

FILED

AUG 17 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29274-6-III

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

STATE OF WASHINGTON,
Plaintiff/Respondent,

vs.

MARION SIMONE CLEARY,
Defendant/Appellant.

APPEAL FROM THE GRANT COUNTY SUPERIOR COURT
HONORABLE JOHN M. ANTOSZ

REPLY BRIEF OF APPELLANT

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A. RESTATEMENT OF APPELLANT'S ISSUE

During the jury selection process in this case, did the trial court err by failing to inquire whether civil rights had been restored to a potential juror with a prior felony conviction?¹

B. RESPONDENT'S ANSWER TO APPELLANT'S ISSUE

Can petitioner establish that an unqualified juror sat on the jury that convicted her and, if so, whether she received an unfair or biased trial?²

C. RESTATEMENT OF FACTS PERTINENT TO ISSUE

The relevant facts are set forth in Brief of Appellant at pp. 1-3.

D. ARGUMENT IN REPLY TO STATE'S RESPONSE

The State argues that Ms. Cleary waived the right to challenge the qualification of juror No. 7, relying on State v. Clark, 34 Wash. 485, 492, 76 P. 98 (1904). Respondent's Brief, p. 4-7. However, this Court has noted that "Clark comments on a long-defunct statute regarding juror qualifications, which expressly provided that an appeal of a jury verdict on the grounds of jury qualifications can only be made on the specific challenge for cause made below. Clark, 34 Wash. at 492, 76 P. 98 (citing § 5940, PIERCE'S CODE)." State v. Boiko 138 Wn. App. 256, 266, 156

¹ Brief of Appellant, p. 1.

P.3d 934 (2007). Clark, therefore, is irrelevant to the challenge being made by Ms. Cleary herein. *See Id.*

Appellant additionally incorporates by reference the arguments made in her Brief of Appellant, pp. 3–7.

E. CONCLUSION

It is Grant County’s apparent judicial policy to disregard the statutory directives governing jury selection, and in particular, to fail to preliminarily determine by written declaration signed under penalty of perjury whether a person summoned for jury duty who has previously been convicted of a felony has had his or her civil rights restored. For the reasons stated here and in the initial brief of appellant, the convictions must be vacated and the matter remanded for retrial.

DATED: August 15, 2011


s/SUSAN MARIE GASCH, WSBA #16485

² Respondent’s Brief, p. 1.

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,) Grant County No. 09-1-00267-6
Plaintiff/Respondent,) Court of Appeals No. 29274-6-III
vs.)
)
MARION SIMONE CLEARY,) PROOF OF SERVICE (RAP 18.5(b))
Defendant/Appellant.)

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on August 15, 2011, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of reply brief of appellant:

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