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No. 63666-9
King County Superior Court No. 99-1-00573-9KNT

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,
Plaintiff/Appellee,
v.

DANIEL VALENTINE,
Defendant/Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

The Honorable LeRoy McCullough, Judge

APPELLANT'S OPENING BRIEF

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DIVISION ONE
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I.
ASSIGNMENTS OF ERROR

After one of Mr. Valentine's convictions was reversed on appeal due to Double Jeopardy, the trial court refused to hold a resentencing hearing on remand. Instead, it stapled to the judgment a separate order indicating that Count II had been vacated.

- 1) The trial court's refusal to hold a new sentencing hearing violated Valentine's right to due process under the Fourteenth Amendment to the U.S. Constitution because the trial court considered an unconstitutional conviction at the original sentencing hearing.
- 2) The trial court's refusal to hold a new sentencing hearing violated Valentine's Fifth Amendment right to be free from Double Jeopardy, since he never received any meaningful remedy for the Double Jeopardy violation.
- 3) The trial court's refusal to issue a new judgment and sentence on remand violated the requirement of CrR 7.3 that the "adjudication and sentence" be set out in the judgment.
- 4) The exceptional sentence imposed by the judge at the original sentencing hearing violated Valentine's Sixth Amendment right to trial by jury, his Fourteenth Amendment due process right to proof of all

elements beyond a reasonable doubt. See Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). It also violated his statutory and Sixth and Fourteenth Amendment rights to notice of the charges against him. The trial court's refusal to hold a new sentencing hearing continued these violations.

- 5) If the proceedings on remand are viewed as a resentencing, then the new sentencing hearing violated Blakely.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Must the trial court revisit its sentence when one count has been vacated on appeal due to Double Jeopardy?
2. Must the trial court revisit its sentence on remand when the intervening decision in Blakely renders the original exceptional sentence unconstitutional?
3. Is a judgment "final" for retroactivity purposes when the Court of Appeals remands for further proceedings following vacation of one count, and no further proceedings have taken place?
4. Does Valentine's sentence violate the constitutional principles set out in Blakely?

5. Did the trial court, in effect, hold a resentencing hearing when it decided that the number of counts was not, in its view, the determining factor in this case?

III. STATEMENT OF THE CASE

Mr. Valentine was charged with attempted murder in the first degree and assault in the first degree, with deadly weapon allegations on both counts. CP 1-2. The State alleged that Valentine attacked his girlfriend, Pamela Dixon, with a knife in the early morning hours of January 1, 1999. The jury acquitted Valentine of attempted murder in the first degree but convicted him of the lesser charge of attempted murder in the second degree, and of assault in the first degree. The jury found that Valentine used a deadly weapon as to both counts. CP 3-6.

At sentencing, the Court calculated the standard ranges (including the 24-month deadly weapon enhancements) as 116.25 to 189 months on the attempted murder count and 117-147 months on the assault count. The Court imposed an exceptional sentence of 240 months on each count, based on multiple injuries and deliberate cruelty. The court ran the time concurrently, finding that the offenses involved the “same criminal

conduct.” The Court added 24 months of community placement. The judgment was entered on August 30, 1999. CP 7-15.

Mr. Valentine filed a timely appeal and proceeded at public expense. This Court vacated the assault conviction on Double Jeopardy grounds, but affirmed the exceptional sentence on the murder count. State v. Valentine, 108 Wn. App. 24, 29 P.3d 42 (2001), review denied, 145 Wn.2d 1022, 41 P.3d 483 (2002) (“Valentine I”). The mandate, which issued on March 28, 2002, states: “This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.” Ex. A; CP 39.

Unfortunately, no further proceedings took place in the Superior Court. Mr. Valentine did not realize that they should because he was no longer represented by counsel once the petition for review was denied, and his appointed appellate lawyer did not discuss remand proceedings with him. Mr. Valentine unsuccessfully attempted to challenge his attempted murder conviction through a pro se petition for a writ of habeas corpus in federal court and a personal restraint petition in state court. CP 22-39.

In 2008, Mr. Valentine came into sufficient funds to hire a private attorney. When undersigned counsel learned that the mandate had not been followed, I contacted opposing counsel Tod Bergstrom in an effort to

set a date for resentencing. Because the parties disagreed about the scope of the hearing that should take place on remand, they agreed to brief the matter and submit it to the trial court for a ruling.

The hearing took place on May 11, 2009. Valentine maintained that the Court must hold a new sentencing hearing in view of the vacated count, and in view of the U.S. Supreme Court's decision in Blakely v. Washington, supra, that invalidated the Court's exceptional sentence. RP 2-10. The State maintained that the remand was purely "ministerial." RP 12. It asked the Court to simply sign an order indicating that Count II is vacated and staple that order to the judgment. RP 13. It also argued that the Court would not likely change the sentence in view of the vacated conviction because the charges arose from a single event and there was no change in the offender score. RP 14-15. The defense responded that the State was essentially asking the Court to make a resentencing decision without calling the hearing a resentencing. RP 20-21.

The Court agreed with the State. It signed a written order stating that the judgment and sentence "is amended to reflect that the defendant's conviction for Count II (Assault in the First Degree) is vacated." CP 54-55.

**IV.
ARGUMENT**

A. THE TRIAL COURT WAS REQUIRED TO HOLD A RESENTENCING HEARING IN VIEW OF THE VACATED CONVICTION AND THE CHANGE IN LEGAL STANDARDS

1. The Vacation of a Conviction Requires a New Sentencing Hearing

In the first appeal, this Court properly found that Valentine was entitled to a remedy for the Double Jeopardy violation even though his sentences on the two convictions ran currently. See State v. Calle, 125 Wn.2d 769, 773, 888 P.2d 155 (1995), citing Ball v. United States, 470 U.S. 856, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985). One reason for this rule is that the existence of an additional conviction is likely to affect the sentencing decision, even when it has no mandatory consequences. See Calle, 125 Wn.2d at 774. For example, prior to passage of the Sentencing Reform Act, the presence of multiple convictions was “apt to affect the minimum sentence set by the parole board.” Id., quoting State v. Johnson, 92 Wn.2d 671, 679, 600 P.2d 1249 (1979), cert. dismissed, 446 U.S. 948, 100 S.Ct. 2179, 64 L.Ed.2d 819 (1980).

Because criminal convictions may influence sentencing, the United States Supreme Court has held that a trial court must reconsider its sentence when any of the convictions it originally considered have been

reversed. United States v. Tucker, 404 U.S. 443, 92 S.Ct. 589, 30 L.Ed.2d 592 (1972). At the time of Tucker, federal judges had broad discretion in imposing sentences, they could consider nearly any information they wished, and their sentences were generally unreviewable as long as they did not exceed the statutory maximum. Id., 404 U.S. at 446. Nevertheless, because Tucker’s trial judge considered prior convictions that were later found to be legally invalid, “this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue.” Id. at 447, quoting Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) (sentencing based on incorrect criminal history violated due process). The Court therefore remanded for resentencing even though the circumstances suggested that the prisoner’s record may not have influenced the original sentence.

It is true that the trial court would have had the power to impose the same sentence at the original sentencing hearing even without the assault conviction. It did not affect the standard range or the grounds for an exceptional sentence. Nevertheless, the decision to impose an exceptional sentence was discretionary, as was the length of the sentence imposed. As Townsend explains, a Court must hold a new sentencing

hearing and consider whether its discretion should be exercised differently in view of the change in criminal history.

A similar situation was presented in State v. Davenport, 140 Wn. App. 925, 167 P.3d 1221 (2007), review denied, 163 Wn.2d 1041, 187 P.3d 270 (2008). In the first appeal, the Court of Appeals reversed one of the defendant's two current robbery counts due to insufficient evidence and remanded. Id. at 929. On remand, defense counsel asked that Davenport be present at the resentencing hearing. The trial court believed that was unnecessary because, even with only one current robbery conviction, Davenport was still a persistent offender and would have to be sentenced to life without parole. Id. The trial court therefore rejected the defendant's request to hold a resentencing hearing with the defendant present, and to consider new arguments concerning applicability of persistent offender sentencing. Id. at 929. The court simply filed an order amending the judgment and sentence to reflect that one count was vacated, and that the offender score had changed for the other count. Id. at 931. The Court of Appeals reversed, finding that the defendant had a right to be present when the trial court exercised its discretion on whether to consider

defendant's sentencing arguments. Id. at 932¹. Davenport's resentencing "involved more than the court's performing a ministerial act." Id.

The Court's options at resentencing are not limited to factors that have changed as a result of the appeal. In State v. White, 123 Wn. App. 106, 97 P.3d 34 (2004), the defendant was initially sentenced on three felonies, a misdemeanor, and a gross misdemeanor. Id. at 109. In the first appeal, the Court of Appeals remanded for correction of the offender score on the felonies. Although this change had no impact on the misdemeanors, the trial court was free to change the sentence on those as well. Id. at 113. Similarly, the trial court was free to reconsider its decision to impose a DOSA on the felonies, even though the reduction in standard range in no way called into question the original decision to impose a DOSA. Id. at 114-15.

2. The *Blakely* Decision Requires Resentencing

Another reason that the trial court was required to hold a new sentencing hearing is that the law regarding exceptional sentences has

¹ The trial court was not *required* to consider Davenport's new legal arguments because they could have been raised at the first sentencing hearing and in the first appeal. Id. In this case, however, Valentine is asking the Court to reconsider his sentence in view of new information that could not have been considered earlier: the vacation of one of his convictions and the change in the law caused by Blakely. Therefore, the trial court was required to reconsider.

changed significantly since the original sentencing. After Blakely v. Washington, supra, factors supporting an exceptional sentence must be found by a jury by proof beyond a reasonable doubt. As discussed below, the parties dispute whether a jury could now be empanelled to make such findings in this case. But it is certain that the trial court cannot make the findings on its own. This change in procedure could easily affect the sentence imposed on remand.

Mr. Valentine could rely on the Blakely decision on remand because his judgment was not yet final. See State v. Evans, 154 Wn.2d 438, 114 P.3d 627, cert. denied, 546 U.S. 983, 126 S.Ct. 560, 163 L.Ed.2d 472 (2005) (Blakely, like other new rules of constitutional criminal procedure, applies to all cases in which the judgment is not yet final). A judgment is not “final” unless both the conviction and sentence are final. In re Skylstad, 160 Wn.2d 944, 162 P.3d 413 (2007). In Skylstad, the defendant’s conviction was upheld on direct appeal but his sentence was reversed and the case remanded. Skylstad’s judgment did not become “final” until the conclusion of his second direct appeal following the remand hearing. According to the Supreme Court, a judgment cannot be final until the litigation has ended, and there is “nothing for the court to do but execute the judgment.” Id. at 949.

In this case, neither the conviction nor the sentence was final when the first appeal concluded. The judgment on file in the clerk's office still contained a conviction for assault which this Court found to be barred by Double Jeopardy. Further, the sentence was not final because the trial court could have imposed a different sentence at a resentencing hearing.² In fact, even if resentencing were discretionary rather than mandatory, the sentence cannot be "final" under any reasonable interpretation of that word until the trial court has decided how to exercise its discretion.

The Ninth Circuit has addressed a situation very similar to Valentine's. See United States v. LaFromboise, 427 F.3d 680 (9th Cir. 2005), cited with approval in Skylstad, 160 Wn.2d at 952 n.5. In that case, a jury convicted the defendant of multiple drug offenses as well as three counts of carrying a firearm. On appeal, the court vacated the three firearm convictions and remanded to the trial court for retrial. Prior to trial, the government moved to dismiss the three firearm counts. The court granted that motion, but then failed to either conduct a new sentencing hearing on the remaining counts or enter an amended judgment reflecting the dismissed counts. Id. at 682. Two years later, the defendant filed a

² In fact, it is Valentine's position that the trial court was *required* to impose a different sentence because no valid procedure existed to re-impose an exceptional sentence.

habeas action, which the district court dismissed as untimely based on the issuance of the mandate.

The appellate court reversed, explaining that a final judgment necessarily includes a final sentence. Id. at 683. Further, “[i]mplicit in our mandate to the district court was the opportunity for resentencing, whether or not the remanded gun counts resulted in an eventual conviction.” Id. at 684 (emphasis added). Accordingly, until such time as the district court acted on the mandate—whether to resentence the defendant or to amend the judgment and sentence—there could not be a final judgment. Id. Because there had been a change in the law relating to sentencing in the interim, the defendant could now rely upon that change. Id. at 684. The change in the law was United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), which applied Blakely to the federal sentencing guidelines.

The State and the trial court placed undue emphasis on a single sentence in this Court’s opinion on direct appeal. In summarizing its ruling, the Court stated: “The conviction for attempted murder is affirmed, the assault conviction is vacated and the sentence is affirmed.” By saying “the sentence is affirmed” the Court was merely noting that it rejected the particular challenge raised by the appellant, that is, that the

trial court abused its discretion in finding that Mr. Valentine acted with “deliberate cruelty.” See Valentine I, 108 Wn. App. at 29-30. The parties did not brief the appropriate remedy for the vacation of the assault conviction and this Court did not address that issue. Rather, it left such matters to be dealt with on remand. That is why the mandate was open-ended: “This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.”

The remedy adopted by the trial court – stapling an order to the existing judgment – is not supported by any authority. Under CrR 7.3, “the adjudication and sentence” must be set out in the judgment – not in a separate order. The “adjudication” obviously includes the counts for which the defendant stands convicted. A judgment is always subject to attack if it is invalid on its face. See RCW 10.73.090; Personal Restraint of Runyan, 121 Wn.2d 432, 853 P.2d 424 (1993). The judgment currently on file in the superior court clerk’s office remains facially invalid.

The State has argued that the trial court properly declined to take any action other than amending the judgment, in view of the wording of the mandate from the first appeal. As LaFromboise explains, however, a conviction is not final after remand even if the mandate leaves the district

court with discretion to decline a resentencing. The mere existence of that discretion means that the conviction is not final. The conviction remains non-final as long as an appeal from the trial court's ruling is pending. Thus, even if the trial court committed no error, *this* Court must now remedy the Blakely violation by remanding for resentencing.

3. The Impact of *State v. Kilgore*

As the above discussion shows, the state of the law relating to Mr. Valentine's case would seem to be clear. Unfortunately, there is one anomalous decision from Division Two that muddies the waters. See *State v. Kilgore*, 141 Wn. App. 817, 172 P.3d 373 (2007), review granted, 164 Wn. 2d 1001, 190 P.3d 55 (Aug. 5, 2008). Kilgore is a confusing case for many reasons, not the least of which is that it generated three separate opinions with little reasoning in common between them.

In Kilgore, the defendant was convicted on seven counts and received exceptional sentences on each of them. Id. at 820. In his first appeal, Kilgore challenged the convictions but not the sentences. The Court of Appeals reversed two of the convictions and remanded for "further proceedings." Id. at 820-21. On remand, the prosecutor chose not to retry the reversed counts. Id. at 821. In 2005, Kilgore sought a resentencing hearing, arguing that he should be entitled to a standard range

sentence in view of Blakely. The trial court agreed with the State that it should merely correct the judgment to strike the two reversed counts and correct the offender score. (Because the corrected offender score was still above nine, the standard ranges did not change.) Id. at 822. Kilgore then appealed a second time.

Judge Hunt wrote an opinion concluding that the appeal should be dismissed. She rejected Kilgore's argument that a resentencing hearing was mandatory. "Kilgore cites no authority to support his . . . argument that the trial court was obligated to resentence him on remand because our reduction of his total convictions from seven to five would likely have had an impact. Thus, we do not further consider this argument." Id. at 825, n. 6. (Valentine, of course, has provided such authority.) Judge Hunt agreed that the remand was open-ended when the Court "remanded for further proceedings," and therefore the trial court could have held a full resentencing hearing on remand. Id. at 826. However, "[w]hen the trial court chose not to exercise its discretion under Barberio to resentence Kilgore on remand 'for further proceedings,' our remand became ministerial in nature." Id. at 829. Since it did not, however, there was nothing to appeal. Id. Judge Hunt believed her result was compelled by State v. Barberio, 121 Wn.2d 48, 846 P.2d 519 (1993). See Kilgore at

827-30. She noted that in Barberio, the appellate courts were required to dismiss certain claims raised in a second appeal because they had not been raised in the first appeal, and the trial court declined to consider them on remand.

Judge Penoyar issued a brief opinion concurring in the result without fully endorsing Judge Hunt's reasoning. Id. at 839.

Judge Armstrong issued a lengthy and well-reasoned dissent. Kilgore at 830-39. As he noted, Barberio actually supports Kilgore's position. As Judge Armstrong points out, Division One granted the State's motion to dismiss Barberio's second appeal only "as to those issues which could have been raised in the first appeal, *and den[ied] the motion as to those issues which could not have been raised at that time.*" Kilgore at 839, quoting State v. Barberio, 66 Wn. App. 902, 903, 833 P.2d 459 (1992), aff'd, 121 Wn.2d 48, 846 P.2d 519 (1993) (emphasis in Kilgore).

Judge Armstrong's understanding of Barberio is correct. Division One prohibited Barberio from raising challenges to his exceptional sentence that could have been raised in the first appeal. It permitted him, however, to raise two issues that could not have been raised in the first appeal: 1) that the exceptional sentence should have been reduced because one of his convictions was overturned; and 2) that a recent change in the

statutory definition of a term used by the sentencing judge affected the result. Barberio, 66 Wn. App. at 905-06. The Washington Supreme Court took “limited review” of the Court of Appeals decision “*to clarify the rationale which leads to dismissal.*” State v. Barberio, 121 Wn.2d at 50 (emphasis added). In other words, the Supreme Court addressed only the portion of the Court of Appeals decision that dismissed certain claims because they could have been, but had not been, raised in the first appeal. The Supreme Court noted that Division One never discussed the applicable rule, RAP 2.5(c)(1), which permits an appellate court to address such claims only if the trial court chose to address it on remand. Barberio, 121 Wn.2d at 50. The Court of Appeals reached the correct result because “[t]he issue presented was a clear and obvious issue which could have been decided in 1990 in the first appeal.” Id. at 52. The “issue” to which the Supreme Court refers must be the trial court’s *imposition* of an exceptional sentence. Obviously, Barberio could not have addressed in the first appeal whether the sentence should be reduced in view of the decreased number of convictions since he did not know whether any conviction would be overturned or, if it were, whether the State would retry it. The Supreme Court did not review the Court of Appeals’ determination that the latter issue was properly raised.

Because Barberio did not preclude review of Kilgore's claims, Judge Armstrong found that the appeal was properly brought. Further, state and federal cases demonstrated that Kilgore's case was not final when the mandate left open further proceedings. Kilgore, at 830-36. In Judge Armstrong's view, the trial court clearly had at least the power to resentence Kilgore, "and if it had the power, our remand order cannot be construed as ministerial." Kilgore, at 838. Kilgore therefore was entitled to the benefit of Blakely. Kilgore, at 838-39.

Judge Armstrong's opinion in Kilgore is more sensible than Judge Hunt's. Why should a defendant's entitlement to rely on a new court decision turn on the whims of the trial court? If that were the case, two defendants who were otherwise identically situated could have different law apply to their cases simply because the judge in one case chose to hold a resentencing hearing while the other chose to handle the remand "ministerially." The U.S. Supreme Court has cautioned that the applicability of its rulings should not turn on such fortuities. See Griffith v. Kentucky, 479 U.S. 314, 323, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) ("[S]elective application of new rules violates the principle of treating similarly situated defendants the same."). As discussed above, the Ninth

Circuit has concluded that the mere existence of trial court discretion following a remand means that the judgment is not final.

The Washington Supreme Court granted review in Kilgore. Oral argument took place on March 12, 2009. It appears likely that the Court of Appeals decision in Kilgore will be reversed.

In any event, Kilgore is distinguishable from Valentine's case under the reasoning of any of the Division Two judges. Valentine, unlike Kilgore, *did* challenge his exceptional sentence in his first appeal. See Valentine I, 108 Wn. App. at 29-30. Therefore, whether or not the trial court chose to revisit that issue on remand, this Court can review it in this second appeal.

4. If the Trial Court's Hearing on Remand is Viewed as a Resentencing, this Court Must Reverse in View of *Blakely*

Arguably, the trial court actually did hold a resentencing hearing. As discussed above in the statement of the case, the prosecutor argued that the vacation of one count should not affect the sentence imposed. He maintained that the facts of the case, rather than the number of counts, should determine the punishment. The trial court's ruling was based in part on its interpretation of this Court's mandate, but also on its view of the factors that it considered most important for sentencing.

While it can be argued that a resentencing could yield a different result, this was, as has been described by plaintiff's counsel and by the State, a singular event with a singular victim, and a singular fact pattern.

RP 26. The trial Judge thereby made a subjective determination that the number of counts would not affect his view of the sentence in view of the particular facts of this case. Such an analysis is not relevant to *whether* a resentencing should take place, but only as to the *result* of a resentencing.

Therefore, the trial court's ruling could be viewed as a resentencing hearing. As such, it clearly violated Blakely as well as the court rules and statutes regarding sentencing.³

B. WHETHER AN EXCEPTIONAL SENTENCE CAN BE IMPOSED UPON REMAND MUST BE DECIDED BY THE TRIAL COURT

Before Judge McCullough, the parties briefed whether, and under what circumstances, the trial court could impose an exceptional sentence upon resentencing. That issue is not raised on appeal because the Supreme Court has stated that the issue is not ripe for review until after a resentencing has actually taken place. State v. Hughes, -- Wn.2d -- , --

³ None of the procedures required by CrR 7.1 and 7.2 were followed. Valentine never had a fair opportunity to present his arguments for leniency. Further, the Court made no attempt to comply with RCW 9.94A.537, which sets out the only procedures that could apply for imposing an exceptional sentence. (Valentine maintains that there is no valid statutory procedure that applies in his setting.)

P.3d -- , 2009 WL 2182808 at *5 (July 23, 2009); State v. Doney, 165 Wn.2d. 400, 198 P.3d 483 (2008); State v. Davis, 163 Wn.2d 606, 616, 184 P.3d 639 (2008). If this Court remands for resentencing, the trial court must determine what procedures it can then follow.⁴

**V.
CONCLUSION**

Based on the foregoing, this Court should vacate the judgment and sentence, and the order purporting to amend the judgment and sentence, and remand for resentencing.

DATED this 3rd day of August, 2009.

Respectfully submitted,



David B. Zuckerman, WSBA #18221
Attorney for Daniel Valentine

⁴ If the Court finds that the trial court did, in effect, hold a resentencing hearing, it is beyond dispute that an exceptional sentence was imposed in violation of constitutional and statutory requirements. In that case, the Court would still leave for remand a determination of what procedures should be followed.

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of this brief on the following:

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8/3/2009
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

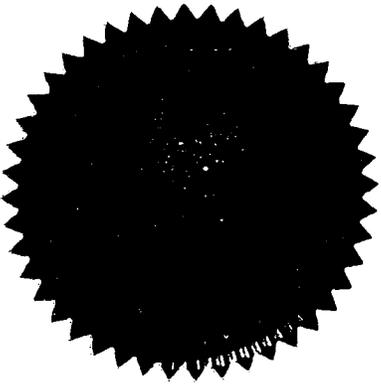
STATE OF WASHINGTON,)	
)	
Respondent,)	No. 45228-2-1
)	
v.)	MANDATE
)	
DANIEL VALENTINE,)	King County
)	
Appellant.)	Superior Court No. 99-1-00573-9.KNT
)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on August 20, 2001, became the decision terminating review of this court in the above entitled case on March 28, 2002. An order denying a petition for review was entered in the Supreme Court on February 5, 2002. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

COMMITMENT ISSUED
APR 10 2002

c: Oliver Davis
Andrea Vitalich
Hon. Leroy McCullough



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 28th of March, 2002.

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

EXHIBIT A

POSTED

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