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Division III
State of Washington
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NO. 36512-3-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

JOSEPH THURURA,

Plaintiff-Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

**SUPPLEMENTAL ANSWERING BRIEF OF DEFENDANT-
APPELLEE**

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I. SUPPLEMENTAL ARGUMENT

Through his supplemental brief, Thurura argues the Court should treat the Department's show cause motion as a motion for summary judgment for the purposes of appellate review. Thurura asserts that permitting the Department to file a show cause motion in the trial court to determine whether there was a Public Records Act (PRA) violation, allowed the Department to "bypass the standards applicable to a summary judgment motion and place the burden of proof on Mr. Thurura." Thurura claims that the show cause motion unfairly switched the burden to him to show whether a violation existed.

However, Thurura raised no objection or argument to the method of using a show cause motion to determine whether there was a PRA violation in trial court. He cannot raise this argument for the first time through his appeal. *Sourakli v. Kyriakos, Inc.*, 144 Wn. App. 501, 509, 182 P.3d 985 (2008) (citing *Sneed v. Barna*, 80 Wn. App. 843, 847, 912 P.2d 1035 (1996)).

Moreover, an agency seeking a dispositive decision on a PRA matter through a show cause motion is appropriate and does not prejudice the requestor by shifting the burden to prove a PRA violation. *Kittitas County v. Allphin*, 2 Wn. App 2d 782, 791-792, 413 P.3d 22 (2018). Accordingly, Thurura's supplemental grounds for appeal should be denied.

II. CONCLUSION

The Court's review should be based on the standard of review for show cause motions under RCW 42.56 because Thurura failed to raise any objection to the use of a show cause hearing in the trial court. Further, an agency may file a show cause motion to determine the merits of a PRA claim.

RESPECTFULLY SUBMITTED this 6th day of April, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing Supplemental Answering Brief of Defendant-Appellee with the Clerk of the Court using the electronic filing system and to be mailed by United States Postal Service the document to the following non electronic filing participants:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 6th day of April, 2020, at Spokane, Washington.

s/ Scott L. Kappes _____

SCOTT L. KAPPES

Legal Assistant

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

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