

49447-7-II

RECEIVED
JUN 24 2016
WASHINGTON STATE
SUPREME COURT

NO. 92462-7

[Handwritten signature]

**SUPREME COURT OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CALVIN NORMAN ROUSE, JR., APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Ronald Culpepper

No. 02-1-02929-1

Brief of Respondent

MARK LINDQUIST
Prosecuting Attorney

By
JAMES SCHACHT
Deputy Prosecuting Attorney
WSB # 17298

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

FILED AS
ATTACHMENT TO EMAIL

 **ORIGINAL**

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Should the appellant’s direct appeal be dismissed rather than transferred to the Court of Appeals where it satisfies none of the bases for a direct appeal to this Court, and where the subject matter jurisdiction issue is facially invalid?..... 1

 2. In the event this direct appeal is not dismissed, should this case be transferred to the Court of Appeals pursuant to RAP 4.2(e)(1) as a matter that is appealable to that court as a matter of right?..... 1

B. STATEMENT OF THE CASE..... 1

C. ARGUMENT..... 2

D. CONCLUSION..... 6

Table of Authorities

State Cases

<i>In re Barbee</i> , 19 Wash. 306, 310, 53 P. 155, 156 (1898).....	4
<i>In re Clark</i> , 24 Wn.2d 105, 110, 163 P.2d 577 (1945)	4
<i>State v. B.P.M.</i> , 97 Wn. App. 294, 299, 982 P.2d 1208 (1999)	4
<i>State v. Golden</i> , 112 Wn. App. 68, 74, 47 P.3d 587 (2002).....	4
<i>State v. Werner</i> , 129 Wn.2d 485, 493, 918 P.2d 916 (1996)	4

Constitutional Provisions

Wash.Const. at. IV, § 6	4
-------------------------------	---

Statutes

RCW 2.08.010	4
RCW 9A.04.030(1).....	4

Rules and Regulations

CrR 1.1	5
CrR 7.8.....	5
CrR 7.8(c)	5
RAP 1.2.....	3
RAP 1.2(a) and (c)	3
RAP 2.2(a)(10).....	3
RAP 4.2(a)	2

RAP 4.2(a)(1) – (6).....	2
RAP 4.2(b)(2)	2, 3
RAP 4.2(c)(1).....	1, 3, 6

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

1. Should the appellant's direct appeal be dismissed rather than transferred to the Court of Appeals where it satisfies none of the bases for a direct appeal to this Court, and where the subject matter jurisdiction issue is facially invalid?
2. In the event this direct appeal is not dismissed, should this case be transferred to the Court of Appeals pursuant to RAP 4.2(e)(1) as a matter that is appealable to that court as a matter of right?

B. STATEMENT OF THE CASE.

On June 25, 2002, appellant Calvin Norman Rouse, Jr. (the "defendant") was charged along with two co-defendants with first degree felony murder predicated on robbery. CP 53-56. On August 25, 2003, he pleaded guilty pursuant to a plea agreement to second degree murder. CP 57-68. He was sentenced on September 26, 2003, to a high end sentence totaling 340 months in prison. *Id.* The defendant filed a notice of appeal on October 17, 2003. CP 69. His direct appeal was resolved and his conviction affirmed in an unpublished opinion entered on November 16, 2004. CP 70-79.

This case stems from the denial of a June 11, 2015, post-conviction motion to dismiss for lack of subject matter jurisdiction. CP 1-3. The trial court initially sought to transfer the motion to the Court of Appeals as a personal restraint petition by written order entered on August 18, 2015. CP 80-121 and 122-23. The Court of Appeals rejected the transfer and remanded to the trial court via an order entered on August 24, 2015. CP 125. Thereafter the trial court held a hearing on the motion on October 18, 2015, and denied the motion. CP 126. RP 8-10. This direct appeal followed.

The present direct appeal to this Court was filed on November 4, 2015. In response to clerk's letters, appellant filed a statement of grounds for direct review, but has neither cited nor discussed the jurisdiction statute at issue in his motion and appeal, nor the bases for a direct appeal to this court in RAP 4.2(a).

C. ARGUMENT.

Direct review of a trial court decision to this Court is limited to six potential types of cases. RAP 4.2(a)(1) – (6). It is difficult to determine which of the six the defendant may claim apply to this matter. If interpreted tolerantly, the *original motion in the trial court*, together with the defendant's statement of grounds and opening brief in this Court, could be viewed as an invocation of the second ground, RAP 4.2(b)(2).

Were that to be the case, the defendant would need to show that the trial court's ruling constituted a finding that the superior court jurisdiction statute is "repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty." RAP 4.2(b)(2). That plainly was not the case. CP 126. RP 8-10.

In the event that the defendant is unable to establish a viable basis for direct review to this Court, this case should be transferred to the Court of Appeals, provided the superior court decision was appealable as a matter of right. RAP 4.2(e)(1). In light of RAP 2.2(a)(10), the trial court's denial of the defendant's post-trial motion to dismiss appears to have been appealable as a matter of right. Thus, a clear option in this case is for this Court to transfer this matter to the Court of Appeals.

Were the Court to consider a more liberal interpretation of the appellate rules, there could be another option. The Court could exercise its discretion to resolve this case in a more direct fashion. RAP 1.2 provides this Court with discretion to interpret RAP 4.2(e)(1) liberally so as to "promote justice and facilitate the decision of cases on the merits" and to "waive or alter the provisions of any of these rules in order to serve the ends of justice. . . ." RAP 1.2(a) and (c). There can be no argument that the resources of this Court, the Courts of Appeals, the prosecution, and potentially appellate defense counsel are scarce and should not be harnessed in needless appellate litigation. Accordingly, it would be a reasonable interpretation of RAP 4.2(e)(1) for this Court to decide this

direct appeal on the merits rather than transfer it to the Court of Appeals for further proceedings.

Insofar as the merits are concerned, the defendant's position in this appeal is not well taken. The Washington Constitution and RCW 2.08.010 vest the superior courts with original jurisdiction over "all criminal cases amounting to felony. . . ." Wash.Const. at. IV, § 6. *State v. Golden*, 112 Wn. App. 68, 74, 47 P.3d 587 (2002). *In re Barbee*, 19 Wash. 306, 310, 53 P. 155, 156 (1898)("Such crimes as felonies can only be tried in the superior court and upon indictment or information."). In addition, RCW 9A.04.030(1) provides for "personal jurisdiction over all individuals, including juveniles, who commit crimes in this state." *State v. Golden*, 112 Wn. App. at 74, citing *State v. Werner*, 129 Wn.2d 485, 493, 918 P.2d 916 (1996), and *State v. B.P.M.*, 97 Wn. App. 294, 299, 982 P.2d 1208 (1999); *In re Clark*, 24 Wn.2d 105, 110, 163 P.2d 577 (1945)("The offense with which appellant was charged, and of which he was convicted, is a felony." . . . "The court therefore had jurisdiction of the subject matter" and of "the person of the appellant, for it recites that he appeared in court. . . .")(citations omitted). In short, there is no basis for this Court or the Court of Appeals to conclude that the superior court lacked jurisdiction.

The defendant's argument appears to be based on a claim that the civil rules should have been applied "for the reason that appellant's judgment is void, under the fourth indicia of the above statute." Brief of Appellant, p.6. The trial court correctly stated, "You're not a debtor. You're not a third party intervenor. You're a criminal defendant, so I don't really see what application the civil rules have in your case." RP 5.

There can be no doubt that the prosecution of the defendant for murder was a felony criminal offense. The criminal rules rather than the civil rules applied because they "govern the procedure in the courts of general jurisdiction of the State of Washington in all criminal proceedings and supersede all procedural statutes and rules that may be in conflict and shall be interpreted and supplemented in light of the common law and the decisional law of this state." CrR 1.1. The Court of Appeals correctly decided that CrR 7.8 applied to the defendant's motion when it dismissed the trial court's attempted transfer on procedural grounds. The defendant's motion was not decided as a personal restraint petition but instead was remanded for consideration as a CrR 7.8(c) motion for vacation of judgment. The trial court subsequently convened a hearing on the motion and denied it on the merits. RP 8-10.

The procedural history of this case places the issue of the superior courts' criminal jurisdiction in murder cases before this Court. It would

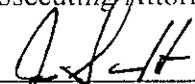
be a reasonable interpretation of the appellate rules for this Court to decide the issue rather than transfer this case to the Court of Appeals for further appellate litigation.

D. CONCLUSION.

For the foregoing reasons, the State urges the Court to either transfer this case to the Court of Appeals pursuant to RAP 4.2(e)(1), or in the alternative, exercise its discretion to interpret the appellate rules and decide this case on the merits.

DATED: Friday, June 24, 2016.

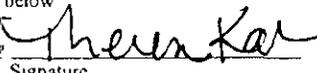
MARK LINDQUIST
Pierce County
Prosecuting Attorney



JAMES SCHACHT
Deputy Prosecuting Attorney
WSB # 17298

Certificate of Service

The undersigned certifies that on this day she delivered by ~~email~~ 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.

6-24-16 
Date Signature

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, June 24, 2016 11:08 AM
To: 'Therese Nicholson-Kahn'
Subject: RE: State v Rouse, No. 92462-7

Received 6/24/2016.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:

http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

From: Therese Nicholson-Kahn [mailto:tnichol@co.pierce.wa.us]
Sent: Friday, June 24, 2016 10:51 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: State v. Rouse, No. 92462-7

Please see attached the State's Brief of Respondent in the below matter:

St. v. Rouse
No. 92462-7
Submitted by: J. Schacht
WSB # 17298

Please call me at 253 798-7426 if you have any questions.

Therese Kahn
Legal Assistant to J. Schacht