

68123-1

68123-1

NO. 68123-1-I

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER MAZDRA,

Appellant.

---

---

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

The Honorable Vickie I. Churchill, Judge

---

---

BRIEF OF APPELLANT

---

---

DANA M. NELSON  
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122  
(206) 623-2373

FILED  
DIVISION ONE  
COURT OF APPEALS  
STATE OF WASHINGTON  
DANA M. NELSON  
APPELLANT  
JUL 13 10:45:53

**TABLE OF CONTENTS**

	Page
A. <u>INTRODUCTION</u> .....	1
B. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	2
C. <u>STATEMENT OF THE CASE</u> .....	2
D. <u>ARGUMENT</u> .....	9
1. THE COURT'S DENIAL OF CREDIT FOR TIME MAZDRA SPENT WHILE UNDER HOUSE ARREST DEPRIVED HIM OF HIS RIGHT TO EQUAL PROTECTION UNDER THE LAW .....	9
2. THE COURT LACKED STATUTORY AUTHORITY TO IMPOSE MORE THAN \$250 IN JURY FEES.....	13
E. <u>CONCLUSION</u> .....	18

## TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>Beggs v. State</u> 171 Wn.2d 69, 247 P.3d 421 (2011) .....	14
<u>City of Wenatchee v. Owens</u> 145 Wn. App. 196, 185 P.3d 1218 (2008) <u>review denied</u> , 165 Wn.2d 1021, 203 P.3d 378 (2009) .....	16
<u>In re Pers. Restraint of Call</u> 144 Wash.2d 315, 28 P.3d 709 (2001).....	17
<u>Pierce County v. Magnuson</u> 70 Wn. 639, 127 P. 302 (1912) .....	14, 16
<u>State v. Anderson</u> 132 Wn.2d 203, 937 P.2d 581 (1997) .....	13
<u>State v. Delgado</u> 148 Wn.2d 723, 63 P.3d 792 (2003) .....	16
<u>State v. Dockens</u> 156 Wn. App. 793, 236 P.3d 211 (2010) .....	12, 13
<u>State v. Gartrell</u> 138 Wn. App. 787, 158 P.3d 636 (2007) .....	9
<u>State v. Harner</u> 153 Wash.2d 228, 103 P.3d 738 (2004).....	11
<u>State v. Hathaway</u> 161 Wn. App. 634, 251 P.3d 253 (2011) .....	17
<u>State v. Murray</u> 118 Wn. App. 518, 77 P.3d 1188 (2003).....	14
<u>State v. Nolan</u> 98 Wn. App. 75, 988 P.2d 473 (1999) <u>aff'd</u> , 141 Wn.2d 620, 8 P.3d 300 (2000).....	14

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Paulson</u> 131 Wn. App. 579, 128 P.3d 133 (2006) .....	14
<u>State v. Pringle</u> 83 Wn.2d 188, 517 P.2d 192 (1973) .....	14
<u>State v. Simmons</u> 152 Wash.2d 450, 98 P.3d 789 (2004).....	11
<u>State v. Smith</u> 65 Wn. App. 887, 830 P.2d 379 (1992).....	16
<u>State v. Vasquez</u> 75 Wn. App. 896, 881 P.2d 1058 (1994) <u>review denied</u> , 126 Wn.2d 1005, 891 P.2d 38 (1995) .....	10

**OTHER JURISDICTIONS**

<u>People v. Lapaille</u> 15 Cal. App. 4 <sup>th</sup> 1159, 19 Cal. Rptr.2d 390 (1993) .....	11, 12, 13
--	------------

**RULES, STATUTES AND OTHER AUTHORITIES**

Former RCW 9.94A.670 (2002).....	3
Laws of 2002, c 175 § 11 .....	3
Laws of 2004, c 176 § 4 .....	3
RAP 1.2.....	17
RCW 9.94A.030(8) .....	9
RCW 9.94A.030(28) .....	10
RCW 9.94A.030(35) .....	10
RCW 9.94A.030(51) .....	10

**TABLE OF AUTHORITIES (CONT'D)**

	Page
RCW 9.94A.670 (2004) .....	3, 4, 9
RCW 10.01.160(1) .....	15
RCW 10.01.160(2) .....	15
RCW 10.46.190.....	15, 16
RCW 36.18.016(3)(a) .....	15
RCW 36.18.016(3)(b) .....	15
U.S. Const. amend. XIV, § 1 .....	11
Wash. Const. art. I, § 12.....	11

A. INTRODUCTION

Appellant Christopher Mazdra is appealing from the revocation of his special sex offender sentencing alternative (SSOSA). CP 1-6. In a prior appeal, this Court reversed and remanded for a new revocation hearing on grounds the lower court relied in part on an unsubstantiated violation to revoke Mazdra's SSOSA. CP 120-21. On remand, the court again revoked Mazdra's SSOSA based on the remaining violations it previously found. CP 7-10.

In this opening brief of appellant, Mazdra does not challenge the revocation of his SSOSA.<sup>1</sup> Rather, he challenges the court's denial of credit for time served while on house arrest, as well as the court's imposition of an unauthorized jury demand fee in the original judgment and sentence, which this Court has the power and duty to correct despite its late discovery.

B. ASSIGNMENTS OF ERROR

1. The court erred in denying appellant credit for time served on house arrest.

---

<sup>1</sup> Mazdra reserves the right to challenge the revocation in his Statement of Additional Grounds, however.

2. The court's denial of credit to appellant for time served while on house arrest deprived appellant of his right to equal protection under the law.

3. The court imposed a jury demand fee as part of the judgment and sentence that exceeds the statutory maximum.

Issues Pertaining to Assignments of Error

1. Did the court deprive appellant of equal protection under the law when it denied him credit for time served while on house arrest where: (1) appellant was not permitted to leave his house except for treatment and court appointments; (2) he was under the supervision of the Department of Corrections (DOC) at all times and required to submit to polygraph testing as a part of that supervision; and (3) the terms of appellant's house arrest authorized his arrest if found to be in violation thereof?

2. Did the court exceed its statutory authority when it ordered appellant to pay jury costs that are unauthorized by statute?

C. STATEMENT OF THE CASE

Following a jury trial in 2006, Mazdra was convicted of three counts of third degree rape of a child, reportedly occurring in 2003. CP 84, 142-43. At sentencing, the court granted Mazdra's request

for a SSOSA. CP 91. The court and parties thereafter went off the record to fill out the judgment and sentence. CP 91.

Upon reconvening, the prosecutor informed the court there was a "confinement portion" to be filled out. CP 92. The prosecutor indicated the parties presumed the court would provide for Mazdra's immediate release, which could be accomplished by imposing 9 months:

MR. OHME: The maximum you could give him would be 12 months.<sup>[2]</sup> I will just defer to the court. It was my assumption from your ruling that he's done nine and a half months; that you were going to release him.

CP 92. The court indicated it would release Mazdra. CP 92.

The prosecutor then asked about the period of community custody:

MR. OHME: And also, Your Honor, there was the length of time of his community custody. The State would ask for 60 months. It's 48 to 60 months.<sup>[3]</sup>

---

<sup>2</sup> It appears the parties were mistakenly relying on the version of RCW 9.94A.670 in effect at the time of sentencing (2006), as opposed to the version in effect in at the time of the offenses (2003). Under the earlier version of the statute, the court could suspend a sentence on condition it impose up six months of confinement, community custody for the period of the suspended sentence and up to three years of sex offender treatment. Former RCW 9.94A.670 (2002), Laws of 2002, c 175 § 11. By the time of sentencing, however, the statute was amended and allowed the court to suspend the sentence on condition it impose up to 12 months of confinement, community custody for the period of the suspended sentence and up to five years of sex offender treatment. RCW 9.94A.670 (2004), Laws of 2004, c 176 § 4.

CP 92. The court imposed 60 months of community custody. CP 92.

The judgment and sentence reflected that 9 months was imposed for each count. CP 132. The judgment further reflected the sentence was suspended on condition Mazdra complete 60 months of outpatient treatment. CP 132.

Perhaps realizing it had not actually imposed a sentence, but merely the conditions of its suspension, the court later entered an order amending the judgment and sentence to reflect that the period of confinement imposed for each count was 53 months. CP 125. The order also reflected that the sentence was suspended on condition Mazdra serve nine months of confinement in addition to 60 months of outpatient sex offender treatment.<sup>4</sup> CP 125.

On February 14, 2007, the court placed Mazdra on house arrest pending the outcome of alleged community custody violations reported by the department. Supp. CP \_\_ (sub. no. 116,

---

<sup>3</sup> It's not clear how the prosecutor arrived at this number or if he simply misquoted the standard range, which was listed on the judgment and sentence as 46 to 60 months. CP 129.

<sup>4</sup> Under either version of the statute previously cited, it appears the longest period of community custody the court was authorized to impose was the length of the suspended sentence, i.e. 53 months. RCW 9.94A.670(5)(b).

Order Establishing Conditions of Release, 2/14/07); Supp. CP \_\_  
(sub. no. 120 Status Report, 2/27/07).<sup>5</sup>

The court's order provided:

IT IS HERBY ORDERED that:

1. The defendant shall be subject to the following conditions of release pending trial:

All conditions previously imposed upon defendant shall remain in effect, except as modified below:

Defendant is released upon his/her own recognizance

...  
Other conditions: Defendant shall remain at home and shall only leave home to attend treatment, DOC meetings or Court hearings.

...  
If the defendant violates any provision of this order, the following may occur: (1) The court may immediately issue a warrant for the arrest of the defendant; (2) The court may revoke the order for release and require the defendant be detained without bail pending trial; (3) Any law enforcement officer having probable cause to believe the defendant has violated this order under circumstances rendering the securing of a warrant impracticable may arrest the defendant and take him/her forthwith before the court.

Supp. CP \_\_ (sub. no. 116, Order Establishing Conditions of Release, 2/14/07) (emphasis added).

---

<sup>5</sup> The department alleged Mazdra spoke to minor females during a church function. The defense responded Mazdra was supervised at the time by a responsible adult who was knowledgeable of his offenses. Supp. CP \_\_ (sub. no. 120, Status Report, 2/27/07).

The court continued the violation hearing for over a year. Supp. CP \_\_ (sub. no. 152, Order on Plaintiff's Motion to Revoke, 2/28/08). Not only was Mazdra confined to his home during this time, but he remained under supervision by the department and therefore subject to polygraph testing. Supp. CP \_\_ (sub. no. 138, Supplemental Notice of Violation to Court, 9/20/07). As a result of polygraph testing, the department learned Mazdra stopped at a 7-Eleven store on his way to treatment, in violation of DOC's condition that he not stop anywhere between home and treatment. Supp. CP \_\_ (sub. no. 130, Status Report, 5/8/07). Although the department recommended revocation of the SSOSA, a plan was implemented for Mazdra to bring a sack lunch from home on treatment days. Id.

A hearing on the violations was finally held on February 28, 2008. Supp. CP \_\_ (sub. no. 152, Order on Plaintiff's Motion to Revoke, 2/28/08). The court found Mazdra violated the conditions of his SSOSA as alleged in DOC's February 14, 2007 report (church violation) and its September 17, 2007 report (7-Eleven violation). Id.; see also Supp. CP \_\_ (sub. no. 138, Supplemental Notice of Violation to Court, 9/20/07)). The court declined to revoke

Mazdra's SSOSA, however, on grounds his house arrest was sanction enough:

IT IS ORDERED that the Defendant has been sanctioned for the above violations by attending the previous review hearing and by being placed on house arrest. Defendant shall remain on house arrest until the Defendant's community safety plan is complete. The Defendant's Community Corrections Officer shall have authority to approve the above plan. Once approved, the Defendant will no longer be on house arrest.

Supp. CP \_\_ (sub. no. 152).

By the time of the next status report, filed April 7, 2008, Mazdra had been taken off house arrest. Supp. CP \_\_ (sub. no. 153, Monthly Progress Report, 4/7/08). The exact date of release is unclear from the record. Id.

Mazdra remained on community custody without incident for the next two years, when DOC filed a new violation report alleging that Mazdra had gone to Burger King on two occasions, accessed the internet and visited a social networking site, in violation of treatment conditions. Supp. CP \_\_ (sub. no. 161, Notice of Violations, 7/12/10). The department thereafter filed an supplemental violation report alleging that Mazdra had been intimate with an age-appropriate woman, but without prior approval

from his therapist. Supp. CP \_\_ (sub. no. 171, Supplemental Notice of Violation, 8/12/10).

On August 19, 2010, the court revoked Mazdra's SSOSA based on the violations alleged above, as well as an alleged failure to complete state certified sex offender treatment as ordered. Supp. CP \_\_ (sub. no. 174, Order Revoking Sentence, 8/19/10). But in fact, Mazdra had satisfactorily completed three years of treatment. Supp. CP \_\_ (sub. no. 159, Progress Report, 1/12/10).

As a result, and based on the parties agreement that the alleged treatment violation was not supported by the record, this Court reversed the revocation and remanded for resentencing. CP 120-21.

At the hearing on remand, the defense moved to vacate the original judgment and sentence on grounds it was invalid on its face. RP 4-5.<sup>6</sup> The defense contended the 53 months plus the 9 months imposed exceeded the statutory maximum for the offenses and therefore violated Mazdra's right to a jury trial. RP 4-13. The prosecutor argued the 9 months was included in the imposition of 53 months, and that DOC had credited the 9 months Mazdra

---

<sup>6</sup> "RP" – refers to the revocation hearing on 11/22/11.

previously served against the 53 months. RP 13. The defense conceded DOC had indeed credited Mazdra's sentence. RP 10.

The court denied the motion to dismiss, concluding there was nothing unlawful about Mazdra's sentence. RP 17. It also revoked Mazdra's SSOSA, based on the violations it previously found. RP 34-35.

Defense counsel asked the court to grant Mazdra credit for time he spent under house arrest. RP 36. The prosecutor argued the court was without authority to do so, because Mazdra was not under electronic home monitoring at the time. RP 36. The court accordingly denied the defense request for credit. RP 42.

D. ARGUMENT

1. THE COURT'S DENIAL OF CREDIT FOR TIME MAZDRA SPENT WHILE UNDER HOUSE ARREST DEPRIVED HIM OF HIS RIGHT TO EQUAL PROTECTION UNDER THE LAW.

When the court revokes a SSOSA, it must credit all confinement time – total or partial – imposed for violations of community custody. State v. Gartrell, 138 Wn. App. 787, 789, 158 P.3d 636 (2007); RCW 9.94A.670(11). "Confinement" is defined as "total or partial confinement." RCW 9.94A.030(8). "Total confinement" means confinement inside the physical boundaries of

a state facility 24 hours a day. RCW 9.94A.030(51). "Partial confinement" means confinement for 12 months or less in a state facility for a substantial portion of each day, or, if home detention or work crew has been ordered, confinement in an approved residence for a substantial portion of each day. RCW 9.94A.030(35). "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. RCW 9.94A.030(28).

Based on the requirement of electronic surveillance in the definition of "home detention," the prosecutor argued the court did not have authority to grant Mazdra credit for time spent on house arrest. RP 38; see e.g. State v. Vasquez, 75 Wn. App. 896, 898, 881 P.2d 1058 (1994), review denied, 126 Wn.2d 1005, 891 P.2d 38 (1995). In Vasquez, Division Three held that "home detention" includes only confinement subject to "electronic surveillance." Vasquez, 75 Wn. App. at 898. In its interpretation, "[t]here is no room therefore for judicial interpretation." Id.

Definitions aside, the denial of credit under the circumstances here violated Mazdra's right to equal protection. See e.g. People v. Lapaille, 15 Cal. App. 4<sup>th</sup> 1159, 19 Cal. Rptr.2d

390 (1993). Equal protection requires that similarly situated individuals receive similar treatment under the law. See U.S. Const. amend. XIV, § 1; Wash. Const. art. I, § 12. Equal protection provides equal application of law but does not provide complete equality among individuals or classes of individuals. State v. Simmons, 152 Wash.2d 450, 458, 98 P.3d 789 (2004).

In order to determine whether the equal protection clause has been violated, one of three tests is employed. First, strict scrutiny is applied when a classification affects a fundamental right or a suspect class. Second, intermediate scrutiny is applied when a classification affects both a liberty right and a semi-suspect class not accountable for its status. The third test is rational basis. Under this inquiry, the legislative classification is upheld unless the classification rests on grounds wholly irrelevant to the achievement of legitimate state objectives. State v. Harner, 153 Wash.2d 228, 235–36, 103 P.3d 738 (2004).

In Lapaille, the court released the defendant on personal recognizance to home detention. Lapaille was prohibited from leaving his residence except to visit his lawyer and make court appearances. He was also allowed to walk his granddaughter to the school bus but could not be gone from his residence longer

than 30 minutes. The California court held that Lapaille, like someone on electronic home monitoring, was in custody. Applying the strict scrutiny equal protection test, the court held that Lapaille was entitled to credit for the time he remained confined to his home on house arrest. Lapaille, 15 Cal. App.4<sup>th</sup> at 1169-1170.

Recently, Division Two of this Court distinguished the facts of Lapaille to deny a defendant's equal protection claim for credit for approximately two years presentence time he served on bond and conditional release. State v. Dockens, 156 Wn. App. 793, 236 P.3d 211 (2010). As conditions of his release, the trial court had ordered Dockens to maintain a residence in Port Angeles, not travel outside Western Washington, maintain a curfew at his residence of 8 pm to 6 am, surrender his passport, and report Monday through Friday to an electronic home monitoring office. Dockens, 156 Wn. App. at 795-96.

Although Dockens argued that under Lapaille, he should receive credit for this time, Division Two disagreed:

In contrast [to Lapaille], after Dockens signed in at the monitoring office, he was free to spend his days traveling wherever he chose in western Washington. Dockens was not under house arrest and Lapaille is inapposite.

Dockens, 156 Wn. App. at 799.

Unlike the circumstances of Dockens, the circumstances here are virtually identical to those in Lapaille. Mazdra was prohibited from leaving his residence except to attend treatment, DOC meetings or court hearings. While Mazdra was not on electronic surveillance, he was subject to polygraph testing to monitor compliance with the conditions of his release. Moreover, the court authorized Mazdra's warrantless arrest by any police officer having probable cause to believe he had violated the conditions of his house arrest. Like Lapaille, Mazdra was as much in custody as someone on home detention. There is therefore no reason – rational or otherwise – for him to be treated differently. The denial of credit for time Mazdra served on house arrest therefore violated his right to equal protection under the law. See e.g. State v. Anderson, 132 Wn.2d 203, 208-10, 937 P.2d 581 (1997) (defendant was entitled under Equal Protection Clause to three years of jail time credit for time spent on electronic home detention, although not statutorily authorized).

2. THE COURT LACKED STATUTORY AUTHORITY TO IMPOSE MORE THAN \$250 IN JURY FEES.

As part of the judgment and sentence, the court ordered Mazdra to pay a "jury demand fee" of \$2,048.87. CP 87, 130.

The court exceeded its statutory authority in imposing this fee. Jury demand fees in excess of \$250 are unauthorized by statute and should be stricken from the judgment and sentence.

A court may impose only a sentence that is authorized by statute. State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). Whether a trial court exceeded its statutory authority is an issue of law reviewed de novo. State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003). Statutory interpretation is likewise a question of law reviewed de novo. Beggs v. State, 171 Wn.2d 69, 75, 247 P.3d 421 (2011).

It has long been held "costs are the creature of statute" and that "there is no inherent power in the courts to award costs, and that they can be granted in any case or proceeding solely by virtue of express statutory authority." Pierce County v. Magnuson, 70 Wn. 639, 641, 127 P. 302 (1912); accord State v. Nolan, 98 Wn. App. 75, 78-79, 988 P.2d 473 (1999), aff'd, 141 Wn.2d 620, 8 P.3d 300 (2000). Sentencing provisions outside the authority of the trial court are illegal. State v. Pringle, 83 Wn.2d 188, 193-94, 517 P.2d 192 (1973). "If the trial court exceeds its sentencing authority, its actions are void." Paulson, 131 Wn. App. at 588.

The trial court may require a convicted defendant to pay costs. RCW 10.01.160(1). Costs specially incurred by the State in prosecuting the defendant "cannot include expenses inherent in providing a constitutionally guaranteed jury trial." RCW 10.01.160(2). One exception is that "jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay." RCW 10.01.160(2).

RCW 10.46.190 allows a superior court to impose a "jury fee" on convicted defendants using the same rules covering civil jury fees: "Every person convicted of a crime . . . shall be liable to all the costs of the proceedings against him or her, including . . . a jury fee as provided for in civil actions for which judgment shall be rendered and collected."

RCW 36.18.016(3)(a) provides: "The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars."

RCW 36.18.016(3)(b) likewise provides: "Upon conviction in criminal cases a *jury demand charge* of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of

twelve may be imposed as costs under RCW 10.46.190." (emphasis added).

Costs in a criminal case may be granted "solely by virtue of express statutory authority." Magnuson, 70 Wn. at 641. When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal and strict interpretation. State v. Delgado, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003). "[C]ourts are to give effect to that plain meaning as an expression of legislative intent." State v. Thompson, 151 Wn.2d 793, 801, 92 P.3d 228 (2004).

In addition, statutes are construed as a whole. State v. Smith, 65 Wn. App. 887, 891, 830 P.2d 379 (1992). "By reading the statute as a whole, and harmonizing statutory provisions to the extent possible, the court ensures proper construction of every provision and a unified statutory scheme." City of Wenatchee v. Owens, 145 Wn. App. 196, 205, 185 P.3d 1218 (2008), review denied, 165 Wn.2d 1021, 203 P.3d 378 (2009).

The plain language of the statutory scheme limits a jury demand fee imposed in a criminal case to \$250 for a 12 person jury. State v. Hathaway, 161 Wn. App. 634, 653, 251 P.3d 253

(2011). The imposition of a jury demand fee here in the amount of \$2,048.87 is illegal. The fee is statutorily limited to \$250.

In Hathaway, Division Two remanded for correction of a jury fee that exceeded the statutory maximum. Hathaway, 161 Wn. App. at 639. Division Two determined the error technically could not be appealed as a matter of right, but addressed the error and granted relief because "review of this purely legal question at this time will facilitate justice and likely conserve future judicial resources[.]" Id. at 652 (citing RAP 1.2(c), which allows waiver of rules of appellate procedure "in order to serve the ends of justice.").

Mazdra likewise requests correction of the judgment and sentence to reflect a lawful jury demand fee, as this Court has the power and duty to correct an erroneous sentence upon its discovery. In re Pers. Restraint of Call, 144 Wash.2d 315, 332, 28 P.3d 709 (2001) ("Courts generally "have the duty and power to correct an erroneous sentence upon its discovery.").

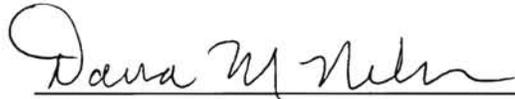
E. CONCLUSION

This Court should remand with instructions to amend the judgment and sentence to reflect that Mazdra is entitled to credit for time served while on house arrest and to reflect a jury demand fee that does not exceed the statutory maximum.

Dated this 13<sup>th</sup> day of June, 2012

Respectfully submitted

NIELSEN, BROMAN & KOCH



---

DANA M. NELSON, WSBA 28239  
Office ID No. 91051  
Attorneys for Appellant

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

---

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 68123-1-I
	)	
CHRISTOPHER MAZDRA,	)	
	)	
Appellant.	)	

---

**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 13<sup>TH</sup> DAY OF JUNE, 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] ISLAND COUNTY PROSECUTING ATTORNEY  
P.O. BOX 5000  
COUPEVILLE, WA 98239
  
- [X] CHRISTOPHER MAZDRA  
DOC NO. 891924  
AIRWAY HEIGHTS CORRECTIONS CENTER  
P.O. BOX 2049  
AIRWAY HEIGHTS, WA 99001

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2012 JUN 13 PM 4:53

**SIGNED** IN SEATTLE WASHINGTON, THIS 13<sup>TH</sup> DAY OF JUNE, 2012.

x *Patrick Mayovsky*