

73155-6

FILED
November 12, 2015
Court of Appeals
Division I
State of Washington

73155-6
NO. 73155-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

TARAILLE CHESNEY,

Appellant.

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

The Honorable Timothy A. Bradshaw, Judge

REPLY BRIEF

MARY T. SWIFT
Attorney for Appellant

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

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A. ARGUMENT IN REPLY

UNDER FRIEDLUND, THIS COURT MUST VACATE THE BELATEDLY ENTERED FINDINGS AND REMAND TO THE TRIAL COURT.

In his opening brief, Chesney argued remand was required because the trial court failed to enter written findings of fact and conclusions of law, pursuant to CrR 3.6(b) and CrR 6.1(d). Br. of Appellant, 4-6. In response, the State requested the trial court enter belated written findings and conclusions. Br. of Resp't, Appendix A. The trial court did so on August 21, 2015. Br. of Resp't, Appendix A. The State then designated these belated written findings as supplemental clerk's papers. See CP 69-90. The State argues the findings are properly before this Court and so remand is unnecessary. Br. of Resp't, 2-4.

The State is mistaken. In State v. Friedlund, the trial court entered belated written findings and conclusions supporting an exceptional sentence while the appeal was pending. 182 Wn.2d 388, 393, 341 P.3d 280 (2015). The supreme court concluded "the trial court lacked authority to enter its findings under RAP 7.2(e)." Id. at 395. RAP 7.2(e) explicitly requires the superior court to obtain permission from the appellate court before making any determination that would "change a decision then being reviewed by the appellate court." Id. at 395-96 (quoting RAP 7.2(e)). Belated written findings altered the decision under review. Id. at 396. "Because the trial

court failed to obtain our permission prior to entering its written findings, entering the findings violated RAP 7.2(e).” Id.

The Friedlund court accordingly denied the State’s request to supplement the record with the belated findings and vacated them. Id. at 396-97. Remand was required for entry of the written findings and conclusions. Id. at 397. Friedlund controls here. The trial court entered belated findings without this Court’s permission under RAP 7.2(e) and the State then attempted to supplement the record with them. This Court should vacate the belatedly entered findings and remand to the trial court.

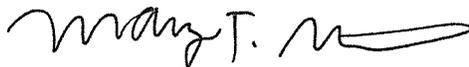
B. CONCLUSION

For the reasons discussed above, this Court should vacate the trial court’s belatedly entered findings and remand for proper entry of written findings of fact and conclusions of law.

DATED this 12th day of November, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



MARY T. SWIFT
WSBA No. 45668
Office ID No. 91051

Attorneys for Appellant