

NO. 33443-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

ELUTERIO MORFIN-CAMACHO,

Appellant.

FILED
Mar 02, 2016
Court of Appeals
Division III
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR FRANKLIN COUNTY

The Honorable Carrie L. Runge, Judge

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ARGUMENTS IN REPLY</u>	1
1. UNDER <u>STATE V. SILVA</u> , MORFIN-CAMACHO'S WAIVER OF COUNSEL WAS INVALID AND REVERSAL IS REQUIRED.	1
2. THIS COURT SHOULD ACCEPT THE STATE'S CONCESSION OF ERROR AND REMAND FOR RESENTENCING.	2
B. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Silva
108 Wn. App. 536, 31 P.3d 729 (2001)..... 1, 2

A. ARGUMENTS IN REPLY

1. UNDER STATE V. SILVA,¹ MORFIN-CAMACHO'S WAIVER OF COUNSEL WAS INVALID AND REVERSAL IS REQUIRED.

On appeal, Morfin-Camacho challenges the validity of his waiver of right to counsel on grounds that he was not properly informed of the maximum penalties he faced if convicted, citing Silva and other decisions of this Court and the Washington Supreme Court. Brief of Appellant BOA) at 1, 3-6. In response, the State claims Morfin-Camacho's reliance on Silva is misplaced. According to the State, Silva does not provide a "formula" for determining whether a waiver of counsel is valid or not, but instead is an outlier, a case with "extreme" facts "unlike the facts here." Brief of Respondent (BOR) at 7-8. The State is wrong.

The State's acknowledged Silva sets forth a "preferred method" for obtaining a valid waiver. BOR at 8. But it fails to acknowledge that in doing so, Silva also established that at a "minimum" the record must show the defendant was aware of "the seriousness of the charge, the possible maximum penalty involved, and the existence of technical, procedural rules governing presentation of the accused's defense." Silva, 180 Wn. App. 539-40 (emphasis added).

¹ State v. Silva, 108 Wn. App. 536, 31 P.3d 729, 731 (2001)

As noted in the opening brief, the colloquy between Morfin-Camacho and the trial court failed to include an advisement about the maximum penalties he faced if convicted. BOA at 2, 5. Notably, the State does not claim Morfin-Camacho had notice of the maximum penalties by some other means, as nothing in the record would support such a claim.

The State instead asserts Morfin-Camacho's lack of knowledge about maximum penalties is not fatal to his waiver of counsel because "the record demonstrates that he was advised of the nature and gravity of the charges and that the Defendant was aware of the risks and disadvantages of self-representation." BOR at 9. This is simply incorrect under Silva, which makes clear that even the most legally savvy pro se criminal defendant cannot validly waive counsel without a basis in the record to show "at a minimum" that the accused was aware of "the possible maximum penalty involved[.]" 108 Wn. App. at 539.

The State's argument should be rejected and Morfin-Camacho's judgment and sentence reversed and remanded for a new trial, as Silva dictates. 108 Wn. App. at 542.

2. THIS COURT SHOULD ACCEPT THE STATE'S CONCESSION OF ERROR AND REMAND FOR RESENTENCING.

The State concedes the trial court erred by imposing a sentence of 12 months and a day for the methamphetamine possession conviction.

BOR at 10-11. If this Court reverses because of an invalid waiver by Morfin-Camacho of his right to counsel, then this error is moot. If, however, this Court affirms the convictions, then it should accept the State's concession of error and remand for resentencing.

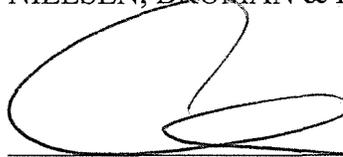
B. CONCLUSION

For the reasons stated here and in the opening brief, this Court should reverse and remand for a new trial. In the alternative, this Court should remand for resentencing.

DATED this 2nd day of ^{March}~~February~~ 2016

Respectfully submitted,

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State v. Eluterio Morfin-Camacho

No. 33443-1-III

Certificate of Service

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 2nd day of March, 2016, I caused a true and correct copy of the **Reply Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

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Signed in Seattle, Washington this 2nd day of March, 2016.

X  _____