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Jan 10, 2012
Court of Appeals
Division III
State of Washington

NO. 30200-8-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

RICHARD WILLIAM JOYNER JR.,

Defendant/Appellant.

APPELLANT'S BRIEF,

Dennis W. Morgan WSBA #5286
Attorney for Appellant
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ASSIGNMENT OF ERROR

1. The State failed to establish that Richard William Joyner Jr. is the same person as the Richard Joyner convicted under Snohomish County Superior Court Cause No. 00-1-00430-8. (CP 86).

ISSUE RELATING TO ASSIGNMENT OF ERROR

1. Based upon the State's failure to establish that Mr. Joyner is the same person who was convicted in Snohomish County on April 25, 2001, should his offender score be reduced to zero (0) and resentencing occur?

STATEMENT OF CASE

Mr. Joyner was born on July 19, 1982. He is currently incarcerated in the State Penitentiary at Walla Walla. An Information was filed on August 27, 2010 charging him with custodial assault. (CP 4; RP 2, l. 4).

At his preliminary appearance on September 13, 2010, again at his arraignment on September 27, 2010, and throughout the proceedings Mr. Joyner asserted that he is being unlawfully held and that he is not the Richard Joyner who was convicted under Snohomish County Superior Court Cause No. 00-1-00430-8. (RP 4, ll. 6-10; RP 6, l. 18 to RP 7, l. 15; RP 13,

l. 3 to RP 15, l. 20; RP 23, ll. 19-23; RP 93, ll. 6-16; RP 94, ll. 5-6; RP 95, ll. 18-20).

Mr. Joyner was referred for a mental evaluation. He was determined competent to stand trial. A competency order was entered on June 20, 2011. (RP 11, ll. 4-6; RP 21, ll. 16-19; CP 9; CP 11; CP 56).

During the course of the proceedings Mr. Joyner wrote a number of letters to the Court. The letters continued to address the issue of mistaken identity. (CP 17; CP 44; CP 59).

A CrR 3.5 hearing was conducted on August 1, 2011. The Court determined that statements made by Mr. Joyner, admitting to the assault, were admissible in evidence. (RP 32, ll. 14-17; RP 33, ll. 6-8; RP 45, ll. 18-19).

The State played a video of the events underlying the charged custodial assault. The video reflects Mr. Joyner coming up behind Corrections Officer Webber and hitting him in the back and neck with a sharpened toothbrush. Mr. Joyner testified at trial. He asserted that he had “no choice” but to commit the assault due to the fact that he had not been released from custody. (RP 49, l.25 to RP 50, l.2; RP 50, ll. 9-16; RP 55, l. 3 to RP 56, l. 14; RP 62, ll. 1-22; RP 65, l. 8 to RP 67, l. 3; RP 95, ll. 1-12).

The trial court denied Mr. Joyner’s request to bring evidence before the jury concerning his claimed unlawful incarceration. This included

the documentation Mr. Joyner tried to present to the Court on prior occasions. (RP 77, 1.1 to RP 92, 1.7).

A jury determined that Mr. Joyner was guilty of custodial assault. Judgment and Sentence was entered on August 29, 2011. (CP 80; CP 98).

At his sentencing hearing Mr. Joyner again raised the issue of mistaken identity and unlawful incarceration. The trial court did not take any additional steps to evaluate Mr. Joyner's claims. The Court relied upon a certified copy of the Judgment and Sentence from Snohomish County in calculating Mr. Joyner's offender score. (RP 8/29/11, 1.1 at *et.seq.*)

The trial court sentenced Mr. Joyner to six (6) months to run consecutive to the Snohomish County case. This is based upon an offender score of two (2). Mr. Joyner filed his Notice of Appeal on August 30, 2011. (CP 98; CP 113).

SUMMARY OF ARGUMENT

The trial court, the prosecuting attorney and defense counsel all failed in their duty to Mr. Joyner to determine whether or not he was the individual convicted under Snohomish County Cause No. 00-1-00430-8.

ARGUMENT

Mr. Joyner asserts that he was in custody in California at the time of the alleged offense under Snohomish County Cause No. 00-1-00430-8. (CP 19).

Mr. Joyner is six feet one and a half inches tall (6'1½") and weighs 225 pounds. He claims that the individual convicted under the Snohomish County case is five foot eight inches tall (5' 8") and 175 pounds. (RP 7, ll. 13-15; CP 45; CP 62).

The State presented a certified copy of the Snohomish County Judgment and Sentence at the sentencing hearing.

The record is devoid of any action taken by the prosecuting attorney to otherwise identify Mr. Joyner.

The record is devoid of any evidence that the trial court made an independent determination that Mr. Joyner was the same person as the person convicted under the Snohomish County case.

Defense counsel did not make any presentation on behalf of Mr. Joyner in connection with his claims of mistaken identity and unlawful incarceration.

The best evidence of a prior conviction is a certified copy of the judgment. *State v. Chandler*, 158 Wn. App. 1, 5, 240 P.3d 159 (2010). ..."[W]hen criminal liability depends on the accused's being the person to whom a document pertains...the State must do more than authenticate and admit the document; it must also show beyond a rea-

sonable doubt' that the person named thereon is the same person on trial.'" *Huber*[*State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005)] at 502 (quoting *State v. Kelly*, 52 Wn. 2d 676, 678, 328 P.2d 362 (1958)... .This showing cannot be based on the documents; it must be based on independent evidence that "the person named therein is the defendant in the present action," which includes booking photographs or fingerprints, eyewitness identification, or distinctive personal information. *Id.* at 502-03.

State v. Ceja-Santos, 163 Wn. App. 780, 784 (2011).

The prosecuting attorney did not present any independent evidence to counter Mr. Joyner's claims, other than the fact that he is currently incarcerated at the State Penitentiary in Walla Walla.

Mr. Joyner contends that the fact of incarceration, in and of itself, is insufficient to meet the burden set out in the *Huber* and *Ceja-Santos* cases.

A comparison of Mr. Joyner's handwriting, based upon the various letters submitted to the Court, with the signature on the Snohomish County Judgment and Sentence clearly indicates that there is a serious question concerning identity.

The trial court did not conduct any independent analysis of the handwriting. The trial court has authority to do so. *See: State v. Haisilp*, 77 Wn. 2d 838, 841, 467 P. 2d 284, 174 A.L.R. 1300, 36 Am. Jur. 2d, Forgery §§ 24, 25 (1970).

In the absence of any independent evaluation by either the trial court or the State, Mr. Joyner contends that the State failed to carry its burden of proof as to his identity.

CONCLUSION

RCW 9.94A.525(22) is inapplicable to Mr. Joyner's case. The State does not get a second opportunity to provide the appropriate documentation to the Court. *See: State v. Wilson*, 170 Wn. 2d 682, 244 P. 3d 950 (2010).

The sentencing court acts without statutory authority under the Sentencing Reform Act of 1981 when it imposes a sentence based on a miscalculated offender score.

Personal Restraint of Johnson, 131 Wn. 2d 558, 568, 933 P. 2d 1019 (1997).

Mr. Joyner's offender score was miscalculated due to the State's failure to properly identify him as the individual who was convicted in Snohomish County.

Mr. Joyner is entitled to be resentenced with an offender score of zero (0).

DATED this 10th day of January, 2012.

Respectfully submitted,

s/ Dennis W. Morgan

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	WALLA WALLA COUNTY
Plaintiff,)	NO. 10 1 00249 6
Respondent,)	
)	CERTIFICATE OF
)	SERVICE
v.)	
)	
RICHARD WILLIAM JOYNER JR.,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 10th day of January, 2012, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

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