

FILED
Court of Appeals
Division II
State of Washington
NO. 52047-8-II
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JAMES ROBERT VINES,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 16-1-00481-3

BRIEF OF RESPONDENT/RESPONSE TO MOTION OF
APPELLANT'S COUNSEL TO WITHDRAW

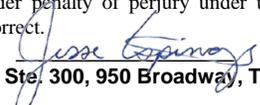
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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED June 15, 2020, Port Angeles, WA 
Original filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402
Copy to counsel listed at left

I. COUNTERSTATEMENT OF THE ISSUES

Whether counsel has correctly determined that there are no non-frivolous issues on appeal?

II. STATEMENT OF THE CASE

The State accepts the statement of the case presented in counsel's brief, as supplemented in the argument portion of this brief.

III. ARGUMENT

COUNSEL HAS CORRECTLY DETERMINED THAT THERE ARE NO NON-FRIVOLOUS ISSUES ON APPEAL.

Counsel for Vines raises one potential issue in the *Anders* motion of whether the Clallam County Superior Court incorrectly transferred Vines' motion to vacate to the Court of Appeals contrary to CrR 7.8. Counsel correctly notes that this potential claim lacked merit.

When a court-appointed attorney files a motion to withdraw on the ground that there is no basis for a good faith argument on review, pursuant to *State v. Theobald*, 78 Wn.2d 184, 470 P.2d 188 (1970) and *Anders v. California*, 386 U.S. 738, 18 L. Ed. 2d 493, 87 S. Ct. 1396 (1967), the motion to withdraw must:

(1) be accompanied by a brief referring to anything in the record that might arguably support the appeal. (2) A copy of counsel's brief should be furnished the indigent and (3) time allowed him to raise any points that he chooses; (4) the court -- not counsel -- then proceeds, after a full examination of all

the proceedings, to decide whether the case is wholly frivolous.

Theobald, 78 Wn.2d at 185, quoting *Anders*, 386 U.S. at 744.

Counsel has complied with this procedure. The State concurs with counsel's assessment of the potential issues to raise on appeal as discussed below. Further, the Defendant has not filed a *pro se* brief. The Court should therefore grant counsel's motion to withdraw and affirm the ruling of the court below.

1. The possible argument that the Superior Court failed to comply with RAP 7.2(e) lacks merit because Vines' motion was not of the type that the Superior Court was authorized to act upon under RAP 7.2(e).

Counsel suggests that Vines could possibly argue that the trial court failed to comply with RAP 7.2(e) by failing to seek permission from the Court of Appeals to enter an order on the motion. This claim is without merit because this procedure only applies to motions or actions that the Superior Court is authorized to act upon under RAP 7.2(e) or as determined by the Court of Appeals under RAP 8.3.

“After review is accepted by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in rule 8.3.” RAP 7.2(a).

The trial court has authority to hear and determine

(1) postjudgment 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 postjudgment 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 motion.

RAP 7.2(e).

Postjudgement motions authorized by the criminal rules fall under CrR 7.4 (Arrest of Judgment), CrR 7.5 (New Trial), and 7.8 (Relief from Judgment or Order). Postjudgment motions authorized under the civil rules fall under CR 59 (New Trial, Reconsideration, and Amendment of Judgments), CR 60 (Relief from Judgment or Order), and CR 62 (Stay of Proceedings to Enforce a Judgment). Collateral attacks on the judgment are authorized under RCW 10.73.090 and a stay of judgment pending appeal under RCW 9.95.062.

Here, Vines' discovery motion (motion for production of exculpatory evidence) does not fall under any of the postjudgment motions authorized under RAP 7.2(e). Vines' motion was also not an action to change or modify a previous decision by the trial court. Therefore, the trial court was not authorized to act upon Vines' motion. Accordingly, the procedure under RAP

7.2(e) does not apply and the Superior Court did not err by not seeking permission from the Court of Appeals to enter any kind of order on the motion.

Rather, after review was accepted, the Court of Appeals had jurisdiction over all matters related to the subject matter in controversy on review. *See Pike v. Pike*, 24 Wash.2d 735, 739, 167 P.2d 401 (1946) (citing *Irving v. Irving*, 66 P. 123, 124, 26 Wash. 122, 124–25 (1901) (“It is the rule in this state that after appeal has been perfected, the trial court loses all jurisdiction of the matters concerned in the case except those provided for in the law relating to appeals.”) (other citations omitted).

This is necessary or a party would be able to file motions in the trial court to continually litigate issues being advanced on appeal while the Court of Appeals is reviewing the same matter.

On appeal, Vines argued that the State violated its *Brady* obligations by not turning over what he claimed to be exculpatory evidence, in particular, the CAD log which documented law enforcement communications during the incident. Then, after appeal was accepted for review, Vines filed a motion in Superior Court for the production of exculpatory evidence. Thus, Vines’ motion in Superior Court was related to same subject matter of controversy that he raised on appeal. In fact, the purpose of the motion was to attempt to discover possible exculpatory evidence and have it included in the record for

purposes of the appeal. Supp. CP 82. Therefore, the Court of Appeals had sole jurisdiction over such matters and Vines' motion was not properly before the Superior Court.

For this reason, the possible argument the Superior Court failed to comply with RAP 7.2(e) lacks merit. Vines has not filed a pro se Statement of Additional Grounds for Review. Therefore, this Court should affirm the trial court's decision.

IV. CONCLUSION

For the foregoing reasons, counsel should be permitted to withdraw and this Court should affirm the Superior Court's ruling declining to act on the postjudgment motion for production of exculpatory evidence.

DATED June 15, 2020.

Respectfully submitted,

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Transmittal Information

Filed with Court: Court of Appeals Division II
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- 520478_Briefs_20200615130117D2832201_9050.pdf
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- Kelder@tillerlaw.com
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Comments:

State's response to appellant counsel's motion to withdraw as counsel.

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