

FILED
COURT OF APPEALS
DIVISION II

Court of Appeals No. 41660-3-II

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STATE OF WASHINGTON
BY

DEPUTY

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON

Plaintiff/Respondent,

v.

WILLIAM A. BARROW,

Defendant/Appellant.

BRIEF OF APPELLANT

**Appeal from the Superior Court of Pierce County,
Cause No. 10-1-03981-5
The Honorable Katherine Stolz, Presiding Judge**

**Sheri Arnold, WSBA No. 18760
Attorney for Appellant
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TABLE OF CONTENTS

	<u>Page(s)</u>
I. ASSIGNMENT OF ERROR.....	1
II. ISSUE PRESENTED.....	1
Did the trial court violate the appearance of fairness doctrine in insulting Mr. Barrow at sentencing and imposing the maximum sentence possible based only on Mr. Barrow's criminal history?.....	1
III. STATEMENT OF THE CASE.....	1
Factual and Procedural Background.....	1
IV. ARGUMENT.....	2-4
The trial court violated the appearance of fairness doctrine in insulting Mr. Barrow at sentencing and imposing the maximum sentence possible based only on Mr. Barrow's criminal history.....	2
VI. CONCLUSION.....	4

TABLE OF AUTHORITIES

Page (s)

Table of Cases

Washington Cases

State v. Dominguez, 81 Wn.App. 325, 914 P.2d 141 (1996).....3

State v. Madry, 8 Wn.App. 61, 504 P.2d 1156 (1972).....3

State v. Moreno, 147 Wn.2d 500, 58 P.3d 265 (2002).....3

Other Authorities

U.S. Const. amend. VI.....3

U.S. Const. amend. XIV.....3

Wn. Const. Art. I, § 22.....3

I. ASSIGNMENT OF ERROR

The trial court violated the appearance of fairness doctrine in insulting Mr. Barrow at sentencing and sentencing him to the maximum possible sentence on the basis of his criminal history.

II. ISSUE PRESENTED

Did the trial court violate the appearance of fairness doctrine in insulting Mr. Barrow at sentencing and imposing the maximum sentence possible based only on Mr. Barrow's criminal history? (Assignment of Error No. 1)

III. STATEMENT OF THE CASE

Factual and Procedural Background

On September 20, 2010, Mr. William Barrow was charged with one count of failure to remain at an injury accident and on count of with a suspended license in the third degree. CP 1-2.

On October 28, 2010, the Superior Court ordered that Mr. Barrow be evaluated for competency to stand trial. CP 7-10.

On November 19, 2010, the Superior Court entered an order finding Mr. Barrow competent to stand trial. CP 11-12.

On December 10, 2010, the charges against Mr. Barrow were amended to drop the driving with a suspended license charge in return for Mr. Barrow pleading guilty to the failure to remain at an injury accident charge. CP 31-33.

On December 10, 2010, Mr. Barrow entered an *Alford* guilty plea

to the charge of failure to remain at an injury accident. CP 34-42. The trial court went over the plea agreement with Mr. Barrow and accepted his guilty plea. RP 3-8, 12-10-10.¹ Mr. Barrow stipulated that his offender score was 6, that his current charge had a seriousness level of IV, and that the standard range sentence for the current charge was 33-43 months. CP 43-45.

At sentencing, the prosecutor recommended a mid-range sentence of 38 months and Mr. Barrow asked for a standard range low-end sentence of 33 months. RP 8-10.

In pronouncing Mr. Barrow's sentence, the trial court noted Mr. Barrow's criminal history and complained that the "best" it could do was to sentence Mr. Barrow to the maximum sentence, complained that it could not impose community custody, and told Mr. Barrow, "once you're out, you'll probably drive without a license and insurance, again, until you probably kill someone else unless you decide, finally, to take responsibility that you're a lousy driver, and you can't drive."

IV. ARGUMENT

The trial court violated the appearance of fairness doctrine in insulting Mr. Barrow at sentencing and imposing the maximum sentence possible based only on Mr. Barrow's

¹ The report of the trial proceedings is composed of three volumes. The page numbers are not continuous between the volumes. Reference will be made to the report of proceedings by giving the page number followed by the date of the hearing being referenced.

criminal history.

Criminal defendants have a due process right to a fair trial by an impartial judge. U.S. Const. amends. VI, XIV; Wn. Const. art. I, § 22.

“Impartial” means the absence of bias, either actual or apparent. *State v. Moreno*, 147 Wn.2d 500, 507, 58 P.3d 265 (2002).

The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial. Next in importance to rendering a righteous judgment is that it be accomplished in such a manner that it will cause no reasonable questioning of the fairness and impartiality of the judge.

State v. Madry, 8 Wn.App. 61, 70, 504 P.2d 1156 (1972).

“The test is whether a reasonably prudent and disinterested observer would conclude [that the claimant] obtained a fair, impartial, and neutral trial.” *State v. Dominguez*, 81 Wn.App. 325, 330, 914 P.2d 141 (1996).

In pronouncing Mr. Barow’s sentence the trial judge called Mr. Barrow a “lousy driver” who refused to take responsibility for his actions and who had killed someone before and would probably kill someone else once released from his current sentence. RP 13-14, 12-10-10. Rather than acknowledge that Mr. Barrow’s criminal history had already been considered by the legislature in setting the standard range of Mr. Barrow’s punishment, the trial judge, citing Mr. Barrow’s criminal history alone,

imposed the maximum possible sentence and lamented that she could not impose a harsher sentence.

A reasonably prudent and disinterested observer would not conclude that the trial judge in this case acted in a manner exhibiting fairness and impartiality. The trial judge clearly disliked Mr. Barrow, had no compunction against belittling and insulting him, and even based Mr. Barrow's sentence on a spurious finding of future propensity to commit a crime. Such behavior is not indicative of a neutral and detached magistrate enforcing the law impartially.

The trial court's comments and behavior in this case violated the appearance of fairness doctrine.

VI. CONCLUSION

For the reasons stated above, this court should vacate Mr. Barrow's convictions and remand his case for resentencing.

DATED this 28th day of July, 2011.

Respectfully submitted,



Sheri Arnold
Sheri Arnold, WSBA No. 18760
Attorney for Appellant

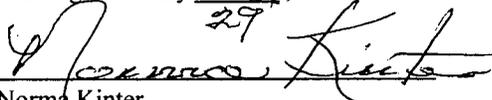
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CERTIFICATE OF SERVICE

The undersigned certifies that on July ~~28~~²⁹, 2011, she delivered in person to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Avenue South, Tacoma, Washington 98402, and by United States Mail to appellant, William A. Barrow, DOC # 297087, Airway Heights Corrections Center, Post Office Box 900, Airway Heights, Washington 99001, true and correct copies of this Opening Brief. 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 July ~~28~~²⁹, 2011.



Norma Kinter