

61869-S

61869-S

NO. 61869-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ROBERT LANGSTEAD,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE DOUGLAS McBROOM, JUDGE

BRIEF OF RESPONDENT

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A. ISSUES

1. The United States Supreme Court has excepted "the fact of a prior conviction" from those sentencing facts that must be proved to a jury beyond a reasonable doubt. Washington courts have repeatedly recognized this distinction, and have found it valid under the Washington Constitution as well. The trial court found that Langstead had two prior "strikes" in addition to his current convictions for Robbery in the First Degree. Did the trial court properly sentence Langstead as a persistent offender without resorting to a jury to determine his prior convictions beyond a reasonable doubt?

2. Where only a liberty interest is at issue, equal protection requires no more than a rational basis for a legislative classification; the classification will be upheld unless it rests on grounds wholly irrelevant to the achievement of legitimate state objectives. The legislature has chosen to deter certain conduct by making specific prior offenses "elements" of a greater, related crime, resulting in a requirement that the prior offenses be proved to a jury beyond a reasonable doubt. The legislature has chosen to treat recidivism in general differently; when the prior conviction does not change the currently charged crime, but merely has the

effect of increasing the punishment, the prior convictions may be found by the court by a preponderance of the evidence. Does this sentencing scheme rest upon a rational basis?

3. The State need not prove the constitutional validity of a prior conviction before it can be used in a sentencing proceeding; rather, the defendant must show that the conviction is constitutionally invalid on its face, i.e., without further elaboration. The 1984 judgment and sentence for robbery (Langstead's first "strike") evinces no constitutional invalidity. The alleged lack of a factual basis for the corresponding guilty plea is not a constitutional infirmity, and in any event cannot be determined without resort to the entire record of the plea hearing. Has Langstead failed to show that his 1984 conviction is constitutionally invalid on its face?

B. STATEMENT OF THE CASE

Defendant Robert Langstead was charged by information with two counts of Robbery in the Second Degree and two counts of Robbery in the First Degree. In support of these charges, the State alleged that Langstead had robbed a Baskin Robbins on April 14, 2006; a Plaid Pantry on April 16, 2006; a Washington Mutual Bank on April 17, 2006; and a Citibank on April 20, 2006.

Langstead's image was captured on a video surveillance system in each instance. He was apprehended during flight from the April 20th robbery. CP 1-11.

Langstead admitted all four robberies, and told police that he was a "three striker."¹ CP 5, 7-8, 10. He committed these crimes only two months after his release from prison on multiple counts of Robbery in the First Degree. CP 13, 40. The State gave notice that it believed that a conviction on any of the current charges would represent Langstead's "third strike." CP 12-13.

Langstead pled guilty as charged. CP 14-46; RP (10-27-06). His attorney, Byron Ward, explained the decision: "I've been over the evidence with Mr. Langstead, and I think certainly if we went to trial he would be found guilty of at least even one of the offenses, which would be a potential third strike. . . . Mr. Langstead will take the position that sentencing in his 1982 robbery is inadmissible because the judgment and sentence is unconstitutional." RP (10-27-06) 3-4.

Both the trial court and the prosecutor took care to ensure that Langstead's guilty pleas were knowing, intelligent and

¹ Langstead had prior convictions for Robbery in the Second Degree (1984) and Robbery in the First Degree (1994). CP 40-41.

voluntary. Langstead affirmed that he had read the plea form, and that his attorney had answered all questions to his satisfaction. RP (10-27-06) 5-6. Langstead understood that he was reserving the right to contest his 1984 conviction for Robbery in the Second Degree. RP (10-27-06) 15. "I understand pretty much everything. Byron's been real good about going over that with me. . . . And I've asked millions of questions." Id.

When the prosecutor emphasized that the State believed the 1984 conviction was Langstead's first "strike," and that Langstead was essentially pleading guilty to a penalty of life without possibility of parole, Langston responded: "Well, I – yes, that's why I agreed to this. I don't – I don't – I'm going to get convicted of anything that I take to trial, so it's just – all it's a matter of is the 1983 conviction.^[2] I will get found guilty if I go to trial on any of these, so it's not even a – I mean I feel – personally myself feel like I'd be spitting in people's faces going to trying [sic] on this and waste everybody's time." RP (10-27-06) 16.

When asked as to each count whose choice it was to plead guilty, Langstead responded four times, "My choice." RP (10-27-

² The robbery was committed in 1983; the conviction was obtained in 1984. CP 41; Ex. 2.

06) 23. When the court asked if he was "entirely satisfied with the representation that has been given to you by Mr. Ward, your defense attorney," Langstead responded, "Yes." RP (10-27-06) 25.

Nevertheless, approximately one year later, Langstead moved to withdraw his guilty pleas.³ CP 94-104. He said that his attorney had made him feel "[l]ike a lost cause," and that "everything was so negative it made me just want to give up, along with the fact I was depressed anyway." RP (12-7-07) 8-9. Langstead said that, at the time of his decision to plead guilty, "I was to the point that I just didn't care. My whole plan was get this over with and get to Walla Walla and kill myself or have somebody kill me." RP (12-7-07) 11. He asserted that he was "in a different frame of mind, and I want to exercise my rights." RP (12-7-07) 46. When the prosecutor confronted him with, "Mr. Langstead, isn't it fair to say that you simply changed your mind after you pled guilty?", Langstead responded, "Absolutely. That's – that's exactly what I'm saying is that I've changed my mind and this is my life. It's not a matter of two years. It's a matter of the rest of my life, and not

³ The lengthy delay between plea and sentencing is explained in correspondence between counsel (sub # 88). Because the document is 177 pages long, and there is no claim in this appeal relating to any delay, the State has not designated this document for transmission to this Court.

only did I change my mind as far as wanting the plea, I changed my mind on wanting to live. That's the key thing." RP (12-7-07) 47-48.

The trial court also heard testimony from attorney Byron Ward. Ward described what he believed was a good relationship with Langstead. RP (12-7-07) 53. Ward outlined his investigation, his attempts to get a favorable plea offer from the prosecutor's office, and his ultimate strategy in advising Langstead to plead guilty and challenge the 1984 conviction. RP (12-7-07) 54-65. Langstead never told Ward that he was suicidal. RP (12-7-07) 65. Ward never told Langstead that he could not take his case to trial, or that his only choice was to plead guilty. RP (12-7-07) 66.

The trial court, the same court that had accepted Langstead's guilty plea, read the entire transcript of the plea hearing, and viewed a portion of the video of the hearing. RP (12-7-07) 81-83. After considering the arguments of the parties, the trial court denied Langstead's motion to withdraw his guilty pleas. CP 94-104, 107-55, 177-78; RP 83-88. The court found that Langstead had received effective assistance of counsel, that he had ratified the pleas, that the pleas were voluntary, and that the State had honored the plea agreement. RP (12-7-07) 89-90.

At the sentencing hearing, the State presented the testimony of latent fingerprint examiner Betty Newlin, as well as numerous documents from the Department of Corrections, to link Langstead to his two prior "strikes." RP (5-23-08) 4-27; Ex. 1, 2, 3.⁴ While Langstead chose not to stipulate to these prior convictions, he presented no argument on the issue. RP (5-23-08) 27-28. The trial court found that the State had proven the convictions. RP (5-23-08) 49.

Langstead did, however, contest the constitutional validity of his first "strike." Both Byron Ward and Langstead's subsequent attorney, Patricia Penn, filed briefs attacking Langstead's 1984 conviction for Robbery in the Second Degree. CP 47-58, 83-93, 161-76. In his Statement of Defendant on Plea of Guilty to that crime, Langstead had admitted: "Count V. On November 28, 1983 I took property from Grace Williams without permission. I took the property in her presence by the threatened use of force." CP 54. Counsel argued that the factual basis for the plea was inadequate,

⁴ Ex. 1 is a 1994 King County judgment and sentence (two counts of Robbery in the First Degree); Ex. 2 is a 1984 King County judgment and sentence (includes one count of Robbery in the Second Degree); Ex. 3 is a 1994 Snohomish County judgment and sentence (nine counts of Robbery in the First Degree). The exhibits that Newlin used to link Langstead to these convictions (Ex. 4, 5) are lengthy; because these exhibits are not necessary to respond to the issues on appeal, the State has not designated them for transmission to this Court.

in that it did not explicitly state that Langstead's conduct was "unlawful." CP 48; RP (5-23-08) 32-35. Thus, counsel argued, the plea was constitutionally invalid on its face. CP 47, 83, 87, 161-62; RP (5-23-08) 32-33.

The State disputed this claim, pointing out that the requirement that the trial court find a factual basis for the guilty plea comes from CrR 4.2(d), and is not constitutionally based. CP 157-58; RP (5-23-08) 36-37, 38-39. Relying primarily on State v. Ammons,⁵ the State further argued that the judgment and sentence was not constitutionally invalid on its face. CP 67-73, 158-59; RP (5-23-08) 44-47.

The trial court found the 1984 judgment and sentence facially valid: "I find that there has been no constitutional infirmity made out." RP (5-23-08) 48-49. The court accordingly imposed a sentence of life without possibility of parole. CP 179-87; RP (5-23-08) 54.

⁵ 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986).

C. ARGUMENT

At his sentencing hearing, Langstead never argued that he had a right to have a jury determine his prior "strikes" beyond a reasonable doubt (argument # 1). Nor did he raise an equal protection challenge to the sentencing scheme used to find him a persistent offender (argument # 2). The State is not arguing that Langstead has waived these arguments, because this Court's case law appears to preclude such an argument. See State v. McNear, 88 Wn. App. 331, 333-35, 944 P.2d 1099 (1997) (defendant did not waive challenges to constitutional validity of sentencing statute by pleading guilty and failing to raise challenges in trial court).

1. NEITHER DUE PROCESS NOR THE RIGHT TO A JURY TRIAL PRECLUDED THE TRIAL COURT FROM DETERMINING WHETHER LANGSTEAD HAS TWO PRIOR CONVICTIONS THAT QUALIFY AS "STRIKES" UNDER THE POAA.

Langstead contends that his federal constitutional rights under the Sixth and Fourteenth Amendments, to a jury trial and to proof beyond a reasonable doubt, were violated when the trial court, rather than a jury, found the existence of his two prior "strikes." These arguments have repeatedly been rejected by Washington courts.

The relevant line of cases begins with Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). In that case, the United States Supreme Court held that "[o]*ther than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490 (italics added). Despite this explicit language, defendants argued that Apprendi conferred a right to a jury trial in persistent offender sentencings; i.e., that the State must prove the relevant prior convictions to a jury beyond a reasonable doubt. State v. Wheeler, 145 Wn.2d 116, 119, 34 P.3d 799 (2001), cert. denied, 535 U.S. 996 (2002). The Washington Supreme Court rejected this argument: "Unless and until the federal courts extend *Apprendi* to require such a result, we hold these additional protections [charging prior "strike" convictions in an information and proving them to a jury beyond a reasonable doubt] are not required under the United States Constitution or by the Persistent Offender Accountability Act (POAA) of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW." Id. at 117.

Subsequently, in State v. Smith, the Washington Supreme Court addressed these same issues under the Washington

Constitution, article I, sections 21 and 22, in another POAA case. 150 Wn.2d 135, 139, 75 P.3d 934 (2003), cert. denied, 541 U.S. 909 (2004). The court first reaffirmed its holding in Wheeler under the federal constitution. Id. at 143. Then, after a full Gunwall⁶ analysis, the court rejected the claim that the Washington Constitution requires a jury trial for determining prior convictions at sentencing. Id. at 156. See also In re Personal Restraint of Lavery, 154 Wn.2d 249, 256, 111 P.3d 837 (2005) ("In applying *Apprendi*, we have held that the existence of a prior conviction need not be presented to a jury and proved beyond a reasonable doubt.").

Langstead nevertheless argues that the United States Supreme Court's decision in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), altered this law as it applies to prior convictions, in that it extended the constitutional protections to facts that elevate a sentence above the standard range. Brf. of App. at 11-13; 542 U.S. at 303-04. Again, the Washington Supreme Court has rejected this argument. In State v. Thieffault, 160 Wn.2d 409, 418, 158 P.3d 580 (2007), another POAA case, the defendant cited Blakely as well as Apprendi in

⁶ State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

support of his argument that he had a right to a jury determination of his prior conviction. Citing Lavery, Smith and Wheeler, the court reiterated: "This court has repeatedly rejected similar arguments and held that *Apprendi* and its progeny do not require the State to submit a defendant's prior convictions to a jury and prove them beyond a reasonable doubt." Thiefault, 160 Wn.2d at 418.

Based on this unbroken line of cases rejecting the argument Langstead makes in this case, this Court should hold that Langstead did not have a right to a jury determination on proof beyond a reasonable doubt of the prior convictions that constituted his first two "strikes." The trial court properly made this determination.

2. LANGSTEAD'S RIGHT TO EQUAL PROTECTION OF LAW WAS NOT VIOLATED WHEN THE TRIAL COURT FOUND HIS PRIOR CONVICTIONS BY A PREPONDERANCE OF THE EVIDENCE RATHER THAN PROOF BEYOND A REASONABLE DOUBT.

Langstead next argues that, because a prior conviction that elevates the current crime to a higher level requires proof beyond a reasonable doubt of that prior conviction, his right to equal protection of the law was violated where his prior convictions, found by the court by a preponderance of the evidence, were used to

increase his punishment for the current crimes. This claim does not withstand careful scrutiny. While a prior conviction that the legislature has made an element of a crime must be proved to a jury beyond a reasonable doubt, the legislature had a rational basis to treat ordinary recidivism differently.

Under the Equal Protection Clause of the Fourteenth Amendment, as well as article I, section § 12 of the Washington Constitution, persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. State v. Thorne, 129 Wn.2d 736, 771, 921 P.2d 514 (1996). Courts employ three different levels of scrutiny in determining whether this right has been violated: 1) strict scrutiny, when a classification affects a suspect class or a fundamental right; 2) intermediate scrutiny; or 3) rational basis. Id. A statutory classification that implicates physical liberty only is not subject to intermediate scrutiny unless it also affects a semisuspect class. Id. Recidivist criminals are not a semisuspect class; thus, the proper test to apply where only a liberty interest is asserted is the rational basis test. Id.; State v. Manussier, 129 Wn.2d 652, 673-74, 921 P.2d 473 (1996), cert. denied, 520 U.S. 1201 (1997).

The rational basis test is a deferential one: a legislative classification will be upheld unless it rests on grounds wholly irrelevant to the achievement of legitimate state objectives. Thorne, 129 Wn.2d at 771. The burden is on the challenging party to show that the classification is purely arbitrary. Id. The rational basis test requires only that the means employed be rationally related to a legitimate State goal; the means need not be the best way of achieving that goal. Manussier, 129 Wn.2d at 673. The legislature has broad discretion to determine the public interest, as well as the measures necessary to protect that interest. Id.

Langstead relies primarily on State v. Roswell, 165 Wn.2d 186, 196 P.3d 705 (2008) in making his equal protection argument. He argues that, because the court in Roswell recognized that elements of a crime must be proved to a jury beyond a reasonable doubt, even where the element is a prior conviction, it follows that *all* prior convictions must be treated as elements of a crime where they are used to increase the punishment for that crime. This argument ignores the distinction between a prior conviction that actually alters the crime that may be charged, and a prior conviction that is used solely to establish recidivism.

In Roswell, the court addressed RCW 9.68A.090(1), under which a person who communicates with a minor for immoral purposes is ordinarily guilty of a gross misdemeanor; however, under RCW 9.68A.090(2), if the defendant has previously been convicted of a felony sexual offense, he is guilty of a class C felony. 165 Wn.2d at 190. Addressing confusion that had arisen at argument concerning whether the prior conviction was an aggravating factor or an element of the charged crime, the court clarified:

[A] prior sexual offense conviction is an essential element that must be proved beyond a reasonable doubt. The prior conviction is not used to merely increase the sentence beyond the standard range but *actually alters the crime that may be charged.*

Roswell, 165 Wn.2d at 190, 192 (italics added).

The legislature chose to elevate certain crimes if the defendant had been convicted of closely related conduct in the past. See, e.g., RCW 9.68A.090(2) (elevating Communicating With a Minor For Immoral Purposes from a gross misdemeanor to a felony if defendant was previously convicted of a felony sexual offense); RCW 25.50.110(5) (elevating Violation of a Domestic Violence Court Order from a gross misdemeanor to a class C felony if defendant has at least two prior convictions for violating

such an order). These prior convictions, which serve as elements of the crime and thus must be proved to a jury beyond a reasonable doubt, are closely connected in subject matter to the crimes that they elevate, and these prior convictions actually change the crime currently charged.

By contrast, Langstead would still be guilty of the same crime, Robbery in the First Degree, whether or not the State proved the prior convictions that establish him as a persistent offender. This is because, under the SRA, the legislature has chosen to use prior convictions purely for recidivist purposes as to most crimes, simply counting all felonies of any nature in calculating the punishment for the current conviction. RCW 9.94A.525. And under the persistent offender provisions of the SRA, the legislature has chosen to punish those defendants who have committed a crime classified as a "most serious offense" and who have been convicted on at least two separate occasions of prior "most serious offenses" (regardless of the nature of the "most serious offense") more harshly, with a sentence of life without possibility of parole. RCW 9.94A.030(33), 9.94A.570.

The fact that the legislature has chosen to handle these situations differently is not irrational. Making specific crimes more

serious by reason of specific, related prior crimes evinces a legislative intent to deter repeat offenses of a specific nature by making subsequent violations a more serious crime. Increasing the punishment for felonies in general, and for certain "most serious offenses" in particular, by taking recidivism into account, reflects a different, more generalized legislative choice to protect the public.

Langstead's equal protection argument, taken to its logical conclusion, would invalidate not only the POAA, but the sentencing scheme of the SRA in general – all prior convictions would have to be treated as "elements" of the current crime and proved to a jury beyond a reasonable doubt. The Washington courts have in general rejected such claims. See In re Personal Restraint of Stanphill, 134 Wn.2d 165, 175, 949 P.2d 365 (1998) (no equal protection violation when legislature changed its view of criminal punishment, resulting in offenders being subject to different punishment schemes); State v. Ross, 152 Wn.2d 220, 240-41, 95 P.3d 1225 (2004) (same); Manussier, 129 Wn.2d at 672-74 (POAA passes rational basis test and thus does not violate federal or state equal protection clauses).

3. LANGSTEAD HAS NOT SHOWN THAT HIS
1984 JUDGMENT AND SENTENCE IS
CONSTITUTIONALLY INVALID.

Langstead finally claims that his guilty plea to robbery in the 1984 conviction lacked a factual basis, in that his written admission in the plea statement failed to include the word "unlawfully" in reference to the unpermitted and forceful taking. He reasons that this omission somehow renders his *judgment and sentence* in that case constitutionally invalid on its face, and accordingly argues that the trial court improperly used the 1984 conviction as a prior "strike." The law does not support these leaps of logic.

The State does not have the affirmative burden of proving the constitutional validity of a prior conviction before it can be used in a sentencing proceeding. State v. Ammons, 105 Wn.2d 175, 187, 713 P.2d 719, 718 P.2d 796 (1986). A prior conviction that has previously been determined to have been unconstitutionally obtained, or that is unconstitutional on its face, may not be considered, however. Id. at 187-88. "Constitutionally invalid on its face means a conviction which without further elaboration evidences infirmities of a constitutional magnitude." Id. at 188.

Since Ammons, the Washington Supreme Court has clarified the meaning of constitutional facial invalidity:

"Invalid on its face" means the judgment and sentence evidences the invalidity without further elaboration. . . . The court in *Stoudmire* [⁷] and *Thompson* [⁸] held that documents signed as part of a plea agreement may be considered in determining facial invalidity when those documents are relevant in assessing the validity of the judgment and sentence. . . . *The question is not, however, whether the plea documents are facially invalid, but whether the judgment and sentence is invalid on its face.*

In re Personal Restraint of Hemenway, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002) (italics added). The court added further explanation in a footnote:

To the extent that this court's recent decision in *In re Personal Restraint of Stoudmire*, 145 Wn.2d 258, 36 P.3d 1005 (2001) suggests that facial invalidity under RCW 10.73.090(1) refers to a facially invalid plea, we take this opportunity to make clear that plea documents are only relevant to the question under RCW 10.73.090(1) in so far as they bear on the facial validity of the judgment and sentence. See *In re Pers. Restraint of Goodwin*, noted at 146 Wn.2d 861, slip op. at 6 (2002).

In re Hemenway, 147 Wn.2d at 533 n.2.⁹

⁷ In re Personal Restraint of Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000).

⁸ In re Personal Restraint of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000).

⁹ Langstead relies on In re Personal Restraint of Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004) to argue that this Court should look to the plea statement directly to determine the validity of the judgment and sentence. Brf. of App. at 23-24. However, in Hinton, the defendant had been convicted of felony murder based on assault, a crime that the Washington Supreme Court had determined did not exist. In re Hinton, 152 Wn.2d at 857. Thus, the judgment and sentence was by definition invalid on its face. Id. at 857-58.

Langstead points to no facial invalidity in the judgment and sentence itself, nor is any apparent. CP 57; Ex. 2. Because the judgment and sentence evidences no invalidity "without further elaboration," this Court need not and should not look to the plea statement. See In re Hemenway, 147 Wn.2d at 532-33.

In any event, the guilty plea statement itself is not constitutionally invalid on its face. A trial court "shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." CrR 4.2(d). The establishment of a factual basis for a guilty plea "is not an independent constitutional requirement, and is constitutionally significant only insofar as it relates to the defendant's understanding of his or her plea." In re Personal Restraint of Hews, 108 Wn.2d 579, 591-92, 741 P.2d 983 (1987). Moreover, the factual basis need not be established from the defendant's admissions; the court may consider any reliable source of information in the record to determine whether a plea has a factual basis. State v. Osborne, 102 Wn.2d 87, 95, 684 P.2d 683 (1984).

Thus, in order to properly evaluate the factual basis relied upon by the trial court that took Langstead's guilty plea in the 1984 conviction, it would be necessary to obtain a complete record of that hearing, including a transcript, to determine whether the court relied on any reliable sources of information beyond Langstead's statement (including asking questions of Langstead himself as to his understanding of the elements of the crime). This necessarily precludes any finding of constitutional invalidity from the face of the plea document alone. The Ammons court explicitly recognized this:

Garrett argued that the guilty plea form failed to show that he was aware of his right to remain silent, failed to set forth the elements of the crime of burglary, failed to set forth the consequences of pleading guilty and failed to include a sufficient factual basis for the plea. A determination as to the validity of these issues cannot be made from the face of the guilty plea form.

Ammons, 105 Wn.2d at 189 (italics added).

Langstead has failed to show that his 1984 judgment and sentence is constitutionally invalid on its face. The trial court properly considered this conviction in sentencing Langstead as a persistent offender.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Langstead's sentence as a persistent offender.

DATED this 26th day of June, 2009.

Respectfully submitted,

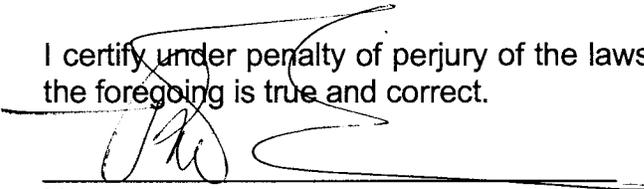
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Susan F. Wilk**, the attorney for the appellant, at **Washington Appellate Project**, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the **Brief of Respondent**, in **STATE V. ROBERT LANGSTEAD**, Cause No. **61869-5-I**, in the Court of Appeals for the State of Washington, Division I.

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



Name
Done in Seattle, Washington

06/26/2009
Date

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