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NO. 64422-0-I

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

REC'D  
MAR 07 2011  
King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

MOHAMMED KONE,

Appellant.

2011 MAR 07 PM 3:05  
DEPT. OF APPELLATE JUSTICE

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Bruce E. Heller, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. THE TRIAL COURT SHOULD HAVE DISMISSED THE BARG CASE WITH PREJUDICE UNDER CrR 8.3 BECAUSE GOVERNMENTAL MISMANAGEMENT UNDERMINED KONE'S RIGHT TO A SPEEDY TRIAL.

The State claims Kone cannot show prejudice from government mismanagement because "[t]he defendant's CrR 3.3 rights were not violated, nor was his motion raised under that rule." Brief of Respondent (BOR) at 30. That contention makes no sense. The Supreme Court has recognized that one means of showing prejudice in a CrR 8.3(b) motion is by showing a violation of the right to speedy trial under CrR 3.3. State v. Michielli, 132 Wn.2d 229, 240, 937 P.2d 587 (1997). The State cannot undermine a defendant's speedy trial rights under CrR 3.3 by obtaining a dismissal without prejudice in the absence of sufficient justification. State v. Bible, 77 Wn. App. 470, 472-73, 892 P.2d 116 (1995). The proper way to raise the issue is by means of a CrR 8.3 motion.

Indeed, the State elsewhere acknowledges "one can imagine a case wherein a dismissal by the State was intended to circumvent the speedy trial rule and prejudice could be shown[.]" BOR at 30 n.11. Intent to circumvent is not necessary to show prejudice of the speedy trial right. Simple mismanagement suffices. Michielli, 132 Wn.2d at 239-40.

The State complains of Kone's citation to cases involving denial of the speedy trial right due to improper continuances. BOR at 25 n.7. For analytic guidance, it is appropriate to look to such cases. Where government mismanagement causes delay, a dismissal without prejudice and continuance of the speedy trial period are different procedural mechanisms that have the same effect: the case not being brought to trial within the appropriate speedy trial deadline. In both cases, the defendant's speedy trial rights are undermined. The mechanisms for circumvention are merely different. In Kone's case, the prosecutor, instead of asking for a continuance to find Barg, elected to seek dismissal for the same purpose. In both contexts, mismanagement is co-extensive with lack of due diligence in making a witness available for trial. It makes no difference whether the speedy trial circumvention is due to an improper dismissal without prejudice or an improper continuance.

The State also claims Kone cannot show prejudice because it is "pure speculation" that his case would have gone to trial on May 7. BOR at 30. In defending against Kone's CrR 8.3(b) motion below, the State did not dispute the case would have gone to trial on May 7. CP 315-34. For the first time on appeal, the State argues the case would not have gone to trial.

RAP 2.5(a) provides "A party may present a ground for affirming a trial court decision which was not presented to the trial court *if the record*

*has been sufficiently developed to fairly consider the ground.*" (emphasis added). This Court will not affirm on the basis of a theory that the State argues for the first time on appeal where the record is insufficiently developed. State v. Larson, 88 Wn. App. 849, 852, 946 P.2d 1212 (1997); State v. Lakotiy, 151 Wn. App. 699, 707, 214 P.3d 181 (2009). This is especially true where the opposing party does not have an opportunity to develop the record in order to defend against the new theory presented on appeal. In re Detention of Ambers, 160 Wn.2d 543, 558 n.6, 158 P.3d 1144 (2007). The State's "speculation" argument should be rejected for this reason. The record was not further developed below because the State did not oppose Kone's CrR 8.3(b) motion on the basis that the State relies on for the first time on appeal.

Moreover, the State's prejudice argument would effectively shield from challenge all pre-emptive dismissals without prejudice to avoid the speedy trial deadline because it could never be proven the speedy trial date would have actually come and gone in the absence of dismissal. The State forecloses such a definitive showing by its own pre-emptive action. When a request for dismissal without prejudice is made shortly before the speedy trial deadline is set to expire, the most that can be done by the defense is to object to circumvention of the speedy trial right. That is exactly what happened here. 2RP 2, 4-5, 10-11; CP 252-53.

When faced with CrR 8.3(b) challenges involving the violation of speedy trial rights, courts do not require the kind of showing demanded by the State here. In Bible, the State moved to dismiss without prejudice 15 days before speedy trial deadline due to the unavailability of witness. Bible, 77 Wn. App. at 471. The Bible court did not require the defendant to account for any possibility that the trial may have ended up being continued had the State's motion for dismissal not been granted. Id. at 470-73; cf. State v. Teems, 89 Wn. App. 385, 389-90, 948 P.2d 1336 (1997) (dismissal with prejudice under CrR 8.3(b) justified because defendant could not be forced to choose between speedy trial and prepared counsel; defendant unwilling to waive speedy trial rights and defense counsel represented 12 days was inadequate to prepare for trial).

Furthermore, the trial court, in ruling on the CrR 8.3(b) motion, accepted the speedy trial deadline would have expired had the State not moved to dismiss without prejudice. 6RP 11-13. In seeking a preservation deposition after locating Barg, the prosecutor acknowledged Kone, "quite properly, has always insisted that he wants his case to go to trial as soon as possible." 22RP<sup>1</sup> 8. If the trial prosecutor was unconvinced the speedy trial deadline would not have elapsed in the absence of dismissal, then there

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<sup>1</sup> In keeping with Kone's reference method in the opening brief, the May 4, 2009 hearing is referenced as 22RP. The State ordered this supplemental hearing date after the opening brief was filed.

would have been no reason to make a motion for dismissal. CP 309, 323. On this record, it is the State who is speculating on appeal that the case would not have gone to trial by the speedy trial deadline.

The State elsewhere asserts the State did not mismanage its case. BOR at 26-28. It does not dispute Kone's argument that the State must exercise due diligence to locate a material witness within the speedy trial deadline. Rather, its argument is that the State was diligent here. Id.

The State claims a subpoena was impractical because no trial date had been set. BOR at 27. But a trial date was set a few days after Barg contacted Detective Ford regarding her whereabouts. 6RP 11-12; CP 249, 285, 320, 451-52. Nothing, however, was done to contact her at that time to inform her of the trial date and secure her presence through a subpoena.

The salient point is whether the State exercised due diligence to obtain a material witness's availability under the circumstances. The State does not dispute the trial court's finding that it may have been possible for the State to contact Barg sooner. 6RP 13. On March 19, Barg told Detective Ford she was moving to an apartment in Tacoma on April 1. 6RP 11-12; CP 285. Ford "informed her to call me with the exact and [sic] address and contact number when she gets one." CP 285. At the latest, then, the State should have expected Barg to update her contact information by April 1 — her purported move-in date. When Barg failed to follow up with Ford by

notifying him of the Tacoma address, the State should have been alert to the danger that Barg had gone missing and used family member contacts to locate her well before the April 24th omnibus hearing.

The State's inaction caused it to request a dismissal. That is a proper factor to be considered in determining whether the State had sufficient reason to request a dismissal without prejudice to avoid the speedy trial deadline.

On appeal, the State claims it did enough to obtain Barg's availability within the speedy trial deadline and was simply blindsided when Barg failed to maintain contact. BOR at 25-27. But in arguing a preservation deposition was needed after re-filing the case, the trial prosecutor represented that Barg "has demonstrated over the last month's time, and *actually during the entire pendency of the case*, that she has an incredibly difficult time making herself available due to difficulties she has with arranging logistics and difficulties she has financially and being able to provide ways to keep in contact or being able to just communicate in order to arrive." 22RP 7 (emphasis added). The State was aware of the difficulty in contacting Barg from the inception of the case. Yet when Barg failed to keep in contact as she said she would, nothing was done locate her until two weeks before the speedy trial deadline. That is not a diligent effort to locate a witness that the State

knew had severe availability issues. That is not a sufficient reason to seek dismissal without prejudice in order to avoid the speedy trial deadline.

The State claims Barg's unavailability was out of its control. BOR at 27. That is not true. It found the means to contact Barg and arrange for her to physically come from California to Washington to testify after the case was re-filed. It should have done that before the dismissal.

The State complains Kone relies on hindsight in making his due diligence argument. To the extent hindsight is offered, it is done to rebut the trial court's finding that it may have been possible for the State to contact Barg sooner, but there was no evidence that the State would have been able to find her earlier if it had initiated the search process more quickly. 6RP 13. The fact that the State was able to quickly locate Barg when it finally tried to do so also shows the exercise of due diligence would not have been futile in this case, which the State would certainly have argued if the record showed otherwise.

2. THE COURT COMMITTED PREJUDICIAL ERROR IN ADMITTING CONSISTENT OUT OF COURT STATEMENTS MADE BY THE COMPLAINING WITNESS.

The State claims Coppola's prior statements were admissible as prior inconsistent statements under ER 801(d)(1)(ii) because they "rebutted the defendant's assertion that Coppola was lying when she testified he sexually assaulted her at his house." BOR at 38.

The premise of the State's argument is that Coppola's prior out of court statements that are consistent with her trial testimony show that she was telling the truth at trial. That premise is unfounded because repetition of a statement does not imply veracity. State v. Purdom, 106 Wn.2d 745, 750, 725 P.2d 622 (1986) (quoting State v. Harper, 35 Wn. App. 855, 858, 670 P.2d 296 (1983)). "Prior out-of-court statements consistent with the declarant's testimony are not admissible simply to reinforce or bolster the testimony." State v. Osborn, 59 Wn. App. 1, 4, 795 P.2d 1174 (1990). But that is the very purpose for which the State sought their admission in this case.

The opening brief refutes the State's argument regarding the rule of completeness and need not be repeated here. Brief of Appellant at 29-34.

The State argues the defense opened the door to the admission of Coppola's prior statements. BOR at 40-41. The purpose of the open door

doctrine is to preserve fairness. State v. Avendano-Lopez, 79 Wn. App. 706, 714, 904 P.2d 324 (1995). The State's argument fails because the State would not have been unfairly disadvantaged had Coppola's statements been excluded. Coppola was allowed to explain why she made the false statements and the context in which she made them. 12RP 91, 147, 153, 156, 163.

The open door argument also fails because Barg's prior out of court statements supposedly used to explain, clarify or contradict other statements are irrelevant as a matter of law. Harper, 35 Wn. App. at 857-58; State v. Bargas, 52 Wn. App. 700, 702, 763 P.2d 470 (1988). Irrelevant evidence is incapable of explaining, clarifying or contradicting relevant evidence because it is neither probative nor material of any fact of consequence. See State v. Rice, 48 Wn. App. 7, 12, 737 P.2d 726 (1987) ("To be relevant, evidence must meet two requirements: (1) the evidence must have a tendency to prove or disprove a fact (probative value), and (2) that fact must be of consequence in the context of the other facts and the applicable substantive law (materiality).").

The State claims lack of prejudice on the theory that the evidence was unimportant in the scheme of things. The trial prosecutor, in fighting so hard for its admission, did not think the evidence was insignificant. CP 433-38; 12RP 67-73, 105-16, 165-71. The trial court thought the issue

was very important. 12RP 173. The State on appeal claims an omniscience that neither its trial counterpart nor the trial court shared. Kone stands by the prejudice analysis advanced in the opening brief. Brief of Appellant at 34-35.

3. KONE'S CONVICTIONS FOR BOTH ATTEMPTED SECOND DEGREE RAPE AND INDECENT LIBERTIES VIOLATE DOUBLE JEOPARDY.

The State claims Kone's conviction for indecent liberties should not be vacated because it was not reduced to judgment and sentence. BOR at 44-47. According to the State, the conditional vacature of a lesser conviction offends double jeopardy but a court's failure to vacate the lesser conviction altogether does not offend double jeopardy. BOR at 46-47.

It is established that the remedy for convictions on two counts that together violate the protection against double jeopardy is to vacate the conviction on the lesser offense. See, e.g., State v. Weber, 127 Wn. App. 879, 885, 888, 112 P.3d 1287 (2005), aff'd, 159 Wn.2d 252, 149 P.3d 646 (2006) (citing In re Pers. Restraint of Burchfield, 111 Wn. App. 892, 899, 46 P.3d 840 (2002); Ball v. United States, 470 U.S. 856, 865, 105 S. Ct. 1668, 84 L. Ed. 2d 740 (1985)), accord State v. Elmi, 138 Wn. App. 306, 321, 156 P.3d 281 (2007); State v. Borsheim, 140 Wn. App. 357, 371, 165 P.3d 417 (2007). If the State's argument were correct, then the remedy in cases

such as Weber would have been to redact the lesser conviction from the judgment and sentence, not vacate it.

Double jeopardy is violated when the sentencing court gives any indication that the lesser offense is still a viable conviction. State v. Turner, 169 Wn.2d 448, 464-65, 238 P.3d 461 (2010). That is what happened here. The lesser offense was subject to extensive discussion at sentencing regarding what should be done with it. 20RP 23-28. The court resolved the issue, not by declaring the lesser offense lacked all validity, but rather by simply leaving it out of the judgment and sentence. 20RP 23-27. In doing so, the court followed the lead of the prosecutor, who clearly wanted to keep the conviction alive and stated the standard range, offense level, and statutory maximum for that count to "complete the record." 20RP 26-28. The court validated the conviction at the sentencing hearing when it should have wiped the conviction out of existence.

In Turner, the Supreme Court held double jeopardy cannot be avoided by conditionally vacating a lesser conviction. Turner, 169 Wn.2d at 466. The Supreme Court explained "[t]he double jeopardy clause prohibits the imposition of multiple punishments for the same criminal conduct." Turner, 169 Wn.2d at 465. "*In keeping with this principle*, the trial courts in Turner and Faagata vacated the lesser of two convictions that each defendant received for his offense." Id. at 46 (emphasis added). Those

vacated convictions could not be kept "alive" by conditional vacature. Id. It necessarily follows a lesser conviction cannot be kept "alive" by failing to vacate it altogether.

The State's attempt to read the Supreme Court's decision in Turner for the opposite proposition does not withstand scrutiny. The Supreme Court recognized it is a basic principle of double jeopardy that "a court has no authority to take a verdict on another charge . . . find that it violates double jeopardy . . . not sentence the defendant . . . on it[,] and just . . . hold it in abeyance for a later time." Turner, 169 Wn.2d at 462 (quoting State v. Womac, 160 Wn.2d 643, 659, 160 P.3d 40 (2007)) (internal quotation marks omitted). In support of this proposition, Turner cited United States v. Jose, 425 F.3d 1237, 1247 (9th Cir. 2005). Turner, 238 P.3d at 466. The Jose court recognized "the district court should enter a final judgment of conviction on the greater offense *and vacate the conviction on the lesser offense.*" Jose, 425 F.3d at 1247 (emphasis added).

There is a simple reason why vacature is necessary. "The term 'punishment' encompasses more than just a defendant's sentence for purposes of double jeopardy." Turner, 169 Wn.2d at 454. "[E]ven a conviction alone, without an accompanying sentence, can constitute 'punishment' sufficient to trigger double jeopardy protections." Id. at 454-55. The lesser conviction in and of itself violates double jeopardy because it may result in

future adverse consequences and, at the very least, carries a societal stigma. Id.; Womac, 160 Wn. 2d at 656-58.

The adverse consequence of a conviction is not alleviated by conditional vacation. Turner, 169 Wn.2d at 455, 466. How then could the adverse consequence of a conviction be alleviated by no vacation at all?

In State v. League, the Court of Appeals found multiple convictions violated double jeopardy, vacated the original sentences and remanding for resentencing on the greater offense. State v. League, 167 Wn.2d 671, 672, 223 P.3d 493 (2009). The Supreme Court reversed, holding the Court of Appeals *erred in affirming both convictions*. League, 167 Wn.2d at 672. The protection against double jeopardy required vacature of the lesser offense. Id. Under the State's argument, the Court of Appeals' remedy in League would have been sufficient.

What is clear from the holdings in Turner and Womac is that a conviction is punishment under double jeopardy jurisprudence. And a conviction remains a conviction regardless of a trial court's clerical decision not to "enter judgment" on it. The State cannot reconcile its argument with these basic propositions.

State v. Ward, 125 Wn. App. 138, 144-45, 104 P.3d 61 (2005), insofar as it can be read to hold double jeopardy is avoided so long as a conviction is not reduced to judgment and sentence, cannot be reconciled

with the reasoning the Supreme Court used to reach its result in Turner and Womac, nor with the long line of cases holding vacature is the proper remedy for a double jeopardy violation.

The State also cites State v. Trujillo, 112 Wn. App. 390, 49 P.3d 935 (2002). BOR at 45-46. But according to the Supreme Court, there was no double jeopardy violation in Trujillo because the lesser convictions were vacated. Turner, 169 Wn.2d at 463-64.

The impetus behind not vacating the lesser conviction, and the only conceivable reason why such a request was made here, was to avoid the imaginary problem of not being able to rely on the lesser conviction in the event the greater conviction is ultimately reversed on appeal. 20RP 25-26; CP 440. As the Supreme Court makes clear, the vacated lesser conviction may be reinstated if the conviction for the greater offense is reversed. Turner, 169 Wn.2d at 466. The State nonetheless continues to argue on appeal that Kone's lesser conviction should not be vacated. Why? The State has no interest to defend here. The only interest at stake is Kone's interest in not being subjected to double jeopardy by means of multiple *convictions* for the same offense. Kone is entitled to an order vacating the indecent liberties conviction.

4. THE TRIAL COURT WRONGLY ORDERED SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT AS A CONDITION OF COMMUNITY CUSTODY.

The State contends the court did not err by imposing the substance abuse and mental health conditions because the court did not actually impose them, leaving it to the Department of Corrections and the Indeterminate Sentencing Review Board to decide whether such conditions were appropriate. BOR at 47-50.<sup>2</sup> If the DOC and the Board have statutory authority to impose such conditions regardless of whether they are crime-related, then there is no need to include those conditions in the judgment and sentence. If the court did not impose these conditions, then they retain no legal validity as conditions of community custody in that order. The conditions are at least superfluous and should be stricken.

5. THE COURT ERRED IN ORDERING PAYMENT OF COUNSELING COSTS AS A CONDITION OF COMMUNITY CUSTODY.

As a condition of community custody, the court ordered Kone to "pay for counseling costs for victims and their families." CP 118, 207. In

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<sup>2</sup> The State cites to repealed statute RCW 9.94A.713. BOR at 49. RCW 9.94A.704 (Laws of 2009 ch. 375 § 6) is the statute at issue because it applies retroactively. See Laws of 2009 ch. 375 § 20 ("This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after the effective date of this section.").

its response brief, the State acknowledges it "is unaware of any authority allowing the court to impose restitution as part of community custody." BOR at 52. The State effectively concedes the condition at issue here is illegal. See State v. McNeair, 88 Wn. App. 331, 340, 944 P.2d 1099 (1997) (failure to cite authority constitutes concession that argument lacks merit); In re Detention of Cross, 99 Wn.2d 373, 379, 662 P.2d 828 (1983) ("by failing to argue this point, respondents appear to concede it.").

The State nonetheless claims the community custody condition requiring Kone to pay counseling costs is moot because such costs were not imposed as part of restitution. BOR at 51-52. The State misconceives the nature of the problem. The requirement to pay counseling costs as a condition of community custody operates outside the restitution framework. That is why it is illegal.

The issue is not moot because the requirement to pay counseling costs is triggered by Kone's entry into community custody, which has not yet happened. "Community custody is the intense monitoring of an offender in the community for a period of at least one year after release or transfer from confinement." In re Pers. Restraint of Crowder, 97 Wn. App. 598, 600 n.3, 985 P.2d 944 (1999). Community custody, which continues in the nature of punishment, begins upon completion of the term

of confinement or at such time as the offender is transferred to community custody. Crowder, 97 Wn. App. at 600.

The issue in Kone's case is not moot because continuing supervision in community custody continues as an affirmative restraint on his liberty. Id. at 599 n.3. Furthermore, an issue is only moot when the court can no longer provide effective relief. State v. Gentry, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995). Review remains appropriate when "there is the possibility that [the court] can provide effective relief," such as when it is unclear whether the appellant will suffer future adverse consequences if the issue is not decided. In re Interest of Mowery, 141 Wn. App. 263, 274, 169 P.3d 835 (2007); see also State v. Raines, 83 Wn. App. 312, 315, 922 P.2d 100 (1996) (holding an appeal was not moot even though the appellant had served his entire sentence because the appellant could potentially suffer adverse consequences in the future if the challenged sentence remained in effect). This Court can provide Kone the effective relief of not requiring him to pay counseling costs as part of a community custody term that has not yet begun.

Moreover, "[s]entences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them." United States v. Daugherty, 269 U.S. 360, 363, 46 S. Ct. 156, 70 L. Ed. 309 (1926). The face of the judgment

and sentence reveals the court's intent to require Kone to pay counseling costs as a part of community custody, regardless of whether such costs were made part of restitution. If that condition is left to stand as part of the judgment and sentence, the community corrections officer ultimately tasked with abiding by the judgment and sentence when Kone's community custody term begins will be laboring under a misapprehension of what is required of Kone.

The State cites State v. Autrey for the blanket proposition that "[t]he unconstitutionality of a community custody condition is not ripe for review unless the person is harmfully affected by the part of the condition alleged to be unconstitutional." State v. Autrey, 136 Wn. App. 460, 470-71, 150 P.3d 580 (2006) (citing State v. Massey, 81 Wn. App. 198, 200, 913 P.2d 424 (1996) (condition requiring consent to DOC compliance monitoring based upon a "well founded, reasonable suspicion that a violation of the terms of Community Custody has occurred" not ripe for review because no search had taken place).

In citing to Autrey, the State conflates two separate legal issues: mootness and ripeness. BOR at 52-53. The State has not developed the ripeness argument and it therefore should be ignored. See Johnson v. Mermis, 91 Wn. App. 127, 136, 955 P.2d 826 (1998) (passing treatment of

an issue or lack of reasoned argument is insufficient to merit judicial consideration).

Regardless, the broad statement in Autrey that challenges to community custody conditions are not ripe for review until the person is actually harmfully affected by the condition is not good law. A pre-enforcement challenge to a community custody condition is ripe for review on direct appeal "if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." State v. Valencia, 169 Wn.2d 782, 786, 239 P.3d 1059 (2010) quoting (State v. Bahl, 164 Wn.2d 739, 751, 193 P.3d 678 (2008)) (challenge to condition prohibiting possession and use of paraphernalia related to controlled substances). The Supreme Court in Valencia distinguished Massey, on which the Autrey relied, on ground that a search condition is not ripe for pre-enforcement challenge because its validity depends on the particular circumstances of the attempted enforcement. Valencia, 169 Wn.2d at 789.

The issue in Kone's case is ripe. The issue is primarily legal: does the sentencing court have the authority to impose the cost of counseling as a condition of community custody where no restitution for those costs has been imposed? Second, this question is not fact-dependant. Either the condition as written is grounded in statutory authority or it is not. The

issue does not require further factual development because such a condition is not legal under any set of factual circumstances. Third, the challenged condition is final because Kone has been sentenced under the condition at issue. Id. The condition related to counseling costs should be stricken.

D. CONCLUSION

For the reasons stated above and in the opening brief, Kone requests that this Court reverse the convictions and dismiss the charges involving Barg with prejudice. In the event this Court declines to do so, then the erroneous community custody portions of both sentences should be reversed and count III under 09-1-3352-4 should be vacated.

DATED this 7<sup>th</sup> day of March 2011.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

  
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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 64422-0-1
	)	
MOHAMMED KONE,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7<sup>TH</sup> DAY OF MARCH, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MOHAMMED KONE  
DOC NO. 334011  
COYOTE RIDGE CORRECTIONS CENTER  
P.O. BOX 769  
CONNELL, WA 99326

**SIGNED** IN SEATTLE WASHINGTON, THIS 7<sup>TH</sup> DAY OF MARCH, 2011.

x *Patrick Mayovsky*