

FILED

OCT 31 2018

No. 356281

FILED
NOV 07 2018
WASHINGTON STATE
SUPREME COURT

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

96481-5

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

RUSSELL PAUL KASSNER,

Appellant-Petitioner.

PETITION FOR REVIEW

RICHARD D. WALL, #16581
Attorney for Appellant-Petitioner

Richard D. Wall, P.S.
Attorney at Law
1604 W. Dean
Spokane, WA 99201
(509) 747-5646

TABLE OF CONTENTS

Table of Authoritiesii

A. Identity of Petitioner.....1

B. Decision to be Reviewed1

C. Issues Presented for Review:

 1. Whether the Superior Court has jurisdiction to adjudicate a criminal charge against a 10 or 11 year old child without first making a determination that the child had legal capacity to commit the crime?.....1

D. Statement of the Case1

E. Argument Why Review Should be Accepted3

 1. The Decision of the Court of Appeals is in Direct Conflict with a Prior Published Decision of the Same Court and Expressly Overrules that Decision.....3

 2. The Decision of the Court of Appeals in this Case Raises a Significant Question of Law Under the Washington State Constitution.....6

 3. The Decision of the Court of Appeals in this Case Raises an Issue of Substantial Public Interest that Should be Decided by this Court.....8

F. Conclusion11

Certificate of Service12

TABLE OF AUTHORITIES

CASES:

Washington State Supreme Court:

State v. Barnes, 146 Wn.2d 74, 43 P.3d 490 (2002).....7
State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1984).....6
State v. Posey, 174 Wn.2d 131, 272, P.3d 840 (2012).....4
State v. Q.D., 102 Wn.2d 19, 24, 685 P.2d 557 (1984).....8

Washington Court of Appeals:

State v. Golden, 112 Wn.App. 68, 80, 47 P.3d 587 (2002).....2, 3, 5
State v. Gilman, 105 Wn.App. 366, 19 P.3d 1116, *review denied*,
144 Wn.2d 1011 (2001)9

Washington Statutes:

RCW 9A.04.050.....passim
RCW 10.73.09010

Washington State Constitution:

Art. 4, § 6.....6

A. Identity of Petitioner:

Russell Paul Kassner, asks this court to accept review of the decision designated in Part B of this motion.

B. Decision to be Reviewed:

The decision of the Court of Appeals, Division III, filed October 2, 2018.

C. Issues Presented for Review:

This case presents the following question of substantial interest to the citizens of this state:

1. Whether the Superior Court has jurisdiction to adjudicate a criminal charge against a 10 or 11 year old child without first making a determination that the child had legal capacity to commit the crime?

D. Statement of the Case:

Russell Paul Kassner was charged by Information filed on November 28, 1995, with one count of First Degree Child Molestation and one count of Child Rape. CP 1. On March 15, 1996, Kassner entered a plea of guilty to the charge of first degree child molestation. Judgment and Sentence were entered on May 21, 1996. CP 2. The date of the alleged offense as stated on the Judgment and Sentence was sometime between May 24, 1987 and May 24, 1989. CP 2. Defendant's date of birth is listed on the Judgment

and Sentence as September 11, 1977. CP 2. Defendant would have been 10 or 11 years old at the time the alleged offense occurred.

The record is devoid of any indication that a hearing was held to determine whether Kassner had the capacity to commit the alleged offense despite being under the age of 12. CP 30 - 34. The record is also devoid of any indication that the trial court entered any findings regarding Kassner's mental or emotional development at the time of the alleged offense and whether he was he had legal capacity to commit a crime under Washington law. CP 30 - 34.

On June 6, 2017, Kassner moved pursuant to CrR 7.8 for an order vacating his conviction and allowing him to withdraw his plea on the grounds that the court lacked authority to enter a judgment of conviction in the absence of a finding of capacity as required by RCW 9A.04.050. CP 13 - 34. The trial court denied the motion, ruling in part that Kassner could not "avail himself of the capacity defense" because he was charged as an adult in adult court. CP 49. The trial court also concluded that the motion was untimely under CrR 7.8(b) because it was not brought within a "reasonable time." CP 50.

Kassner appealed to Division III of the Court of Appeals, citing that court's ruling in *State v. Golden*, 112 Wn.2d 68, 47 P.3d 587 (2002) in which the court held on almost identical facts that the superior court lacked jurisdiction to adjudicate criminal charges against a child between the ages of 8 and 11 without first holding a capacity hearing. The Court of Appeals overruled its decision in *Golden*, stating that the *Golden* court had relied on "an antiquated understanding of subject matter jurisdiction." The Court concluded that the trial court had jurisdiction to convict Kassner of a crime even though it

failed to hold a capacity hearing or to make a finding that at the age of 10 or 11 he had capacity to commit the charged offense. Kassner now seeks review that decision.

V. Argument Why Review Should Be Accepted:

1. The Decision of the Court of Appeals is in Direct Conflict with a Prior Published Decision of the Same Court and Expressly Overrules that Decision.

In affirming the trial court's denial of Kassner's motion to vacate his conviction, the Court of Appeals expressly overruled its prior decision in *State v. Golden*. In *Golden*, the Court had held that the superior court lacked authority to take any action on a criminal complaint or information against a child under the age of 12 unless the court first held a hearing pursuant to RCW 9A.04.050 and made a finding that the child had legal capacity to commit a crime.

Golden has been the law in this State since it was decided in 2002, and was well-reasoned. In *Golden*, the Court noted that the superior court has criminal jurisdiction only over persons who commit crimes and that a child under the age of 12 is presumptively incapable of committing a crime. RCW 9A.04.050. Furthermore, the presumption of incapacity can be overcome only by proof that is clear, cogent, and convincing. *Golden*, 112 Wn.App. at 77. Therefore, until a finding has been made that the child had capacity to commit a crime, there is no factual basis for the superior court to exercise its criminal jurisdiction.

In the present case, the Court of Appeals seized upon language in *Golden* indicating that the failure to make a finding of capacity may not in fact deprive

the superior court of jurisdiction, but only limits the court's authority to act. See, *Id.* Thus, the Court of Appeals concluded that the superior court here had both subject matter and personal jurisdiction. Relying on language from this court's opinion in *State v. Posey*, 114 W.2d 131, 272 P.3d 840 (2012), the Court of Appeals held that *Golden* had relied on "an antiquated understanding of subject matter jurisdiction" and should be overturned.

The Court of Appeals' decision here is problematic on several levels. In *Posey*, the defendant had been charged as a juvenile with three counts of second degree rape and one count of first degree assault with a firearm. The juvenile court automatically declined jurisdiction based on the assault charge. Posey was convicted of two counts of second degree rape in superior court, but acquitted of the assault charge. Following his conviction, Posey claimed that neither the juvenile court nor the superior court had jurisdiction to sentence him because he had reached the age of 21 and had been acquitted of the assault charge, which was the basis for the juvenile court declining jurisdiction.

This Court had little difficulty disposing of those arguments. First the Court pointed out that Washington's constitution grants jurisdiction over "all criminal cases amounting to felony" to the superior courts, including felonies committed by juveniles. The Court also pointed out that the juvenile court is simply a division of the superior court, not a separate court. Thus, the superior court at all times retained jurisdiction over the charges against Posey.

The present case involves an entirely different issue. Posey was 16 years old at the time of the charged offenses. There was no suggestion that the

Information failed to allege the commission of a felony, regardless of whether it was filed in juvenile court or superior court. Thus, both the superior and juvenile courts had subject matter jurisdiction.

Posey's The discussion of subject matter jurisdiction and its history in Washington case law was entirely unnecessary to the court's decision, which rested on the characterization of the juvenile court as being a division of the superior court. Therefore, it is mere dicta. Nothing in the *Posey* opinion indicates this court intended to overrule *Golden* or to suggest that a complaint or information that fails to allege a felony offense because the defendant is by law incapable of committing a crime is sufficient to invoke the criminal jurisdiction of the superior court. The Court of Appeals reliance on *Posey* is misplaced.

Here, in contrast to *Posey*, the Information alleged that Kassner committed the offense of conviction at a time when he was either 10 or 11 years old. At that age Kassner was incapable as a matter of law of committing any crime. Therefore, the facts alleged in the Information fail to establish the commission of a felony and the superior court did not have subject matter jurisdiction. Subject matter jurisdiction would arise only upon a finding pursuant to RCW 9A.04.050 that Kassner had capacity to commit the alleged offense despite being under the age of 12. The decision of the Court of Appeals to overrule *Golden* based on this Court's opinion in *Posey* is based on an erroneous interpretation of that decision and should be overturned.

2. The Decision of the Court of Appeals in this Case Raises a Significant Question of Law Under the Washington State Constitution.

As noted in both *Golden* and *Posey*, the State constitution grants the superior court criminal jurisdiction over all felonies. Art. 4, § 6. What constitutes a felony is defined by statute. Thus, although the criminal jurisdiction of the superior court is established by the constitution, its extent can only be determined by reference to the criminal statutes that define what a felony is. A complaint or information that does not allege facts sufficient to establish that a felony has been committed does not invoke the superior court's criminal subject matter jurisdiction.

The State will likely argue that the superior court necessarily had subject matter jurisdiction in order to conduct a capacity hearing in the first place. However, the court would not be exercising subject matter jurisdiction simply by holding a capacity hearing. All courts necessarily have the power to determine whether jurisdiction exists in a particular proceeding. Therefore, the fact that a court makes findings necessary to determine its jurisdiction does not lead to the conclusion that jurisdiction exists. Otherwise, subject matter jurisdiction would exist in every case before the court.

The situation here is no different than if the State filed an information in superior court alleging facts that do not constitute a felony even if true. In such a case, the court would not have subject matter jurisdiction, since its criminal jurisdiction is limited to felonies. The court would have no power to enter any

order other than an order of dismissal. See, *State v. Holt*, 104 Wn.2d 315, 704 P.2d 1189 (1984)(objection to information that fails to state an offense may be raised at any time and proper remedy is dismissal).

The same reasoning applies in this case. The Information stated facts that if committed by a person 12 years or older would constitute a felony offense. However, the Information identified Kassner by both name and date of birth. The Information also stated the dates when the alleged acts had occurred. Thus, the Information clearly states that Kassner was either 10 or 11 years old at the time of the alleged acts. Since a child of that age is presumed incapable of committing a crime, the Information fails to allege a felony under Washington law. Absent a finding that Kassner had capacity under RCW 9A.04.50, the superior court had no subject matter jurisdiction and no power to enter any order other than an order of dismissal. The Court of Appeals clearly erred by upholding the trial court's denial of Kassner's motion to withdraw his plea.

This court has previously discussed in detail the relationship between the sufficiency of a charging document and the jurisdiction of the superior court. See, *State v. Barnes*, 146 Wn.2d 74, 43 P.3d 490 (2002). In *Barnes*, the court rejected the defendant's contention that the superior court lost jurisdiction over his case because the State did not file an amended information with the court clerk. The court held that the superior court acquired jurisdiction upon the filing of the original information and that failure to file the amended information was a procedural error that could not divest the court of subject matter jurisdiction previously acquired. *Id.* at 87. The court defined subject matter jurisdiction as

the power to hear and determine the case and stated that subject matter jurisdiction is lacking only when "no offense is charged at all." *Id.* 86.

Here, the Information alleging that Kassner had committed a felonious act when he was 10 or 11 years old does not charge an offense under Washington law. The acts alleged in the Information would become a felony under Washington law only upon a finding of capacity. Since no finding of capacity was ever made, the superior court never acquired subject matter jurisdiction.

When and how the State can compel a child under the age of 12 to answer to criminal charges is a matter of great importance to the citizens of this state. Kassner submits that a plain reading of RCW 9A.04.050 shows that the legislature chose to define crime in a manner that exempts children under a certain age from being prosecuted as criminals regardless of what acts they are alleged to have committed.

Under RCW 9A.04.050, children under the age of 8 are legally incapable of committing any crime. Therefore, they cannot be lawfully arrested or charged with a crime under any circumstances. Children 8 or older but less than 12 years old are presumed incapable of committing a crime, and the presumption can only be overcome by proof. Since a child under the age of 8 cannot as a matter of law commit a crime, the superior court can never acquire criminal jurisdiction over the child regardless of what acts the child is alleged to have committed. If a child is 8 to 11 years old, the superior court can acquire criminal jurisdiction, but only by making a finding based on evidence that the child had the capacity to understand the act or neglect with which he or she is charged and to know that it

was wrong. RCW 9A.04.50. In the absence of such a finding, the law presumes no crime has been committed.

Unfortunately, these basic principles have often been ignored or overlooked by our courts. Even this court has on occasion treated the lack of capacity under RCW 9A.04.050 as a "defense," which it clearly is not. See, e.g., *State v. Q.D.*, 102 Wn.2d 19, 24, 685 P.2d 557 (1984).

In order to effectuate the intent of RCW 9A.04.050, this court should accept review of this case and clarify once and for all that the superior courts have no jurisdiction to adjudicate crimes allegedly committed by children under the age of 12, unless and until the court has determined that the child was at least 8 years old at the time of the offense and State has presented sufficient evidence to overcome the statutory presumption of incapacity.

Kassner acknowledges that this interpretation of RCW 9A.40.050 is in some ways at odds with other Court of Appeals decisions. See, *State v. Gilman*, 105 Wn.App. 366, 19 P.3d 1116, *review denied*, 144 Wn.2d 1011 (2001)(stating that failure to hold a capacity hearing pursuant to RCW 9A.04.050 does not "deprive" the court of subject matter jurisdiction). Nevertheless, the plain language of the statute compels the conclusion that lack of capacity based upon infancy is not a defense, but is instead a statutory limitation upon what the legislature has defined as a crime. Therefore, RCW 9A.04.050 necessarily acts as a limitation on the criminal jurisdiction of the superior court.

In general, Washington's criminal code does not define particular offenses with respect to the age of the alleged perpetrator. (Statutory rape and child

molestation are notable exceptions.) However, in light of RCW 9A.40.050, it is clear that crimes can only be committed by a person over the age of 7 and by a child between the ages of 7 and 12 only if the child understood the nature of his or her conduct and that it was wrong. A proper criminal complaint or information should contain an allegation that the defendant was over the age of 12 at the time of the offense or that the defendant was between the ages of 7 and 12 and had the capacity to commit the charged offense. Absent that allegation, an information does not state that any crime has occurred.

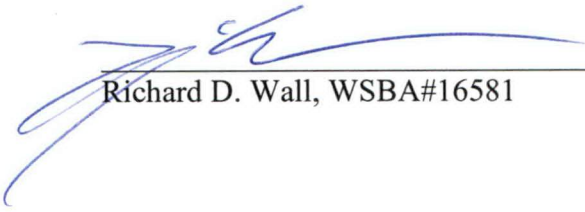
Ultimately, the question raised by the Court of Appeals decision in this case is whether persons accused of committing crimes when under the age of 12 will be treated as adult criminals or as children who are incapable of committing crimes as a matter of law unless and until the State proves otherwise. By holding that a determination of capacity is not a prerequisite to exercising subject matter jurisdiction, the Court of Appeals exposes very young children in this State who are charged with a felony to all the same consequences they would face as an adult, including arrest and incarceration, even though as a matter of law they are incapable of committing a criminal act.

Here, the question of capacity simply was not raised by anyone, prosecutor, defense counsel, or the court, prior to Kassner's conviction and sentencing. The Court of Appeals' response to this oversight is to tell the child that if he did know to challenge his conviction within the one year limitations period imposed by RCW 10.73.090, he is forever barred from seeking relief.

F. Conclusion:

For the foregoing reasons, this court should accept review, reverse the decision of the Court of Appeals, and remand this case with instructions to allow Kassner to withdraw his plea of guilty.

Respectfully submitted this 31st day of October, 2018.



Richard D. Wall, WSBA#16581

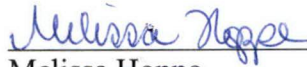
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 2018, a true and correct copy of the foregoing PETITION FOR REVIEW was sent via legal messenger to the following:

Brian C. O'Brien, DPA
Spokane County Prosecuting Attorney's Office
1100 W. Mallon
Spokane, WA 99260

And was sent via US Mail postage prepaid to Appellant at:

Russell Kassner
4228 W. Indian Trail Rd.
Spokane, WA 99208



Melissa Hoppe

FILED
OCTOBER 2, 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. 35628-1-III
)	
Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
RUSSELL PAUL KASSNER,)	
)	
Appellant.)	

LAWRENCE-BERREY, C.J. — Russell Kassner appeals the superior court’s denial of his CrR 7.8 motion to vacate his first degree child molestation conviction. We affirm.

KASSNER’S PLEA AND SUBSEQUENT MOTION

Russell Kassner allegedly began sexually abusing one of his adopted sisters when he was 10 and she was 4. The sexual abuse allegedly continued until Kassner was 17 and his adopted sister was 11. While law enforcement investigated, Kassner turned 18.

In late November 1995, the State charged Kassner in adult court with one count of first degree child molestation, related to when he was 10, and one count of second degree child rape, related to when he was 17.

In March 1996, the parties reached a plea deal. Kassner agreed to plead guilty to the older first degree child molestation charge, and the State agreed to dismiss the more serious rape charge. The State also agreed to recommend a special sex offender sentencing alternative (SSOSA) and to bring no further charges against Kassner arising from the underlying investigation. That month, Kassner pleaded guilty to the older charge and the State dismissed the more serious charge. In May 1996, the trial court sentenced Kassner consistent with the State's SSOSA recommendation.

In June 2017, Kassner moved to vacate his 1996 first degree child molestation conviction. Kassner argued that the trial court failed to conduct a hearing, as required by RCW 9A.04.050, on whether he had sufficient capacity to commit the crime when he was 10. The trial court denied Kassner's motion. It reasoned, "the defendant was charged in adult court after he became an adult, he was represented by counsel, and he negotiated a beneficial plea agreement that conveyed clear benefit to him." Clerk's Papers at 49. The trial court also found that Kassner's motion to vacate his conviction was not brought within a reasonable time, and that granting the motion would work an injustice against the State in having to prosecute a second degree child rape charge that was previously dismissed through negotiations.

Kassner timely appealed.

KASSNER'S MOTION TO STRIKE

Kassner filed a motion to strike "Attachment A" to the State's brief. Attachment A is a presentence investigation report. Kassner argued that the report was not part of the record considered by the 2017 trial court. The State responded that the report was filed in the confidential portion of the clerk's record, but the report was lost when the record was scanned years ago. The report contains an admission by 18-year-old Kassner that he had begun molesting his adopted sister when he was 14 or 15, and she was 7 or 8.

In denying Kassner's motion, our court commissioner ruled:

Mr. Kassner pleaded guilty before the report was compiled, but the court did not enter its judgment and sentence on that plea until after the report. The report is relevant to whether Mr. Kassner had the capacity to commit the crime under RCW 9A.04.050, even though he was an adult when convicted. Its timing may or may not be material and is subject to argument before the panel that decides this appeal. But for our purpose here, this Court has determined that the ends of justice are served by adding the report, whether or not it satisfies all the requirements of RAP 9.11(a) for additional evidence. *See Sears v. Grange Ins. Ass'n*, 111 Wn.2d 636, 640, 762 P.2d 1141 (1988). It is evidence the superior court would have had when it considered Mr. Kassner's motion to withdraw his plea, but for the happenstance of it being lost when the file was "back-saved."

Comm'r's Ruling, *State v. Kassner*, No. 35628-1-III (Wash. Ct. App. June 5, 2018), at 2-3.

Kassner moved to modify our commissioner's ruling. We will address his motion at the end of this opinion.

ANALYSIS

Kassner argues that the trial court erred by denying his motion to vacate his 1996 first degree child molestation conviction.

A. STANDARD OF REVIEW

The trial court's denial of a motion to vacate under CrR 7.8 is reviewed for an abuse of discretion. *State v. Ellis*, 76 Wn. App. 391, 394, 884 P.2d 1360 (1994). A trial court abuses its discretion when its decision is “‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’” *State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). A trial court's decision is based on untenable grounds when the decision is contrary to law. *City of Kennewick v. Day*, 142 Wn.2d 1, 15, 11 P.3d 304 (2000).

B. JURISDICTION TO ENTER 1996 CONVICTION

Kassner argues that the trial court committed legal error when it failed to conclude that his 1996 conviction was invalid for lack of jurisdiction. We disagree.

In adopting Washington Constitution, article IV, section 6, the people of this state granted the superior courts original jurisdiction “in all criminal cases amounting to felony” and in several other enumerated types of cases and proceedings. In these enumerated categories where the constitution specifically grants jurisdiction to the superior courts, the legislature cannot restrict the jurisdiction of the superior courts.

State v. Posey, 174 Wn.2d 131, 135, 272 P.3d 840 (2012).

No. 35628-1-III
State v. Kassner

First degree child molestation is a class A felony. RCW 9A.44.083(2). For this reason, the trial court had jurisdiction to convict Kassner of this crime.

Kassner argues that the trial court's jurisdiction was limited to determining whether, at 10 years of age, he had the capacity to commit a crime; and, until that question was answered, the trial court lacked jurisdiction to convict him of the crime. Kassner's argument is predicated on our decision in *State v. Golden*, 112 Wn. App. 68, 47 P.3d 587 (2002).

George Golden was 10 years old when he pleaded guilty in juvenile court to arson. *Id.* at 71. The court entered a disposition without first conducting a capacity determination as provided by RCW 9A.04.050.¹ *Id.* at 72. Years later, Golden sought to vacate his conviction on the basis that the juvenile court lacked jurisdiction to enter a conviction. *Id.* at 71-72. We agreed, and held:

When a capacity or competency determination is required by the statute creating jurisdiction, the failure to comply does not deprive the court of jurisdiction over the subject matter or the person. But it *does* deprive the court of the authority to act.

¹ RCW 9A.04.050 provides in relevant part:

Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong.

No. 35628-1-III
State v. Kassner

The juvenile court, therefore, had jurisdiction solely to conduct a capacity hearing. Until that was done, the court had no authority to do anything but dismiss the charge. RCW 10.73.090 does not, therefore, time-bar the motion for relief of judgment.

Id. at 77 (citations omitted).

When we decided *Golden*, Washington law recognized three elements for every valid judgment: jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment. *See State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996). *Werner* was overruled six years ago by *Posey*, 174 Wn.2d at 138-40.

In *Posey*, the court noted that *Werner*'s distinction between "subject matter jurisdiction" and "the power or authority to render the particular judgment" rested on "an antiquated understanding of subject matter jurisdiction." *Id.* at 138. To the extent *Golden* holds that RCW 9A.04.050 is a statute that deprives the court of jurisdictional "authority to act," it is overruled by *Posey*.

We conclude the 1996 trial court had jurisdiction to convict Kassner of first degree child molestation, despite not first finding that he, at the age of 10, had the capacity to

No. 35628-1-III
State v. Kassner

commit a crime. The 2017 trial court did not err in denying Kassner's motion to vacate his conviction.²

Affirmed.

Lawrence-Berrey, C.J.
Lawrence-Berrey, C.J.

WE CONCUR:

Korsmo, J.
Korsmo, J.

Pennell, J.
Pennell, J.

² Because the presentence investigation report is not necessary to decide the issues on review, we decline to allow the additional evidence. RAP 9.11(a)(1). We therefore grant Kassner's motion to modify and strike Attachment A and all references to it from the State's brief.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

October 2, 2018

E-mail

Brian Clayton O'Brien
Spokane Co Pros Atty
1100 W Mallon Ave
Spokane, WA 99260-2043

Richard David Wall
Richard D. Wall, P.S.
1604 W Dean Ave
Spokane, WA 99201-1825
rdwallps@comcast.net

CASE # 356281
State of Washington v. Russell Paul Kassner
SPOKANE COUNTY SUPERIOR COURT No. 951025201

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 the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. 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:pb
Enc.

c: **E-mail** Hon. John Cooney
c: Russell Paul Kassner
4228 W. Indian Trail Rd.
Spokane, WA 99208

Court of Appeals Division III
State of Washington
Opinion Information Sheet

Docket Number: 35628-1
Title of Case: State of Washington v. Russell Paul Kassner
File Date: 10/02/2018

SOURCE OF APPEAL

Appeal from Spokane Superior Court
Docket No: 95-1-02520-1
Judgment or order under review
Date filed: 09/22/2017
Judge signing: Honorable John O. Cooney

JUDGES

Authored by Robert Lawrence-Berrey
Concurring: Rebecca Pennell
Kevin Korsmo

COUNSEL OF RECORD

Counsel for Appellant(s)
Richard David Wall
Richard D. Wall, P.S.
1604 W Dean Ave
Spokane, WA, 99201-1825

Counsel for Respondent(s)
Brian Clayton O'Brien
Spokane Co Pros Atty
1100 W Mallon Ave
Spokane, WA, 99260-2043

OPINION FACT SHEET

Case Name: State v. Kassner
Case Number: 356281

1. TRIAL COURT INFORMATION:

A. SUPERIOR COURT: Spokane; John Cooney;
 Letter Decision filed 8/25/17

2. COURT OF APPEALS INFORMATION:

Disposition:

- Affirmed
- Affirmed as Modified
- Affirmed in Part/Remanded**
- Affirmed/Reversed-in part and Remanded**
- Affirmed/Vacated in part
- Affirmed/Reversed in part
- Denied (PRP, Motions, Petitions)
- Dismissed
- Granted/Denied in part
- Granted (PRP, Motions, Petitions)
- Other
- Reversed and Dismissed
- Remanded**
- Remanded with Instructions**
- Reversed in part
- Reversed and Remanded**
- Reversed
- Reversed, Vacated and Remanded**
- Vacated and Remanded**
- * These categories are established by the Supreme Court
- ** If remanded, is jurisdiction being retained by the Court
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

RLB

Authoring Judge's Initials