WASHINGTON STATE COURT OF APPEALS DIVISION TWO

FILED
COURT OF APPEALS
DIVISION II
2018 JUL 13 PM 12:59
STATE OF WASHINGTON
BY DEPUTY

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| STATE OF WASHINGTON<br>RESPONDENT,<br>V.<br>ISAAC MAURICE NETTLES<br>APPELLANT. | COA NO. 51766-3-2<br>PIERCE COUNTY SUPERIOR COURT<br>CAUSE NO. 15-1-03225-1<br><br>STATEMENT OF ADDITIONAL GROUNDS |

I, ISAAC MAURICE NETTLES, WAIVE THE RIGHT TO RECIEVE AND REVIEW THE OPENING BRIEF WHICH MY COURT APPOINTED ATTORNEY IS SET TO PREPARE. PURSUANT TO RAP 10.10(C), APPELLANT INFORMS THIS COURT OF THE NATURE AND OCCURANCE OF ERROR(S), AS FOLLOWS:

ADDITIONAL GROUND ONE

APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE PRESENT, AT THE MARCH 21, 2018 HEARING.

A CRIMINAL DEFENDANT HAS A CONSTITUTIONAL RIGHT TO BE PRESENT DERIVES FROM THE FEDERAL AND STATE CONSTITUTIONS AND COURT RULE. WSC ART. 1, §22 ("IN CRIMINAL PROCEEDINGS THE ACCUSED SHALL HAVE THE RIGHT TO APPEAR AND DEFEND IN PERSON, OR BY COUNSEL"); US CONST. AMEND. XIV ("NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW"); CR 3.4. THE CONSTITUTIONAL RIGHT TO BE PRESENT EXTENDS TO ANY STAGE OF THE CRIMINAL PROCEEDINGS WHERE THE DEFENDANT'S "SUBSTANTIAL RIGHTS MIGHT BE AFFECTED." STATE V. WALKER, 13 WN. APP. 545 (1975); SEE ALSO SNYDER V. COMMONWEALTH OF MASSACHUSETTS, 291 U.S. 97 (1934)(DEFENDANT MUST "BE PRESENT IN HIS OWN

PERSON WHENEVER HIS PRESENCE HAS A RELATION, REASONABLY SUBSTANTIAL, TO THE FULLNESS OF HIS OPPORTUNITY TO DEFEND AGAINST THE CHARGE").

## ADDITIONAL GROUND TWO

APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO THE ASSISTANCE OF COUNSEL, AT THE MARCH 21, 2018 HEARING.

A CRIMINAL DEFENDANT ALSO HAS A CONSTITUTIONAL RIGHT TO THE ASSISTANCE OF COUNSEL AT EVERY "CRITICAL STAGE" OF THE PROCEEDINGS. U.S. CONST. AMEND. VI ("IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT.... TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE"); WSC ART. 1, § 22; STATE V. REDDRICK, 166 WN.2d 898 (2009). A CRITICAL STAGE IS "ONE IN WHICH A DEFENDANT'S RIGHTS MAY BE LOST, DEFENSES WAIVED, PRIVILEGES CLAIMED OR WAIVED, OR IN WHICH THE OUTCOME OF THE CASE IS OTHERWISE SUBSTANTIALLY AFFECTED." STATE V. REDDRICK, 166 WN.2d at 910 (2009)(INTERNAL QUOTATION MARKS AND CITATION OMITTED).

## ADDITIONAL GROUND THREE

APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO PUBLIC TRIAL[HEARING], AT THE MARCH 21, 2018 HEARING.

A CRIMINAL DEFENDANT HAS A RIGHT TO A PUBLIC TRIAL AS GUARANTEED BY OUR STATE AND FEDERAL CONSTITUTIONS. U.S. CONST. AMEND. VI; WSC ART. 1, § 10 (GUARANTEES THAT JUSTICE IN ALL CASES SHALL BE ADMINISTERED OPENLY); WSC ART. 1, § 22 (PROVIDING "THE ACCUSED SHALL HAVE THE RIGHT.... TO HAVE A SPEEDY PUBLIC TRIAL").

OUR STATES SUPREME COURT HAS HELD THAT THE USUAL

PRESUMPTION OF PREJUDICE APPLICABLE TO COURTROOM CLOSURE CLAIMS RAISED ON DIRECT APPEAL DOES NOT APPLY IN THE PRP CONTEXT. IN RE COGGIN, 182 WN.2d 115 (2014). APPELLANT IS ON DIRECT APPEAL, THUS PREJUDICE IS PRESUMED.

THE MARCH 21, 2018 ORDER WAS RULED IN CHAMBERS, OUTSIDE THE PRESENCE OF THE PUBLIC, COURTROOM, PROSECUTION, OR DEFENSE. ITS CLEARLY ESTABLISHED BETWEEN THE FOUR CORNERS OF THE ORDER, THAT NONE OF THE AFOREMENTIONED WERE PRESENT FOR ISSUANCE OF THIS ORDER. FURTHER, THE ORDER CROSSES OUT "IN OPEN COURT", SUPPORTING THE CLAIM THAT THE "HEARING" WAS CLOSED.

I. THE WASHINGTON SUPREME COURT HAS ESTABLISHED THAT A TRIAL COURT MAY CLOSE THE COURTROOM SO LONG AS IT CONSIDERS THE FIVE CRITERIA OUTLINED IN STATE V. BONE-CLUB, 128 WN.2d 254 (1995). THE FIVE FACTORS ARE (1) THE PROPONENT OF CLOSURE MUST MAKE A SHOWING OF COMPELLING NEED, (2) ANY PERSON PRESENT WHEN THE MOTION IS MADE MUST BE GIVEN AN OPPORTUNITY TO OBJECT, (3) THE MEANS OF CURTAILING OPEN ACCESS MUST BE THE LEAST RESTRICTIVE MEANS AVAILABLE FOR PROTECTING THE THREATENED INTERESTS, (4) THE COURT MUST WEIGH THE COMPETING INTERESTS OF THE PUBLIC AND THE CLOSURE, AND (5) THE ORDER MUST BE NO BROADER IN APPLICATION OR DURATION THAN NECESSARY.

THE INSTANT CASE IS SIMILAR TO STATE V. FRAWLEY, 181 WN.2d 452 (2014), WHERE IT WAS CONCLUDED THAT CONDUCTING PROCEEDINGS IN CHAMBERS SO THAT THE PUBLIC IS EXCLUDED CONSTITUTES A CLOSURE GIVEN THAT THE TRIAL COURT DID NOT CONDUCT A BONE-CLUB ANALYSIS, SO CLOSURE WAS NOT

JUSTIFIED. STATE V. SMITH, 181 WN.2d 508 (2013). SEE ALSO: PRESLEY V. GEORGIA, 558 U.S. 209 (2010).

II. WHETHER A DEFENDANT'S PUBLIC TRIAL RIGHT HAS BEEN VIOLATED IS A QUESTION OF LAW THAT IS RULED DE NOVO. STATE V. WISE, 176 WN. 2d 1 (2001)(QUOTING STATE V. EASTERLING, 157 WN.2d 167 (2006). TO ANSWER THAT QUESTION, THE COURT ENGAGES IN A THREE PART INQUIRY: "(1) DOES THE PROCEEDING AT ISSUE IMPLICATE THE PUBLIC TRIAL RIGHT? (2) IF SO, WAS THE PROCEEDING CLOSED? AND (3) IF SO, WAS THE CLOSURE JUSTIFIED?" STATE V. SMITH, 181 WN.2d 508 (2013)(CITING STATE V. SUBLETT, 176 WN.2d 58 (2012)(MADSEN, C.J., CONCURRING).

THE IN CHAMBER RULING WAS DEFINATELY A CLOSURE, AND THE BONE-CLUB ANALYSIS WAS NOT CONDUCTED; SATISFYING 2 AND 3. TO DETERMINE WHETHER THE PUBLIC TRIAL RIGHT ATTACHES TO A PARTICULAR PROCEEDING, WE APPLY THE "EXPERIENCE AND LOGIC TEST". STATE V. SMITH, 181 WN.2d 508 (2013). IF BOTH PRONGS ARE SATISFIED, THE PUBLIC TRIAL RIGHT ATTACHES. IN RE DET. OF MORGAN, 180 WN.2d 312 (2013). THE GUIDING PRINCIPLE IS "'WHETHER OPENNESS WILL "ENHANCE [] BOTH THE BASIC FAIRNESS OF THE CRIMINAL TRIAL AND THE APPEARANCE OF FAIRNESS SO ESSENTIAL TO PUBLIC CONFIDENCE IN THE SYSTEM"." STATE V. SMITH, 181 WN.2d 508 (2013). IT WOULD BE ABSURD TO STATE WITH CONVICTION, THAT THE 1st PART HAS NOT BEEN MET, OF THE 3 PART INQUIRY.

## ADDITIONAL GROUND FOUR

THE MARCH 21, 2018 ORDER STATED "DEFENDANT'S MOTION TO CORRECT JUDGEMENT AND SENTENCE IS DENIED BECAUSE THERE IS NOTHING

TO CORRECT." THIS BALD ASSERTION IS COMPLETELY INCORRECT. IT'S CLEARLY ESTABLISHED WITHIN THE FOUR CORNERS OF THE JUDGEMENT AND SENTENCE THAT APPELLANT RECIEVED A SENTENCE OF 81 MONTHS (CONCEDED BY THE HONORABLE EDMUND MURPHY, IN THE ORDER); ALTHOUGH THE STANDARD SENTENCE RANGE IS 21-27, THUS THE 'RELEVANT STATUTORY MAXIMUM' IS 27 MONTHS.

APPELLANT'S EXCEPTIONAL SENTENCE WAS IMPOSED IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL. THIS IS A QUESTION OF LAW THAT THE APPELLATE COURT REVIEWS DE NOVO. STATE V. SALTZ, 137 WN. APP. 576 (2007).

FURTHER, THE TRIAL COURT UNCONSTITUTIONALLY APPLIED CHAPTER 9.94A RCW TO THE FACTS OF THIS CASE. THE INTERPRETATION OF THE SENTENCING REFORM ACT OF 1981 (CH. 9.94A RCW) IS A QUESTION OF LAW THAT IS RULED DE NOVO. STATE V. CALDWELL, 2015 Wash. App. LEXIS 347 (2015).

THE STATE DID NOT SATISIFY RCW 9.94A.537(1) BECAUSE THE STATE DID NOT GIVE APPELLANT PRE-TRIAL NOTICE OF ITS INTENTION TO SEEK AN EXCEPTIONAL SENTENCE. STATE V. VANCE, NO. 55364-0-I (2008) (CITING STATE V. WOMAC, 160 WN. 2d 643 (2007)). ACCORDINGLY, THE TRIAL COURT UNCONSTITUTIONALLY APPLIED RCW 9.94A.537(1) TO THIS CASE, BY IMPOSING AN EXCEPTIONAL SENTENCE IN WHICH "THE NOTICE SHALL STATE AGGRAVATING CIRCUMSTANCES UPON WHICH THE REQUESTED SENTENCE WAS BASED."

THE TRIAL COURT ALSO UNCONSTITUTIONALLY APPLIED RCW 9.94A.525, AS IT'S WELL ESTABLISHED THAT APPELLANT'S RELEVANT STATUTORY MAXIMUM IS 27 MONTHS. IT IS OF NO MATTER THAT THE MAXIMUM PENALTY IS 10 YEARS. SEE: APPRENDI V.

NEW JERSEY, 530 U.S. 466(2000). IN UNITED STATES V. BOOKER, 543 U.S. 220(2005), THE COURT HELD THAT THE SIXTH AMENDMENT AS CONSTRUED IN BLAKELY V. WASHINGTON, 542 U.S. 296(2004) DOES APPLY TO THE SENTENCING GUIDELINES. FURTHER, THE WASHINGTON STATE SUPREME COURT CLARIFIED IN STATE V. EVANS, 154 WN.2d 438(2005) THAT THE STATUTORY MAXIMUM IS THE TOP END OF THE STANDARD RANGE SENTENCE. THE MAXIMUM TERM FOR THE OFFENSE THAT THE LEGISLATURE AUTHORIZED FOR A SPECIFIC CRIME. THIS DETERMINATION HAS ALSO BEEN UPHELD IN: STATE V. HUGHES, 74147-6(2004); STATE V. ALVARADO, 81069-9(2008).

FURTHER, THE TRIAL COURT UNCONSTITUTIONALLY APPLIED RCW 9.94A.533(G), AND RCW 9.94A.701(9) TO THE FACTS OF THIS CASE; FAILING TO REDUCE THE TERM OF CONFINEMENT AND COMMUNITY CUSTODY "SO THAT THE TOTAL CONFINEMENT TIME DOES NOT EXCEED THE STATUTORY MAXIMUM." THIS IS A CLEAR AND CONVINCING MISAPPLICATION AND MISINTERPRETATION OF THE LEGISLATURE'S INTENT IN THE STATUES. SEE ALSO RCW 9.94A.599 (ALSO UNCONSTITUTIONALLY APPLIED).

## GROUND FIVE

APPELLANT ENTERED INTO A PLEA AGREEMENT, IN WHICH THE CONVICTION IS BASED. THE IMPOSITION OF THE SENTENCE ITSELF IS WHAT'S BEING COLLATERALLY ATTACKED, NOT THE PLEA. THUS APPELLANT IS SEEKING SPECIFIC PERFORMANCE OF THE STANDARD RANGE SENTENCE. SEE: STATE V. BARBER, 170 WN.2d 854(2011).

## RELIEF SOUGHT

APPELLANT RESPECTFULLY REQUESTS THIS COURT ENTER AN ORDER DIRECTING THE PIERCE COUNTY SUPERIOR COURT TO: 1.) HOLD A HEARING ON THE MERITS, OF WHICH APPELLANT AND COUNSEL HAVE A RIGHT TO BE PRESENT; 2.) ENTER AN ORDER DIRECTING THE PIERCE COUNTY SUPERIOR COURT TO RESENTENCE APPELLANT WITHIN THE STANDARD RANGE, IN ACCORDANCE WITH STATUE(S); 3.) OR ANY OTHER RELIEF DEEMED APPROPRIATE.

SIGNED AND DATED THIS 9TH DAY OF JULY, 2018.

ISAAC MAURICE NETTLES

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, ISAAC NETTLES, declare and say:

That on the 19TH day of JULY, 2018, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 51766-3-2:

STATEMENT OF ADDITIONAL GROUNDS;

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addressed to the following:

COURT OF APPEALS DIVISION TWO
ATTN: DAVID PONZOHA
950 BROADWAY, SUITE #300
TACOMA, WA. 98402

PIERCE COUNTY PROSECUTOR
ATTN: MICHELLE HYER
930 TACOMA AVE. SO., RM#946
TACOMA, WA. 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 19TH day of JULY, 2018, in the City of Aberdeen, County of Grays Harbor, State of Washington.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____ DEPUTY

Signature

ISAAC NETTLES
Print Name

DOC 392254 UNIT G
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520