

FILED
Court of Appeals
Division II
State of Washington
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No. 53531-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Abdur Rashid Khalif

(formerly known as Calvin Rouse),

Appellant.

Pierce County Superior Court Cause No. 02-1-02929-1

The Honorable Judge Jack Nevin

Appellant's Opening Brief

Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

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ISSUE AND ASSIGNMENTS OF ERROR

1. The trial court erred by failing to hold a hearing or rule on Mr. Khalif's Motion for Order to Correct Judgment and Sentence
2. The trial court erred by failing to take "further action" on Mr. Khalif's motion to correct his judgment and sentence, as directed by the Court of Appeals.

ISSUE: Did the trial judge err by failing to hold a hearing or rule on Mr. Khalif's Motion for Order to Correct Judgment and Sentence?

INTRODUCTION AND SUMMARY OF ARGUMENT

Abdur Rashid Khalif asked the Pierce County Superior Court to amend his judgment and sentence to reflect his legal name. The court attempted to transfer his motion to the Court of Appeals. The appellate court rejected the transfer and returned the matter to the superior court “for further action.” The superior court took no action. When Mr. Khalif petitioned for a Writ of Mandamus, the superior court summarily denied the petition.

Mr. Khalif is entitled to have his motion addressed on its merits. The Court of Appeals should reverse the trial court’s decision and remand for a hearing to determine if the judgment and sentence should be amended to reflect Mr. Khalif’s legal name.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

The state of New Jersey granted Calvin Rouse permission to change his name to Abdur Rashid Khalif. CP 19-20. The New Jersey Court’s order became final in November of 1997. CP 19-20.

In 2003, Pierce County charged Mr. Khalif with second-degree murder. CP 1. The county charged Mr. Khalif using his birth name (Calvin Rouse), and did not acknowledge the name change ordered by the New

Jersey Superior Court. CP 1-2. Mr. Khalif pled guilty and was sentenced to 340 months in prison. CP 8.

In September of 2018, Mr. Khalif filed a motion asking the Pierce County Superior Court to amend the judgment and sentence to reflect his legal name.¹ CP 16-20. He pointed out that the name change had been ordered in 1997, several years before charges were filed. CP 16-20.

Mr. Khalif accompanied his motion with a “Notice of Motion Docket” addressed to the clerk. CP 15. The notice indicated that his motion “shall be presented to the Court without oral argument” on September 28, 2018. CP 15. He served a copy of his motion and the notice upon the prosecuting attorney. CP 21.

Instead of addressing Mr. Khalif’s motion, Pierce County Superior Court Judge Jack Nevin entered an order transferring the matter to the Court of Appeals as a time-barred Personal Restraint Petition. CP 22-23. The Court of Appeals rejected the transfer. CP 24.

In its Order Rejecting Transfer, the Court of Appeals returned Mr. Khalif’s case to the superior court “for further action.” CP 25. The superior court took no action on the appellate court’s order.

¹ He included with his motion copies of his New Jersey paperwork. CP 19-20. The New Jersey court had authorized him to use the name “Abdur Rashid Khalif,” and it included in its Amended Judgment the following language: “ADJUDGED that the Applicant assume the name so applied for from and after (date) November 17, 1997.” CP 20.

Four months after entry of the Court of Appeals' order, Mr. Khalif filed a Petition for Writ of Mandamus.² CP 26-30. He asked the court to issue a writ directing the superior court clerk to "set his motion on court calendar for a factual hearing showing why relief should not be granted."³ CP 27. Mr. Khalif argued that "[t]he Clerk failed in his duty to give notice to Plaintiff, set a hearing and or correct Judgment and Sentence." CP 28.

In materials accompanying his petition, Mr. Khalif asked the court to either set a hearing on his motion or to consider it without argument. CP 31-38. Instead, the court provided Mr. Khalif a copy of the prosecuting attorney's response and notified him that "[t]he Court is in the process of preparing an Order which will be filed in the Court file and a copy of the Order will be sent to you by mail." CP 66. Mr. Khalif asked for an opportunity to respond to the State's pleading or to present argument, but his request arrived after the court had already entered its order.⁴ CP 69-71.

The court denied Mr. Khalif's petition, and he timely appealed. CP 67, 72.

² Faced with the superior court's inaction, Mr. Khalif had asked the Court of Appeals to recall its mandate. He also asked the appellate court to issue a writ of mandamus. *See* Court of Appeals No. 52771-5-II.

³ In the alternative, he asked the court to "direct Respondent to correct his Judgment and Sentence to reflect his legal name." CP 27.

⁴ After receiving the court's letter, Mr. Khalif wrote that he'd "like to send a reply to the State's response or have an opportunity for a telephone conference before the court file[s] an order." CP 70.

ARGUMENT

THE TRIAL COURT SHOULD CONSIDER AND RULE ON MR. KHALIF’S MOTION TO CORRECT HIS JUDGMENT AND SENTENCE.

Abdur Rashid Khalif would like his judgment and sentence to reflect his legal name. CP 16-20. He submitted a motion outlining his request to the Pierce County Superior Court. CP 16-20. He attached evidence showing that New Jersey authorized his name change years before Pierce County charged him – under his birth name—with the crime for which he is currently imprisoned. CP 19-20.

When the Superior Court attempted to transfer the motion, the Court of Appeals rejected the transfer and returned the matter “to the superior court for further action.” CP 25. After the Superior Court failed to take “further action,” Mr. Khalif filed pleadings aimed at forcing the clerk to docket the matter for the court’s consideration.⁵ CP 26-30.

The Court of Appeals should direct Pierce County Superior Court to address Mr. Khalif’s motion on its merits.⁶ Under the Rules of Appellate Procedure, the Court of Appeals “may reverse, affirm, or

⁵ He also asked the appellate courts for help. *See* Court of Appeals No. 52771-5-II.

⁶ Although not cited in Mr. Khalif’s motion, RCW 10.40.050 specifically addresses the use of a defendant’s “true name.” Under the statute, “[i]f [the defendant] alleges that another name is his or her true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him or her by that name, referring also to the name by which he or she is indicted or informed against.” RCW 10.40.050.

modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require.” RAP 12.2.

Mr. Khalif is incarcerated. He has made every effort to have his motion heard and decided. He filed and served the motion along with a docket notice, he sought help from the Court of Appeals,⁷ and, when the superior court still failed to act, he filed pleadings aimed at securing a hearing and a decision on the merits.

He should not be required to do more.

The “interests of justice” require the superior court to decide the merits of Mr. Khalif’s motion. RAP 12.2. The Court of Appeals should remand the case with instructions to schedule a hearing. At that hearing, the lower court should determine if Mr. Khalif’s judgment and sentence should be corrected to add his legal name to the caption.

CONCLUSION

Abdur Rashid Khalif was convicted and sentenced under his birth name (Calvin Rouse) rather than his legal name. He would like his judgment and sentence to reflect his legal name. He filed an appropriate motion with supporting evidence and has repeatedly sought a decision from the superior court.

⁷ See Court of Appeals No. 52771-5-II.

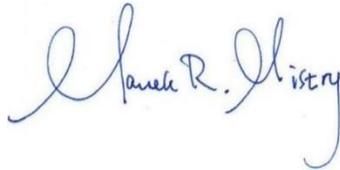
The Court of Appeals should exercise its authority under RAP 12.2
and remand the case with instructions to decide the issue on its merits.

Respectfully submitted on September 9, 2019,

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Abdur Rashid Khalif, DOC #821206
FKA Calvin Rouse
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Pierce County Prosecuting Attorney
kristie.barham@piercecountywa.gov
PCpatcecf@piercecountywa.gov

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Signed at Olympia, Washington on September 9, 2019.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

September 09, 2019 - 9:02 AM

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