

FILED
Court of Appeals
Division II
State of Washington
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No. 53790-7-II

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

STATE OF WASHINGTON, Respondent

v.

FORREST AMOS, Appellant

APPEAL FROM THE SUPERIOR COURT
OF LEWIS COUNTY
THE HONORABLE JAMES LAWLER

APPELLANT'S REPLY TO MOTION TO WITHDRAW

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I. IDENTITY OF MOVING PARTY

Marie Trombley, appointed counsel for the appellant, Forrest Amos, respectfully requests the relief designated in Part II.

II. STATEMENT OF RELIEF REQUESTED

Appointed counsel requests permission to withdraw pursuant to RAP 15.2(i) and RAP 18.3(a)(2).

III. FACTS RELEVANT TO MOTION

The facts presented in the motion to withdraw are incorporated by reference.

The trial court entered findings of fact and conclusions of law from the CrR 7.8 hearing, the subject of Mr. Amos's appeal. CP 120-122. Mr. Amos was represented by counsel at that hearing. CP 120.

The trial court entered Conclusion of Law 2.4:

Amos provided no authority that showed his sentence was illegal therefore Amos did not meet his burden pursuant to CrR 7.8(b)(1) to show the court made a mistake, which Amos sustained actual and substantial prejudice from, requiring resentencing on this matter.

CP 121.

The court denied Mr. Amos's CrR 7.8 motion. CP 122.

IV. GROUND FOR RELIEF

The grounds for the motion are incorporated by reference from the original motion.

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

The matters in the record that might arguably support review are incorporated from the previously filed motion. The following is added in reply to the State's answer.

Did the trial court abuse its discretion in denying Mr. Amos's CrR 7.8 motion?

VI. STATEMENT OF THE CASE

The facts as presented in the original motion are incorporated by reference.

A. POTENTIAL ARGUMENTS ON APPEAL

Did The Trial Court Abuse Its Discretion When It Denied Mr. Amos's CrR 7.8 Motion?

Criminal Rule 7.8 allows the trial court to vacate or amend a final judgment on certain grounds, including mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, a void judgment, or any other reason justifying relief from the operation of the judgment. CrR 7.8(a), (b)(1)-(5). A party may appeal, as a matter of right, from an order granting or denying a

motion for new trial or amendment of the judgment. RAP 2.2(a)(9),(10).

CrR 7.8 provides the criteria when a trial court must transfer a motion to the Court of Appeals, when authorized to retain a motion, and the mandatory procedures the trial court must follow. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted. CrR 7.8(c)(3).

Here the court followed the prescribed procedure and retained the motion because it was not time-barred and the court determined that either Mr. Amos had made a substantial showing that he was entitled to relief, or resolution of the motion required factual hearing.

Where a trial court weighs evidence following a CrR 7.8 hearing, the appellate court reviews the findings of fact for substantial evidence, and its conclusions of law de novo. *State v. Schwab*, 141 Wn. App. 85, 91, 167 P.3d 1225 (2007). Substantial evidence is a sufficient quantity of evidence to persuade a rational, fair-minded person that a finding is true. *State v. Schultz*, 170 Wn.2d 746, 753, 248 P.3d 424 (2011).

As the State points out, a trial court's ruling on a CrR 7.8(b) motion will be reversed if it is manifestly unreasonable or based on untenable grounds or reasons. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Here, the trial court entered the following findings of fact:

- 1.1 Amos was convicted of four pairs of charges: each pair consisting of one count of Forgery and one Count of Criminal Impersonation in the First Degree, for a total of four counts of Forgery and four documents of Criminal Impersonation in the First Degree. Each pair of charges represents a different victim.
 - 1.2 Amos' argument regarding the five-year statutory maximum would be applicable if there was only one count of Forgery.
 - 1.3 Amos' reading of the statutes, that there is a five-year statutory maximum sentence when applying the multiple offense policy (free crimes aggravator) regardless of how many counts of Forgery a person is convicted of is a novel reading of the statutes.
 - 1.4 The applicable statutes are RCW 9.94A.010 (purpose of SRA), RCW 9.94A.535 (departure from guidelines), RCW 9.94A.589 (consecutive or concurrent sentences), RCW 9A.20.021 (maximum sentences for crimes), and RCW 9A.60.020 (forgery).
- CP 120-121.

The court entered conclusions of law:

Based on these findings the Court draws the following conclusions:

- 2.1 The statutes, RCW 9.94A.535 and 9.94A.589 are not ambiguous,
- 2.2 The requirement regarding “limitations of the sections” found in RCW 9.94A.535 refer to allowing an exceptional sentence only upon specific circumstances, either found by a jury under section RCW 9.94A.535(3) or found by a judge under section RCW 9.94A.535(2).
- 2.3 Once the conditions are met pursuant to RCW 9.94A.535(2) or (3) a judge has the discretion to sentence a defendant up to the statutory maximum sentence, per count, and run each count consecutively pursuant to RCW 9.94A.010, RCW 9.94A.589, and RCW 9A.20.021.
- 2.4 Amos provided no authority that showed his sentence was illegal, therefore , Amos did not meet his burden pursuant to a CrR 7.8(b)(1) to show the court made a mistake, which Amos sustained actual and substantial prejudice from, requiring resentencing on this matter.

CP 121.

- 3.1. Amos’ CrR 7.8 motion is denied.

CP 122.

Mr. Amos may wish to argue the sentencing court abused its discretion in denying his CrR 7.8 motion. He may also wish to argue the court erred in its ruling and he sustained actual and substantial prejudice, requiring resentencing.

VII. CONCLUSION

For the reasons stated above, counsel for the appellant asks that the motion to withdraw as appointed counsel be granted and that appellant be allowed to proceed pro se if he chooses to do so.

Dated this 28th day of January 2020.

Respectfully submitted,

A handwritten signature in black ink that reads "Marie Trombley". The signature is written in a cursive style.

Marie Trombley
WSBA 41410
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on January 28, 2020, I mailed to the following US Postal Service first-class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Reply to Motion to the following: Lewis County Prosecuting Attorney at appeals@lewiscountywa.gov and sara.beigh@lewiscountywa.gov and to Forrest Amos/DOC#809903, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326.

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Transmittal Information

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Superior Court Case Number: 16-1-00399-5

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- 537907_Briefs_20200128160412D2743335_5470.pdf
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