

NO. 35433-1-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

THOMAS W. RICHEY, APPELLANT

APPELLANT'S BRIEF
NO. 35433-1-II
STATE OF WASHINGTON
COURT OF APPEALS, DIVISION II
JAN 11 2016
10:11 AM
JAN 11 2016
10:11 AM
JAN 11 2016
10:11 AM

Appeal from the Superior Court of Pierce County
The Honorable D. Gary Steiner

No. 86-1-00658-5

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this Court reconsider defendant's argument regarding CrR 7.2 when defendant has already presented that argument to, and been rejected by, both this Court and the Supreme Court?
2. Is there substantial evidence in the record to support the trial court's finding that defendant knowingly, intelligently and voluntarily waived his appeal rights when the evidence showed (1) that defendant was advised of those rights by his former trial counsel, and (2) that defendant chose not to appeal because he wanted to pursue a transfer to Scotland which a pending appeal would prevent?

B. STATEMENT OF THE CASE.

1. Procedure

On March 31, 1986, the State charged THOMAS WILLIAM SINCLAIR RICHEY, defendant, with first degree aggravated murder in the shooting death of Arlene Koestner (premeditated murder with aggravating circumstances) and one count of first degree attempted murder for the attack on Scott Sander (attempted premeditated murder). CP 1-4. After the State decided that it was not going to seek the death penalty, defendant reached an agreement with the State to resolve the

charges against him. 4/23/87 RP 2-3. After extensive discussions with defense counsel, the State agreed to reduce the charges to of first degree murder for the death of Arlene Koestner (felony murder predicated on robbery) and attempted first degree murder for the attack on Scott Sander in exchange for defendant's guilty plea and a stipulation to an exceptional sentence of 65 years on each count to be served concurrently. CP 5-6; 4/23/87 RP 3.

On April 23, 1987, defendant entered a plea of guilty to the amended information. CP 21-26. In addition to the statement in the guilty plea form, defendant signed the stipulation to sentence in excess of presumptive range and to real facts. CP 15-17.

It was clear that the benefit the agreement gave defendant was that it eliminated the risk of being convicted of a crime that carried a sentence of life without possibility of parole. After engaging in a colloquy with defendant, the trial court accepted defendant's plea. 4/23/87 RP 14-19. The court proceeded immediately to sentencing and followed the joint recommendation, imposing an exceptional sentence of 65 years on each count, to be served concurrently. CP 7-14.

The record does not indicate that the court read defendant his appellate rights, as set forth in CrR 7.2(b). The plea form informed defendant that his plea waived the right to appeal a determination of guilt, but that he had the right to appeal an exceptional sentence. CP 21-26.

Defendant did not file a notice of appeal within thirty days of the entry of judgment.

According to ACORDS, defendant has filed four personal restraint petitions in case numbers, 15638-5, 16022-6, 27491-4, and 35212-5. The first of these personal restraint petitions, filed December 23, 1991, alleged that the court erred in imposing the exceptional sentence. This Court dismissed the petition as time-barred on April 6, 1992. According to ACORDS, the next two personal restraint petitions, which were served upon the Office of the Attorney General for response, were also dismissed. The fourth petition, a successive petition, was forwarded to the Supreme Court and disposition is pending.

In January 2005, nearly 18 years nearly eighteen years after the entry of defendant's judgment and sentence, defendant moved this Court for an extension of time beyond the 30 day time limit to file his notice of appeal. At that time, defendant filed a 31 page motion with full briefing on the issue along with numerous appendices, including the verbatim report of proceedings from defendant's April 23, 1987 plea and sentencing hearing. This Court denied defendant's motion. Appendix A (Order Denying Motion to File Late Notice of Appeal). On July 13, 2005, the Supreme Court granted discretionary review and issued an order remanding this case to the Superior Court:

[F]or a hearing to determine whether [defendant] knowingly, intelligently and voluntarily waived his right to appeal his conviction after his guilty plea. If after

conducting a hearing, the Pierce County Superior Court determines the appeal should be reinstated, then said court shall entertain a motion for an order of indigency relative to appeal.

Appendix B (Order of Supreme Court).

Pursuant to the Supreme Court's order, the trial court conducted an evidentiary hearing on April 14 and 18, 2006. CP 193. On May 12, 2006, the trial court entered findings of fact and conclusions of law concluding that defendant had been fully advised of his appeal rights by his trial counsel and that he knowingly, voluntarily, and intelligently waived his right to appeal. CP 193-97.

On June 2, 2006, defendant filed his "motion to set briefing schedule re motion to reinstate appeal and for appointment of counsel" in the Supreme Court. Appendix C (Letter from Supreme Court). That same day, the Supreme Court rejected the motion for filing, noting that defendant's Supreme Court case was closed and that a mandate had been filed. Id.

On June 9, 2006, defendant filed a notice of appeal. CP 198-204.

On June 20, 2006, the Commissioner dismissed this appeal.

On October 20, 2006, this Court granted defendant's motion to modify the commissioner's ruling and allowed this appeal to go forward,

limiting review to the trial court's May 12, 2006 ruling regarding defendant's waiver of his right to appeal.

2. Facts

At the time of plea and sentence, the parties stipulated that defendant's conduct during the commission of the crime manifested deliberate cruelty to both victims and that his standard range presumptive sentence is clearly too lenient.

Defendant further stipulated to the following real facts regarding his crime:

[O]n March 28, 1986, the defendant entered the Military TV and Stereo store on Pacific Highway Southwest in Pierce County, Washington, to purchase a television set. He had concealed on his person a loaded .22 caliber Beretta handgun. He had earlier that day secretly removed this gun from Ft. Lewis and used it for target practice. In the store, the defendant negotiated with Arlene Koestner for the purchase of the color television with a listed price of \$599.00. Upon learning that the terms of his time payment contract would result in a total price in excess of \$700.00, the defendant became upset. He pulled out his gun, pointed it at Mrs. Koestner, and ordered her to a back room. As she complied the defendant noticed another employee, Scott Jacob Sanford, and ordered him at gunpoint to accompany Mrs. Koestner.

As they approached the back room, the defendant demanded to be told where the money was. However, before any reply was made and upon entering that room, the defendant shot each victim once in the head. Mrs. Koestner, who was shot in the back of the head, died very shortly thereafter. Mr. Sanford was facing the defendant

and moved slightly to protect himself. He survived the gunshot wound to the brain.

The defendant then gathered up all the paperwork that would have traced him to the crime and took it with him. He stole a stereo cassette player and a pair of speakers. He later burned the paperwork. The stolen property was found secreted in a ceiling space over his bunk at Ft. Lewis during a later search.

CP 15-17.

C. ARGUMENT.

1. DEFENDANT'S ARGUMENT REGARDING CrR 7.2 IS NOT PROPERLY BEFORE THIS COURT BECAUSE IT HAS ALREADY BEEN RAISED AND REJECTED BY BOTH THIS COURT AND THE SUPREME COURT.

When defendant moved this Court for an 18 year extension of his 30 day time limit to appeal his plea and stipulated sentence, the matter was fully briefed, citing and analyzing the same cases on which defendant relies in his current brief. Defendant repeatedly focuses on the fact that the trial court did not read defendant his appeal rights on the record pursuant to CrR 7.2. AOB 7-27. However, the verbatim report of proceedings, VRP's, from defendant's plea and sentence in 1987 were previously before both this Court and the Supreme Court for consideration. (VRP's were attached to Appellant's Motion for Extension of Time to file Notice of Appeal as Appendix A. VRP's were attached to Motion for Discretionary Review as Appendix B.) Had the CrR 7.2 issue

been dispositive, this Court would have not denied his motion in the first place. See, Appendix A. Nor would the Supreme Court have referred the matter to the trial court to determine the waiver issue and then closed its file. See, Appendix B and C. On remand, the trial court understood this and questioned defense counsel about it:

THE COURT: Why did [the Supreme Court] send it to me if the face of the record indicates that he [sic] clearly did not advise under the rule orally? If I have not met my responsibility and if it is mandatory, they could have decided it on the record. Instead, they sent it back to me for a finding as to whether, in some fashion, he was advised and waived it? Right? So they have already decided the issue that it is not necessary for the judge to necessarily advise him. He could receive the information in other ways.

...

[The Supreme Court] are not making me go through this for no reason, I assume. Aren't they saying, have a fact finding hearing to determine whether he knew about it in some other way and whether he waived it.

4/28/06 RP 66-67. Again, on May 12, the trial court stated:

THE COURT: ... The record is just devoid of any advice under the rule. The Supreme Court remanded this matter knowing that.

The Supreme Court, I think, is trying to indicate that this Court should review all of the facts and circumstances to determine whether the waiver and his knowledge took place independently of the failure of this Court to follow the rule.

I think that the Supreme Court has that kind of wisdom and would not send this matter back to us to do a useless act.

...

5/12/06 RP 4.

Based on the prior Ruling of this Court and the Order from the Supreme Court, Section E-1 of defendant's brief should not be considered by this Court. The only issue properly before this Court for review is whether the trial court's findings of fact are supported by substantial evidence in the record.

2. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS THAT DEFENDANT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVED HIS RIGHT TO APPEAL.

A reviewing court must determine whether substantial evidence supports the trial court's findings of fact and whether the findings support the conclusions of law. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). Substantial evidence is "evidence sufficient to persuade a fair-minded, rational person of the finding's truth." Id. at 193. Where the findings of fact and conclusions of law are supported by substantial but disputed evidence, we do not disturb the ruling. State v. Aase, 121 Wn. App. 558, 564, 89 P.3d 721 (2004).

An appellate court accords a trial court's factual findings great deference because it alone has had the opportunity to view the witness's

demeanor and to judge veracity. State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985). It is the fact finder whose role is to resolve conflicting testimony, evaluate the credibility of witnesses, and weigh the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Defendant assigns error to 11 of the 16 findings of Fact, claiming they are not supported by substantial evidence in the record. However, for each challenged finding of fact, there is substantial evidence in the record.

- a. Finding of Fact #3 is supported by substantial evidence.

Finding of Fact #3 reads as follows:

III.

Defendant was represented by Larry Nichols of the Department of Assigned Counsel. Mr. Nichols thoroughly went over the Statement of Defendant on Plea of Guilty with defendant, reading aloud the entire document to him.

CP 194. Mr. Nichols, an attorney since 1974, testified that he represented defendant. 4/14/06 RP 9. Nichols further testified that it was his practice to go over a guilty plea statement with a client by reading to them the entire document; reading it over together and talking about it. 4/14/06 RP 9-10. Evidence of habit or routine practice is relevant to prove that the conduct of the person of a particular occasion was in conformity with the habit or routine. ER 406; State v. Platz, 33 Wn. App. 345, 655 P.2d 710 (1982)(evidence of the defendant's habit of usually carrying a knife and

not leaving the house without it was admissible); Jaquith v. Warden, 73 Wash. 349, 132 P. 33 (1913)(evidence that the defendant always parked his unlighted car in front of his house after dark, was admissible to show he left his car in that location on the night in question); Meyers v. Meyers, 5 Wn. App. 829, 491 P.2d 253 (1971)(evidence that the usual practice of a notary public was to ask for identification before she notarized a signature was admissible to show she asked for identification on the day in question).

Defense did not object to this testimony below. Therefore, trial court was entitled to rely on the habit, practice, or routine Nichols followed in going over guilty plea statements with clients to show that his conduct on the day of defendant's plea was in conformity with his usual habit of reading the statement to the client. ER 406.

Additionally, Nichols specifically recalled spending a lot of time with defendant on this particular case because he wanted to be sure defendant understood what he was doing, given the serious consequences. 4/14/06 RP 14-15. Nichols also testified that in this particular case, he reviewed the plea form thoroughly with defendant. 4/14/06 RP 15.

This is substantial evidence supporting finding of fact #3.

- b. Finding of Fact #4 is also supported by substantial evidence.

Finding of Fact #4 reads as follows:

IV.

Mr. Nichols thoroughly advised defendant of his right to appeal and the time limits associated therewith.

CP 194. Mr. Nichols was candid with the court and testified that he did not specifically remember advising defendant Richey of his appellate rights and time limits. Id. at 15. However, Mr. Nichols also testified that it is and was his practice to specifically advise defendants of their right to appeal. 4/14/06 RP 13. He also testified that it was his practice to advise defendants of the time limit for filing the appeal. Id. When challenged on cross-examination, Mr. Nichols was asked if it were *possible* that he did not advise defendant of his appeal rights. Mr. Nichols responded, "Well, we're talking possibilities, I suppose it would be possible. Not likely, but possible." Id. at 17.

Again, ER 406 allows the trial court to use Mr. Nichols routine practice as proof that Mr. Nichols duly advised defendant of his right to appeal and the time limit therefore, in accordance with his usual custom.

Defendant's testimony corroborates Mr. Nichols' testimony that defendant had been advised of his rights and time limits. Defendant testified that he knew he could not pursue a transfer to Scotland if he had

an appeal pending. Id. at 35-36. He chose instead to apply for the transfer. Id. at 38. Defendant *considered* withdrawing his request for a transfer because of the time limits regarding an appeal. Id. at 36. Defendant admitted that in 1989, he was aware that time was of the essence for an appeal. Id. at 37. Defendant further admitted that in 1999, he was still pursuing his transfer to Scotland. Id. at 42-43.

There is compelling Supporting finding of fact #4.

- c. Findings of Fact #7, #8, and #9 are supported by overwhelming evidence.

Finding of Fact #7 reads as follows:

VII.

Defendant understood that he could not pursue a transfer to Scotland if he had an appeal pending. Defendant understood that he had the choice of pursuing the transfer, or filing an appeal. Defendant further understood that applying for a transfer was an option he had, but that it was not mandatory for him to do so.

CP 195.

Finding of Fact #8 reads as follows:

VIII.

By defendant's own testimony, by May 23, 1989, defendant realized that there was a time limit to the filing of appeals. He acknowledged that he knew, back in 1989, that time was of the essence for filing an appeal.

CP 195.

Finding of Fact #9 reads as follows:

IX.

Defendant chose to pursue a transfer to Scotland instead of appealing his case.

CP 195.

As discussed above, there is substantial evidence in the record that defendant wanted to transfer to Scotland where his mother resided, that he could not do so if he had an appeal pending; even when reminded about the appeal time limits by a prison rumor in 1989, defendant still did not withdraw his transfer application knowing time was of the essence for filing an appeal. 4/14/06 RP 35-39; CP 189 (Letter from defendant dated May 23, 1989).

Defendant's correspondence and testimony on cross-examination overwhelmingly support findings of fact #7, #8, and #9.

d. Finding of Fact #10 is supported by substantial evidence.

Finding of Fact #10 reads as follows:

X.

Defendant wrote to this court on November 10, 1991 (Plaintiff's Exhibit #1) indicating his transfer was "finally denied," "unless I can get a reduction in sentence." At no time did defendant allege any defect in his case or express a desire to appeal. In 1991 and 2006, defendant was still pursuing a transfer to Scotland.

CP 195. Defendant admitted he did not allege any defect in his case or any desire to appeal in the 1991 letter. 4/14/06 RP 16; 38-39; Ex #1.

Defendant testified that he has continued to pursue a transfer to Scotland. 4/14/06 RP 42-43. This amounts to substantial evidence in the record to support finding of fact #10.

- e. Findings of Fact #11, #12, and #13 are supported by substantial evidence.

Finding of Fact #11 reads as follows:

XI.

In 1992, defendant wrote to the Court of Appeals (Plaintiff's Exhibit #2) asking for additional time to file his notice of appeal, claiming that he could not file an appeal "because of his transfer process." He did not claim that he was not advised of the time limits for appeal.

CP 195.

Finding of Fact #12 reads as follows:

XII.

On April 26, 1999, defendant wrote to the Superior Court Clerk again. (Plaintiff's Exhibit #3.) He still held out hope of a successful transfer to a Scotland prison and was actively pursuing this option.

CP 196.

Finding of Fact #13 reads as follows:

XIII.

In 2006, defendant's attorneys continued to negotiate with Pierce County Prosecutor Gerald Horne to try to effectuate defendant's transfer to Scotland.

CP 196.

There is substantial evidence in the record which supports all three of these findings. Evidence supporting findings #11 and #12 is fully set

forth in Ex #2 and #3, respectively. Defendant admitted his attorneys continue to try to negotiate with the prosecutor regarding his transfer. 4/14/06 RP 43.

Defendant assigns error to these three findings of fact, but does not present argument or analysis that there is an absence of substantial evidence supporting the findings. A party abandons an assignment of error to findings of fact by failing to argue them in his or her brief. Valley View Indus. Park v. Redmond, 107 Wn.2d 621, 630, 733 P.2d 182 (1987). The State presumes that defendant has abandoned his argument with respect these findings. See, Valley View Indus. Park v. Redmond, supra.

- f. Findings of Fact #14 and #15 are credibility determinations that are not subject to appellate review.

Finding of Fact #14 reads as follows:

XIV.

Attorney Nichols is a credible witness.

CP 196.

Finding of Fact #15 reads as follows:

XV.

Defendant is not credible in his assertion that he had never received appellate advice from his attorney, Larry Nichols.

CP 196.

Defendant has assigned error to these findings of fact. These are not proper challenges on appeal because the trial court alone is the one to

view the witness' demeanor and to evaluate each witness' veracity. State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1995). Great deference is to be given to the trial court's factual findings. Id., citing In re Seago, 82 Wn.2d 736, 513 P.2d 831 (1973); Nissen v. Obde, 55 Wn.2d 527, 348 P.2d 421 (1960). **"Credibility determinations are for the trier of fact and cannot be reviewed on appeal."** State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990), citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987). [Emphasis added.] Defendant's challenge to findings #14 and #15 must therefore fail.

- g. The record supports the trial court's conclusion on the ultimate issue of fact that defendant knowingly, intelligently, and voluntarily waived his right to appeal his conviction and sentence.

Defendant had the requisite knowledge to waive his appeal rights. The State presented credible evidence by way of Mr. Nichols' testimony that proved defendant was advised of his appeal rights and the time limits associated therewith. Under ER 406, the court was entitled to rely on Mr. Nichols' testimony of habit, routine, and practice to establish that he acted in conformity therewith on the day in question. As the plea and sentence took place some 19 years before the remand hearing, it is understandable that Mr. Nichols would not remember every detail of his representation of defendant.

Exhibits #1, #2, and #3 are documents which support the conclusion that defendant was aware of his appeal rights and that he chose to waive them to pursue his overwhelming desire to transfer to Scotland. The evidence shows, and defendant admitted, that he was anxious to return to Scotland. He has doggedly pursued this transfer from the beginning and has continued to pursue it up the point of the remand hearing. Defendant knew he could not seek the transfer if he had an appeal pending. In 1992, defendant wrote to this Court stating his reason for not filing a timely appeal. Referring to himself in the third person, defendant wrote: "Due to his transfer request and process he was prohibited from filing any appeal..." "[Defendant] was prejudiced from appealing his sentence because of his transfer process so was unable to file in a timely manner." Ex #2.¹ This is the true reason for not appealing for 18 years; not that he did not know his rights relative to appeal.

Defendant had to make a choice between appealing and seeking his much-desired transfer. Defendant chose the transfer. He admitted it; the trial court found it. In choosing a transfer over the appeal which he knew was subject to time limits, defendant knowingly *waived* the appeal.

Defendant addresses the trial court's findings of fact in a very cursory fashion, clinging to the argument that the failure of the court to

¹ Defendant also wrote that he was told by two attorneys that he could not appeal. However, that was after the expiration of the 30-day time limit. Ex #2.

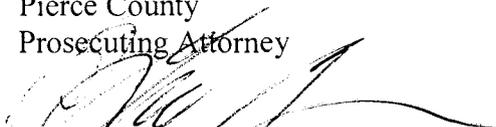
read the appeal rights on the record after sentencing as required by CrR 7.2 is dispositive of the issue. However, as discussed above, that fact has been part of the record all along. That argument has been raised and rejected at every level: by the trial court, the Court of Appeals, and the Supreme Court. Defendant's claim fails.

D. CONCLUSION.

For the foregoing reasons, the State respectfully requests this Court to deny defendant's request to reinstate his appeal.

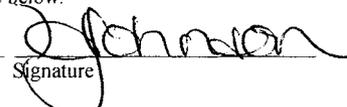
DATED: June 1, 2007.

GERALD A. HORNE
Pierce County
Prosecuting Attorney


P. GRACE KINGMAN
Deputy Prosecuting Attorney
WSB # 16717

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

6/1/07 
Date Signature

BY:  IDENTITY
STATE OF WASHINGTON
07 JUN -1 PM 1:12
COUNTY CLERK

APPENDIX "A"

*Order Denying Motion to File Late Notice of Appeal
(COA No. 32793-7)*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

THOMAS W.S. RICHEY,

Appellant.

No. 32793-7-II

ORDER DENYING MOTION TO FILE LATE
NOTICE OF APPEAL

FILED
FEB 11 2005
S. COURT

COURT OF APPEALS
DIVISION II
05 FEB -4 11 10 52
STATE OF WASHINGTON
BY DEPUTY

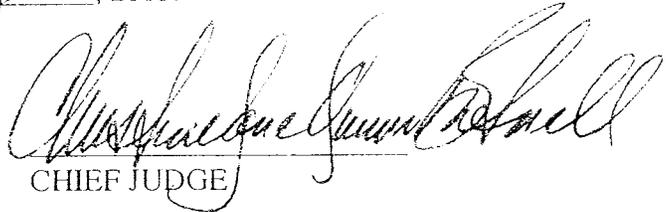
APPELLANT has moved this court for permission to file a late notice of appeal in the above-referenced matter. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Quinn-Brintnall, Morgan, Van Deren

DATED this 4th day of February, 2005.

FOR THE COURT:


CHIEF JUDGE

Sheryl Gordon McCloud
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APPENDIX “B”

Order

(Supreme Court Case No. 76661-4, COA No. 32793-7)

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

THOMAS W.S. RICHEY,

Petitioner.

ORDER

No. 76661-4

Pierce County No. 86-1-00658

C/A No. 32793-7-II

CLERK

FILED
SUPREME COURT
STATE OF WASHINGTON
2005 JUL 13 A 11:14
BY C.J. MERRITT

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Bridge, Owens and J. M. Johnson, considered this matter at its July 12, 2005, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion for Discretionary Review is granted and this matter is remanded to the Pierce County Superior Court for a hearing to determine whether the Petitioner knowingly, intelligently and voluntarily waived his right to appeal his conviction after his guilty plea. If after conducting a hearing, the Pierce County Superior Court determines the appeal should be reinstated, then said court shall entertain a motion for an order of indigency relative to appeal.

DATED at Olympia, Washington this 13th day of July, 2005.

For the Court

Gerry L. Alexander
CHIEF JUSTICE

477/176

APPENDIX “C”

*Letter from Supreme Court,
dated June 2, 2006*

THE SUPREME COURT

STATE OF WASHINGTON

C.J. MERRITT
SUPREME COURT CLERK

RONALD R. CARPENTER
DEPUTY CLERK/CHIEF STAFF ATTORNEY



GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY
APPELLATE DIVISION

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June 2, 2006

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Re: Supreme Court No. 76661-4 - State of Washington v Thomas W.S. Richey
Court of Appeals No. 32793-7-II
Pierce County No. 86-1-00658-5

Clerks & Counsel:

The "MOTION TO SET A BRIEFING SCHEDULE RE MOTION TO REINSTATE APPEAL AND FOR APPOINTMENT OF COUNSEL" (motion) was received on this date. After both the Court Commissioner and I reviewed said pleading, it was concluded that it must be rejected for filing. It has been placed in our rejected pleadings drawer. In that regard please note that Supreme Court cause number 76661-4 is a closed matter in which a mandate was filed on October 13, 2005; see RAP 12.7(b).

I do note in closing that any request to review the trial court's most recent decision would presumably need to take the form of a notice seeking review that was timely filed with the trial court pursuant to RAP 5.1.

Sincerely,

Ronald R. Carpenter
Supreme Court Deputy Clerk

RRC;jlb

