

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Feb 05, 2013, 3:46 pm
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 87946-0
)	
vs.)	
)	RESPONSE TO MOTION FOR
ANDONIYAH LACROY SYKES,)	DISCRETIONARY REVIEW
)	AND TO STATEMENT OF
)	GROUND FOR DIRECT
)	REVIEW
Petitioners.)	

1. IDENTITY OF MOVING PARTY

Respondent, the State of Washington, seeks the relief designated in part 2.

2. STATEMENT OF RELIEF SOUGHT

This Court should grant direct discretionary review.

3. FACTS RELEVANT TO MOTION

The facts as outlined in Petitioners' motion for discretionary review are sufficient for purposes of deciding whether this Court should grant review. As noted by the Petitioners, many drug courts in the state conduct closed proceedings as a matter of design, and these courts are processing hundreds of defendants each year. These petitioners' cases present fairly typical examples of drug court participants who ultimately do not succeed in the program.

Although not discussed in detail in the motion for discretionary review or statement of grounds for direct review, the parties made a concerted effort to fully develop the record in the trial court in a manner that will ensure this Court has full access to the information necessary to decide the issues presented. For instance, although a verbatim record of drug court staffings is not kept, the notes made by court personnel at closed drug court staffings concerning the defendants' progression through the drug court program were made a part of the record in these cases. The parties fully briefed the issue of the constitutionality of drug court practices, oral argument was presented to the superior court, and the court made its decision after fully considering the issue.

are made. Drug courts operated in many other Washington counties have a similar design where staffings are closed.

The State has asked the King County Superior Court to open these proceedings because article I, section 10, presumes that all judicial proceedings must be open and it appears that the drug court staffings are judicial proceedings. The superior court has declined, believing that closed drug court staffings are not covered by article I, section 10, and also believing that open staffings would diminish the effectiveness of drug courts. Because the same presumption of closure exists in many drug courts statewide, a decision by this Court is needed to tell the parties and the superior courts whether the state constitution demands openness of all drug court proceedings, including staffings. For these reasons, direct and discretionary review is appropriate.

Consideration of the issue presented also brings up for review the related questions as to what remedy should be granted to a defendant who challenges closure of a court proceeding where he fully assented to the closure upon entering the program, and as to whether he should be able to challenge the closure at all under these circumstances. The State argued below, and it urges this

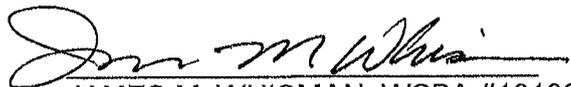
Court to consider, that rewarding a defendant who challenges a proceeding he fully assented to creates an incentive for defendants to invite courtroom closure, because they can benefit from the closure, until it becomes more expedient to challenge the closure. A rule of law or procedure that encourages such sandbagging defeats the constitutional principle it seeks to vindicate, it wastes precious judicial resources, and it undermines public confidence in the judiciary. These deleterious effects are especially pernicious with drug courts, which are a tool to coerce treatment. If a defendant is permitted to escape his obligations under the program and return to the status quo ante, he has less incentive to complete the program through difficult times.

In short, these cases present an opportunity for this Court to ensure that courts are open, and that the constitutional doctrine cannot be manipulated in a manner that undercuts the constitutional provision and/or the drug courts themselves.

For these reasons, the State joins the Petitioners and the King County Superior Court judge in asking that direct discretionary review be granted.

Submitted this 5th day of February, 2013.

DANIEL T. SATTERBERG
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "James M. Whisman", written over a horizontal line.

JAMES M. WHISMAN, WSBA #19109
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the petitioner, Amy King, Associated Counsel for the Accused at amy.king@acapd.org, containing a copy of the Response to Motion for Discretionary Review and to Statement of Grounds for Direct Review, in State v. Andonijay Lacroy Sykes and Wendell Ray Allgood, Cause No. 87946-0-1, in the Supreme Court, for the State of Washington.

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

L Brame
Name
Done in Seattle, Washington

2/5/13
Date 2/5/13

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From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, February 05, 2013 3:47 PM
To: 'Brame, Wynne'; King, Amy-acapd.org
Cc: Whisman, Jim
Subject: RE: State v. Andonijah Lacroy Sykes & Wendell Ray Allgood, Supreme Court # 87946-0

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Brame, Wynne [<mailto:Wynne.Brame@kingcounty.gov>]
Sent: Tuesday, February 05, 2013 3:46 PM
To: OFFICE RECEPTIONIST, CLERK; King, Amy-acapd.org
Cc: Whisman, Jim
Subject: State v. Andonijah Lacroy Sykes & Wendell Ray Allgood, Supreme Court # 87946-0

Please accept for filing the attached documents (Response to Motion for Discretionary Review and to Statement of Grounds for Direct Review) in
State of Washington v. Andonijah Lacroy Sykes & Wendell Ray Allgood, No. 87946-0.

Thank you.

James M. Whisman
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This e-mail has been sent by Wynne Brame, paralegal (phone: 206-296-9650), at James Whisman's direction.

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