

FILED  
COURT OF APPEALS  
DIVISION II

10 FEB 10 PM 12:44

STATE OF WASHINGTON

BY C  
DEPUTY

COURT OF APPEALS  
No. 39166-0-II

COWLITZ COUNTY  
SUPERIOR COURT  
No. 01-1-1388-2

**IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON**  
(DIVISION TWO)

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IN RE:  
OPENING BRIEF OF APPELLANT  
  
State of Washington -v- TED JENSEN

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**ADDITIONAL GROUNDS  
FOR REVIEW**  
(Pursuant to RAP 10.10)

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TED JENSEN,  
Coyote Ridge Corrections Center  
"C"-Unit, 'CB'-52  
PO Box 769  
Connell WA 99326

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**In THE WASHINGTON STATE  
COURT of APPEALS**  
(DIVISION II)

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STATE OF WASHINGTON

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State of WASHINGTON,  
Plaintiff/Respondent,

-v-

TED \* JENSEN,  
Defendant/Appellant.

No. 05-1-1388-2, Cowlitz Co.  
39166-0-II, C.O.A.

STATEMENT of ADDITIONAL  
GROUNDS for REVIEW  
(Pursuant RAP 10.10)

10 I, TED \* JENSEN, have received and reviewed the 'Opening Brief' prepared by the court  
11 appointed counsel, Oliver R. Davis, W.S.BA. 24560. Set below are the issues I feel merit review  
12 by this Honorable Court, individually as, 'Additional Grounds' which have not been addressed  
13 in the opening brief. It is my understanding and utmost confidence this court will review these  
14 issues at the time that the opening brief and merits of this appeal are painstaking  
15 deliberated.

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**ADDITIONAL GROUND**

**No. (1) One**

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1. The sentencing court erred in entering the Maximum Term allowable in both counts 2 and 3 in its '2nd Amended Judgment and Sentence' on 10 April 2009.

22 An entry Vacating the sentence and Remanding it back to the Sentencing Court for  
23 resentencing is mandated in that the entry made by the State on 10 April 2009, was not in  
24 accordance with the "Mid-Range" determination made by the Court/Judge [Ln. 25, Pg. 37 - Ln.3,  
25 Pg. 38], or the statements made by the State Via its Prosecutor, Shaffer, [Lns. 8-12, Pg. 28, of 276

1 months and rounded down at mid-range], and Fraudulently and Knowingly prepared and submitted  
2 by the said state prosecutor to be signed by the judge and entered into the record.

3 This was further propagated by the said court and prosecutor deliberately manipulating the  
4 court and its participants by not supplying the Appellant a copy of the *'2nd Amended Judgment and*  
5 *Sentence'* for review prior to or during the judges review and signing, [Lns. 17-25, State handed  
6 assigned counsel a' No-Contact Order' to hand the Appellant, not a Judgment and  
7 Sentence, and Lns. 24-25]

9 State through Shaffer, continues fraud by stating 255 months as "the true  
10 mid- point" when the midpoint is 254 months; and while she has an opportunity of  
11 correcting or explaining her having prior to the rearing and any discussion by the  
12 appellant in the review process filled out the Judgment and Sentence for the Judge  
13 without court intent or discussion, [Lns. 4-10, Pg. 34], (and with no prior  
14 knowledge/agreement), counter to all previous documents and oral dialog  
15 submitted to the court by the Appellant, no copies having been provided to the  
16 Appellant for review at any time in any manner.

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20 A sentence was imposed that violated the specific judgment of the court and  
21 in direct violation of the Appellant's right to sentencing consistent with the  
22 findings of the court), not fraudulently entered without discussion or instruction in  
23 open court, without the judges or appellant's knowledge, enhancing a sentence  
24 directly counter to the record, and violation 'Specific Performance' in that the  
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1 sentence was entered without the knowledgeable consent of the court, in fact not  
2 the sentence that the judge clearly imposed or what the State had argued was the  
3 courts prior decision.  
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## ADDITIONAL GROUND

### No. (2) Two

1. The appellant's constitutional right to "Effective Assistance of Counsel" was violated by his assigned Counsels negligence in properly filing documents entrusted to him for entry into the record and not in fact submitting motions and petitions, supplemental evidence in support of Appellant's arguments and position by withholding them from the Clerk of the Court.

The appellant was denied 'Effective Assistance of Counsel' even though he was granted status to proceed as pro se, Judge Warning, 25<sup>th</sup> March 2009,[Lns. 15-18, Pg. 8 - Lns. 10-22, Pg. 1], the sentencing court additionally assigned counsel to ensure paperwork was processed properly, [Lns, 1-5 and Lns. 22-23, Pg. 20], in its recognition of the significant burdens and hardships that would be imposed by the Cowlitz County Jail while addressing and attempting to function during a court proceeding that must be overcome.

The assignment of the 'Stand-by' attorney was specifically to facilitate the appellant's needs to properly enter and present Supplemental Evidence and Motions during the court proceedings and to ensure that the appellant had access to the court clerk and entry into the court file for review.

The assigned counsel on occasion of all documents being given to him for presentation to the court omitted the essential need of submitting the in the way mandated to be entered into the record by the court clerk.

This is most evident in that the assigned counsel, was required to contact the COA with an apology letter addressing his "oversight" in not filing the Appellant's 'Affidavit of Indigence' or 'Affidavit of Service' and other documents that were required to bring this matter before th

1 Honorable Court for review and came very close to (1-day) having the appeal dismissed for  
2 "Abandonment".

3 The improper filing of the motions, petitions and documents to the court resulted in  
4 serious prejudice against and injury to the Appellant's interests in addressing issues that each  
5 alone would be mandatory cause for a retrial, and prove beyond any doubt that he (the appellant)  
6 was not under any legal constraint to 'Community Custody Placement or Jurisdiction' regardless  
7 of clerical errors resulting in the reporting status or the time and which were being resolved in the  
8 original sentencing court in Olympia WA at the time of the crime in question.  
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## ADDITIONAL GROUND

### No. (2) Two

2. The sentencing court erred in “Badgering” and “Coercing” the appellant into accepting an ‘Appointed Counsel’ to assist him.

An entry Vacating the sentence and Remanding it back to the Sentencing Court for resentencing and review is mandated in that the very ‘Specific Intent and Explanation/Direction given to convince the appellant, [Lns. 2-5, Pg. 20, Judge Warme, “He is going to help you with getting the paperwork done – Anything else you would want him to help you with” on 27 March 2009], the court assigned counsel was defective in all capacities that a reasonable effort on his behalf would have avoided the issues which delayed the proper service of the appellant’s Documents, Motions, Petitions and Supplements to the record and to the Court/State and Court Clerk, even to the added work and misunderstanding of the Division Two, Court Clerk, and added expense incurred by the state in appointing a counsel in disregard of the appellant’s position of representing himself, [Lns. 1-10, Pg. 40], to the point that the properly prepared and presented documents and added expenses of time, monies, copies and multiple mailings in good faith was not in accordance with the ‘Good Faith’ acceptance of the assigned counsel or the office which he was to provide assistance to the appellant as the clear determination made by the Court/Judge [Lns. 2-5, Pg. 20].

The Ineffective Assistance of Counsel is a Fundamental Violation of the Appellant’s rights, and not exceptions can be made by any argument when the direct quote and wordings of the Judge of Record, Honorable Judge Warme, lend no other interpretation of the courts intent, and leads the appellant to direct acceptance and expectation in the office and services to be preformed. The inefficient assistance of the assigned counsel directly undermined all attempts of the appellant to review issues which he painstakingly hand wrote triplicate copies of (5) separate documents, for

1 presentation to the court with limited access to even basic needs to properly prepare  
2 supplementation and entry into the record for review.

3           The 2<sup>nd</sup> Amended Judgment and Sentence of 10 April 2009, should be immediately  
4 vacated and remanded back to the sentencing court for review and resentencing and review and  
5 decisioning of all Motions and Petitions and Supplemental information presented to the court  
6 from the dates of 25 March 2009 to the present.

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## ADDITIONAL GROUND

### No. (3) Three

1. The Sentencing Court erred in not properly reviewing the 2<sup>nd</sup> Amended Judgment and Sentence prior to signing and entry into the record and by not providing the Appellant with a copy of the document for review during discussion to enable questions and errors to be addresses.

The court relied upon fraudulent narrative by the State through its agent Ms Shaffer, as the single and sole consideration for accuracy and facts of without any review of documents in the judges possession prior to signing.

The Appellant was not provided a copy of the Judgment and Sentence by the court or the state for review, [Lns.17-20, Pg. 33], purposely so as to further Ms Shaffer's, "Official Misconduct" during the hearing and further supporting the need for further and more in-depth assessments of her overall adherences to court rules and ethics of the court and bar in addition to the rights of the Appellant during all proceedings trial, sentencing, 1<sup>st</sup> appeal in the case instant.

This basic violation of court procedure during review and sentencing is cause for Vacation of the 2<sup>nd</sup> Amended Sentence and should be remanded back to the Sentencing Court for Review and Resentencing.

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## ADDITIONAL GROUND

### No. (4) Four

1. The appellant was placed at serious and considerable prejudice by the tactics and delaying actions of the State through its agent, Ms Shaffer, Prosecutor Cowlitz County, and intentionally placed in a position from which he was denied his right to act in his own behalf or to offer rebuttal and supporting evidence to disprove the state's claims and assertions.

The appellant was granted pro se status in this matter, but was denied acknowledgement by the Court and the State of documents and motions and supporting evidence supplied in good faith to the court for review.

The court failed in its duty to provide the appellant with properly requested clerk's papers, documents, and records of the case for review by the appellant in his authorized office acting in pro se in this matter.

The coercion by the court and state in accepting an assigned counsel who circumvented the actions of the appellant to seek justice and access to the court for review in this matter rendered the appellant's capacity to act in Propria Personam.

The State through its departments and agencies violated the appellant's Constitutional Right to be secure in his papers and in its confiscation of his entire legal files in this matter and for a period from September 11<sup>th</sup> 2009 through 28<sup>th</sup> of January 2010, and withheld all acknowledgement of records, documents, and verbatim reports of proceedings for a period greater than 90-days, and then further withheld legal papers requiring payment three times \$25.00, \$35.00 and \$25.00 with \$60.00 still remaining to be paid for transportation of this property.

1           The combined efforts of the state agents at all levels have prejudiced the efforts of the  
2 appellant to the ends that he could not proceed in his own behalf and was in effect forced to seek  
3 further assistance of assigned counsel.  
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## ADDITIONAL GROUND

### No. (5) Five

1. The Sentencing court erred in allowing the State through its prosecutor Ms Shaffer, to act in its assigned capacity, and should have recognized the circumstances and the authority that is invested in the Judge to decide and enter a sentence which is both *Just and Fitting*, and not solely relied on the prosecutor's narrative of sentence and prior rulings without the input of the Appellant.

A trial courts failure to recognize that it has the discretion to impose its own sentence may constitute a fundamental defect inherently resulting in a complete miscarriage of justice for which relief may be granted under RAP 16.4, particularly where the court expresses on the record its openness toward allowing the Defense to enter any motions and supplemental in its efforts to seek justice and relief from a false sentence being entered, and expressing sympathy toward the defendant due to mitigation circumstances.

The court has an inherent authority to protect the right of the Appellant to be sentenced and to have his sentence consistent throughout his imprisonment and not contingent on the whims of the State or its agents/prosecutors is manifest in the Defendant's rights protection him from "Cruel and Unusual Punishment" in the Constitution of the United States of America, in his not being subjected to a changing and uncertain sentence, (two amended sentences brought by the state to add additional time to the original agreed upon sentence and enhancements).

In reviewing this issue the court must determine if (1) the Appellant was actually and substantially prejudiced by any violation of his constitutional rights; of (2) that the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice. The State not the Appellant has the burden of showing that it was harmless.

The Washington State Supreme Court has found a fundamental defect resulting in a complete miscarriage of justice when the trial court had an incorrect understanding of standard range for sentencing the defendant. The Supreme Court has also found a fundamental defect when the Defendant/Appellant's are likely to spend substantially more time in DOC custody than the sentences originally imposed.

And so it is faithfully hoped and believed that this Honorable court will also find and enter a judgment Vacating the 2<sup>nd</sup> Amended Sentence of 10 April 2009 and remand back to the Sentencing Court for Review and Resentencing, with emphasis on review of the Motions and Petitions and Supplemental Evidence supplied to the court by the Appellant.

\* REV. C.O.A

NO. 39166-0-II

ADDITIONAL GROUND

No. (6) Six

1. The Sentencing court erred in not entertaining Motions, Petitions of Supplemental Evidence submitted by the appellant in open court during review on the 25<sup>th</sup>, 27<sup>th</sup> of March 2009 and on the 3<sup>rd</sup> and 10<sup>th</sup> of April 2009, after its having allowed the entries into the record diverting the defense to issues not decided and incapacitating the Appellant at all levels of review.

a. 'Petition for Review of Individual Juror Information', (Voir Dire - Ms Marsh, bias Juror).  
\*\* Submitted 10 April 2009 \*\*

b. 'Motion to Review Evidence and Authorities to determine Deadly Weapon Enhancement'  
(2¾ inch blade length knife [not "Firearm" as stated by State] entered into evidence by Shaffer).  
\*\* Submitted 27 March 2009 \*\*

c. 'Motion for Modification of Judgment and Sentence'.  
(Counts 2 & 3 2<sup>nd</sup> Amended J & S, 10 April 2009)

- d. Not reviewing the documentation provided as 'supplemental evidence',
- 1) 'Order for Release' 02 December 2002 (conditions of release Thurston County Cause # 02-1-01110-5,
  - 2) WA ST DOC's documentation of total cost of supervision for a total of 12 months @ \$20.00 per month, total of \$240.00 in Thurston County Cause # 01-1-00511-5.  
\*\* Submitted 27 March 2009 \*\*

It is in the interest of justice and righting the violation of secured rights of the Appellant that the court find and grant the appeal on its merits and vacate the 2nd Amended Sentence and remand back to the Sentencing Court for Review and Resentencing.

*[Handwritten signature]* 08/18/2010

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STATE OF WASHINGTON

BY  \_\_\_\_\_  
DEPUTY

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document **Appellant's Pro Se Continuation of Statement of Additional Grounds for Review** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 39166-0-II** and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for  respondent **Michelle Shaffer - Cowlitz County Prosecuting Attorney**,  appellant and/or  other party, at the regular office or residence or drop-off box at the prosecutor's office.

  
MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: February 12, 2010