

FILED  
Court of Appeals  
Division II  
State of Washington  
2/7/2019 1:25 PM

NO. 51973-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

SHANE VANDERVORT,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Keith Harper, Judge

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BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

VANDERVORT'S APPEAL IS TIMELY BECAUSE THIS COURT GRANTED AN EXTENSION OF TIME TO FILE THE NOTICE OF APPEAL.

In response to Vandervort's challenge to the improper imposition of Legal Financial Obligation (LFOs), the State claims it should be rejected because his notice of appeal was filed late. Brief of Respondent (BOR) at 1-3. What the State fails to mention, however, is that on July 12, 2018, this Court granted Vandervort's unchallenged motion to extend time to file his notice of appeal. **"A RULING BY COMMISSIONER BEARSE"** DATED July 12, 2018.<sup>1</sup>

The State also claims the issues raised by Vandervort are beyond the scope of the notice of appeal. Even if this is technically correct, a point Vandervort does not concede, this Court still has the authority and discretion to address his claims:

The purpose of a notice of appeal is to notify the adverse party that an appeal is intended. See RAP 5.3(a). Even though the notice is jurisdictional, "where the deficiency in the notice is one of form only, and not of substance, the court is not necessarily deprived of jurisdiction." In re Saltis, 25 Wn. App. 214, 219, 607 P.2d 316, aff'd, 94 Wn.2d 889, 621 P.2d 716 (1980). Generally, issues are not considered on appeal unless raised by an assignment of error. State v. Fortun, 94 Wn.2d 754, 756, 626 P.2d 504 (1981). However, a "technical violation of the rules will not ordinarily bar appellate review, where

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<sup>1</sup> A copy of the ruling is attached as an appendix.

justice is to be served by such review.... [W]here the nature of the challenge is perfectly clear, and the challenged finding is set forth in the appellate brief, [we] will consider the merits of the challenge.” State v. Williams, 96 Wn.2d 215, 220, 634 P.2d 868 (1981), quoting Daughtry v. Jet Aeration Co., 91 Wn.2d 704, 710, 592 P.2d 631 (1979).

State v. Olson, 74 Wn. App. 126, 128, 872 P.2d 64, 66 (1994), aff'd, 126 Wash. 2d 315, 893 P.2d 629 (1995) (emphasis added).

Vandervort opening brief meets the criteria set forth under Olson. It assigns error to the imposition of a second DNA collection fee and to the criminal filing fee. BOA at 1. The statement of the case, argument and conclusion sections makes “perfectly clear” the nature of his challenges in this appeal. BOA at 2-6.

In light of Commissioner Bearse’s July 12, 2018 ruling, the State’s claim of an untimely appeal is clearly wrong and the associated arguments by the State are irrelevant. And because Vandervort’s brief makes “perfectly clear” the nature of his challenges on appeal, this Court should consider the issues raised.

B. CONCLUSION

Based on the reasoning set forth in Vandervort's opening brief, reasoning that is uncontested by the State, this Court should order the trial court to strike the improperly imposed discretionary LFOs from his judgment and sentence.

DATED this 7<sup>th</sup> day of February 2019.

Respectfully submitted,

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# Washington State Court of Appeals Division Two

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General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

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July 12, 2018

Shane I. Vandervort  
DOC #884549  
Washington Correction Center  
PO Box 900  
Shelton, WA 98584

Michael Edward Haas  
Jefferson County Prosecuting Attorney  
1820 Jefferson St  
PO Box 1220  
Port Townsend, WA 98368-6951

CASE #: 51973-9-II  
State of Washington, Respondent v. Shane I. Vandervort, Appellant

Counsel:

On the above date, this court entered the following notation ruling:

### **A RULING BY COMMISSIONER BEARSE:**

Shane Vandervort filed a late notice of appeal. He moves for permission to file a late appeal. RAP 18.8(b). He states that his attorney told him there was no timeline for filing an appeal because his appeal rights were not discussed in "court [on] April 13, 2018." He adds that he asked to appeal "in a timely manner." This court requested the State to respond to the motion but no response was filed. In light of Vandervort's representations, this court grants his extension motion and accepts his notice of appeal. See *State v. Kells*, 134 Wn.2d 309, 314-15, 949 P.2d 818 (1998) (a criminal appeal may not be dismissed as untimely unless the State shows that the defendant voluntarily, knowingly, and intelligently abandoned his appeal).

Very truly yours,

Derek M. Byrne  
Court Clerk

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

**February 07, 2019 - 1:25 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51973-9  
**Appellate Court Case Title:** State of Washington, Respondent v. Shane I. Vandervort, Appellant  
**Superior Court Case Number:** 17-1-00052-9

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**A copy of the uploaded files will be sent to:**

- jkennedy@co.jefferson.wa.us
- nielsene@nwattorney.net

**Comments:**

copy mailed to: Shane Vandervort 884549 C/O Randall Tremain Community Corrections Officer PO Box 1009  
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