

FILED  
Court of Appeals  
Division II  
State of Washington  
5/8/2020 12:50 PM

NO. 52047-8-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

JAMES ROBERT VINES,

Appellant.

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

The Honorable Eric Rohrer, Judge

AMENDED MOTION TO WITHDRAW AND BRIEF REFERRING  
TO MATTERS IN THE RECORD WHICH  
MIGHT ARGUABLY SUPPORT REVIEW

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Peter B. Tiller, WSBA No. 20835  
Of Attorneys for Appellant

The Tiller Law Firm  
P. O. Box 58  
Centralia, WA 98531  
(360) 736-9301

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**I. IDENTITY OF MOVING PARTY**

Peter B. Tiller, attorney for Appellant, moves the Court for the relief designated in Part II of this motion.

**II. STATEMENT OF RELIEF SOUGHT**

Counsel moves the Court for leave to withdraw as attorney for Appellant pursuant to RAP 15.2(h) and 18.3(a).

**III. FACTS RELEVANT TO MOTION**

Undersigned counsel was appointed to represent appellant in his appeal from the January 19, 2018 ruling of the Clallam County Superior Court denying Mr. Vines' motion for production of exculpatory and mitigating evidence. Attachment A. In reviewing the case for issues to raise on appeal, appellate counsel did the following:

- (a) read and reviewed all of the clerk's papers and exhibits;
- (b) researched all pertinent legal issues and conferred with another attorney concerning legal and factual bases for appellate review;
- (c) wrote to appellant, including a letter dated May 4, 2020, explaining the *Anders* procedure and appellant's right to file a pro se supplemental brief.

Counsel believes that this appeal presents no viable issues to raise before the Court. Counsel has set forth the possible errors and the references in the record to support these possible errors. The argument that follows sets forth the additional facts that are incorporated herein by reference.

#### **IV. GROUNDS FOR RELIEF**

RAP 15.2(h) allows counsel to withdraw on appeal if counsel can find no basis for a good faith argument for review. In accordance with the due process requirements of *Anders v. California*, 386 U.S. 738, 18 L.Ed. 493, 83 S.Ct. 1396(1967), *State v. Harston*, 133 Wn.2d 534, 946 P.2d 397(1997), *State v. Theobald*, 78 Wn. 2d 184, 470 P.2d 188 (1970), and *State v. Pollard*, 66 Wn.App. 779, 825 P.2d 336, 834 P.2d 51, review denied, 120 Wn.2d 115 (1992), counsel seeks to withdraw as appellate counsel and allow James Vines to proceed *pro se* in the event he so desires. Counsel submits the following amended brief to satisfy his obligations under *Anders* and *Theobald*, RAP 15.2(h), and RAP 18.3(a).

#### **V. BRIEF REFERRING TO MATTERS IN THE RECORD THAT MIGHT ARGUABLY SUPPORT REVIEW**

**A. POTENTIAL ASSIGNMENT OF ERROR**

1. The trial court erred in ruling that Mr. Vines' motion for production of exculpatory evidence was not properly before the court.

**B. ISSUE PERTAINING TO POTENTIAL ASSIGNMENT OF ERROR**

1. Mr. Vines could argue that the court did not comply with RAP 7.2 and prematurely denied the motion without hearing the motion on the merits and without making a determination whether the production of exculpatory evidence would change the decision being reviewed.

**VI. STATEMENT OF THE CASE**

**A. Procedural history:**

James Vines was convicted by jury with attempting to elude a pursuing police vehicle in Clallam County Superior Court *State v. Vines*, No. 50517-7-II, consolidated with No. 52297-7-II, October 23, 2018, 5 Wash.App.2d 1049, 2018 WL 5279097, at \*1.

Mr. Vines appealed from the conviction and was represented in his direct appeal by undersigned counsel. While the direct appeal was pending, Mr. Vines filed a pro se motion for production of exculpatory evidence and mitigating evidence on December 18, 2017. Supplemental Clerk's Papers (SCP) 81. In the motion, Mr. Vines made a blanket request for non-specific exculpatory and mitigation evidence, physical evidence in the possession of prosecutors relevant to guilt or innocence, all documents or records regarding accuracy or reliability of scientific or expert testing, the criminal record of witnesses called by the prosecution, evidence that might undermine the credibility of state witnesses, and statements of witnesses not called by the prosecution. SCP 81-82.

The motion was heard by Judge Eric Rohrer on January 19, 2018. According to the Clerk's Minutes, Mr. Vines appeared by telephone from Stafford Creek Corrections Center. SCP 78. The State argued that the motion was not properly before the court because the case was pending at that time in the Court of Appeals. SCP 78. The court entered a minute order on that date stating:

The defendant's Motion for Production of Exculpatory Evidence filed December 18, 2017, is not properly before this court as the case was accepted for review in the Court of Appeals after the trial was concluded.

SCP 80.

Mr. Vines filed notice of appeal on or about February 16, 2018, and the case was assigned cause number 52047-8-II. SCP 72. The notice of appeal was later filed in the Clallam County Superior Court on March 21, 2018. SCP 72. The appeal in cause number 52047-8-II was stayed on April 11, 2018.

In the meantime, this Court heard the direct appeal of his conviction and ruled in an unpublished opinion issued October 23, 2018 that there was insufficient evidence to support Mr. Vines' conviction for attempting to elude because the State failed to produce any evidence that the police vehicle was equipped with sirens and reversed his conviction and remanded with instructions for the trial court to vacate Mr. Vines' conviction and enter a conviction for the lesser included misdemeanor offense of refusal to cooperate with an officer and resentence Mr. Vines on the offense of refusal to cooperate with an officer. *Vines*, 2018 WL 5279097, at \*11.

Following the January 19, 2018 hearing and prior to the resolution of the direct appeal, Mr. Vines obtained the CAD logs pertaining to his case through a public records request filed January 22, 2018, which he then cited in subsequent motions. SCP 76. The issue of exculpatory evidence was addressed in subsequent filings by Mr. Vines, who raised numerous claims based on his allegation that the State failed to provide the CAD log, and that the incident could not have occurred within the ninety-seven second time period denoted in the CAD. CP 41-44. In a CrR 7.8 motion to dismiss he filed on April 2, 2018, Mr. Vines asserted that the ninety-seven second time period in the CAD logs is contradicted by the testimony of the officers, and the events “are clearly beyond the 97-second window according to the CAD log.” CP 42. Mr. Vines also filed a Statement of Additional Grounds in his direct appeal in which he raised substantially the same issues, arguing that the prosecutor failed to turn over materially exculpatory evidence under *Brady* by failing to provide the CAD log, and that his attorney provided ineffective assistance of counsel by not obtaining

readily available evidence to support these claims before the trial court.

*Vines*, 2018 WL 5279097, at \*9.

This Court addressed the claims raised regarding an alleged failure to provide exculpatory evidence contained in Mr. Vines' SAG, and his argument that trial counsel was ineffective by failing to introduce the CAD log into evidence at trial and to use the CAD to cross examine the deputies regarding the time-line in which the State alleged the events occurred. *Vines*, 2018 WL 5279097, at \*8-9. This Court found that the CAD log shows that the deputies identified Mr. Vines' vehicle at the site of the crime at time of the crime, took Mr. Vines into custody ninety-seven seconds later, that the CAD showed that the full incident lasted only ninety-seven seconds, and that it was not inconsistent with the deputies' testimony. *Vines*, 2018 WL 5279097, at \*9. This Court also found no *Brady* violation and found that trial counsel was not ineffective. *Vines*, 2018 WL 5279097, at \*9.

This Court lifted the previously-imposed stay on January 13, 2020.

## VII. POTENTIAL ARGUMENT

### A. **MR. VINES COULD ARGUE THAT THE TRIAL COURT ERRED IN FAILING TO COMPLY WITH RAP 7.2(e)**

The trial court determined that motion for production of exculpatory evidence was not properly before the court because the case was accepted for review in the Court of Appeals. SCP 80.

Here, Mr. Vines could argue that the trial court did not comply with RAP 7.2. Under RAP 7.2(e),<sup>1</sup> the trial court has authority to hear post-judgment motions after a case has been appealed. However, once the Court accepts review, a trial court cannot modify a decision before this court unless it first receives permission to do so. RAP 7.2(e).

RAP 7.2(e) explicitly requires the superior court to obtain permission from the appellate court before making any determination

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<sup>1</sup>RAP 7.2 (e) states in relevant part:

Post judgment Motions and Actions to Modify Decision. The trial court has authority to hear and determine (1) post judgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The post judgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by

that would “change a decision then being reviewed by the appellate court.” The proper sequence of events under RAP 7.2(e) is for the party to seek relief with the trial court and, if the relief would change the decision on review, then the party must seek permission from the appellate court for the order to be entered.

Under RAP 7.2(e) a trial court has authority to make a decision on a post-judgment motion within its authority but can only enter an order that changes the ruling under review after receiving permission from the appellate court. This Court had the original conviction and judgment and sentence under review at the time Mr. Vines filed his motion for production of evidence. Nevertheless, the trial court did not hear the motion on the merits, citing acceptance of review by the Court of Appeals. SCP 78, 80. Mr. Vines could argue that if the court had heard the motion and evidence produced constituted newly-discovered evidence or led to discovery of a violation of *Brady*, the trial court's decision would alter that judgment and therefore RAP 7.2(e) would apply. Mr. Vines could further argue that because RAP 7.2(e) was applicable, the trial court failed to follow the rule by not

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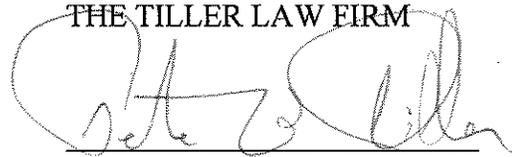
motion.

hearing the motion on the merits and then seeking permission from the Court of Appeals to enter the order.

**VIII. CONCLUSION**

Counsel respectfully moves this Court for permission to withdraw as attorney of record and to permit Mr. Vines to proceed pro se.

Dated: May 8, 2020.

THE TILLER LAW FIRM  
  
PETER B. TILLER - WSBA #20835  
Attorney for James Vines

CERTIFICATE OF SERVICE

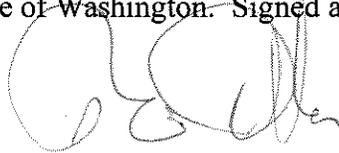
The undersigned certifies that on May 8, 2020, that this Amended Appellant's *Anders* Brief was sent via JIS Link, to Mr. Derek Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and was sent by first class mail, postage pre-paid to the following:

Jesse Espinoza  
Clallam County Prosecutor's Office  
223 East 4th Street, Suite 11  
Port Angeles, WA 98362-3000  
jespinoza@co.clallam.wa.us

Mr. Derek Byrne  
Clerk of the Court  
Court of Appeals  
950 Broadway, Ste.300  
Tacoma, WA 98402-4454

James R. Vines  
PO Box 1365  
Port Angeles, WA 98362

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on May 8, 2020.



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PETER B. TILLER

# ATTACHMENT A

**THE TILLER LAW FIRM**  
ATTORNEYS AT LAW

LAUREL L. TILLER  
PETER B. TILLER  
RACHAEL M. TILLER  
KEVIN T. NELSON

CORNER N. ROCK & W. PINE  
POST OFFICE BOX-58  
CENTRALIA, WASHINGTON 98531-0058  
TELEPHONE 360/736-9301  
FACSIMILE 360/736-5828

May 4, 2020

James R. Vines  
PO Box 1365  
Port Angeles, WA 98362

RE: *State of Washington vs. James R. Vines*  
*Court of Appeals No: 52047-8-II*  
*Clallam County Superior Court No. 16-1-00481-3*

Dear Mr. Vines:

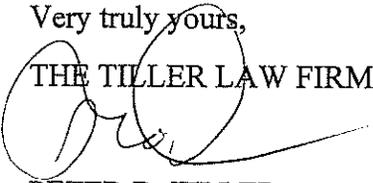
I am sorry to tell you that after reviewing your appeal of the courts ruling dismissing your motion for production of exculpatory evidence and without hearing the motion on the merits, I will file in the next few days another *Anders* brief, in which I raised a potential issue and ask the Court to independently review the issue to see if it is meritorious. An *Anders* brief is filed in cases which the appellant's counsel is unable to find any non-frivolous issues that can be raised on appeal. A copy of the *Anders* brief is enclosed for your review. In conjunction with the *Anders* brief, I have requested leave to withdraw from the case because I was unable to find any non-frivolous issues in your case.

The good news is that you can file a Supplemental Pro Se Brief to the Court of Appeals. In that Supplemental Pro Se Brief you may raise any issues in your case that you believe the Court of Appeals should hear. If you need a copy of the CrR 7.8 hearing transcripts, please let me know as soon as possible and I will ask the Court to forward a set of transcripts to you for use in a Supplemental Brief.

If you have any question, please contact me.

Very truly yours,

THE TILLER LAW FIRM

  
PETER B. TILLER

PBT/ke  
Enclosures

**THE TILLER LAW FIRM**

**May 08, 2020 - 12:50 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
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**Appellate Court Case Title:** State of Washington, Respondent v. James Robert Vines, Appellant  
**Superior Court Case Number:** 16-1-00481-3

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Centralia, WA, 98531  
Phone: (360) 736-9301

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