

FILED

Mar 30, 2015
Court of Appeals

Division III

State of Washington

9/531-8

Supreme Court No. _____

(Court of Appeals No. 32015-4-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

v.

CURTIS G. STUMP,
Appellant.

Washington State Supreme Court
Filed

APR 07 2015

Ronald R. Carpenter
Clerk

E
b/h

18272

MOTION FOR DISCRETIONARY REVIEW

JAN TRASEN
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WASHINGTON APPELLATE PROJECT
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OF APPEALS DECISION IS IN CONFLICT WITH A
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A. IDENTITY OF PETITIONER

Mr. Curtis Stump, appellant below, seeks review of the Court of Appeals decision designated in Part B. The Commissioner's Ruling is attached as Appendix A. The Court of Appeals decision denying the motion to modify is attached as Appendix B.

B. COURT OF APPEALS DECISION

Mr. Stump appealed from the Commissioner's ruling, affirming the imposition of costs on appeal, where the State did not substantially prevail. This motion is based upon RAP 13.3(e) and 13.5A.

C. ISSUE PRESENTED FOR REVIEW

Where a defendant does not file a brief on the merits, but files a motion to withdraw pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and the Court of Appeals agrees there are no non-frivolous issues; granting the motion to withdraw, the State has not substantially prevailed. Suquamish Indian Tribe v. Kitsap County, 92 Wn. App. 816, 832, 965 P.2d 636 (1998). Should the State's request for costs have been denied and the cost bill stricken, and was the Court of Appeals decision thus in conflict with a decision of this Court, with another decision of the Court of Appeals, and does it involve an issue of substantial public interest that should be determined by the Supreme Court? RAP 13.4(b)(1), (2), (4).

D. STATEMENT OF THE CASE

In June 2013, Curtis Stump was charged with possession of a controlled substance, in connection with a small bag of heroin recovered from his during a routine traffic stop. RP 25-30. Officers also recovered a glass pipe from his pocket. RP 23, 36.

After counsel for Mr. Stump reviewed the record, counsel filed a motion to withdraw, pursuant to RAP 18.3 and Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), noting that there was no basis in law or fact upon which a claim for relief could be granted. In response, the State agreed with counsel's assessment of the record and urged the Court of Appeals to grant counsel's motion to withdraw. The Court of Appeals agreed with counsel for Mr. Stump and granted the motion to withdraw.

The State then filed a cost bill, seeking costs as the party who substantially prevailed on appeal. Mr. Stump timely filed an objection under RAP 14.5, arguing in light of the Anders brief, the State did not substantially prevail. The Commissioner of the Court of Appeals rejected Mr. Stump's argument, finding the State had substantially prevailed, noting: "[t]his Court therefore affirmed the trial court's decision. Thus, the State of Washington did prevail in that the trial court's decision was affirmed." Appendix A.

On December 10, 2014, Mr. Stump moved to modify the Commissioner's ruling. On February 26, 2015, the Court of Appeals affirmed the ruling, ordering costs. Appendix B.

Mr. Stump seeks review in this Court. RAP 13.4(b)(1), (2), (4).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW, AS THE COURT OF APPEALS DECISION IS IN CONFLICT WITH A DECISION OF THIS COURT, WITH OTHER DECISIONS OF THE COURT OF APPEALS, AND INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST. RAP 13.4(b)(1), (2), (4).

1. Contrary to the Court of Appeals conclusion, Mr. Stump was the substantially prevailing party.

Here, counsel for Mr. Stump filed a motion to seeking a specific form of relief; to be allowed to withdraw as counsel for Mr. Stump.

Based on the foregoing evaluation of the record, there is no basis in law or fact upon which a claim for relief could be granted ... Counsel requests this Court independently review the record in order to determine whether there is any further basis for appellate review ... In the event that the Court concurs, the undersigned seeks to withdraw as appointed counsel on appeal without prejudice to Mr. Stump's right to proceed pro se.

Motion to Withdraw at 2 (emphasis added).

The State filed a brief agreeing with counsel's assessment and agreeing that allowing counsel to withdraw was the appropriate remedy.

The State has reviewed this case and cannot find any viable issues ... For the reasons stated, the conviction of the

defendant should be affirmed and the defense counsel's request to withdraw should be granted.

Brief of Respondent at 2-3 (emphasis added).

The Court of Appeals granted defense counsel's motion and granted the relief requested by *petitioner* (Mr. Stump), by permitting counsel to withdraw. Thus, if anyone prevailed, Mr. Stump was the prevailing party, because he received the relief he sought. See Marine Enterprises, Inc. v. Security Pacific Trading Corp., 50 Wn. App. 768, 772, 750 P.2d 1290 (1988).

2. In the alternative, there was no substantially prevailing party, as each party received the relief requested.

Here, each party requested the same relief – to allow counsel for Mr. Stump to withdraw. As a consequence, *both* parties prevailed, since the relief requested by *both* parties was granted. See Phillips Bldg. Co. v. An. 81 Wn.App. 696, 702, 915 P.2d 1146 (1996) (when both parties prevail on a major issue, there may be no prevailing party for attorney fee purposes).

In a recent similar case in Division One, counsel for appellant, upon reviewing the record, filed a motion to withdraw, pursuant to Anders v. California. See State v. C.A.G., 184 Wn. App.1023 (2014).¹ The Court

¹ Although C.A.G. is an unpublished opinion, it is cited in order to show the conflict amongst divisions of the Court of Appeals, not as persuasive

of Appeals agreed that the issues presented were frivolous and granted C.A.G.'s counsel's motion to withdraw. Id. C.A.G. objected to the cost bill filed by the State. On January 7, 2015, Division One of the Court of Appeals denied the cost bill, finding simply:

This is an Anders appeal in which appellant's counsel withdrew. No costs will be awarded.

State v. C.A.G., (No. 70939-9-I), Notation Ruling of Commissioner Neel, Appendix C.

Because the Court of Appeals decision in Mr. Stump's case is thus in conflict with another decision of the Court of Appeals, this Court should grant review. RAP 13.4(b)(2).

3. Alternatively, costs are not appropriately assessed as there was no brief addressing the merits of the case filed.

Finally, neither party was the substantially prevailing party, since Mr. Stump did not file a brief addressing the merits of the appeal. Instead, after fully reviewing the record, counsel for Mr. Stump filed a motion to withdraw pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), seeking the Court of Appeals to independently review the record to determine if there were any non-frivolous issues, and if the Court agreed, allowing counsel to withdraw. The State agreed with counsel's assessment and sought the same remedy -- allowing counsel to

authority. The Commissioner's Ruling denying the Cost Bill as attached as Appendix C.

withdraw. The Court of Appeals agreed with both parties, and granted counsel's motion to withdraw. The motion filed by counsel for Mr. Stump did not address the merits of any issue on appeal, merely concluding there were no non-frivolous issues on appeal.

As such, in light of the fact that a motion, not a merits brief, was filed, neither party substantially prevailed. Suquamish Indian Tribe, 92 Wn. App. at 832. Thus, the State's request for costs should have been denied and the cost bill stricken.

Accordingly, the Court of Appeals decision affirming the trial court order is in conflict with other decisions of the Court of Appeals, and involves an issue of substantial public interest that should be determined by this Court, requiring review. RAP 13.4(b)(2), (4).²

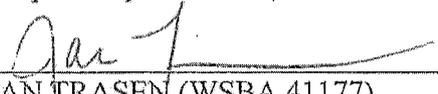
² In addition, Mr. Stump was found to be indigent by the trial court. CP 27-30. In light of this Court's recent decision in State v. Blazina, ___ P.3d ___ (2015 WL 1086552, Mar. 12, 2015), this Court should reach the equitable issues raised when courts impose costs on indigent defendants who file Anders briefs. RAP 13.4(b)(1), (4).

F. CONCLUSION

For the above reasons, the Court of Appeals decision should be reviewed, as it is in conflict with a decision of this Court, with another decision of the Court of Appeals, and involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(1), (2), and (4).

DATED this 30th day of March, 2015.

Respectfully submitted,



JAN TRASEN (WSBA 41177)
Washington Appellate Project
Attorneys for Petitioner

APPENDIX A

The Court of Appeals
of the
State of Washington
Division III

NOV 13 2014

CLERK OF COURTS
COURT HOUSE
SPokane, WA 99201

STATE OF WASHINGTON,

Respondent,

v.

CURTIS G. STUMP,

Appellant.

COMMISSIONER'S RULING
NO. 32015-4-III

On September 15, 2014, this Court filed its decision in this matter, affirming the trial court decision. The State of Washington timely filed a cost bill in the amount of \$3,024.50. Mr. Stump objects claiming the State did not substantially prevail on appeal.

RAP 14.2 provides that costs may be awarded "to the party that substantially prevails on review."

Mr. Stump's logic is faulty. He filed a notice of appeal seeking review of his Spokane County Superior Court conviction. After reviewing the trial court record, his attorney filed an *Anders* brief conceding there was no basis in law or fact upon which a claim for relief could be granted. The State of Washington filed a responsive brief. This

No. 32015-4-III

Court also reviewed the record and also did not find any non-frivolous issues. This Court therefore affirmed the trial court's decision. Thus, the State of Washington did prevail in that the trial court's decision was affirmed. Now, therefore,

IT IS ORDERED, costs in the amount of \$6.00 are awarded to the Spokane County Prosecutor's Office and \$3,018.50 to the Office of Public Defense (Indigent Defense Fund) to be paid by Mr. Curtis G. Stump.

November 13, 2014.



Joyce J. McCown
COMMISSIONER

APPENDIX B

FILED
FEBRUARY 26, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 32015-4-III
)	
Respondent,)	
)	
v.)	ORDER DENYING
)	MOTION TO MODIFY
CURTIS G. STUMP,)	COMMISSIONER'S RULING
)	
Appellant.)	

Having considered appellant's motion to modify the commissioner's ruling and the record and file herein;

IT IS ORDERED the motion to modify the commissioner's ruling is denied.

DATED: February 26, 2015

PANEL: Judges Lawrence-Berrey, Brown, Siddoway

FOR THE COURT:


LAUREL H. SIDDOWAY
CHIEF JUDGE

APPENDIX C

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

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January 7, 2015

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State of Washington, Respondent v. Cesar Alberto Garza, Appellant

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on January 7, 2015, regarding Appellant's Objection to Cost Bill:

This is an Anders appeal in which appellant's counsel withdrew. No costs will be awarded.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

lls

WASHINGTON APPELLATE PROJECT

FILED

Mar 30, 2015

Court of Appeals

Division III

State of Washington

March 30, 2015 - 4:13 PM

Transmittal Letter

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Case Name: STATE V. CURTIS STUMP

Court of Appeals Case Number: 32015-4

Party Represented: APPELLANT

Is This a Personal Restraint Petition? Yes No

Trial Court County: _____ - Superior Court # _____

Type of Document being Filed:

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Response/Reply to Motion: _____
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: MOTION FOR DISCRETIONARY REVIEW TO THE SC

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org