

No. 94175-1

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Jun 06, 2016  
Court of Appeals  
Division III  
State of Washington

**NO. 32002-2-III**

**COURT OF APPEALS**

**STATE OF WASHINGTON**

**DIVISION III**

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**STEVEN LOUIS CANHA,**

Defendant/Appellant.

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**REPLY TO STATE'S SUPPLEMENTAL RESPONSE,**

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## ARGUMENT

The Court of Appeals directed the State and Mr. Canha to file supplemental briefing in connection with his Personal Restraint Petition (PRP). The State filed its response on May 16, 2016. Mr. Canha has a number of concerns with the State's response.

The State continues to argue that Mr. Canha does not have the right to proceed with his PRP. The State ignores the Washington State Supreme Court order directing the PRP be heard on its merits.

Moreover, the State fails to respond to *In re Personal Restraint of McCready*, 100 Wn. App. 259, 996 P.2d 658 (2000), *Personal Restraint of Crawford*, 150 Wn. App. 787, 209 P.3d 507 (2009) and *State v. Mandanas*, 163 Wn. App. 712, 262 P.3d 522 (2011).

The foregoing cases along with *State v. Crawford*, 128 Wn. App. 376, 115 P.3d 387 (2005) and *State v. Crawford*, 159 Wn. 2d 86, 147 P.3d 1288 (2006) are the controlling authority.

Insofar as a comparability analysis is concerned the State rehashes its original argument, misstates the facts, and fails to appropriately cite to the record or existing case law as to portions of the issues involved.

RAP 10.3(a)(6) provides:

*Argument.* The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.

Failure to cite to authority to support an argument generally constitutes a concession. *See: State v. McNear*, 88 Wn. App. 331, 340, 944 P.2d 1099 (1997).

The State argues that the trial court conducted a comparability analysis at several junctures in its Response. The following statements do not constitute a comparability analysis:

The Court in accepting the offender points calculated by the State, determined that the California Manslaughter offense was comparable to the Washington State Crime of Murder in Second Degree. (p.10)

The defendant had a prior Oregon conviction for Felon in Possession of a Firearm which the sentencing court compared to this

State's Unlawful Possession of a Firearm  
statute. (p.13)

Moreover, the record on this PRP clearly reflects that the State did not even have the documents to conduct a comparability analysis at the time of sentencing. (*See*: State's Motions to Extend Time dated June 11, 2015 and June 30, 2015).

As announced in *Dependency of K.S.C.*, 137 Wn. 2d. 918, 933, 976 P.2d 113 (1999) "representations [that] misstate the facts, ... should be stricken insofar as they do."

The State goes on to address the Oregon conviction of hindering prosecution. (p. 15) In its original response to the PRP the State conceded error. Now it has backtracked and is requesting a comparability analysis on it. (*See*: July 27, 2015 Response, pp.2-3; May 16, 2016 Response pp. 15-16.)

Additionally, the State's Response raises a new issue that the offender score was miscalculated and that Mr. Canha should receive an additional 43 months in prison. The State totally misreads the sentencing court's oral ruling and the Judgment and Sentence.

THE COURT: The court is going to impose  
a sentence of 43 months on Count I, 43  
months on Count II, 41 months on Count III,

41 months on Count IV, 41 months on Count III and IV will be run consecutive for a total of 82 months. **43 months on Counts I and II will run concurrently with those 82 months.** So, that will be a total of **82 months.** An additional 36 months for the firearm enhancement in Count I. Additional 36 months for the firearm enhancement in Count II. A total of 154 months.

RP 587, II 8-17; (Appendix A to State's Response). (Emphasis supplied.)

The State's attempt to read into the court's ruling that the trial court ordered Counts I and II to run consecutive is specious and disingenuous.

Moreover, the State failed to raise this issue in any of the prior appeals or PRPs. *See: State v. Vanderpool*, 99 Wn. App. 709, 714, 955 P.2d 104 (2000).

Finally, the State claims that Mr. Canha's PRP is frivolous. Mr. Canha adamantly disagrees. If there is one debatable issue involved in an appeal/PRP it precludes a finding that either the appeal or PRP as a whole is frivolous. *See: Greenriver Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn. 2d 427, 443, 730 P.2d 653 (1986).

Mr. Canha otherwise relies upon the argument contained in his original PRP and the Supplemental Response previously filed.

Dated this 6th day of June, 2016.

Respectfully submitted,

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**NO. 32002-2-III**  
**COURT OF APPEALS**  
**DIVISION III**  
**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	BENTON COUNTY
Plaintiff,	)	NO. 07 1 01052 5
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF</b>
	)	<b>SERVICE</b>
	)	
STEVEN LOUIS CANHA,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 6th day of June, 2016, I caused a true and corrected copy of *Reply to State's Supplemental Response* to be served on:

COURT OF APPEALS, DIVISION III  
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CERTIFICATE OF SERVICE

BENTON COUNTY PROSECUTOR'S OFFICE

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CERTIFICATE OF SERVICE

**MORGAN LAW OFFICE**

**June 06, 2016 - 9:05 AM**

**Transmittal Letter**

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Case Name: State of Washington v. Steven Louis Canha  
Court of Appeals Case Number: 32002-2  
Party Represented: Steven Louis Canha  
Is This a Personal Restraint Petition?  Yes  No  
Trial Court County: Benton - Superior Court # 07-1-01052-5

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- Personal Restraint Petition (PRP)
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**Comments:**

No Comments were entered.

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