

FILED
Court of Appeals
Division II
State of Washington
7/25/2019 9:02 AM

NO. 53158-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant

vs.

JAMES SHRIVER, Defendant
NICOLE HUGHES, Respondent and Real Party in Interest
JOHN CHAMBERS, Respondent and Real Party in Interest

APPELLANT'S OPENING BRIEF

RYAN JURVAKAINEN
Prosecuting Attorney
AILA R. WALLACE/WSBA #46898
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
KELSO, WA 98626
(360) 577-3080

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR..... 1
II. STATEMENT OF THE CASE..... 1
III. ARGUMENT..... 2
IV. CONCLUSION 3

TABLE OF AUTHORITIES

Washington State Cases

<i>State v. Berty</i> , 136 Wn. App. 74, 84, 147 P.3d 1004 (2006).....	2
<i>State v. Gassman</i> , 175 Wn.2d 208, 210, 283 P.3d 1113 (2012)	2
<i>State v. S.H.</i> , 102 Wn. App. 468, 474, 8 P.3d 1058 (2000)	2

I. ASSIGNMENT OF ERROR

The trial court erred when it issued sanctions against Deputy Prosecuting Attorney Nicole Hughes and defense attorney John Chambers because there was no finding or inference of bad faith or conduct tantamount to bad faith.

II. STATEMENT OF THE CASE

On December 20, 2018, the case of *State of Washington v. John H. Shriver* was on the usual docket for a change of plea. The State, represented on the docket by Sean Brittain, filed an amended information charging the defendant with attempted possession of a controlled substance. Nicole Hughes was the DPA of record on the case. The defense, represented by John Chambers, filed a Statement of Defendant on Plea of Guilty form (plea form), which had been signed by both attorneys and the defendant. The plea form incorrectly stated the elements of the offense charged, listing the elements for possession of a controlled substance rather than *attempted* possession of a controlled substance. This was due to an oversight by the parties.

When the case was called, at approximately 9:15 am, Judge Warning noticed the error and set the case to the end of the docket so the parties could write in the correct language. RP 3. When the case was recalled, at approximately 10:08 am, the plea went through with no issues. RP 4–6.

At 1:23 pm that day, Judge Warning filed an “Order Assessing Terms,” imposing a \$50 sanction on both John Chambers and Nicole Hughes. CP 8. No reason was given for the assessment.

III. ARGUMENT

Decisions regarding sanctions are reviewed for abuse of discretion. *State v. Gassman*, 175 Wn.2d 208, 210, 283 P.3d 1113 (2012). A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or reasons. *Id.*; *State v. Berty*, 136 Wn. App. 74, 84, 147 P.3d 1004 (2006).

A court may impose sanctions under its inherent constitutional authority or pursuant to statute or court rule. *Gassman*, 175 Wn.2d at 210; *State v. Jordan*, 146 Wn. App. 395, 401, 190 P.3d 516 (2008). Trial courts have the inherent authority to manage their calendars and proceedings. *Id.* However, a sanction imposed under a trial court’s inherent authority must be “based on a finding of conduct that was at least tantamount to bad faith.” *Id.* at 211, *citing State v. S.H.*, 102 Wn. App. 468, 474, 8 P.3d 1058 (2000) (internal citations omitted). This finding can either be expressly made by the court or inferred from an examination of the record. *Id.*

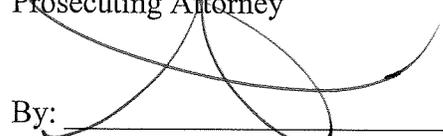
In this case, the trial court did not make an express finding of bad faith and there is no indication in the record that either attorney acted in bad faith. All that occurred here was a mistake as to the elements of the crime in the Statement of Defendant on Plea of Guilty. Therefore, the court abused its discretion in issuing sanctions against the attorneys.

IV. CONCLUSION

This Court should reverse the sanction order entered against Nicole Hughes and John Chambers as there is no indication that they acted in bad faith.

Respectfully submitted this 23 day of July, 2019.

Ryan Jurvakainen
Prosecuting Attorney

By: 

AILA R. WALLACE
WSBA #46898
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

Julie Dalton certifies that opposing counsel was served electronically via the Division II portal:

John Chambers
Cowlitz County Office of Public Defense
1801 First Ave, Ste 1A
Longview, WA 98632
chambersj@co.cowlitz.wa.us

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington, on the 25th day of July, 2019.



JULIE DALTON

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

July 25, 2019 - 9:02 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53158-5
Appellate Court Case Title: State of Washington, Appellant v. James Henry Shriver, Respondent
Superior Court Case Number: 18-1-01489-9

The following documents have been uploaded:

- 531585_Briefs_20190725090146D2405145_1402.pdf

This File Contains:

Briefs - Appellants

The Original File Name was State of WA vs James Shriver COA 53158-5-II Appellants Opening Brief.pdf

Comments:

Sender Name: Julie Dalton - Email: dalton.julie@co.cowlitz.wa.us

Filing on Behalf of: Aila Rose Wallace - Email: WallaceA@co.cowlitz.wa.us (Alternate Email: appeals@co.cowlitz.wa.us)

Note: The Filing Id is 20190725090146D2405145