

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

State of Washington  
10/9/2018 12:03 PM

STATE OF WASHINGTON

Respondent,

v.

John Benton Ragland

(your name)

Appellant.

No. 51242-4-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, John Ragland, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The court ~~erred~~ erred when when it failed to properly review the verbatim record for 'same criminal conduct' thereby violating my right to a fair sentencing free from bias.

Please note: Judge Wilson's recall of record was her memory from years before and not the verbatim record. = RP 19-20

Additional Ground 2

The Court erred when it misstated the law or rule of when it believed "because the jury found 'separate and distinct acts'" was a controlling factor in determining 'same Criminal Conduct' and that making a find of 'same criminal conduct' would some how disrupt the jury's finding of 'separate and distinct acts' there for proper consideration was not give in ex to make a finding by the court and violated my right to a fair sentencing free from bias.

If there are additional grounds, a brief summary is attached to this statement.

Date: 10-5-18

Signature: John Ragland

State of Washington V. John Benton Ragland

No. 51242-4-II

Statement of additional ground for review.

I am writing to address 'Same Criminal Conduct'. During my resentencing defense argued for same criminal conduct stating that the convictions for molestation against S.D.R. him contains all the elements required to receive a reduction in points in order to receive a reduced sentence space off of the lesser points. Prior to the sentencing hearing defense also submitted a brief regarding the argument of same criminal conduct. Defense argued that the crimes against S.D.R. were on the same dates, same place, and contains the same criminal element. State did not cement a responding brief but did respond to the defense's argument promptly during the sentencing hearing, by stating that the jury was given an instruction of "must find 'separate and distinct acts' along with a Peterich instruction. Judge Wilson, directly after, states, Megan Winder, rebuttal argument, stated she remembered the evidence from years prior and stated that the jury made a finding of 'separate and distinct acts' and that she wasn't going to disrupt the jury's findings and made her own finding, that there was no 'same criminal conduct'.

The state made no attempt to present a brief in regards to 'same criminal conduct' and did not make any legitimate argument during the hearing. She only stated that the jury found 'separate and distinct acts'. A jury instruction that the jury must find 'separate and distinct acts' is for the purpose of preventing double jeopardy when the jury is given a peterich instruction. Therefore, the only thing Megan Winder did was state the obvious. Defense is well aware that there was a finding of 'separate and distinct acts'. The court is required to review the record from trial to make it findings, without the jury's findings of 'separate and distinct acts', there wouldn't be any argument for 'same criminal conduct'. Each act must be reviewed to determine if the convictions contained the elements required to make findings, also if there wasn't a finding of 'separate and distinct acts', because of the Peterich instruction, we would be addressing an issue of double jeopardy not 'same criminal conduct'. Therefore, the state, Megan Winder, made no legitimate argument in regards to presenting a finding of 'same criminal conduct'.

In addition to the state's failure to make a legitimate argument the judge, Mary Sue Wilson, failed to make her findings of 'same criminal conduct', based off of the record from the trial, as required, she simply stated that she had recalled/remembered the evidence from years earlier. Judge Wilson didn't even attempt to pretend that she had reviewed the record, she seemed more worried about disrupting the jury's findings of 'separate and distinct acts' that she recalled from memory. As long as the judge's findings are based off of factual evidence there isn't any reason to believe that a finding of 'same criminal conduct' and this seems to be. Wilson's only reason for making a finding of no 'same criminal conduct' and for not reviewing the record. It is clear that Judge Wilson's findings is based from belief and not facts. Even if, upon review of the record, a finding of 'same criminal conduct' somehow disrupted the jury's findings that is a whole separate issue in itself and cannot be a basis for refusing to

acknowledge the record from trial and to automatically deny 'same criminal conduct'. Judge Wilson's findings are a clear abuse of direction. As a test for relevance I ask this court to consider the following:

Does an instruction of 'separate and distinct acts' (separate acts), and the presumption that the jury made a finding of separate acts, as the state, stated during the sentencing hearing, address the elements required to determine 'same criminal conduct'. Such as a person, time, place and whether said crimes opposed to the same criminal intent or if one act furthered the other; was the jury informed of the elements required to make a finding of 'same criminal conduct'. Was the jury informed in any way that their finding of a separate act may somehow affect the finding of 'same criminal conduct' in any way? Can same criminal conduct be found despite a finding of separate acts? Yes. As previously stated the 'separate acts' down by the jury, just as the state would have if not for the Peterich instruction to the jury to make the determination, are what need to be assessed to determine whether or not they possess the elements required to make a finding of 'same criminal conduct'. Can a finding of 'same criminal conduct' to strip the jury's findings of 'separate and distinct acts'? No. Can a review of the record disrupt the jury's findings? Yes. Only if upon review of the trial record, it is found that the information or evidence used to determine the jury's findings was somehow false or insufficient. This Judge Wilson's fear or belief that the findings of 'same criminal conduct' may disrupt the jury's finding a legitimate reason for not addressing any of the elements required to make a finding of 'same criminal conduct'? No.

Therefore, can the state's statement that the jury was instructed that they must find 'separate and distinct acts' and Judge Wilson's memory that the jury made said findings and that she was not going to disrupt that finding, be considered a legitimate consideration of the record? No. Because first of a judge Wilson made it clear that not only was her findings based off of her memory and not the verbatim record of the trial but also that her findings were determined because she did not want to disrupt the jury's findings of 'separate and distinct acts'. Also, the determination of 'same criminal conduct' can be made only by the sentencing judge during the sentencing hearing and only if and when the defense makes an argument for 'same criminal conduct'. The finding is the sole responsibility of the sentencing judge and cannot be delegated to the jury or anyone else in any way as Judge Wilson did by stating that the jury made a finding of 'separate and distinct acts' and that she wasn't going to disrupt their finding, therefore, she made a finding that there was no 'same criminal conduct', as if the jury had already decided the outcome without any consideration of the element required to make such a finding.

- A. Judge Wilson violated my right to a fair and unbiased sentence when she delegated her responsibilities onto the jury as I stated above.
- B. Judge Wilson violated my right to a fair and unbiased sentencing when she made a finding that there was no 'same criminal conduct' without any review of the verbatim record from the trial.
- C. Judge Wilson violated my right to a fair and unbiased sentencing when she made her findings that there was no 'same criminal conduct' for not wanting to disrupt the jury's findings of 'separate and distinct acts'. Because should Wilson did not review the verbatim record from the trial in any way and relied on only her memory of the jury's presumed finding of 'separate and distinct acts' to determine her findings, she showed a complete abuse of discretion thus violating my rights to a fair and unbiased sentencing.
- D. Judge Wilson stated that the jury found 'separate and distinct acts' and was not going to disrupt/disturb the jury's findings she showed that she believed, whether discreetly or in discreetly the jury's findings could be disturbed by a judge's findings that 'same criminal

conduct' existed and also that the jury's findings of 'separate and disliked acts' was somehow a controlling factor in determining 'same criminal conduct'. A jury's findings of 'separate and distinct acts' cannot be disrupted solely because a judge makes a finding of 'same criminal conduct' and only whether said crimes contains same person, place, time, criminal intent or if one crime was in furtherance of another can be considered a controlling factors in determining 'same criminal conduct' after or when reviewing the verbatim record of the trial. Therefore, not only was just wasn't findings a complete abuse of discretion but also was a misrepresentation of law or rule of law and violated my right to fair sentencing.

I Had my rights not been violated and had Judge Wilson reviewed the verbatim record as required she would have found that all the crimes or allegations contained all of the elements required to make a finding of 'same criminal conduct' just as the charging documents show and that the state and testimonies provided at trial cannot dictate otherwise or two rebut defenses argument of 'same criminal conduct'. Thus I would have received a lower offender score and would have received a lesser sentence. Also I could have had my convictions vacated/reversed if upon review of the record, while determining whether or not the alleged crimes or allegations contained the elements required to make a finding of 'same criminal conduct', it had been discovered that the jury's findings of 'separate and distinct acts' were based off of false or insufficient evidence therefore disrupting jury's findings as feared by Judge Wilson.

I am asking this court to strongly consider my statement of additional grounds for review/argument. To allow these errors to go uncorrected would be to set a dangerous precedent, by allowing the courts to make up their own rules rather than following the rules provided, or rules set by the law. By considering the state argument and the court's findings based from the state argument as a legitimate consideration of the record this course would be allowing flyby statements to determine a finding as the state has in this present case. It also allows a court to make a finding of 'same criminal conduct' based off of the crime or person committing the crime rather than whether or not each separate crime contained developments to make such a finding. This court has never allowed flyby statements, for example, when making references to case ball one must show how it pertains to the case you argue. A simple referencing is not adequate and cannot be considered a legitimate argument. If the state, in a case without a Peterich instruction, argued that a previous judge found sufficient evidence for each separate acts that argument would be insufficient to compact consideration for 'same criminal conduct' because not only was the trial record not considered but also the state failed to show how it addresses elements required to determine the findings or hard has anything at all to do with 'same criminal conduct'. To find in favor of the state in this precedent case would be to invite such arguments without legitimate review of the record from trial. I ask this court to find in favor of this appellate. I asked this court to reverse the sentencing court's findings for violating this appellant's rights to a fair and unbiased sentencing.

I asked this court to remand this case back to the sentencing court with the instruction that the court must review the record from trial in order to make a proper and legitimate finding and that each crime must be assessed to determine whether or not each crime contains the element required to make a finding of 'same criminal conduct'. I also ask this court to remand with instruction that the review of the trial record and any findings, sentencing, be made by a judge that has not participated in any prior findings in order to ensure any findings or sentencing that is based only on the trial record and information provided by both the state and the defense and not with

someone believes should happen based on prior experiences that may bias once per session and decisions. I apologize for not being able to reference exact location of each recollection of the record. My access to anything, is very limited at this moment even this statement of additional grounds for review was sent out to ensure proper spelling because I don't have access to dictionary. Therefore, you may do or view this statement of additional grounds for review as you please but I hope you will give it a sincere consideration.

Thank you for your time and consideration,

**NIELSEN, BROMAN & KOCH P.L.L.C.**

**October 09, 2018 - 12:03 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51242-4  
**Appellate Court Case Title:** State of Washington, Respondent v John Benton Ragland, Appellant  
**Superior Court Case Number:** 13-1-01628-5

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