

Motion for discretionary review.

[Review of trial court decision]; Review of Court of Appeals interlocutory decision SEP 11 2019

No. 35975-1-111  
[Appellate court]

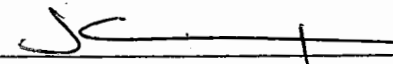
COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

[SUPREME COURT or COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON]

[Title of trial court proceeding with parties designated as in rule 3.4]

WASHINGTON STATE,  
Respondent,  
v.  
CONTRERAS JOSE,  
petitioner,  
and  
CONTRERAS JOSE,  
Defendant.

**MOTION FOR DISCRETIONARY REVIEW**

CONTRERAS JOSE  
[Name of petitioner's attorney] Ro-se  
  
Signature of Attorney for [petitioner]

[Name of Attorney for Appellant]

[Address] [City] [State] [Zip Code]

[Telephone Number] [Washington State Bar Association Membership No.]

A. IDENTITY OF PETITIONER

CONTRERAS JOSE 319551  
[Petitioner's name]

asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. AFFIRMED CONVICTION

[Identify the decision or parts of decision which the party wants reviewed by the type of decision]

6-13-2019

[Court entering or filing the decision]

[date entered or filed]

[Description of any order granting or denying motions made after the decision such as a motion for reconsideration].

Motion for reconsideration denied

August 22, 2019

[date of order granting or denying motions].

Am copy of the decision [and the trial court memorandum opinion] is in the appendix at pages A- \_\_\_\_\_ through \_\_\_\_\_.

C. ISSUES PRESENTED FOR REVIEW

[Define the issues which the court is asked to decide if review is granted].

- CR 12 (b) (6) Plaintiff State of Washington failed to state a valid claim
- C.R 7.8 (b) (3) Defence counsel statements constitute fraud
- CJC 2.9 Trial Court Judge ex-parte communicating with Appellates counsel during pending proceedings

D. STATEMENT OF THE CASE

[Write a statement of the procedure below and the facts].

Court of Appeals Division III has concurred and acknowledged that in fact there is no complaint against defendant

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

[Argument should be short and concise and supported by authority].

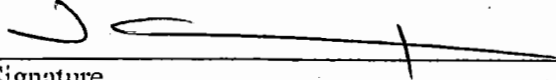
The Washington Constitution threw its bill of rights Article I section 3 guarantees citizens of the State due process of law before depriving any citizen of life, liberty or property. Petitioner has a right to be freed from unlawfull restraint

F. CONCLUSION

[State the relief sought if review is granted].

Appellates case shall be reversed

Respectfully submitted,

  
Signature

CONTRERAS JOSE  
[Name of petitioner's attorney]

APPENDIX

CONTRERAS JOSE  
[Name of Defendant]  
CBC 1830 eagle crest way, Clellan Bay, WA  
[Address] [City] [State] Zip Code]  
[Telephone Number]

976406

RECEIVED  
SEP 12 2019

Washington State  
Supreme Court

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

CONTRERAS, JOSE  
Appellant,  
v.

NO. 17-1-01142-1  
COA 35975-1-111

WASHINGTON, STATE,  
Respondent,

NOTICE OF DISCRETIONARY  
REVIEW TO SUPREME  
COURT

CONTRERAS, JOSE  
Petitioner.

PETITIONER

CONTRERAS JOSE 319551  
AHCC, P.O. Box 2049  
Airway Heights, WA 99001

DECISION FOR REVIEW

Review of Court of Appeals decision  
entered on June 13, 2019

Review part of trial court record proceedings

## ISSUES PRESENTED FOR REVIEW

Pg No. 4 Lines 2, 3, 4, 5, 6, 7

Plaintiff State of Washington has failed to state a valid claim CR12 (b) (6)

Who stated defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming a fire was dangerous to human life?

Pg No. 5 Lines 25, 26, 27

Under CrR 7.8 (b) (3) defence counsel statement constitutes fraud

Who stated defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming that a fire was dangerous to human life?

Pg No. 11 Lines 7, 8, 9, 10

The Court of appeals division three has concurred, that Tim Navarro never filed any complaint against defendant, the injured party need not file a complaint.

Who stated defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming that a fire was dangerous to human life?

Pg No 3 Lines 10, 11, 12

The State of Washington threw its Constitutional Bill of Rights article 1 section 7 guarantees to protect Citizens of this State against invasion of privacy or home without authority of Law prohibited

Under what authority did SWAT members entered defendant's home?

Under what authority was defendant's toxicology report obtained?

Under what authority are defendant's medical records being made public?

Are medical records not protected by State law (RCW 70.02) and Federal regulations (42 CFR Part 2) prohibit public disclosure?

Pg NO. 11 Lines 1, 2, 3

CARYL Chessman V. Harley O.  
Teets, 350 US 3, 100 LEd, 76 S Ct  
34

The conduct of a State prosecuting attorney and a court reporter in preparing a fraudulent transcript of trial proceedings in a criminal case, which transcripts is used in the hearing before the highest State court to which the accused has an automatic right of appeal, amounts to denial of due process of law in violation of the Fourteenth Amendment to the United States Constitution

1. Why are appellants transcripts altered?

2. Why are appellants transcripts not certified?



Pg No 11. Lines 14, 15, 16, 17

Under CR77(C) a trial Judge is allowed one ex-parte

Under CJC 2.9 the trial Judge has violated the code of conduct as a Judicial officer ex-parte communicating with appellates counsel during pending proceedings

Therefore, violating defendants right to due process of law (Wa. const. art. 1. sec 3)

Under what authority is a trial Judge allowed to ex-parte with appellates counsel during pending proceedings?

## STATEMENT OF THE CASE

This is a case, wher Plaintiff, and Court engaged in fraudulent conduct against Defendant to obtain a conviction.

## ARGUMENT

The Plaintiff who bears the burden of proof, failed to prove the essential elements of the crime the Actus reus

Who filed the complaint?

Who stated Defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming a fire dangerous to human life?

There is no legal merit for this conviction to be affirmed RCW 10.73.100 (4)

## SECOND ARGUMENT

Arson in the first degree as defined in RCW 9A.48.020 is the burning of a building through fire or explosion

Who stated defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming that a fire was dangerous to human life?

Who is the property owner of Woodland Green Apartments?

In arson, the corpus delicti, consist of two elements (1) that the building in question burned and, (2) that it burned as the result of the willful and criminal act of some person. State v. Turner, 58 Wn.2d 159, 361 P.2d 581, 1961 Wash. LEXIS

281 (Wash. 1961)

While the corpus delicti of a crime must be prima facie shown through independent evidence before an extra-judicial confession may be considered; once such showing is made, a confession may be considered together with the independent evidence to establish the corpus delicti beyond a reasonable doubt.

State v. Zuercher, 11 Wn. App. 91, 521 P.2d 1184, 1974 Wash. App LEXIS 1210 (Wash. Ct. App. 1974)

Expert witness Detective Daniel Todd confirmed and admitted to exhibits presented during trial, damages being caused threw a blast created by SWAT which constitutes arson under explosion RCW 9A.48.020

Expert witness also admitted  
to damages on the landing  
(Gianguelano RP 96 at 3 to 9)

Which questions Plaintiffs  
credibility on Respondents  
Brief when Respondent accuses  
Defendant of causing such  
damages (Respondent Brief  
No. 2)

Not only on Respondent  
Brief but threw out the trial  
demonstrating exhibits and  
Detective Daniel Todd is  
pointing them out saying  
Hey, these are from an  
explosion. Under C.R. 7.8 (3)  
it constitutes fraud by the  
adversed party


## CONCLUSION

Appellate Contreras conviction of first degree arson shall be reversed, and

Appellate Contreras shall be awarded compensatory damages in the amount of \$48,000,000.00 against Respondent Washington State

Appellate Contreras shall be awarded compensatory damages in the amount of \$48,000,000.00 against County of Benton

AHCC 6-19-19

  
CONTRERAS JOSE  
AHCC, P.O. Box 2049  
Airway Heights, WA  
99001

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>

August 22, 2019

Jose Contreras  
#319551  
Airway Heights Correction Center  
P.O. Box 2049  
Airway Heights,, WA 99001

**E-mail**  
Andrew Kelvin Miller  
Terry Jay Bloor  
Benton County Prosecutors Office  
7122 W Okanogan Pl Bldg A  
Kennewick, WA 99336-2359

CASE # 359751  
State of Washington v. Jose Antonio Contreras  
BENTON COUNTY SUPERIOR COURT No. 171011421

Dear Mr. Contreras and Counsel:

Enclosed is a copy of the Order Denying Motion for Reconsideration.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a Petition for Review, an original and a copy of the Petition for Review in this Court within 30 days after the Order Denying Motion for Reconsideration is filed (may be filed by electronic facsimile transmission). RAP 13.4(a). The Petition for Review will then be forwarded to the Supreme Court.

If the party opposing the petition wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service.

Sincerely,

Renee S. Townsley  
Clerk/Administrator

RST:sh  
Attachment

**FILED**  
**AUGUST 22, 2019**  
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. 35975-1-III
Respondent,	)	
	)	ORDER DENYING MOTION FOR
v.	)	RECONSIDERATION
	)	
JOSE ANTONIO CONTRERAS,	)	
	)	
Appellant.	)	

THE COURT has considered appellant's motion for reconsideration, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's opinion of June 13, 2019, is denied.

PANEL: Judges Fearing, Korsmo, Siddoway

FOR THE COURT:

  
ROBERT LAWRENCE-BERREY  
Chief Judge



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

CONTRERAS, JOSE  
Appellate,  
v.

NO. 35975-1-III

WASHINGTON STATE  
Respondent.

RAP 12.4

MOTION FOR  
RECONSIDERATION

### AUTHORITY

The panel has concurred THEREFORE  
under the authority of RAP 12.4  
Appellate Process moves this Court  
for motion to reconsider and  
reverse its decision

### APPENDICES

APPENDIX A Appeal decision 6-23-19

APPENDIX B CR Daniel Todd

## POINTS RAISED

Pg No. 4 Lines 2, 3, 4, 5, 6, 7

Plaintiff State of Washington  
has failed to state a valid claim  
CR 12(b)(6)

Who stated defendant caused  
a fire?

Who is claiming a damaged  
dwelling?

Who is claiming a fire was  
dangerous to human life?

Pg No 5 Lines 25, 26, 27

Under CrR 7.8(b)(3) defence  
counsel statement constitutes  
fraud

Who stated defendant caused  
a fire?

Who is claiming a damaged dwelling?

Who is claiming that a fire was dangerous to human life?

Pg No 11 Lines 7, 8, 9, 10

The Court of Appeals division three has concurred, that Tim Navarre never filed any complaint against defendant, the injured party need not file a complaint.

Who stated defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming that a fire was dangerous to human life?

Pg No 11 Lines 14, 15, 16, 17

Under CR 77(V) a trial Judge is allowed one ex-parte

Under CJC 2.9 the trial Judge has violated the code of conduct as a Judicial officer ex-parte communicating with appellates counsel during pending proceedings

THEREFORE, violating defendants right to due process of Law (Wa. Const. art 1. sec 3)

Under what authority is a trial Judge allowed to ex-parte with appellates counsel during pending proceedings?

### STATEMENT OF CASE

This is a case, wher Plaintiff and trial Court engaged in fraudulent conduct against Defendant to obtain a conviction in violation of "Due process of law" Wa. Const. art 1. sec 3; U.S. Const. Amend 14

## ARGUMENT

Arson in the first degree as defined in (RCW 9A.48.020) is the burning of a building through fire or explosion.

Who state defendant caused a fire?

Who is claiming a damaged dwelling?

Who is claiming that a fire was dangerous to human life?

Expert witness detective Daniel Todd confirmed and admitted damages to the landing caused through a blast created by SWAT which constitutes (RCW 9A.48.020) explosion (Giangualeno RP 96 at 3-9.)

THEREFORE, Plaintiff failed to state a valid claim CR12 (b) (6)

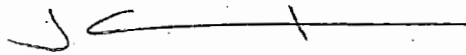
## CONCLUSION

Appellate Contreras conviction of first degree Arson shall be reversed, and

Appellate Contreras counterclaims damages in the amount of \$48,000,000.00 against Respondent Washington State

Appellate Contreras counterclaims damages in the amount of \$48,000,000.00 against County of Benton

AHCC 8-24-19

  
CONTRERAS JOSE 319551  
AHCC, P.O. Box 2049  
Airway Heights, WA  
99001

FILED  
JUNE 13, 2019  
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. 35975-1-III
Respondent,	)	
	)	
v.	)	
	)	
JOSE ANTONIO CONTRERAS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	

FEARING, J.— On appeal, Jose Contreras challenges his conviction for first degree arson on the basis of prosecutorial misconduct and ineffective assistance of counsel. We reject his contentions and affirm his convictions. We remand, however, for the striking of the criminal filing fee and DNA collection fee legal financial obligations.

FACTS

This prosecution arises out of the burning of the front door of Jose Contreras' apartment complex neighbors by Contreras. Tim Navarro resides at a Kennewick apartment with his father, fiancée, and his three children. Jose Contreras resides in another apartment directly across the way from Navarro.

At 3:00 a.m. on October 14, 2017, Tim Navarro awoke to someone loudly and aggressively knocking on his apartment door. Navarro ran to the door, looked through the peephole, and saw his neighbor, Jose Contreras, tampering with the outdoor light near the door. Navarro asked his fiancée to call the police while he continued to surveil Contreras through the peephole.

Tim Navarro watched as Jose Contreras acted bizarrely and as if Contreras was high on methamphetamine. Navarro saw and smelled smoke. Kennewick Police Officer Cory McGee arrived at the apartment complex. Officer McGee saw a fire near Navarro's front door and a male standing near the door of Navarro's apartment staring at the flames. According to Officer McGee, the flames climbed four feet high along the door of Navarro's apartment.

Officer Cory McGee identified himself as a police officer and inquired from Jose Contreras about his activities. Contreras turned toward Officer McGee, produced a large kitchen knife, and stated: "'Who the f\*\*\* are you?'" Report of Proceedings (RP) at 125. McGee again identified himself as a police officer. Contreras walked toward Officer McGee with the knife pointed at McGee. McGee drew his gun and warned Contreras that he would shoot if Contreras took any more steps forward.

Officer James Scott arrived at the apartment complex and noticed Jose Contreras acting aggressively. Contreras held the knife in one hand with his other hand clenched in a fist. He stood in a fighting stance. Contreras retreated into his apartment. The officers



extinguished the fire and called for assistance. The fire had burned Navarro's doormat and had charred Navarro's front door and apartment floor.

Kennewick Officer Aaron Hamel responded and surveilled the back of the apartments. Officer Hamel espied Jose Contreras, holding a large knife, on a balcony. Contreras threw objects at Officer Hamel while also repeatedly stabbing, with his knife, the wooden railing on the deck. Hamel identified himself as a police officer and told Contreras to drop the knife. Contreras snarled: "f\*\*\* you. I am going to kill all of you." RP at 110.

A SWAT team arrived at the Kennewick apartment complex. The team evacuated Tim Navarro and his family from their apartment via a bedroom window. Eventually the SWAT team gained entry to Contreras' apartment and arrested him. A later toxicology report confirmed the presence of methamphetamine in Contreras' body.

#### PROCEDURE

The State of Washington charged Jose Contreras with first degree arson. The information alleged that Contreras, while acting knowingly and maliciously, caused a fire that manifestly endangered human life or damaged a dwelling.

At the conclusion of the evidence, the trial court instructed the jury on the elements of first degree arson and, at the request of Jose Contreras, on the elements of first degree reckless burning as a lesser included offense. According to one jury instruction, to convict on the first degree arson charge, the jury had to find beyond

reasonable doubt:

- (1) That on or about October 14, 2017, the defendant caused a fire;
- (2) That the fire
  - (a) was manifestly dangerous to human life, or
  - (b) damaged a dwelling; and
- (3) That defendant acted knowingly and maliciously; and
- (4) That this act occurred in the State of Washington.

Clerk's Papers (CP) at 60. According to a second jury instruction, to convict on reckless burning in the first degree, the jury had to find beyond reasonable doubt:

- (1) That on or about October 14, 2017, the defendant caused a fire;
- (2) That the fire damaged a building;
- (3) That the defendant knowingly caused the fire;
- (4) That the defendant recklessly caused the damage; and
- (5) That this act occurred in the State of Washington.

CP at 67. Note the difference in mens rea for the two charges.

During the State's closing argument, the prosecutor stated:

My colleague is going to talk to you and I will have another chance. But I wanted to say one more thing about the reckless burning option and that is an option and, you know, I think you can consider that. You should consider it.

But I have to say that if you find the defendant caused the fire—which is pretty straightforward. He definitely damaged a dwelling and that fire was dangerous, manifestly dangerous to human life. I think it would be more intellectually honest for you to just find the defendant not guilty than find him guilty only of reckless burning.

You know, if you find him guilty, the appropriate charge should be arson in the first degree.

RP at 159. Defense counsel did not object.

Defense counsel responded in his closing argument by listing the elements of the crimes, as listed in the jury instructions, of first degree arson and first degree reckless burning.

And I guess what I am getting at here, what we are looking at, the difference that we are looking at has to do with arson in the first degree, deals with an individual having malicious intent. Malicious intent.

Reckless burning in the first degree has to do with an individual acting recklessly and damaging a building. So is there a difference between being reckless and causing damage or trying to actually maliciously cause damage?

There are differences in the law in many situations. Talking about manslaughter and murder. Manslaughter, you can act recklessly. You don't mean to hurt anybody but you are being a fool. You are being an idiot. You are doing something stupid and somebody dies. Manslaughter.

Murder, you want to kill them. You are intending to. Okay? There is a difference. Talking about intent. Okay?

RP at 164.

During his summation, defense counsel juxtaposed the concept of malicious intent to the facts of the case and underscored that Jose Contreras uttered no threats to Tim Navarro or his family. Contreras never threatened to harm the family or burn the family's apartment. Contreras never declared hatred toward the family and never expressed a wish to cause family members harm. Defense counsel emphasized that Navarro described Contreras as "[a] crazed man doing things he didn't understand. . . ." RP at 166, 167. Defense counsel ended his argument:

This was not a case where the defendant, although admittedly doing this sort of thing was manifestly dangerous to human life. Yeah. Absolutely. Not only just human lives there in B10, but we know it was a

four-plex. Okay?

Did it damage a dwelling? It sure did. But, again, that the defendant had this malicious intent to do what he is accused of doing. We are asking you to find that the evidence doesn't support arson in the first degree but rather supports the charge of reckless burning in the first degree. We are asking you that your verdict so reflects. Thank you.

RP at 168.

The jury declared Jose Contreras guilty of the greater charge, first degree arson. The jury also returned a special verdict that found damages to a dwelling and the setting of a fire manifestly dangerous to human life.

During sentencing, the trial court sentenced Jose Contreras to a mid-range sentence of 100 months' confinement. The court found Contreras indigent and imposed only mandatory legal financial obligations, including a \$200 criminal filing fee and a \$100 DNA collection fee.

## LAW AND ANALYSIS

### Prosecutorial Misconduct

On appeal, Jose Contreras asserts misconduct for statements of the prosecuting attorney during closing argument regarding the lesser included instruction. Contreras complains of the prosecutor informing the jury that finding Contreras not guilty of any crime, rather than finding him guilty of first degree reckless burning, served intellectual honesty. Contreras essentially argues that the State's attorney committed misconduct when seeking to deny the accused the benefit of a jury instruction on a lesser included

crime.

Jose Contreras' brief cites no legal authority explaining prosecutorial misconduct when the prosecuting attorney argues against convicting the accused of the lesser included crime. We therefore deny review of this assignment of error. This court does not review errors alleged but not argued, briefed, or supported with citation to authority. RAP 10.3; *Valente v. Bailey*, 74 Wn.2d 857, 858, 447 P.2d 589 (1968); *Avellaneda v. State*, 167 Wn. App. 474, 485 n.5, 273 P.3d 477 (2012).

#### Ineffective Assistance of Counsel

Jose Contreras next contends he received ineffective assistance of counsel due to: (1) counsel's failure to object to the prosecutor's remarks in closing argument, (2) a concession in defense counsel's closing argument that the fire was manifestly dangerous to human life, and (3) counsel's failure to request a voluntary intoxication instruction. We disagree with each contention.

To demonstrate ineffective assistance of counsel, a defendant must make two showings. First, the defendant must show that defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances. Second, a defendant must show that defense counsel's representation prejudiced the defendant. This entails showing a reasonable probability that, except for counsel's unprofessional errors, the result of the proceedings would have been different. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251

(1995).

We engage in a strong presumption that counsel's performance was reasonable. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). When counsel's conduct can be characterized as legitimate trial strategy or tactics, the performance is not deficient. *State v. Kylo*, 166 Wn.2d at 863. Competency of counsel is determined based on the entire record below. *State v. McFarland*, 127 Wn.2d at 335.

Jose Contreras first complains that his trial counsel performed deficiently when failing to object to the State's attorney's argument that intellectual honesty required acquitting Contreras of both charges rather than convicting him only of the lesser included charge. As discussed above, the prosecutor's statements did not constitute misconduct so defense counsel was not deficient for failing to object to the remarks.

Jose Contreras next complains that trial counsel conceded that the fire endangered human life and caused damage to a dwelling. He contends his counsel effectively conceded his guilt to first degree arson and thereby withdrew from the jury the consideration of finding Contreras guilty of the lesser included offense of reckless burning.

We agree with Jose Contreras that the right to effective assistance of counsel extends to closing arguments. *State v. Kylo*, 166 Wn.2d at 870 (2009). Nevertheless, we find no ineffective performance of counsel. Trial counsel aggressively requested that the jury find Contreras not guilty of first degree arson because Contreras lacked any

malicious intent. Counsel never conceded guilt of arson. Counsel conceded damage to a dwelling and endangerment to life because the overwhelming facts supported these elements of first degree arson. By conceding the obvious, counsel bolstered counsel's and Contreras's credibility when arguing Contreras lacked malicious intent.

Jose Contreras also asserts deficient performance by trial counsel in that counsel failed to request a voluntary intoxication instruction. To prevail on the basis that trial counsel was ineffective for failure to request a jury instruction, the reviewing court must find that the defendant was entitled to the instruction, that counsel's performance was deficient in failure to request the instruction, and that the failure to request the instruction prejudiced the defendant. *State v. Johnston*, 143 Wn. App. 1, 21, 177 P.3d 1127 (2007).

A criminal defendant is entitled to a voluntary intoxication instruction only if: (1) the crime charged has a particular mental state as an element, (2) there is substantial evidence of drinking or drug use, and (3) the defendant presents evidence that the drinking or drug use affected his or her ability to acquire the required mental state. *State v. Gallegos*, 65 Wn. App. 230, 238, 828 P.2d 37 (1992). Contreras fails the first prong because case law previously foreclosed the ability of using a voluntary intoxication instruction for first degree arson. *State v. Nelson*, 17 Wn. App. 66, 71-72, 561 P.2d 1093 (1977).

In *State v. Nelson*, the court acknowledged that the arson statute contains the word "maliciously," but held that the term denotes only a general intent, not a specific mental

No. 35975-1-III  
*State v. Contreras*

state. *State v. Nelson*, 17 Wn. App. at 70. The *Nelson* court found no error when the trial court refused to instruct the jury on voluntary intoxication because the defendant was not entitled to the instruction.

#### Criminal Filing Fee

The trial court assessed legal financial obligations at sentencing of a \$500 victim penalty assessment fee, the \$200 criminal filing fee, and the \$100 DNA fee. Although mandatory when imposed, the criminal filing fee and DNA fee are no longer mandatory under new legislation as explained in *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).

Jose Contreras has previous felony convictions that likely resulted in an earlier DNA collection. He asks that the filing fee and DNA fee be struck. The State also advocates for the fees to be struck. Pursuant to *Ramirez*, we remand for the trial court to strike the two fees. Contreras need not be present at any hearing to strike the two financial obligations.

#### Statement of Additional Grounds

Jose Contreras raises five issues in a statement of additional grounds (SAG). But, in contravention of RAP 10.10, Contreras does not inform this court of the nature and occurrence of the alleged errors. Contreras only cites federal statutes and civil court rules to support his contentions, neither of which apply to his case. For example, Contreras cites a civil court rule regarding speedy trial rights. Contreras does not explain, though,



how or why he believes that right was violated. In his third ground, Contreras cites the due process component of the Fifth and Fourteenth Amendments and then cites to civil court rules stating that documents are to be signed and dated. We do not know how those two theories connect and what error Contreras asserts.

In his first additional ground, Contreras cites the Fifth Amendment to the United States Constitution and states that “for due process of law to take effect a crime has to be committed.” SAG, ground 1. Contreras then cites to CR 12(b)(6) and highlights that Tim Navarro never filed any complaint for damages against him. Contreras misunderstands that the State’s filing of an information against him constitutes the allegation that a crime was committed. The injured party need not file a civil complaint.

In his fourth additional ground, Contreras raises a federal statute dealing with “Conspiracy to interfere with civil rights” and then accuses his appellate counsel of assisting the trial court in “conduct that is in violation of applicable rules of Judicial Conduct. . . .” SAG, ground 4. Contreras discusses ex parte communication, but appellate counsel only represents Contreras on appeal. Another attorney represented Contreras at trial. We do not know how or why appellate counsel would engage in contact with the trial court.

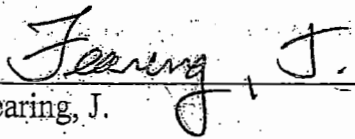
#### CONCLUSIONS

We affirm Jose Contreras’ conviction for first degree arson. We remand to the sentencing court to strike the criminal filing fee and the DNA collection fee. We

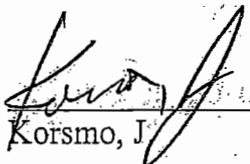
No. 35975-1-III  
*State v. Contreras*

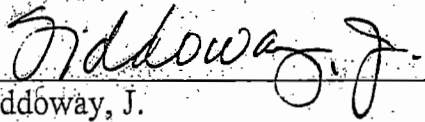
otherwise affirm Contreras' sentence.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Fearing, J.

WE CONCUR:

  
\_\_\_\_\_  
Korsmo, J.

  
\_\_\_\_\_  
Siddoway, J.

28 USC 1343 (a) (2)

Renee S. Townsley  
Clerk/Administrator

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

The Court of Appeals  
of the  
State of Washington  
Division III



November 2, 2018

500 N Cedar ST  
Spokane, WA 99201-1905

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

Jose Antonio Contreras  
#319551  
PO Box 769  
Connell, WA 99326

AHCC  
P.O. BOX 2049  
Airway Heights  
WA 99001

CASE # 359751  
State of Washington v. Jose Antonio Contreras  
BENTON COUNTY SUPERIOR COURT No. 171011421

Dear Mr. Contreras:

The Court has received your "Motion To Dismiss With Prejudice" on October 24, 2018. However, because you are represented by counsel, and your pleading does not relate to your Statement of Additional Grounds for Review, the pleading will be rejected for filing with no action taken. See, State v. Romero, 95 Wn. App. 323, 975 P.2d 564 (1999).

For your information, the original verbatim report of proceedings filed with the Court of Appeals bear the signatures of the court reporters and are accepted for filing.

Your statement of additional grounds for review is due by December 3, 2018.

A copy of your motion is being sent to your appellate counsel, Mr. Morgan. Please contact your appellate counsel if you need legal advice or assistance.

Sincerely,

RENEE S. TOWNSLEY  
Clerk/Administrator

Darnell L. Zundel, Case Manager

RST:diz  
Attachment

c: Andrew Kelvin Miller  
Benton County Prosecutors Office  
7122 W Okanogan Pl Bldg A  
Kennewick, WA 99336-2359  
E-Mail

Dennis W. Morgan  
Attorney at Law  
PO Box 1019  
Republic, WA 99166-1019  
E-Mail

**FILED**

DEC 11 2018

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

WASHINGTON STATE NO. 359751  
Respondent

CONTRERAS, JOSE  
Appellant.

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW 10.10

GROUND 1

The Fifth Amendment to the U.S. Constitution states in a criminal case no one is to be deprived of life, liberty, or property without "due process of law"

In order for due process of law to take effect a crime has to be committed.

Woodland Green Apartments v. Jose Antonio Contreras No. 17-2-0279-6 Plaintiff never claimed property damage.

CR12 (b)(6) The law exist RCW 9A.48.020, But the claim does not THEREFORE, there is no legal base for the restraint

(KATIE E. DEVOIR RP 8 at 22-25, 9 at 1)  
Prosecuting attorney Andrew Miller  
Statement:

I don't have restitution figures as of now. Frankly, the apartment complex may not forward any. They might just view it as a loss, but I ask that that be -- remain to be determined in case they do file any.

## GROUND 2

(Pelletier RP 12, 13) Appellant was set for trial 1-29-2018. 18 USC 3161 (a) set for trial on a date certain, CR1 Speedy Action, 18 USC 3163 Effective dates apply to individuals who are arrested or served with summons.

CR 3 Commencement of action 10-14-2017  
CR 86 when the rules take effect would not  
be feasible or would work injustice, in  
which event the procedure existing at the  
time the action was brought applies, CrR  
3.3 (1) Responsibility of the Court.

### GROUND 3

"Due process of law" under the Fifth  
and Fourteenth Amendments to the U.S.  
Constitution

Documents are to be signed and dated  
(CR 11), CR 34 (a)(1) designated documents are  
to be inspected CR 29(e) Transcripts shall  
not be altered CR 43(h) reports are admissible  
at a later trial CR 44(a) Certified are to  
be signed and dated, under Court seal  
as proof of authentication

### GROUND 4.

28 USC 2244 (1)(B), 42 USC (1985) (3)

Dennis W. Morgan RPC 8.4(f)(1) assisting

Judge Alexander C. Ekstrom in conduct that is in violation of applicable rules of Judicial Conduct or other laws 42 USC 1985 (3) Conspiracy to deprive directly or indirectly of Privileges secured by the Constitution or laws of the United States CJC 2.9, CR 77 ex parte communication on pending proceedings

## GROUND 5

The Fourth Amendment to the U.S Constitution and (42 CFR Part 2)

(Devoir RP Sentencing) Michael Prince, Andrew Miller, and Alexander Ekstrom are all in violation of (42 CFR Part 2) Medical records are protected by Federal Law which prohibit public disclosure and the Fourth Amendment to the U.S Constitution which protect against "unreasonable searches and seizures". The State of Washington had no authority to make public disclosure or to search and seize Appellants medical information

On October 24, 2018 Appellate submitted supporting documents. On November 2, 2018 Darnell L. Zundel from the Court of Appeals confirmed in receipt of documents.

28 USC 1343(a)(2)

JC

Jose Contreras 319551  
AHCC, P.O. Box 2049  
Airway Heights, WA 99001