

NO. 72011-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

AMOS K. GYAU,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

(1) On the date of sentencing, 49 days after trial, defense counsel told the court that he had filed a motion for new trial. The motion was not actually filed until 240 days after trial. All of the information in the motion was available at the time of trial. Did the trial court abuse its discretion in refusing to extend the 10-day time limit for filing a motion for new trial?

(2) The defendant immigrated to the United States four years before trial. At trial, he testified in English, without ever expressing any lack of understanding. At the hearing on the motion for new trial, a witness testified that she had no problem communicating with the defendant in English. If the issue can be raised, did the trial court abuse its discretion in holding that the absence of an interpreter was not an irregularity that prevented the defendant from having a fair trial?

II. STATEMENT OF THE CASE

The substantive facts of this case are set out in the State's brief in the appeal of the judgment and sentence, cause no. 71013-3-I. The following statement of facts deals only with the motion for new trial.

On August 21, 2013, the court orally announced its decision that the defendant (appellant), Amos Gyau, was guilty of second degree rape. 1 CP 23. At trial, the defendant was represented by retained counsel. Sentencing was set for October 9. On that day, defense counsel told the court that “the defense has filed a motion for a new trial.” 6 Trial RP 885-86. The record, however, does not include any such motion.

Counsel went on to explain the basis for the motion:

I spoke with Mr. Gyau, I think it was two weeks ago, and he had asked that that be done. He had written out a list of things he felt had been reasons for him being denied a fair trial, or reasons that constituted to him being denied a fair trial. Not all, but most of them, relate to ineffective assistance. For that reason, when I filed the motion, I asked that another attorney be appointed to talk to Mr. Gyau and go over everything and handle that part of the case.

6 Trial RP 886. No further explanation of the grounds was given. “Two weeks ago” was approximately September 25, which was already 35 days after the conclusion of the bench trial.

The prosecutor argued that the motion was not timely. She asked the court to proceed with sentencing. 6 Trial RP 887-88. The court ruled that it would proceed with sentencing but hear the

motion for new trial at a later date. 6 Trial RP 889. No one objected to this procedure.¹

New counsel was subsequently appointed to represent the defendant. A motion for new trial was finally filed on April 18, 2014. 3 CP 64-83. That date is 240 days after the conclusion of the bench trial. The motion raised three grounds: (1) the court should have appointed an interpreter; (2) the defendant did not knowingly waive his right to a jury trial; and (3) defense counsel should have called two additional witnesses at trial. 3 CP 64-83. (Only the first of these grounds is being raised on appeal.)

In response, the State argued that the motion was untimely. 1 CP 52-55. The defense replied that because of the allegation of ineffective assistance, the court had discretion to extend the time for filing the motion so that new counsel could be appointed and review the case. 1 CP 2-3.

¹ In a later memorandum, the prosecutor described the proceedings on the sentencing date. The memorandum says: "The State did waive objection to timeliness of the motion under CrR 7.5(e), which requires that the motion be disposed of prior to judgment and sentence." 1 CP 23. Despite this statement, the record of the sentencing proceeding does not include any express waiver on this point.

The court held a hearing on the motion. The defendant presented no additional evidence. 5/8 RP 4. The State introduced testimony from a probation counselor about the defendant's familiarity with English. 5/8 RP 8-12.

The court denied the motion both as untimely and on the merits. With regard to timeliness, the court found that the motion contained nothing that was not known to the defendant at the time of trial. On the merits, the court found that (1) the defendant did not need an interpreter, (2) the defendant's waiver of jury trial was knowing, voluntary, and intelligent, and (3) the failure to call additional witnesses did not establish ineffective assistance. 2 CP 56-63. A copy of the court's findings and conclusions is attached to this brief.

III. ARGUMENT

A. SINCE ALL OF THE INFORMATION IN THE MOTION FOR NEW TRIAL WAS KNOWN TO THE DEFENSE AT THE TIME OF TRIAL, THE COURT PROPERLY EXERCISED ITS DISCRETION IN REFUSING TO GRANT A 230-DAY EXTENSION OF THE TIME FOR FILING THE MOTION.

The time for filing a motion for new trial is governed by CrR 7.5(b):

A motion for new trial must be served and filed within 10 days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time.

This time limit is particularly important because of CrR 7.5(e):

The motion [for new trial] shall be disposed of before judgment and sentence or order deferring sentence.

An untimely motion for new trial can thus be a highly effective way of delaying sentencing. In this case, for example, the defense first mentioned a motion for new trial on the scheduled sentencing date, October 9, 2013. The motion was not disposed of until May 8, 2014. Had the court complied with CrR 7.5(e), the untimely motion would have resulted in a seven-month delay of sentencing. Because of the great potential for delay from untimely motions for new trial, the civil rules do not allow *any* extensions of the time for filing such motions. CR 59(b), 6(b).

Unlike the civil rules, the criminal rules do allow an extension of time by the court “in its discretion.” The standard of review is therefore “abuse of discretion.”

A trial court abuses its discretion if its decision is manifestly unreasonable, or based on untenable grounds or untenable reasons.

A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the

facts do not meet the requirements of the correct standard.

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

Here, the court's reasons for denying an extension are summarized in the following finding:

There is no reason the defendant could not have filed a written motion for new trial within 10 days of the verdict or at least prior to the date of sentencing. There was no new evidence discovered, no surprises, and there is nothing contained in the motion that was not known to the defendant at the time of trial.

2 CP 60-61, finding no. 34.

These reasons are supported by the record. The factual support for the motion was (1) a declaration from counsel concerning conversations with the defendant, (2) another declaration setting out statements from the defendant, (3) a transcript of a pre-trial hearing, and (4) a witness statement taken from police reports. 3 CP 65-66, 72-83. As the court stated, all of that information was known to the defendant at the time of trial. Moreover, defense counsel said at the time of sentencing that two weeks earlier the defendant had given him a list of reasons for a new trial. 6 Trial RP 886. Nothing prevented counsel from filing a

motion based on those reasons, if any of them had potential validity.

Since the trial court's factual findings are supported by the record, the court's decision is not based on untenable grounds. There is no showing that the court applied an incorrect legal standard, so its decision is not based on untenable reasons. It is not manifestly unreasonable to enforce a deadline established by court rules, when the party was capable of complying with that deadline. Consequently, the trial court's decision was not an abuse of discretion.

On appeal, the defendant argues three reasons why the trial court's ruling was an abuse of discretion. None of these arguments is supported by any citation to authority. Brief of Appellant at 5-6.

First, the defendant argues that an extension of time should have been granted because the motion was based in part on ineffective assistance of counsel. In effect, he asserts an exception to the time limit for claims of ineffective assistance. CrR 7.5(b) establishes no such exception, and this court should not create one. When defendants are convicted after a trial, they often blame their attorney. If that accusation is enough to delay sentencing, such delays will become routine.

Enforcing the deadline on motions for new trial does not foreclose claims of ineffectiveness. Such claims can be brought via personal restraint petition under RAP 16.4 or motions to vacate judgment under CrR 7.8. Both of these procedures allow new evidence to be presented. Neither one delays sentencing.

Furthermore, the defendant's claims of ineffectiveness are irrelevant to the issues on appeal. The defendant has not challenged the trial court's rejection of his ineffectiveness claim. Even if the defendant was entitled to raise a belated claim of ineffective assistance, that would not give him the right to raise other untimely claims.

The defendant's second reason is that he did not *personally* know the possible grounds for a new trial or the deadline for seeking one. CrR 7.5 does not, however, require personal notice to the defendant. Most defendants are not aware of time limits for actions under court rules. Most are likewise unaware of the potential grounds for such actions. That is part of the reason why they have attorneys to protect their rights. When there is no requirement that a person be provided notice of a deadline, lack of such notice does not excuse non-compliance. See In re Well, 133

Wn.2d 433, 443-44, 946 P.2d 750 (1997) (applying time limit for collateral attacks under RCW 10.73.090).

Third and finally, the defendant claims that an extension of time would not have prejudiced the State. Even if this were true, it is not dispositive. Enforcement of a deadline does not require a showing of prejudice to the opposing party. As this court said in another context, “the prejudice of granting [extension] motions would be to ... litigants generally, who are entitled to an end to their day in court.” Reichelt v. Raymark Industries, Inc., 52 Wn. App. 763, 766 n. 2, 764 P.2d 553 (1988) (discussing extensions of time to file notices of appeal).

In any event, the delay in this case *did* result in prejudice to the State. Counsel was appointed to argue the untimely motion, at public expense. That motion has also led to a separate appeal, independent from the appeal of the judgment and sentence. All of this would have been prevented if, on the original sentencing date, the court had determined that there was no proper basis for extending the time to file a motion for new trial.

In short, the court set out valid reasons, supported by the record, for denying an extension of time to file a motion for new trial. The defendant has not shown that this denial was an abuse of

discretion. Consequently, the asserted grounds for a new trial should not be considered.

B. ALTERNATIVELY. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE MOTION FOR NEW TRIAL.

1. Under CrR 7.5(a)(5), A New Trial Should Be Granted Only If The Court Failed To File A Prescribed Procedure And That Failure Prevented The Defendant From Having A Fair Trial.

If the motion for new trial is considered timely, the trial court's denial of that motion should be upheld. The defendant claims that he was entitled to a new trial under CrR 7.5(a)(5):

The court on motion of a defendant may grant a new trial for any one of the following causes when it affirmatively appears that a substantial right of the defendant was materially affected:

...

(5) Irregularity in the proceedings of the court, jury or prosecution, or any order of court, or abuse of discretion, by which the defendant was prevented from having a fair trial...

Under this rule, the determination whether to grant a new trial comprises two steps. The court should first determine whether there was an irregularity. If there was, the court should determine whether the irregularity was sufficiently serious to prevent the defendant from having a fair trial. See State v. Perez-Valdez, 172 Wn.2d 808, 818 ¶¶ 18-19, 265 P.3d 853 (2011). "We review a trial

court's decision to deny a new trial for an abuse of discretion based on the oft repeated observation that the trial judge, having seen and heard the proceedings, is in a better position to evaluate and adjudge than can we from a cold, printed record." Id. at 819 ¶ 20.

There do not appear to be any cases defining an "irregularity" in the context of CrR 7.5. There are, however, cases defining that term as a ground for vacating civil judgments:

An irregularity is defined to be the want of adherence to some prescribed rule or mode of proceeding; and it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit or doing it in an unseasonable time or improper manner.

In re Ellern, 23 Wn.2d 219, 222, 160 P.2d 639 (1945).

Under this definition, it would appear that *if* appointment of an interpreter was required, failure to do so would constitute an "irregularity." Consequently, this court should ask two questions: (1) Under the circumstances of this case, was the trial court required to appoint an interpreter absent any request? (2) If so, did lack of an interpreter prevent the defendant from having a fair trial?

2. The Record Supports The Trial Court's Finding That The Defendant Has A Solid Understanding Of English.

As discussed above, an abuse of discretion can occur if the trial court's findings are unsupported by the record. Littlefield, 133

Wn.2d at 47. The defendant has assigned error to the underlined portion of finding no. 21:

This court had an opportunity to listen to the defendant testify and notes that he has a solid understanding of the English language and appeared able to communicate clearly and to understand the questions asked of him. The defendant does have an accent but this does not appear to present any communication problems.

3 CP 59-60.

The appellant's brief does not contain any argument relating to this finding. Absent any argument as to why the finding is erroneous, the assignment of error is considered abandoned. State v. Motherwell, 114 Wn.2d 353, 358 n. 3, 788 P.2d 1066 (1990). The court's finding should therefore be considered a verity. "[A]n unchallenged finding of fact will be accepted as a verity upon appeal." State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

If this court believes that there has been an adequate challenge to the finding, it should still be upheld. A challenged finding is viewed as a verity if it is supported by substantial evidence. "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." Hill, 123 Wn.2d at 644. Here, the finding is supported by the following evidence:

1. The defendant testified at trial without an interpreter. On both direct and cross-examination, he was asked questions in English. He gave cogent answers to those questions, also in English. At no point did he express any lack of understanding. 4 Trial RP 586-638; 5 Trial RP 646-764.

2. At the hearing on the motion for new trial, a probation counsel testified that she had conversations with the defendant on several different occasions between 2009 and 2011. She did not use an interpreter in any of these conversations. In all of them, she had no problem communicating with him. 5/8 RP 7-12.

3. Two police officers testified that they had no difficulty communicating with the defendant in English. 2 Trial RP 202, 272. The defendant told one of these officers that he was “very comfortable in English.” 2 Trial RP 272.

This evidence is sufficient to persuade a fair-minded, rational person that the defendant has “a solid understanding of the English language.” The trial court’s finding is therefore supported by substantial evidence. The trial court did not abuse its discretion by relying on unsupported factual findings.

3. Since The Defendant Did Not Manifest Any Significant Language Difficulty, The Trial Court Was Not Required To Appoint An Interpreter.

Once the relevant facts are established, this court can determine whether the absence of an interpreter constituted an “irregularity.” The standard for appointing an interpreter is explained in State v. Woo Won Choi, 55 Wn. App. 895, 781 P.2d 505 (1989), review denied, 114 Wn.2d 1002 (1990):

The federal courts have held that whenever put on notice that there may be some significant language difficulty, the trial court should exercise its discretion to determine whether an interpreter is needed. The court should make unmistakably clear to a defendant that he has a right to a court-appointed interpreter at trial *if the court determines that one is needed*.

Thus, the requirement that the court advise the defendant directly about the waiver of a right to an interpreter does not come into play until the court has determined that an interpreter is necessary. If the defendant's language skills are adequate enough to understand the trial proceedings and to present his defense, he has no right to an interpreter and there is no issue relating to waiver.

Id. at 901-02 (court's emphasis, citations omitted)

Under this standard, the existence of language problems is not, of itself, sufficient to require appointment of an interpreter. Rather, the court must exercise its discretion in determining whether “the defendant's language skills are adequate enough to understand the trial proceedings and to present his defense.” In

Woo Won Choi, for example, the defendant was a Korean immigrant whose English was “not perfect.” Id. at 903. Defense counsel, however, advised the court that he was convinced that the defendant would understand questions put to him. Even though the trial court never questioned the defendant directly, this court held that the trial court properly exercised its discretion in determining that an interpreter was not necessary. Id. at 901-02.

Federal cases agree with this analysis:

Because the determination is likely to hinge upon various factors, including the complexity of the issues and testimony presented during trial and the language ability of the defendant's counsel, considerations of judicial economy would dictate that the trial court, coming into direct contact with the defendant, be granted wide discretion in determining whether an interpreter is necessary. It would be a fruitless and frustrating exercise for the appellate court to have to infer language difficulty from every faltering, repetitious bit of testimony in the record.

United States v. Carrion, 488 F.2d 12, 14-15 (1st Cir. 1973), cert. denied, 416 U.S. 807 (1974) (citations omitted). The defendant's lack of objection is also a proper factor to consider. “To allow a defendant to remain silent throughout the trial and then assert a claim of inadequate translation would be an open invitation to abuse.” Gonzalez v. United States, 33 F.3d 1047 (9th Cir. 1994). In

the present case, for example, the question of an interpreter was not raised until 2 ½ years after the proceedings began.

The record of the trial indicates no language difficulties.² The defendant has not even challenged the finding that he “appeared able to communicate clearly and to understand the questions asked of him.” 3 CP 59-60, finding no. 21. As discussed above, the evidence supports the further finding that the defendant “has a solid understanding of the English language.” Based on these facts, the trial court properly exercised its discretion in determining that no interpreter was needed. This being so, there was no “irregularity” that required a new trial.

² The defendant claims that “[the prosecutor, defense counsel and the judge (in both juvenile and superior court) all knew that Gyau was not a native English speaker.” Brief of Appellant at 8. This claim is unsupported by any citation to the record. Although all of these people knew that the defendant grew up in Ghana, that fact tells nothing about what language he spoke. Many people grow up speaking a language different than that of the country in which they reside. Furthermore, the record does not indicate what languages are spoken in Ghana. The website of the Government of Ghana lists several major languages, but the country’s official language is English. <http://www.ghana.gov.gh/index.php/about-ghana/ghana-at-a-glance> (visited 2/14/15).

4. Since The Defendant Was Able To Communicate His Defense Clearly, The Absence Of An Interpreter Did Not Prevent Him From Having A Fair Trial.

Even if there was an “irregularity,” that would not be sufficient to require a new trial. Under CrR 7.5(a)(5), the defendant would still have to show that the irregularity “prevented [him] from having a fair trial.” He cannot make that showing.

On this point as well, Woo Won Choi is instructive. As an alternative basis for its decision, this court assumed that the trial court committed constitutional error in failing to make direct inquiries of the defendant about the need for an interpreter. This court held that any such error was harmless beyond a reasonable doubt:

A review of the record demonstrates that although [the defendant’s] English was not perfect, he was capable of making himself understood and seemed readily to comprehend questions put to him. Most importantly, he was able to clearly express his defense that he believed the victim was reaching for a gun, and that he shot wildly without intent to kill.

Woo Won Choi, 55 Wn. App. at 903.

The same is true in the present case. As stated in the trial court’s unchallenged finding, the defendant “appeared able to communicate clearly and to understand the questions asked of him.” 3 CP 59-60, finding no. 21. In his testimony, he clearly

expressed his defense that he did not rape the victim, but had consensual intercourse with her at a different location. 4 Trial RP 586-638. In Woo Won Choi, similar facts established harmless error beyond a reasonable doubt. In the present case, they equally demonstrate that the absence of an interpreter did not prevent the defendant from having a fair trial.

IV. CONCLUSION

The order denying the motion for new trial should be affirmed.

Respectfully submitted on February 18, 2015.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

The State of Washington,

Plaintiff,

12-1-00138-8

vs.

GYAU, AMOS K.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW DENYING
DEFENDANT'S MOTION FOR A NEW
TRIAL

Defendant.

This matter came on for hearing on the Defendant's Motion for a New Trial on May 8, 2014. The Court considered the Declaration of Cindy A. Larsen and Exhibits A through E attached thereto; the Declaration of Jennifer Rancourt; the Declaration of Jan Mortensen; the transcript of the waiver of jury trial colloquy; the written statement of Matthew Fellows; the testimony of Aiko Barkdoll; the trial evidence and testimony, including the testimony of the defendant himself, and the records and files herein. The Court also considered the parties stipulation that attorney Kristin Timm would testify that she has represented Mr. Gyau in two cases prior to the filing of this case and briefly represented Mr. Gyau in this matter; that Ms. Timm is an experienced attorney who has represented many juvenile respondents since the late 1990s; that if she believes a respondent or client needs an interpreter she obtains one; that she spoke to the defendant on numerous occasions, went over plea paperwork with the defendant in one

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1 case and a lengthy stipulation with the defendant in another case, and that she had no
2 trouble communicating with the defendant in English and did not believe he needed an
3 interpreter (Kristin Timm was present, in court, prepared to testify). Being fully advised,
4 the court now makes the following findings of fact and conclusions of law.

5 **A. Findings of Fact.**

- 6 1. The defendant came to the United States in December of 2008.
- 7 2. The defendant attended high school in this Country.
- 8 3. The defendant had involvement in the justice system in Snohomish County prior
9 to this case being filed.
- 10 4. The defendant has been represented by Kristin Timm in two prior cases.
- 11 5. The defendant appeared in court during both those cases on multiple occasions.
- 12 6. On February 27, 2011, the defendant entered into a stipulation to police reports,
13 waived his right to a speedy trial and his right to confront witnesses at trial,
14 among other things, all in English. The defendant was represented by Kristin
15 Timm, no interpreter was requested or used and the defendant indicated he
16 understood those rights.
- 17 7. On February 7, 2012, again represented by Kristin Timm on a different matter,
18 the defendant entered a guilty plea in English. No request was made for an
19 interpreter, no interpreter was used, and the defendant indicated he understood
20 his rights.
- 21 8. Aiko Barkdoll was the defendant's probation counsellor in juvenile court.
22
23 Although she did not discuss legal terms with the defendant or give him legal
24
25

1 advice, she has had numerous conversations with the defendant, has never had
2 any issues communicating with him in English and would have obtained the
3 services of an interpreter if she believed one would have been useful. She did
4 not do so.

5 9. The first hearing in the present case took place in juvenile court in late
6 September 2011. Max Harrison substituted in as defense counsel shortly
7 thereafter.

8
9 10. There were many hearings in this case before trial including a contested decline
10 hearing that took place in front of Judge Downes in juvenile court.

11 11. There was also an evaluation of the defendant performed by Dr. Delton Young
12 for purposes of opining on the issue of adult vs. juvenile jurisdiction. This report
13 is contained in the court file and indicates the defendant understands English
14 well.

15 12. At no time during the nearly two years that this case was pending trial did the
16 defendant request an interpreter nor was there any indication that the defendant
17 had any difficulty understanding the proceedings, the rights being waived, or the
18 rights he was advised of.

19
20 13. Neither of the defendant's previous defense attorneys, Kristin Timm and Max
21 Harrison, indicated that they had any problems communicating with the
22 defendant in English. Both of those attorneys have had far more court
23 involvement with the defendant than his current counsel, Jennifer Rancourt.
24
25

1 14. On the afternoon of Friday, August 9, 2013, this case was assigned to Judge
2 Richard T. Okrent to preside over a jury trial set to begin on Monday, August 12,
3 2013.

4 15. On the morning of August 12, 2013, with the jury panel present in the
5 courthouse, the defendant's attorney, Max Harrison, told the court that the
6 defendant wanted to waive his right to a jury trial and have the case decided by
7 Judge Okrent alone.

8 16. The State asked for some time to research this issue and a recess was taken.

9 17. Max Harrison prepared a written waiver of jury trial which was reviewed and
10 signed by the defendant after consultation with his attorney. This waiver is
11 contained in the court file.

12 18. The court then engaged in a colloquy with the defendant, during which the
13 defendant again indicated his understanding of his right to a trial by jury and
14 chose to waive that right. That colloquy is contained in the record.

15 19. The defendant's motion to waive trial by jury was granted over the State's
16 objection.

17 20. The case proceeded to trial and during that trial the defendant testified on more
18 than one occasion.

19 21. This court had an opportunity to listen to the defendant testify and notes that he
20 has a solid understanding of the English language and appeared able to
21 communicate clearly and to understand the questions asked of him. The
22
23
24

1 defendant does have an accent but this does not appear to present any
2 communication problems.

3 22. The defendant did not need an interpreter at trial or during any of the
4 proceedings in this case, including when waiving his right to a jury trial.

5 23. The defendant has never asked the court for an interpreter, no one (prior to
6 current counsel, Jennifer Rancourt) has asked for one on his behalf, and there
7 has been no indication that an interpreter would be necessary or even useful.

8 *The interpreter was appointed solely for this hearing without ruling that one was*
9 24. Matthew Fellows testimony would not have been useful in the determination of *needed*.

10 guilt in this matter as he indicated he was sound asleep in a different part of the
11 house, away from where the incident took place and he did not wake up or even
12 hear when the medics, fire personnel, and police came inside the house to
13 provide treatment to Y.P. and then later were knocking loudly on the door.

14 25. The defendant was convicted after bench trial on August 21, 2013. Sentencing
15 was set for October 9, 2013, 49 days after the verdict.

16 26. The day of the sentencing, defense counsel, Max Harrison, asked for a
17 continuance so that a motion for new trial could be filed, indicating that his client
18 had a list of reasons and that many of them had to do with ineffective assistance
19 of counsel. The State requested that the court proceed with sentencing. The
20 victim was present for the sentencing.
21

22 27. The prosecutor agreed that the State would not argue that entry of the
23 Judgement and Sentence precluded a motion for new trial under CrR 7.5(e) but
24 noted its objection to the timeliness of the motion under CrR 7.5(b) noting that
25

1 the 10 days since the verdict had already long-since lapsed as it was then 49
2 days (7 weeks) post-verdict.

3 28. The Office of Public Defense was appointed to represent the defendant in his
4 motion for new trial on November 15, 2013 and Jennifer Rancourt filed a notice
5 of appearance on November 18, 2013.

6 29. In December 2013, Jennifer Rancourt requested a hearing to clarify the Court's
7 ruling on the timeliness of the motion for a new trial.

8 30. On February 14, 2014, the hearing to clarify the status of the Court's decision
9 regarding timeliness of the motion for new trial was held. The court stated that
10 that issue had been reserved so that counsel could brief that issue and set a
11 hearing for the Motion for New Trial for April 21, 2014. The court continued to
12 reserve the issue of timeliness.
13

14 31. The defendant's written motion for a new trial was filed on Friday, April 18, 2014.

15 This was the first time that reasons were stated for the motion, and so that an
16 an interpreter could be present for the limited purpose of that hearing.
17 32. The hearing was continued to May 8, 2014 so that the State could respond to the
18 written motion.

19 33. On the day defense counsel first mentioned a motion for new trial, which was
20 October 9, 2013, the motion was already untimely as 49 days had passed since
21 the verdict.

22 34. There is no reason the defendant could not have filed a written motion for new
23 trial within 10 days of the verdict or at least prior to the date of sentencing. There
24

1 was no new evidence discovered, no surprises, and there is nothing contained in
2 the motion that was not known to the defendant at the time of the trial.

3
4 **B. Conclusions of Law.**

5
6 1. The court has jurisdiction over this proceeding under RAP 7.2(e)

7 2. The motion for new trial was not timely as of October 9, 2013, the date of
8 sentencing, and the court is not exercising its discretion to extend the time for filing.

9 3. The defendant did not need an interpreter at trial or during any of the
10 proceedings in this case and thus was not denied the right to a fair trial.

11 4. The defendant' jury trial waiver was made knowingly, voluntarily and
12 intelligently after consultation with counsel and was sufficient under the law. The written
13 waiver alone was sufficient and the court's colloquy went above and beyond what is
14 required by law.
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2 5. Speculation that testimony of "cultural experts" may have been admissible and
3 may have been helpful to the trier of fact is not grounds for a new trial.

4 6. The decision not to call Matthew Fellows as a witness does not show
5 ineffective assistance of counsel and is not grounds for a new trial.

6 7. The defendant's motion for new trial is denied.

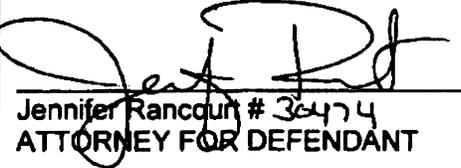
8
9 DONE IN OPEN COURT this 29th day of JULY, 2014.

10
11 
JUDGE RICHARD T. OKRENT

12 Presented by:

13
14 
15 CINDY A. LARSEN, #26280
16 Deputy Prosecuting Attorney

17 Approved as to Form:

18
19 
20 Jennifer Rancourt # 36474
ATTORNEY FOR DEFENDANT

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

THE STATE OF WASHINGTON,

Respondent.

v.

AMOS K. GYAU,

Appellant.

No. 72011-2-1

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 18th day of February, 2015, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

SUZANNE LEE ELLIOTT
ATTORNEY AT LAW
THE HOGE BUILDING
705 SECOND AVENUE, SUITE 1300
SEATTLE, WA 98104-1797

containing an original and one copy to the Court of Appeals, and one copy to the attorney(s) for the Appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

2015 FEB 20 11:11:47



Signed at the Snohomish County Prosecutor's Office this 10th day of February, 2015.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit