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STATE OF WASHINGTON

NO. 80865-1

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GLEN SEBASTIAN BURNS,

Petitioner.

STATE'S SUPPLEMENTAL BRIEF

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A. ISSUES PRESENTED

1. Whether a criminal defendant has a constitutional right to self-representation on appeal under Const. art. I, § 22.

2. If a defendant has a constitutional right to self-representation on appeal, is it satisfied by the defendant's right to file a pro se statement of additional grounds under RAP 10.10?

3. If a defendant has a constitutional right to self-representation on appeal, does the appellate court have the discretion to deny a motion to proceed pro se when it is brought only after the filing of the opening brief and when the defendant offers no reasons for the delay?

4. Whether the defendant's declaration sufficiently establishes that he is knowingly and intelligently waiving his right to counsel on appeal.

B. RELEVANT FACTS

On May 26, 2004, Glen Sebastian Burns and Atif Rafay were found guilty of three counts of aggravated first-degree murder for the deaths of Tariq Rafay, Sultana Rafay and Basma Rafay. CP 3175-80. These convictions came nearly 10 years after the murders due to a lengthy extradition fight, years of trial preparation,

multiple changes in defense attorneys, and one of the longest criminal trials in King County history.

Burns moved for a new trial, claiming that his team of trial attorneys provided ineffective assistance of counsel. After the court appointed new counsel for Burns, he moved to represent himself, but indicated that he still wanted the court to appoint appellate counsel. 156RP 20-21. Burns then moved for appointment of an appellate attorney to represent him at public expense.¹ The court granted this motion.² CP 3373.

In November of 2004, two attorneys from the Washington Appellate Project were assigned to represent Burns. Over the next several years, Burns's attorneys met and consulted with him about the appeal, provided the record to him, and shared drafts of the opening brief.³ The record on appeal is considerable, and after

¹ See Motion And Declaration For An Order Authorizing The Defendant To Seek Review At Public Expense And Appointing An Attorney, attached as Appendix A To State's Response To Burns's Motion To Proceed Pro Se And Allow Counsel To Withdraw, dated September 5, 2007.

² The trial court had previously told Burns that it was not inclined to appoint appellate counsel because Burns had a privately retained lawyer appear at the sentencing hearing. 157RP 1-6, 89.

³ See Motion For Extension Of Time To File Opening Brief, dated July 6, 2007 at 3; Motion For Extension Of Time To File Opening Brief, dated June 7, 2007 at 3; Motion For Extension Of Time To File Opening Brief, dated May 14, 2007 at 3; Motion for Extension Of Time To File Opening Brief, dated August 31, 2006 at 2.

nearly three years, Burns's 191-page opening brief was filed in July of 2007.

Shortly after the filing of his opening brief, Burns informed his attorneys that he wanted to represent himself on appeal. His counsel then moved to allow Burns to proceed pro se. Attached to the motion was a short declaration from Burns stating that he understood that he had the constitutional right to proceed pro se on appeal and that he wished to exercise that right.

Approximately one week later, Court Commissioner James Verellen granted Burns's motion. Given the timing of the motion, Commissioner Verellen understandably interpreted Burns's motion as relating to the opening brief and ordered that "his appeal shall proceed on the existing amended brief, unless Burns files a second amended opening brief by September 28, 2007." Notation Ruling dated August 27, 2007. Commissioner Verellen later withdrew his ruling and referred the matter to a panel of three judges.

In the meantime, Burns sought several extensions of time to file his RAP 10.10 Pro Se Statement of Additional Grounds for Review. In his first motion, Burns requested an extension until October 1, 2008. Burns stated that he still needed to read the trial transcripts and that "it is reasonable to expect that I shall need at

least as much time to do this as was needed by defense counsel...."⁴ In a second motion, Burns again sought more time, stating that he had "only limited access to legal research materials," and that he was restricted in the number of hours that he could spend in the prison law library. He noted that he was only a high school graduate with no prior experience with the appellate court system.⁵

On October 8, 2007, a panel of the Court of Appeals, without explanation, denied Burns's motion to proceed pro se. This Court has accepted discretionary review of that order.

C. ARGUMENT

1. THE COURT OF APPEALS PROPERLY DENIED BURNS'S MOTION TO REPRESENT HIMSELF ON APPEAL.

The Court of Appeals acted well within its discretion in denying Burns's belated motion to proceed pro se in this appeal. Burns brought his motion only after he first obtained counsel at public expense, his counsel worked on the appeal for nearly three years, and his opening brief was filed by counsel. Burns offered no

⁴ Motion To Set Due Date For Burns' Statement of Additional Grounds For Review, dated September 6, 2007, at 3.

⁵ Motion For Extension Of Time To File Statement Of Additional Grounds, dated December 24, 2007, at 2-3.

reasons for his motion other than his claim that he had an absolute constitutional right to proceed pro se.

There is no precedent in Washington for Burns's claim that he has a state constitutional right to self-representation on appeal. Even if such a right exists, the provisions of RAP 10.10 satisfy that right by permitting Burns to raise additional issues on appeal. Moreover, given the lateness of Burns's motion, the Court of Appeals had the discretion to deny it, particularly when Burns offered no reasons for the court to exercise discretion in his favor.

a. There Is No State Constitutional Right To Self-Representation On Appeal.

In addressing Burns's state constitutional claim, the State has previously argued that the Gunwall⁶ factors do not support finding an independent state constitutional right to proceed pro se on appeal.⁷ The United States Supreme Court has observed, "[w]e are not aware of any historical consensus establishing a right of self-representation on appeal." Martinez v. Court of Appeal of California, Fourth Appellate District, 528 U.S. 152, 159, 120 S. Ct.

⁶ State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

⁷ See State's Response to Burns's Motion To Proceed Pro Se And Allow Counsel To Withdraw dated September 5, 2007 at 7-13.

684, 145 L. Ed. 2d 597 (2000).⁸ Most courts considering the issue have held that a defendant does not have a constitutional right to represent himself on appeal.⁹

The plain language of Const. art. 1, § 22 does not link the right to self-representation with the right to appeal.¹⁰ The state constitutional right to self-representation at trial is found in the language: “[i]n criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel....” See State v. Breedlove, 79 Wn. App. 101, 106, 900 P.2d 586 (1995); State v. Woodall, 5 Wn. App. 901, 903, 491 P.2d 680 (1971). The rights “to appear and defend in person or by counsel” apply at trial; they do not apply on appeal. A defendant has no right to *appear* at an

⁸ The Supreme Court in Martinez held that the Sixth Amendment right to self-representation at trial, established in Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), does not extend to the appellate process. 528 U.S. at 159-60.

⁹ See People v. Scott, 64 Cal.App.4th 550, 75 Cal. Rptr. 2d 315 (1998); Grant v. State, 780 So.2d 131 (Fla. Dist. Ct. App. 2000); Callahan v. State, 30 Md. App. 628, 354 A.2d 191 (1976); Blandino v. State, 112 Nev. 352, 914 P.2d 624 (1996); State v. Thomas, 150 N.H. 327, 840 A.2d 803 (2003); State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005); State v. Reeves, 610 S.W.2d 730 (Tenn. Crim. App. 1980); but see Costello v. State, 240 Ga. App. 87, 522 S.E.2d 572 (1999); State v. Mendez, 923 So.2d 189 (La. Ct. App. 2006); People v. Stephens, 71 Mich. App. 33, 246 N.W.2d 429 (1976).

¹⁰ Const. art. 1, § 22 provides: "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is

appellate hearing.¹¹ In addition, on appeal, the defendant, who is no longer presumed innocent, is not *defending* against a charge, but seeking reversal of a conviction.¹² The plain language of the state constitution does not support linking the two rights.

In addition, there is no history in this state of recognizing that a defendant has a constitutional right to proceed pro se on appeal. Instead, in one of the few cases involving a defendant who attempted to proceed pro se on appeal, this Court emphasized the necessity of having an appointed lawyer in order to present appropriate briefing and to handle the procedural aspects of the appeal. In State v. Mode, 55 Wn.2d 706, 349 P.2d 727 (1960), after the defendant was convicted of two counts of carnal knowledge, the superior court appointed an attorney to represent

charged to have been committed and the right to appeal in all cases...."

¹¹ See Price v. Johnston, 334 U.S. 266, 285, 68 S. Ct. 1049, 92 L. Ed. 1356 (1948) (holding that "a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court"); Whipple v. Smith, 33 Wn.2d 615, 618, 206 P.2d 510 (1949); see also RAP 11.4(j) (providing appellate court with discretion to decide the appeal without oral argument).

¹² See Ross v. Moffitt, 417 U.S. 600, 610-11, 94 S. Ct. 2437, 41 L. Ed. 2d 341 (1974) ("The defendant needs an attorney on appeal not as a shield to protect him against being 'haled into court' by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt."); Grant v. State, 780 So.2d 131, 133 (Fl. Dist. Ct. App. 2000) ("There is a substantial difference between a trial and an appeal in that the trial is essentially a fact finding process, while the prosecution of an appeal requires the raising of legal issues. The personal input of the defendant is far more significant at trial, accordingly, than on appeal.").

him on appeal. Dissatisfied with the attorney, the defendant indicated that he would handle the appeal himself, and the superior court discharged his attorney. After the defendant filed an apparently incomprehensible brief, the State moved to strike it, and the defendant moved for additional time to file a new brief and for re-appointment of counsel.

This Court disapproved of the trial court's original discharge of appellate counsel and remanded the matter for appointment of counsel. The Court first noted that a court rule required the trial court to "appoint a member of the bar of this state to represent said defendant on said review, unless the defendant is represented other than *pro se*." 55 Wn.2d at 709 (citing Rule of Pleading, Practice and Procedure 101.24W). The court explained the purposes of requiring counsel:

The purpose of rule 101.24W is at least three-fold: First, it is to furnish indigents with competent, technical help in the intricacies of appellate procedure when the superior court authorizes a statement of facts at county expense so that this court can review the case in accordance with established practices; second, it is to provide the indigent appellant with an advocate for his cause; and third, it is to prevent a waste of public funds, expended for a statement of facts, by not placing the statement in the sole

possession of one devoid of knowledge as to what it is for or how it should be used.

55 Wn.2d at 709. The court stated that a dissatisfied defendant could supplement, rather than replace the work of his lawyer:

A lawyer appointed to prosecute an appeal for an indigent appellant not only performs one of the highest duties of his profession, but, as an officer of *this* court, makes it possible for us to consider the merits of the appeal in accordance with the rules on appeal. This in no wise prevents the indigent appellant, should he become disgruntled, from supplementing efforts of counsel.

55 Wn.2d at 709-10 (emphasis in original).¹³

The reasoning in Mode -- that an appellate attorney is needed in order to ensure that the court can properly consider the appeal -- is similar to the reasoning of other courts that have found that a defendant does not have a constitutional right to self-representation on appeal.¹⁴ The Nevada Supreme Court has explained:

Persuasive reasons support requiring the assistance of counsel on direct appeal from a conviction. This court has a duty to ensure that appellants receive a

¹³ Mode has been cited as establishing a defendant's right to file a pro se brief on appeal. State v. Stiltner, 61 Wn.2d 102, 103, 377 P.2d 252 (1962).

¹⁴ In Hendrix v. Rhay, 56 Wn.2d 420, 423, 353 P.2d 878 (1960), this Court reiterated that an attorney was "essential to a fair appellate review" and that "[t]he recognition and pointing out of appealable errors occurring during the course of a trial, is a highly technical and complicated task, and a task which a layman could not reasonably be expected to accomplish."

fair appeal. [Citations omitted.] This court could not ensure the fairness of criminal appeals if we were to create a right to self-representation on appeal. Documents filed by persons who are untrained in the law are often incoherent and fail to identify the issues presented on appeal.... The due process right to a fair appeal would be hindered by establishing a right to self-representation on appeal.

Blandino v. State, 112 Nev. 352, 354-55, 914 P.2d 624 (1996).¹⁵

Similar arguments have been made concerning the right to self-representation at trial -- that the court's interests in ensuring that the defendant receives a fair trial and that the ultimate verdict is just are undercut by permitting self-representation. Faretta, 422 U.S. at 836-46 (Burger, C.J., dissenting). However, in the trial context, there is both historical support for the right to self-representation, see Faretta, 422 U.S. at 812-18, and the Washington constitution expressly provides for it. With respect to the right to self-representation on appeal, neither is true. The plain language of the state constitution and Washington caselaw do not support the notion that a defendant has a constitutional right to proceed pro se.

¹⁵ See also Scott, 64 Cal.App.4th at 562 (quoting the above language); Thomas, 150 N.H. at 331-32 (expressing similar reasoning).

Nevertheless, it does not follow that a defendant may never proceed pro se on appeal. Under the current rules governing appeals, a defendant must request appointment of counsel. RAP 15.2. There is no court rule or statute permitting the court to appoint counsel without such a request. Even after an attorney is appointed, an appellate court has the discretion to allow a defendant to proceed pro se.¹⁶ Here, Burns asked the trial court to appoint attorneys on appeal; given that he waited almost three years and provided no explanation why they should be discharged, the Court of Appeals had the discretion to deny his motion to proceed pro se.

b. Burns's Ability To File A RAP 10.10 Statement Of Additional Grounds Satisfies Any Right To Self-Representation On Appeal.

Even if a criminal defendant has a constitutional right to self-representation on appeal, the provisions of RAP 10.10¹⁷ satisfy this right. Under that rule, a defendant may obtain a copy of the report

¹⁶ Several state courts have held that defendants have a statutory right to proceed pro se on appeal or that they may do so as a matter of the appellate court's discretion. See Owen v. State, 269 Ind. 513, 517-18, 381 N.E.2d 1235 (1978); Callahan, 30 Md. App. at 633; State v. Siefert, 423 N.W.2d 368, 369-71 (Minn. 1988); Fewin v. State, 170 S.W.3d 293, 295-96 (Tex. Ct. App. 2005).

¹⁷ RAP 10.10(a) provides that "[a] defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel."

of proceedings and file a pro se statement of additional authorities raising new issues. Burns has the record and has indicated that he intends to file a RAP 10.10 pro se statement. Granting Burns pro se status on appeal would not provide him with a meaningful opportunity to participate in the appeal beyond that already provided in RAP 10.10.

In State v. McDonald, 143 Wn.2d 506, 22 P.3d 791 (2001), this Court recognized that the defendant's ability to file a pro se brief satisfies any right to self-representation on appeal. After McDonald moved to represent himself before the Court of Appeals, the trial court held a hearing to determine whether McDonald was competent to represent himself on appeal. When McDonald refused to answer any questions, the trial court found that he was incompetent to represent himself on appeal, and the Court of Appeals appointed appellate counsel. After accepting review of the case, this Court denied McDonald's motion for self-representation, though it permitted McDonald to file a pro se brief.

The Court, while declining to "fully address and analyze" the issue of whether there was a constitutional right to self-representation on appeal, held that McDonald's interest in representing himself had been protected:

Procedurally, although we denied McDonald's motion for self-representation, we allowed McDonald to raise separate issues in pro se briefing. This is also true procedurally for the Court of Appeals. Therefore, McDonald was not denied any right to proceed pro se.

143 Wn.2d at 511 n.3.

Similarly, the Texas Court of Criminal Appeals has recognized that a defendant's constitutional right to proceed pro se on appeal was satisfied by his ability to file a pro se brief.

Contrary to the assertion of appellant's counsel, in this point of error, the trial court did not deny appellant his right to self representation as guaranteed in Faretta v. California. The court allowed appellant to file his own pro se brief. Thus, even though counsel was appointed to represent appellant on appeal, the court preserved appellant's dignity and autonomy which, after all, is what "the right to appear pro se exists to affirm." McKaskle v. Wiggins, 465 U.S. 168, 176-177, 104 S. Ct. 944, 950, 79 L. Ed. 2d 122 (1984).

.... [I]t does not appear that Faretta rights are violated on appeal, as long as a defendant is allowed to view the record and file a brief on his own behalf, unless there is some conflict inherent in the arguments presented by the defendant and those presented by appointed counsel.

Hathorn v. State, 848 S.W.2d 101, 123-24 (Tex. Crim. App. 1992).¹⁸

¹⁸ The opinion in Hathorn pre-dates the United States Supreme Court's decision in Martinez, supra note 8.

The reasoning in McDonald and Hathorn comports with common sense. Simply put, the tasks of an appellate lawyer are to arrange for the preparation of the record on review, to review the record, to identify and brief legal issues, and, if requested by the court, to argue the matter in court. With the exception of the preparation of the record (which has already been done in this case) and oral argument (which Burns concedes that he has no right to participate in), RAP 10.10 allows a pro se defendant to perform these same tasks. It is perhaps because of this rule that appellate courts have rarely encountered defendant's motions to proceed pro se on appeal.

Burns retains the right under RAP 10.10 to file a Statement of Additional Grounds for Review. This is sufficient to protect any right that he may have to represent himself in this appeal.

- c. The Court Of Appeals Had The Discretion To Deny Burns's Motion To Represent Himself.

Even if Burns has a constitutional right to represent himself on appeal, the Court of Appeals had the discretion to deny his motion because it was not timely made and Burns offered no reasons for the court to exercise discretion in his favor.

A defendant does not have an absolute right to proceed pro se – even at trial. "The Faretta right to self-representation is not absolute and the defendant's motion to proceed pro se must be made in a timely fashion or the right is relinquished and the matter of the defendant's representation is left to the discretion of the trial judge." State v. Stenson, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997); see also State v. Kolocotronis, 73 Wn.2d 92, 98, 436 P.2d 774 (1968) ("[T]he right of an accused, granted by the constitution, to act as his own counsel may not be properly construed as an absolute right in all cases."). At the trial level, the closer to trial that the motion to proceed pro se is made, the greater discretion the court has in denying it. State v. Bolar, 118 Wn. App. 490, 516, 78 P.3d 1012 (2003); State v. Fritz, 21 Wn. App. 354, 585 P.2d 173 (1978).

Other state courts have found motions to proceed pro se untimely when made after the defendant's counsel has filed the opening brief. In Bennett v. State, 389 So.2d 1225 (Fla. Dist. Ct. App. 1980), the court rejected the defendant's motion to proceed pro se after the filing of the opening brief. The court noted that, had the defendant moved to represent himself from the outset, it would have decided otherwise. 389 So.2d at 1225. The court found that

the defendant had received the benefit of representation of counsel, and there was no duty on the court to permit him to represent himself. "A criminal appellant cannot have his appointed counsel discharged at his whim, especially after the appellant's work has been done and the case is about ready for disposition." 389 So.2d at 1226; see also People v. Jackson, 362 Ill. App. 3d 1196, 1200, 841 N.E.2d 1098 (2006) (rejecting motion to proceed pro se as untimely when made after opening brief was filed).

Burns brought his motion only after his opening brief was filed. His attorneys put years of work into this appeal, and identified and briefed numerous issues. The Rules of Appellate Procedure recognize that the filing of the opening brief is a significant event in the history of the case. Though RAP 18.3(a)(1) warns that "[t]he appellate court will not ordinarily grant permission to withdraw after the opening brief has been filed," Burns's motion did not attempt to establish good cause. He offered no explanation for his delay and no reasons for seeking pro se status; instead, he simply insisted that he had an absolute constitutional right to represent himself on appeal. Given the timing of his motion, the Court of Appeals had discretion to deny it, and Burns offered no reasons for the court to do otherwise.

The timing of Burns's motion certainly implied that he was dissatisfied with the opening brief filed by his attorneys.¹⁹ Due to the lengthy record, if Burns withdrew his opening brief, the delay to his appeal and his co-defendant's appeal would be considerable -- a factor that the Court of Appeals could consider in deciding whether to grant the motion. If Burns does not intend to withdraw the brief, his motion can be viewed as an attempt to obtain hybrid representation, given that his attorneys have fully researched and briefed the issues on appeal. There is no right to "hybrid representation" through which defendants may serve as co-counsel with their attorneys. State v. DeWeese, 117 Wn.2d 369, 379, 816 P.2d 1 (1991).

The Court of Appeals was entitled to be clearly informed of Burns's intentions, and his reasons for wishing to proceed pro se. Given the untimeliness of Burns's motion and his failure to provide any reasons for the delay, the Court of Appeals acted within its discretion in denying the motion.

¹⁹ When the State raised this issue, Burns's appellate counsel replied that Burns had not asked to withdraw the opening brief. Appellant Burns' Reply Concerning Motion To Proceed Pro Se, dated September 13, 2007, at 4. However, left unsaid was whether Burns intended to do so in the future and why he was seeking self-representation at that time.

d. If Burns Is Permitted To Proceed Pro Se, An Adequate Colloquy Should Be Conducted.

If this Court concludes that Burns has a constitutional right to proceed pro se on appeal and that the Court of Appeals abused its discretion in denying his motion, the Court should consider whether Burns's declaration is sufficient to establish that he is knowingly and intelligently waiving his right to counsel.

Before permitting a defendant to proceed pro se, the court must establish that a defendant has made a knowing and intelligent waiver of the right to counsel. DeWeese, 117 Wn.2d at 377. The court must make a penetrating and comprehensive examination in order to properly assess that the waiver was made knowingly and intelligently.

The court in Faretta said a defendant should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open." Faretta, supra at 422 U.S. 835, 95 S. Ct. 2541. Although each case is different, trial courts should attempt to determine the subjective reasons for the defendant's refusal.

State v. Chavis, 31 Wn. App. 784, 791, 644 P.2d 1202 (1982).

Courts that allow pro se litigants on appeal typically require the trial court to conduct a colloquy in order to ensure that the defendant is knowingly and intelligently making the decision to

proceed pro se.²⁰ Such a procedure appears to be appropriate given that there is no easy mechanism for the appellate court to conduct such a colloquy.

Here, if Burns is allowed to proceed pro se, a colloquy would be appropriate. Burns's declaration supporting his motion to proceed pro se is brief. He acknowledges that he will need to comply with the Rules of Appellate Procedure, that he might later be precluded from arguing that he was ineffective, and that he may not be allowed to conduct oral argument. In addition, a proper colloquy should also include:

- An acknowledgement that if Burns changes his mind, the court is not required to re-appoint appellate counsel;
- That the appellate rules are highly technical, that the failure to follow these rules could result in the waiver of claims, and that Burns's lack of legal training will not excuse him from following them;
- That, because he is in custody, Burns's access to legal material is restricted and will be significantly less than a lawyer's;
- That Burns will not have access to the pretrial and trial exhibits;
- That no threats or promises were made to induce Burns to waive his right to counsel.

²⁰ See Watson v. Delaware, 564 A.2d 1107, 1109 (Del. 1989); Mendez, 923 So.2d at 194-95; State v. Lewis, 104 N.M. 218, 221, 719 P.2d 445 (1986).

The trial court should also inquire into Burn's reasons for proceeding pro se. While the court need not agree with these reasons before permitting a defendant to proceed pro se, such an inquiry will assist in determining whether the decision is made knowingly and intelligently, and whether Burns's pro se status might interfere with the orderly administration of justice.

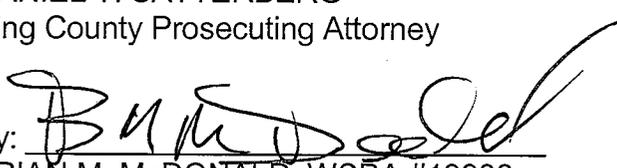
D. CONCLUSION

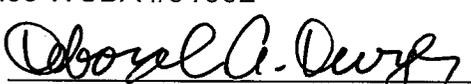
For all the foregoing reasons, the Court should affirm the Court of Appeals' order denying Burns's motion to proceed pro se and to discharge his counsel.

DATED this 6th day of March, 2008.

Respectfully submitted,

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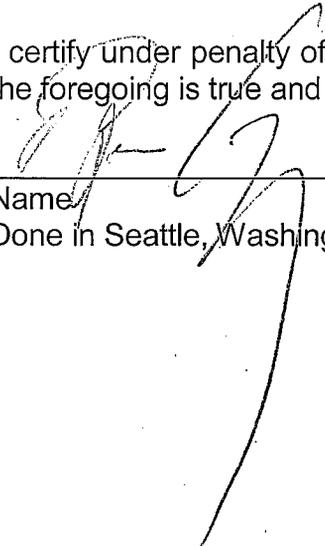
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ELAINE WINTERS and JASON SAUNDERS, the attorney for the petitioner
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Tower, 1511 Third Avenue, Seattle, WA 98101, and

David Koch, the attorney for the Atif Rafay, at Nielsen Broman & Koch,
P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122,

containing copies of the State's Supplemental Brief, in STATE V. BURNS,
Cause No. 80865-1, in the Washington Supreme Court .

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



Name
Done in Seattle, Washington

03/06/2008
Date