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Court of Appeals
Division III
State of Washington
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NO. 35287-1-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

RICARDO G. GONZALEZ-GARCIA,

Defendant/Appellant.

BRIEF OF APPELLANT [REPLY]

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ARGUMENT

The State's argument is essentially that Mr. Gonzalez-Garcia has not provided a sufficient record for the Court of Appeals to make a decision concerning his competency to stand trial.

The State sets out those cases that delineate the procedures involved with determinations of competency and ineffective assistance of counsel. Those cases are *apropos* to the issue before the Court.

Mr. Gonzalez-Garcia contends that the Rules of Appellate Procedure are applicable to both an appellant and a respondent.

RAP 9.1 (a) states: "The 'record on review' **may** consist of (1) a 'report of proceedings', (2) 'clerk's papers', (3) 'exhibits', and (4) 'a certified record of administrative adjudicative proceedings'." (Emphasis supplied.)

RAP 9.1 (c) states: "The clerk's papers include the pleadings, orders, and other papers filed with the clerk of the trial court."

Mr. Gonzalez-Garcia's case pivots on the letters which he wrote to the Court. It does not matter whether there is a single judge in the jurisdiction or multiple judges. Whichever judge is in attendance at a particular

hearing has the court file in front of them. It would be a dereliction of duty if that particular judge has not read the file prior to the hearing.

GR 31 (4) defines the phrase “court record” as including, but not limited to:

- (i) Any document, information, exhibit, or other thing that is maintained by a **court** in connection with a judicial proceeding, and
- (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the **court** that is related to a judicial proceeding. ...

(Emphasis supplied.)

The filing of Mr. Gonzalez-Garcia’s letters, along with the translations in the Clerk’s office, created a court record. A court file is under the control of the Superior Court Clerk and any judge of that court.

CJC 2.5 provides:

- (A) A judge shall perform judicial and administrative duties, competently and diligently.
- (B) A judge shall cooperate with other judges and court officials in the administration of court business.

The Code of Judicial Conduct contains comments to the specific rules. Comment (1) to CJC 2.5 provides:

Competence in the performance of judicial duties requires the legal knowledge, skill, fairness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

Mr. Gonzalez-Garcia contends that a reasonable inference can be drawn from the CJC comment that whichever judge was presiding at whatever hearing had the full opportunity to review the file, his letters, and the translations.

Mr. Gonzalez-Garcia asserts that a judge would *sua sponte* conduct a colloquy, with either the defense attorney or himself, through the interpreter, to determine his understanding of the proceedings.

The State argues that nothing can be determined from the record presented as to Mr. Gonzalez-Garcia's demeanor/behavior, mental state, ability to communicate, or that either the defense attorney or the judge knew of the existence of his letters.

The State is in error in connection with its argument. Mr. Gonzalez-Garcia did not sign a single one of the documents involved with the various continuances granted by the court. He did not testify. His mental state can be considered in light of the letters and translations.

The letters are communications. The communications were directed to the Court. The communications did not relate to the offense before the Court. They were evidence of aberrant thought processes.

The State's brief speculates about what occurred at various hearings. The State asserts that Mr. Gonzalez-Garcia had the responsibility of filing transcripts from those hearings.

RAP 9.10 provides, in part:

If a party has made a good-faith effort to provide those portions of the record required by rule 9.2 (b) the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision... because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits ..., or (2) correct, or direct the supplementation or correction of, the report of proceedings. ...

The State's urging that the appeal be dismissed due to an insufficient record should not be granted. Rather, if the appellate court determines that the record is insufficient it should proceed under RAP 9.10 directing supplementation of that record.

It is interesting to note that there is no order in the Clerk's records to indicate who directed that Mr. Gonzalez-Garcia's letters be translated. It is obvious that the translation occurred prior to the filing of the letters.

It is highly unlikely that a court clerk would independently direct that the letters be translated. This is especially so since the letters were directed to a judge.

It is also highly unlikely that an interpreter would independently translate the letters. Mr. Gonzalez-Garcia is unaware of any requirement that a letter written by a defendant to a judge needs to be translated by a certified court interpreter.

Mr. Gonzalez-Garcia otherwise relies upon the argument contained in his original brief.

DATED this 10th day of January, 2018.

Respectfully submitted,

s/ Dennis W. Morgan

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NO. 35287-1-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	GRANT COUNTY
Plaintiff,)	NO. 17 1 00079 8
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
RICARDO G. GONZALEZ-GARCIA,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 10th day of January, 2018, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

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