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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	NO. 50613-1-II
	)	
vs.	)	STATE'S ANSWER TO
	)	MOTION TO WITHDRAW
CHARLES JOHNSON,	)	PURSUANT TO RAP
	)	18.3(a)(2)
Appellant.	)	
	)	
	)	
	)	

A. IDENTITY OF MOVING PARTY

The State of Washington, respondent, asks for the relief designated in Part B.

B. STATEMENT OF RELIEF SOUGHT

The State agrees this case presents no non-frivolous issues. The State accordingly asks this Court to grant appellate counsel's motion to withdraw and for this Court to dismiss this appeal.

C. ISSUES PRESENTED

Appellate counsel should be permitted to withdraw from a case where there is no basis for a good faith argument on review. Johnson was convicted in the Mason County Superior Court for two counts of bail jumping and one count of possession of a controlled substance, methamphetamine. CP 54. At sentencing, the trial court imposed a DOSA sentence. CP 58-59. Johnson successfully completed inpatient treatment in compliance with the terms of the DOSA, but following his successful discharge from inpatient treatment, Johnson failed to follow the other, remaining terms of the DOSA sentence. CP 25-27; RP 45-46, 54-57, 65-76. Based on these violations, the trial court revoked the DOSA. RP 93-94; CP 6-8.

Issue: Where there are no viable issues that potentially could be raised on review, should appellate counsel be permitted to withdraw from the case?

D. STATEMENT OF THE CASE

The statement of facts presented at pages 2-5 of the appellant's "Motion to Withdraw and Brief in Support" under the caption "Matters in the Record Arguably Supporting Review" accurately summarizes the

proceedings for the purposes of this motion, and the State adopts that summary here, except where clarifications are provided below.

E. ARGUMENT

1. THIS COURT SHOULD PERMIT COUNSEL TO WITHDRAW BECAUSE THERE ARE NO NON-FRIVOLOUS ISSUES TO BE RAISED.

RAP 18.3(a)(2) provides, in relevant part:

> If counsel appointed to represent an indigent defendant [in a criminal case] can find no basis for a good faith argument on review, counsel should file a motion in the appellate court to withdraw as counsel for the indigent. The motion shall identify the issues that could be argued if they had merit and, without argument, include references to the records and citations of authority relevant to the issues.

That procedure has been invoked in this case.

Counsel for the State has reviewed the prosecutor's file, the appellant's brief, the court file, and the transcripts in this case. The potential issue set forth in appellant's brief, as discussed below, demonstrates the lack of merit of this issue under the facts of the case. Accordingly, the State concurs in appellate counsel's motion to withdraw and requests dismissal of the appeal.

2. THE FACTS OF THE CASE DO NOT SUPPORT AN ARGUMENT THAT THE TRIAL COURT ERRED BY ALLOWING THE PROSECUTOR TO ASK QUESTIONS ABOUT WHETHER JOHNSON WAS THEN VOLUNTARILY HOMELESS.

The order from which Johnson appeals was entered by the trial court on May 16, 2017. CP 3. The trial court entered its May 16 order in relation to a notice of violation that was dated October 25, 2016, and was filed with the trial court on November 2, 2016. CP 25-27.

The hearing at which the prosecutor questioned Johnson about whether he was voluntarily homeless occurred in relation to a notice of violation that predated the one that is at issue on appeal, but instead occurred on August 2, 2016, which was about three months before the filing date of the notice of violation at issue in this case. RP 1, 22-23. The August 2, 2016, hearing was held in relation to a notice of violation that was dated July 18, 2016. CP 49-51. After the prosecutor received Johnson's answers to his questions about homelessness, he recommended against revocation of Johnson's DOSA sentence. RP 31-32. The trial court did not revoke Johnson's DOSA sentence based on this report of violation. RP 32-34; CP 36-38. It follows that Johnson suffered no prejudice due to the prosecutor's questions about homelessness, and because these questions occurred in relation to a notice of violation that is

not at issue on appeal, it has no relevance to the instant appeal.

F. CONCLUSION

A review of the record reveals no meritorious appeal issue. Accordingly, the State contends that appellate counsel's motion to withdraw should be granted and that this appeal should be dismissed.

DATED this 20th day of February, 2018, at Shelton, Washington.

Tim Higgs, WSBA #25919
Deputy Prosecuting Attorney
Attorney for Respondent, State of Washington

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Transmittal Information

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