

FILED
Court of Appeals
Division II
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JAMES R. VINES,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 16-1-00481-3

BRIEF IN RESPONSE TO STATEMENT OF ADDITIONAL GROUNDS

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Rules

RAP 2.5(a) 2

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether Vines' arguments in his Statement of Additional Grounds are reviewable on direct appeal when they are based upon information or allegations that exist outside the record?

II. STATEMENT OF THE CASE

Vines, in his Statement of Additional Grounds, states that the prosecutor, defense counsel, and trial judge were all aware of certain alleged facts. Vines states what the thoughts and intentions were of the prosecutor, defense counsel, and trial judge. Vines refers to statements of either the prosecutor, defense counsel, or trial judge which are not on record. The CAD narrative was not introduced into the record at trial or through testimony.

III. ARGUMENT

A. VINES' ARGUMENTS IN THE STATEMENT OF ADDITIONAL GROUNDS ARE NOT REVIEWABLE ON DIRECT APPEAL BECAUSE THEY ARE NOT SUPPORTED BY FACTS WITHIN THE RECORD.

"On direct appeal, we cannot consider evidence outside the trial court record." *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995).

An issue is not reviewable on appeal where the record is insufficient. *See State v. Hunter*, 35 Wn. App. 708, 719, 669 P.2d 489 (1983) (citing *State v. Beckstrom*, 17 Wn. App. 372, 376, 563 P.2d 217 (1977) (appellate review

of trial court's bail determination precluded because the judge's statements at the time of the denial of bail were absent from the record).

As a general rule, appellate courts will not consider issues raised for the first time on appeal. RAP 2.5(a). However, a claim of error may be raised for the first time on appeal if it is a "manifest error affecting a constitutional right". RAP 2.5(a)(3); *State v. Scott*, 110 Wash.2d 682, 686-87, 757 P.2d 492 (1988); *State v. Lynn*, 67 Wash.App. 339, 342, 835 P.2d 251 (1992).

State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995).

"If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest." *Id.* at 31 (citing *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993)).

Here, the defense did not raise the issue of a failure to provide discovery favorable to the defendant in any motion to compel or any objection. The assumed facts alluded to by Vines to support his arguments do not exist within the record.

"If a defendant wishes to raise issues on appeal that require evidence or facts not in the existing trial record, the appropriate means of doing so is through a personal restraint petition, which may be filed concurrently with the direct appeal." *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). A personal restraint petition is the more appropriate avenue for this claim. *Id.* at 339.

Therefore, the arguments raised in the Statement of Additional

Grounds are not reviewable on direct appeal.

IV. CONCLUSION

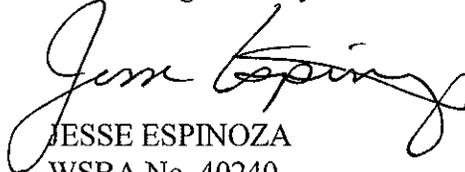
There was no factual basis in the record upon which Vines arguments may be reviewed on direct appeal.

For the foregoing reasons, the Court should affirm the conviction.

Respectfully submitted this 22nd day of March, 2018.

Respectfully submitted,

MARK B. NICHOLS
Prosecuting Attorney

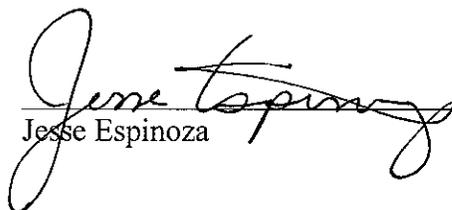
A handwritten signature in black ink, appearing to read "Jesse Espinoza", written in a cursive style.

JESSE ESPINOZA
WSBA No. 40240
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Peter B. Tiller on March 22, 2018.

MARK B. NICHOLS, Prosecutor


Jesse Espinoza

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