp.pdf, *review denied*, 187 Wn.2d 1022 (2017); *State v. Walsh*, No. 34396-1-III (Wash. Ct. App. July 18, 2017) (unpublished), https://www.courts.wa.gov/opinions/pdf/343961_unp.pdf; and *State v. Burrill*, No 34079-1-III (Wash. Ct. App. Jan. 4, 2018) (unpublished), https://www.courts.wa.gov/opinions/pdf/340791_unp.pdf. We reject Mr. St. Peter's assignment of error for the reasons previously articulated in *Tucker*, *Walsh*, and *Burrill*.

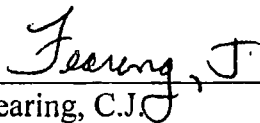
CONCLUSION

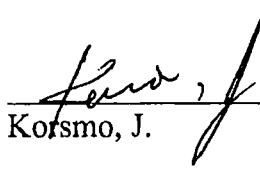
The judgment of conviction is affirmed. Mr. St. Peter's motion to not award appellate costs is granted.



Pennell, J.

WE CONCUR:



Fearing, C.J.

Korsmo, J.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
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*The Court of Appeals
of the
State of Washington
Division III*



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January 9, 2018

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CASE # 348547
State of Washington v. Donny James St. Peter
OKANOGAN COUNTY SUPERIOR COURT No. 161000931
Consolidated with CASE # 348555
State of Washington v. Donny James St. Peter
OKANOGAN COUNTY SUPERIOR COURT No. 161001007

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion (unless filed electronically). If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:btb
Attachment

- c: **E-mail** Honorable Christopher E. Culp
- c: Donny James St. Peter #394526
Airway Heights Correction Center
PO Box 2049
Airway Heights, WA 99001-2049

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 34854-7

Title of Case: State of Washington v. Donny James St. Peter

File Date: 01/09/2018

SOURCE OF APPEAL

Appeal from Okanogan County Superior Court

Docket No: 16-1-00093-1

Judgment or order under review

Date filed: 10/18/2016

Judge signing: Honorable Christopher E. Culp

JUDGES

Authored by Rebecca Pennell

Concurring: George Fearing

Kevin Korsmo

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OPINION FACT SHEET

Case Name: State of Washington v. Donny James St. Peter
Case Number: 34854-7-III (consol. w/ 34855-5-III)

1. TRIAL COURT INFORMATION:

A. SUPERIOR COURT: Okanogan County
Judgment/Order being reviewed: Felony Judgment and Sentence
Judge Signing: Christopher E. Culp
Date Filed: October 18, 2016

2. COURT OF APPEALS INFORMATION:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Affirmed | <input type="checkbox"/> Other |
| <input type="checkbox"/> Affirmed as Modified | <input type="checkbox"/> Reversed and Dismissed |
| <input type="checkbox"/> Affirmed in Part/Remanded** | <input type="checkbox"/> Remanded ** |
| <input type="checkbox"/> Affirmed/Rev'd-in part & Remanded | <input type="checkbox"/> Reversed |
| <input type="checkbox"/> Affirmed/Vacated in part | <input type="checkbox"/> Reversed In Part |
| <input type="checkbox"/> Affirmed In Part/Rev'd in Part | <input type="checkbox"/> Remanded with Instructions** |
| <input type="checkbox"/> Denied (PRP, Motions, Petitions) | <input type="checkbox"/> Reversed and Remanded ** |
| <input type="checkbox"/> Dismissed (PRP) | <input type="checkbox"/> Rev'd, Vacated and Remanded ** |
| <input type="checkbox"/> Granted/Denied in Part | <input type="checkbox"/> Vacated and Remanded ** |
| <input type="checkbox"/> Granted (PRP, Motions, Petitions) | |

- * These categories are established by the Supreme Court
** If remanded, is jurisdiction being retained by the Courts of Appeals? YES
 NO

- 3. SUPERIOR COURT INFORMATION:**
(IF THIS IS A CRIMINAL CASE, CHECK ONE)
Is further action required by the superior court?
 YES NO


Authoring Judge's Initials