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Court of Appeals  
Division III  
State of Washington  
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NO. 36010-5-III

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

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STATE OF WASHINGTON,

Respondent,

v.

MIKHAIL BARBAROSH,

Appellant.

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

The Honorable Shea Brown, Judge

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SUPPLEMENTAL REPLY BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

	Page
A. <u>SUPPLEMENTAL ARGUMENT</u> .....	1
BARBAROSH'S OFFENSE SHOULD BE SENTENCED AS A MISDEMEANOR, BUT CAN BE TREATED AS AN UNRANKED FELONY .....	1
B. <u>CONCLUSION</u> .....	3

**TABLE OF AUTHORITIES**

Page

**WASHINGTON CASES**

State v. Gonzalez

2 Wn. App. 2d 96, 408 P.3d 743

review denied, 190 Wn.2d 1021, 418 P.3d 790 (2018) ..... 1

**RULES, STATUTES AND OTHER AUTHORITIES**

RCW 69.50.360 ..... 2

RCW 69.50.4013 ..... 1, 2

RCW 69.50.4014 ..... 1, 2

A. SUPPLEMENTAL ARGUMENT IN REPLY

BARBAROSH'S OFFENSE SHOULD BE SENTENCED AS A MISDEMEANOR, BUT CAN BE TREATED AS AN UNRANKED FELONY.

This Court ordered the parties to address whether treating Barbarosh's offense as an unranked felony would be appropriate to ensure he receives the lowest possible sentence for possession of a controlled substance.

While the State does eventually address that question, most of its supplemental brief consists of a new argument that State v. Gonzalez, 2 Wn. App. 2d 96, 408 P.3d 743, review denied, 190 Wn.2d 1021, 418 P.3d 790 (2018) was wrongly decided. See Supp. BOR, at 1-3.

The State's original position was that no reason existed to sentence Barbarosh for marijuana possession, "a substance he did not possess, much less possess in the quantity needed for a conviction. See RCW 69.50.4013." BOR, at 18 (emphasis added). Perhaps sensing that position might not carry the day, the State now argues that, under RCW 69.50.4013(3)(a) and RCW 69.50.4014, an adult's possession of less than 40 grams of marijuana is never a crime. Supp. BOR, at 1-2, 4.

The State is mistaken. RCW 69.50.4013(3)(a) provides:

The possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of Washington law.

(emphasis added).

RCW 69.50.360(3) allows possession of “one ounce of useable marijuana . . . [s]ixteen ounces of marijuana-infused product in solid form . . . [s]eventy-two ounces of marijuana-infused product in liquid form; or . . . [s]even grams of marijuana concentrate.” In Washington, possession within these limits is not illegal.

One ounce of useable marijuana is about 28.35 grams. Where an adult possesses greater than 28.35 grams of useable marijuana (exceeding the maximum under RCW 69.50.360(3)), but under 40 grams, the individual has committed a misdemeanor under RCW 69.50.4014 (40 grams or less a misdemeanor). Adults like Barbarosh are eligible for such a sentence.

Regarding the proper subject of these supplemental briefs, unranked offenses, Barbarosh maintains his position that his offense should be sentenced as a misdemeanor, but to the extent this Court concludes that further classification is necessary to ensure imposition

of the lowest possible sentence, it could be treated as an unranked felony.

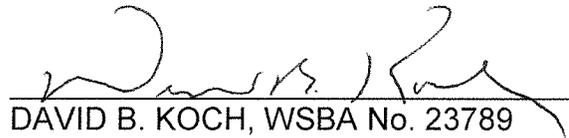
B. CONCLUSION

Barbarosh is eligible for a misdemeanor sentence under RCW 69.50.4014 and his crime is arguably an unranked felony.

DATED this 18<sup>th</sup> day of July, 2019.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

A handwritten signature in black ink, appearing to read "David B. Koch", written over a horizontal line.

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