

NO. 63793-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

GREGORY ALLEN,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHERYL CAREY
THE HONORABLE MICHAEL J. FOX

BRIEF OF RESPONDENT

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A. ISSUE

1. When a defendant requests pro se status, the trial court has an obligation to determine whether the request is both unequivocal and timely, and whether the defendant's decision to represent himself is knowing, voluntary and intelligent. Allen filed a number of hand-written motions while he was represented by counsel, the majority of which requested substitution of counsel. On one occasion, he filed a "Notice of Motion to Withdraw Counsel and Allow Defendant to Proceed Pro Se"; he filed no accompanying motion, and he never mentioned self-representation in his many conversations with the trial court, all of which focused on his request for a new attorney. Has Allen failed to show that he made an unequivocal request to represent himself?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Gregory Lee Allen was charged by information and amended information with one count of felony stalking of his former criminal defense attorney, Kevin McConnell; one count of gross misdemeanor stalking of Carole Furness, an employee of the

Office of Public Defense ("OPD"); and three counts of felony harassment (two against Kevin McConnell and one against Carole Furness). As to each of the four felonies, the State alleged one or both of the following aggravating factors: the offense involved a destructive and foreseeable impact on persons other than the victim (RCW 9.94A.535(3)(r)); or the defendant committed the offense against an officer of the court in retaliation of the officer's performance of his duty to the criminal justice system (RCW 9.94A.535(3)(x)). CP 1-7, 115-18.

A jury found Allen guilty as charged, including the aggravating factors. CP 152-64. The trial court imposed standard range sentences of 60 months on each of the four felonies, and ordered that they be served consecutively for a total of 240 months of incarceration. CP 234-41. The court imposed 12 months for the gross misdemeanor, and ordered that it be served concurrently with the felony sentences. CP 212-13. The court entered written findings in support of the exceptional sentence. CP 242-46.

2. SUBSTANTIVE FACTS.

Kevin McConnell is an attorney with Northwest Defenders Association ("NDA"). 16RP¹ 41. In early 2005, OPD had appointed McConnell to represent Gregory Allen. 16RP 58-60. McConnell was the fourth lawyer to represent Allen in that case.² 16RP 61.

During the course of the representation, McConnell received many haranguing, abusive, and ultimately threatening telephone calls from Allen. 16RP 63-64. Allen argued with McConnell, and would not accept his advice. 16RP 67-69. Allen threatened to sue McConnell, and on one occasion threatened to hit him. 16RP 70-72. Allen accused McConnell of working for the State, and voluntarily absented himself from most of his trial. 16RP 75, 79-80.

At some point after the matter was concluded, McConnell received a copy of a letter that Allen had sent to the Washington State Bar Association ("WSBA"); apparently, the Bar had dismissed

¹ The verbatim report of proceedings consists of 19 volumes, and will be referred to in this brief as follows: 1RP (1-4-08), 2RP (2-25-08), 3RP (3-28-08), 4RP (4-25-08), 5RP (5-30-08), 6RP (8-29-08), 7RP (9-5-08), 8RP (10-31-08), 9RP (11-14-08), 10RP (1-9-09), 11RP (1-30-09), 12RP (2-4-09), 13RP (2-9-09), 14RP (3-13-09), 15RP (4-28-09), 16RP (5-18-09, 5-19-09), 17RP (5-20-09), 18RP (6-26-09), and 19RP (7-10-09).

² The history of Allen's representation in the earlier case is set out in detail in this Court's unpublished opinion in State v. Allen, No. 55957-5-I (2007 WL 93215, Jan. 16, 2007).

a complaint that Allen had filed against McConnell. 16RP 84-85. In his letter, Allen threatened to kill McConnell if the Bar refused to act on Allen's complaint: "You know this whole mess has inflicted an enormous amount of emotional and physical distress upon me. I've even had very strong thoughts of murder-suicide. I'm an innocent man who was convicted by his own freaking lawyer. If you don't reopen my complaint, then I'll just go after that fucker myself." 16RP 87-88.

McConnell was stunned by the letter; he took the threat seriously. 16RP 88. He talked to his wife about the threat, and to people at OPD. 16RP 92. He was concerned for the safety of himself, his wife and his children. 16RP 95.

A few months later, McConnell received a letter that Allen had sent from prison directly to McConnell's personal post office box. 16RP 96. Allen told McConnell that he had McConnell's home address, but chose to send the letter to the post office box "so as not to alarm your . . . 'wife.'" 16RP 100. Allen added, "You know, Kevin, what you do to other people is none of my concern, but when you fuck with me you are going to have a problem." 16RP 109.

After reading this letter, McConnell was convinced that Allen was going to come after him and kill him. 16RP 102. McConnell's wife knew the letter had come, but McConnell did not allow her to read it. 16RP 103. McConnell and his wife considered changing their name and moving. 16RP 110.

Months later, another letter came, again to the post office box; McConnell's wife picked it up and read it. 16RP 111-12. In this letter, Allen asked McConnell if he wanted to accept a "plea agreement." 16RP 113.

Finally, again after some months had passed, McConnell received a large envelope from Allen at his post office box. 16RP 117-19. Inside was a document titled "Last Will and Testament," with McConnell's name typed in. 16RP 120. McConnell took this as a backup to Allen's threats to kill him. 16RP 121-22. He shared this threat with his wife. 16RP 122. He also notified the police about the threats, and obtained a concealed weapons permit. 16RP 122-23. NDA instituted special security measures, including locking doors with a buzzer system. 16RP 125-26.

Carole Furness also testified at Allen's trial. Furness is the felony coordinator for OPD. 16RP 135-36. She recounted the history of Allen's representation in the earlier trial. At first, Allen was assigned an attorney from Associated Counsel for the Accused ("ACA"), Louis Frantz. 16RP 143. Furness received a telephone call from Allen, demanding that she hire him a "private attorney with at least 10 years of heavy trial experience." 16RP 143. Furness was surprised at the complaint, because Frantz had 10 years' experience as assigned counsel, and was one of only a few attorneys available to OPD who was death penalty qualified. 16RP 143.

After the court granted a motion to discharge Frantz, Allen's case was reassigned to the Society of Counsel Representing Accused Persons ("SCRAP"). 16RP 137, 144-45. After Allen complained that his SCRAP attorney would not follow his directions, SCRAP was allowed to withdraw. 16RP 145-46.

Donald Wackerman of The Defender Association ("TDA") took over Allen's representation. 16RP 137, 147-48. After Wackerman successfully petitioned to have Allen's case transferred from Kent to Seattle, Tim Johnson took over. 16RP 148. Allen again called Furness, demanding a private attorney. 16RP 148-49.

When this tactic was unsuccessful, Allen filed a Bar complaint against Johnson, and Johnson was allowed to withdraw. 16RP 149.

Kevin McConnell was assigned as Allen's new lawyer. 16RP 150. Allen complained about access to McConnell, and continued to ask Furness to obtain a private attorney for him; Furness told Allen that she could not give him a private attorney. 16RP 150-51.

Allen's complaints to Furness escalated when his trial began. 16RP 152. After he went to prison, Furness received a letter from Allen wanting an explanation as to "why you ignored my complaints and what you are going to do to correct it." 16RP 154-56. A subsequent letter from Allen to Furness, addressed to her at OPD, repeated previous complaints, but added a threat: "You put my life on the line. Do something or I will come after you." 16RP 157-58. This made Furness extremely afraid, both for herself and for her office. 16RP 158. She gave a copy of the letter to her husband, in the event Allen ever made good on his threat. 16RP 159.

One day, David Hocraffer, the director of OPD, called Furness into his office; Hocraffer showed her a document that had been sent by Allen and purported to be her last will and testament.

16RP 161-62. Furness felt shock, terror and vulnerability; she believed that Allen was telling her that he was going to kill her, and she believed him capable of doing so. 16RP 162.

After this threat, the police were called. 16RP 163-64. OPD rebuilt its office based on safety concerns. 16RP 164; 17RP 40-41. A picture of Allen was posted in the office, and OPD now has a law enforcement officer present at all times. 16RP 164-65; 17RP 40. Furness also got advice from the police on how to secure her home. 16RP 165-66. Furness continues to be concerned for the safety of her disabled husband, her grandchildren, her neighbors and her fellow employees. 17RP 11.

Allen made similar threats against Furness in other letters. In one, he wrote: "What you and Kevin [McConnell] did was particularly vile and despicable. You will be personally held responsible for causing me harm." 17RP 20. In a letter directed to NDA, Allen wrote: "You may have some unwarranted belief that this is all over. I can assure you it is not. Kevin McConnell, Jeanette Brinster, Anne Harper, Carole Furness, and you are going to be severely punished." 17RP 41-42, 59.

Allen spread his threats even more broadly. The WSBA received a complaint from him referencing three lawyers – Louis Frantz, Don Wackerman and Kevin McConnell. 17RP 52-53. Allen wrote: "These are lawyers who have caused me harm. These are also the lawyers who you have protected by manipulating and looking the other way. I have been pushed beyond the point of no return. Because of your failure, I have no other choice but to go after these criminals myself, and it's going to be very, very frightening for them." 17RP 54.

Finally, Eileen Farley, executive director of NDA, testified about threatening letters that she had received from Allen. In one of these letters, Allen wrote: "Dear Eileen, what a joy it will be to finally meet you . . . face-to-face, me away from this awful false imprisonment, you away from your office just you . . . me . . . alone." 17RP 65. In response to the letters, Farley met with the Seattle Police Department and with a private security consultant; NDA implemented some of the security measures recommended. 17RP 69-70.

Allen chose not to testify at his trial; he presented no witnesses. 17RP 79-80.

C. **ARGUMENT**

1. **THE TRIAL COURT DID NOT VIOLATE ALLEN'S CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF; WHILE ALLEN REPEATEDLY ASKED THE COURT FOR A NEW ATTORNEY, HE NEVER ONCE MENTIONED IN OPEN COURT THAT HE WISHED TO REPRESENT HIMSELF.**

Allen claims that the trial court improperly denied his request to represent himself. He concludes that reversal of his convictions and remand for a new trial is required.

The record does not support this claim. Allen, who was represented by counsel throughout, filed multiple hand-written motions for substitution of counsel. He repeatedly argued in court that his attorney should be discharged and he should be given new counsel. Buried among the filings demanding new counsel is a single piece of paper entitled "Notice of Motion to Withdraw Counsel and Allow Defendant to Proceed Pro Se." Allen filed nothing in support of the purported motion. He never once mentioned in court that he wished to represent himself. There was no violation of Allen's constitutional right to self-representation.

a. Relevant Facts.

Allen's original appointed counsel, Kim Exe of SCRAP, was allowed to withdraw based upon a conflict – SCRAP had represented Allen in the same case in which Kevin McConnell, one of the alleged victims in the case, had represented him. 1RP 2-3; CP 249. The trial court, apparently out of options among the King County public defense agencies, turned to the Pierce County Public Defender, and Kirk Mosley was appointed. 1RP 3-4; 3RP 2; CP 249.

Allen soon began a campaign to fire Mosley and obtain new counsel. Allen complained that Mosley had only met with him once. 3RP 6. In addition, Allen believed that any attorney appointed through OPD would have a conflict of interest, given the charges against him; he told the court that he was accordingly "asking for an attorney who is not associated with the Office of Public Defense." 3RP 7.

Mosley acknowledged that he had had some problems getting to see Allen, and he took responsibility for the lack of communication. 3RP 5. In addition, Mosley informed the court that Allen had filed a Bar complaint against him. Id.

The court declined to remove Mosley from the case. 3RP 9; CP 18. The court found that Allen's Bar complaint was not enough to disqualify Mosley, "especially given [Allen's] history."³ 3RP 8. The court did not believe that the fact that Mosley would be paid through OPD created a conflict of interest. 3RP 9. The court obtained assurances from Mosley that he would meet with Allen in the coming week. 3RP 7-8.

Approximately one month later, on April 25, 2008, the parties were in court for a defense motion to continue the trial date. 4RP 2-3. Allen told the court that he had written to the court and had filed motions, but had received no response.⁴ 4RP 7. The court informed Allen that it was "not in a position to work directly with [him]," because Allen was represented by counsel. 4RP 7-8.

Allen nevertheless persisted in personally filing documents with the court. On May 13, 2008, he filed a "Notice of Motion to

³ The court may have been referring to Allen's turbulent history with his multiple attorneys in his previous case. See State v. Allen, No. 55957-5-I (2007 WL 93215).

⁴ Allen had filed a "Motion for New Counsel" (citing "conflict of interest" and "no communication") on March 18, 2008. CP 16. On the same date, he filed a "Request for New Counsel," citing the same bases. CP 250-51.

Withdraw Counsel and Appointment of New Counsel." CP 254. On the same date, he filed a "Notice of Motion to Withdraw Counsel and Allow Defendant to Proceed Pro Se." CP 253.

The next court hearing occurred on May 30, 2008. 5RP 1. Mosley told the court that Allen continued to be unhappy with his representation, but it appeared that they had worked it out:

I think we resolved it. It's basically based on communication between us. I have been having a hard time getting up here.⁵ I'm going to set up a system so he's able to call my office, the public communications. I'll get that done today for Mr. Allen. I think based on my representations and the fact I'm going to do better about getting down here and talking to him, I think he's going to be okay with that. And I guess he can address the Court on those issues.

5RP 3.

Allen told the court that communication problems had been ongoing. 5RP 3. Allen said that he had filed "a couple motions with the Court to have him discharged and requests for substitution of counsel," but his motions had not been scheduled for a hearing. 5RP 3-4. Allen said nothing about wanting to represent himself. When the court asked him point-blank, "So I need to know right

⁵ Mosley was based in Pierce County. 1RP 3.

now what it is you want me to do," Allen again said nothing about self-representation, telling the court only that his "instincts" and "feelings" were to "fire [Mosley]." 5RP 5.

Observing that Allen and Mosley were "attempting to work through the system and set up some procedures that would allow you to have better communication," the court declined to terminate Mosley's representation of Allen at that point. 5RP 5-6. Should communication remain a problem, the court invited Allen to "have your attorney note a motion, and we can move forward then." 5RP 8.

The case was continued through the summer, based on defense counsel's trial schedule and on the need to interview newly identified witnesses. 6RP 2-4; 7RP 2. On October 31, 2008, Mosley moved to withdraw, noting that he was doing so at Allen's request. 8RP 2-4, 10. When the court invited Allen to make a motion "as it relates to your attorney," Allen responded, "Well, you know, to be honest with you, I like Chip [Mosley]. . . . I myself, I would rather keep Chip as my attorney." 8RP 8-9. Reiterating his complaints about communication problems, Allen nevertheless told the court that he did not want Mosley to withdraw: "I myself, before we make a determination on whether or not Mr. Mosley is to be

removed in this case, I would rather have a face to face with Mr. Mosley so we can sit down and discuss this case further and see where we're at." 8RP 10.

Mosley offered to stay on the case until a new lawyer could be brought in. 8RP 10. Allen asked if "co-counsel" could be appointed. 8RP 11. The court told him that was not an option. Id. Allen then expressed concern that allowing Mosley to withdraw would cause delay. 8RP 12-13. The court allowed Mosley to withdraw, with the understanding that Mosley would stay on board until a new lawyer could be found. 8RP 11-14; CP 77. By the conclusion of the hearing, Allen was "requesting a lawyer be assigned to my case whose primary practice is federal criminal law." 8RP 16.

Finding new counsel for Allen turned out to be difficult. Two weeks later, at the next hearing, a new attorney still had not been located. 9RP 2-4. Mosley informed the court that he had contacted the director of the Department of Assigned Counsel in Pierce County, who was willing to assist. 9RP 4-6. The court reassured Allen: "So we still need to find Mr. Allen, who I'm sure still wants to have an attorney, find Mr. Allen an attorney, which we're going to do." 9RP 8.

Allen indeed still wanted an attorney. He objected to Mosley's withdrawal, telling the court: "I, myself, I would like to continue to work on some communication with Mr. Mosley and move this case forward." 9RP 8-9.

Concerned that Allen was now without counsel, the court was inclined to reappoint Mosley. 9RP 11. Mosley made it clear that he would not be free to try the case until February 2009. Id. The court put the decision to Allen: "Let me ask you this. Do you still want – I'm hearing you – correct me if I'm wrong. I think what I'm hearing, you still want Mr. Mosley to represent you." 9RP 13. Allen responded, "I do." Id. The court accordingly reappointed Mosley. 9RP 14; CP 81.

After discussing the need for a continuance of the trial date, the court again asked Allen if he still wanted Mosley to represent him. 9RP 16. Allen again responded unequivocally: "I do." Id. Allen nevertheless went on to complain about Mosley's shortcomings. 9RP 20-22. Obviously frustrated, the court again put the decision to Allen: "Where are you going with this? Do you want Mr. Mosley or not?" 9RP 22. Allen responded, "Well, of course I do." Id.

On January 9, 2009, the parties were again in court discussing Allen's need for counsel. The court had received a letter from Allen, but had not yet read it since the letter had not been served on counsel for either side. 10RP 4. After warning against ex parte contact, the court asked Allen "whether or not you have any requests that you were attempting to communicate to the Court." Id.

In response, Allen reiterated his difficulties in communicating with Mosley. 10RP 5. Reminding Allen that it was he who had insisted that Mosley stay on as his lawyer, the court again left the decision to Allen: "My question to you today then is whether or not you want to continue having Mr. Mosley represent you, or if there's some other wish that you have, because I don't know." 10RP 5-6. Allen said, "I want a new lawyer." 10RP 6. When the court reminded him of the imminent trial date, Allen responded, "I'm not prepared. I need counsel." 10RP 10-11.

The court once again allowed Mosley to withdraw. 10RP 11; CP 83. The court reminded Allen how difficult it was proving to be to find him an attorney, "given I can't use the resources of King

County given the allegations." 10RP 15. The court assured Allen that it would do everything in its power to get him a new lawyer. 10RP 15, 18.

Seemingly out of options in King and Pierce counties, the court turned to Snohomish County in its efforts to find Allen a new lawyer. 11RP 5; 12RP 2. Believing that Snohomish County had a conflict, Allen asked the court to seek representation for him through either the Federal Public Defender or private attorneys. 12RP 2-6.

The court ultimately appointed Karen Halverson, a private attorney practicing in Snohomish County, to represent Allen. 13RP 2; CP 279. By the beginning of trial, Allen was already alleging a conflict of interest, claiming that Halverson was "friends with" Mosley. 16RP 12.

b. Allen Never Unequivocally Requested Self-Representation.

A criminal defendant has a constitutional right to self-representation. Faretta v. California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed.2d 562 (1975); Wash. Const. art. I, § 22. The unjustified denial of this right requires reversal. Id.

A request to proceed pro se must be both timely and unequivocal. State v. Stenson, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997). Whether a request is unequivocal is determined in the context of the record as a whole. State v. Woods, 143 Wn.2d 561, 586, 23 P.3d 1046 (2001); State v. Stenson, 132 Wn.2d 668, 741-42, 940 P.2d 1239 (1997). Only when a defendant's request to proceed pro se is unequivocal is a trial court obliged to engage in a colloquy with the defendant. Woods, 143 Wn.2d at 587-88.

Allen never made a proper request to represent himself in the trial court. The most that can be said is that, while represented by counsel, he personally filed a "Notice of Motion to Withdraw Counsel and Allow Defendant to Proceed Pro Se." CP 253. The notice consisted of a single page, and included nothing in support of such a motion. CP 253. No such motion was ever filed. In the many hearings in the trial court where the issue of counsel was discussed, Allen never once mentioned that he wished to represent himself.

Even if the "Notice of Motion" is deemed a request to proceed pro se, it is inarguably equivocal when placed in the context of this record. On the same day that he filed the

aforementioned "Notice of Motion," he also filed a "Notice of Motion to Withdraw Counsel and Appointment of New Counsel." CP 254.

Moreover, in every other document relating to counsel that Allen filed, both before and after the May 13, 2008 "notice" on which he now relies, he mentioned only his desire for an attorney. See CP 252 ("Motion for New Counsel" filed 3-18-08); CP 250-51 ("Request for New Counsel" filed 3-18-08); CP 254 ("Notice of Motion to Withdraw Counsel and Appointment of New Counsel" filed 5-13-08); CP 33 ("Notice of Motion to Withdraw Counsel and Appointment of New Counsel" dated 5-19-08); CP 64-68 ("Motion to Withdraw Counsel and Letter in Support Thereof" dated 7-14-08); CP 255 ("Motion to Withdraw Counsel and Appointment of New Counsel with Enclosures" filed 7-18-08).

Most importantly, at no less than seven hearings, all but one of which occurred *after* Allen's "Notice of Motion" upon which he now relies, Allen insisted that he wanted to be represented by counsel. See 3RP 7; 5RP 3-4; 8RP 8-11, 16; 9RP 8, 9, 13, 16, 22; 10RP 6, 11, 18; 12RP 5-6; 16RP 8-12. Again, Allen *never once* told the trial judge in open court that he wanted to represent himself.

Under these circumstances, any request that Allen made to represent himself was equivocal, and would properly have been denied without further colloquy. See Stenson, 132 Wn.2d at 742 (finding defendant's request equivocal where almost all of the conversation between the trial court and the defendant concerned the defendant's wish for *different* counsel, and the defendant did not refute the court's conclusion that he did not wish to proceed without counsel).

Allen relies heavily on the Washington Supreme Court's recent decision in State v. Madsen, 168 Wn.2d 496, 229 P.3d 714 (2010). Brf. of App. at 8-11. That case bears little resemblance to this one. Unlike Allen, Madsen three times, explicitly and in open court, told the trial judge that he wished to represent himself. Madsen, 168 Wn.2d at 501-02. Unlike Allen, Madsen provided a basis for his request – he repeatedly cited his right under Article I, Section 22 of the Washington Constitution to represent himself. Madsen, at 501. And unlike Allen, Madsen never wavered from his demand for self-representation. Madsen, at 505, 506.

Perhaps in an attempt to make his case look more like Madsen, Allen claims that the trial court "summarily denied" his "written request of May 13, 2008, to exercise his constitutional right

to self-representation . . . apparently relying on Mosley's claim that he and Allen had 'resolved' their conflict."⁶ Brf. of App. at 8. Allen's characterization of the trial court's response to his request is inaccurate.

On May 30, 2008 (Allen's first appearance in court since filing his conflicting "notices" for new counsel and self-representation on May 13, 2008), Allen told the court that he had filed "a couple motions with the Court to have [Mosley] discharged and requests for a substitution of counsel." 5RP 3; see CP 252 (Motion for New Counsel, filed 3-18-08); 250-51 (Request for New Counsel, filed 3-18-08); CP 254 (Notice of Motion to Withdraw Counsel and Appointment of New Counsel, filed 5-13-08); CP 33 (Notice of Motion to Withdraw Counsel and Appointment of New Counsel, dated 5-19-08). Mosley and Allen both told the court about steps Mosley had promised to take to remedy the communication problem. 5RP 3-4.

⁶ See Madsen, 168 Wn.2d at 501 (urging defendant to talk to new counsel and try to work things out).

In response, the trial court said: "[S]ince it is my understanding the two of you have communicated, you have tried – you're attempting to work through the system and set up some procedures that would allow you to have better communication. . . . So I'm going to count on the representation here, counsel's going to come up and see you. He's going to set up something that you can actually call out, and it's not a collect call and not something that he has to refuse. So any motion to terminate that relationship for today is denied." 5RP 5-6.

Two things are important here. First, the trial court's denial of Allen's motion was anything but "summary"; rather, the court listened to both Allen and Mosley and made a reasonable determination, based upon what both had said, as to how to proceed at that point. Second, the trial court was *not* responding to any motion for self-representation. Allen had mentioned *nothing* about self-representation at the hearing, but rather had explicitly referenced his multiple motions for substitution of counsel. 5RP 3. The trial court denied nothing more than the motion that Allen raised, and refused to order substitution of counsel at that point.

While "[t]here is no requirement that a request to proceed pro se be made at every opportunity,"⁷ a defendant must bear *some* responsibility to make his wishes clear to the trial court. A represented defendant cannot be allowed to bury a "notice" of motion to proceed pro se in the midst of a flurry of hand-written motions filed with the court, *never once* mention the request to the trial court despite many invitations and opportunities, *repeatedly* tell the trial court that he wishes to be represented by counsel, and then claim on appeal that his conviction must be reversed based on the unjustified denial of his right to represent himself.

Even if Allen's "notice" could be construed as a motion for self-representation, he abandoned the motion by ignoring it on the many subsequent occasions where he was given the opportunity to address it further. There was no violation of Allen's constitutional right to represent himself at trial.

⁷ Madsen, 168 Wn.2d at 507.

D. CONCLUSION

For all of the foregoing reasons, the State asks this Court to reject Allen's request for reversal of his convictions based on the alleged denial of his right to represent himself at trial. The Court should affirm the convictions.

DATED this 22nd day of September, 2010.

Respectfully submitted,

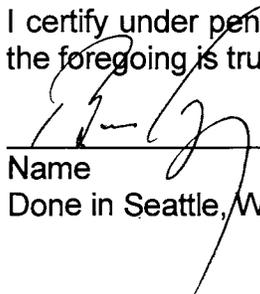
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Christopher H. Gibson**, the attorney for the appellant, at **Nielsen, Broman & Koch, PLLC**, 1908 East Madison, Seattle, WA 98122, containing a copy of the **Brief of Respondent**, in **STATE v. GREGORY ALLEN**, Cause No. **63793-2-I**, in the Court of Appeals for the State of Washington, Division I.

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

09-22-10

Date