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Court of Appeals  
Division I  
State of Washington

No. 73835-6-I

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

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JEREMY GRANDE,

Appellant,

V.

SKAGIT COUNTY,

Respondent.

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COUNTY'S RESPONSE

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RICHARD A. WEYRICH  
Skagit County Prosecuting Attorney

A. O. DENNY, WSBA #14021  
Deputy Prosecuting Attorney  
Attorney for Respondent

Skagit County Prosecuting Attorney  
605 South Third Street  
Mount Vernon, WA 98273  
(360) 336-9460

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## I. INTRODUCTION

Grande asked the superior court to reframe, *nunc pro tunc*, the notice of appeal he filed in 2013 in *State v. Grande*, Skagit County Superior Court cause no. 11-1-00530-4 as a civil appeal of a hearing examiner's decision forfeiting two vehicles under RCW 69.50.505. Although Grande pursued the appeal of his criminal cause to its conclusion, arguing, in part, that the State reneged on the plea agreement, which he argued barred forfeiture of the two vehicles, he now seeks to use that 2013 notice of appeal to perfect a civil appeal of the hearing examiner's decision.

Grande's 2013 notice of appeal is not amenable to an order *nunc pro tunc* and he does not offer any reasoned analysis or authority to show otherwise. His argument, raised for the first time on appeal, that he would have sought a direct appeal of the hearing examiner's decision before the superior court, as he now seeks to do, if the hearing examiner's order had explicitly advised him of where and how to appeal ignores (1) that the hearing examiner correctly advised Grande that it was his responsibility "to determine his/her rights and responsibilities relative to appeal" and (2) Grande's delay in pursuing a civil appeal in the superior court.

The court should not accept review of Grande's challenge to the hearing examiner's notice because it was sufficient and Grande does not establish the extraordinary circumstances necessary for an extension of the time to file an appeal.

## **II. ISSUES**

1. Should the court find that a notice of appeal is not a court order that is amenable to revision nunc pro tunc and affirm the superior court's decision denying Grande's motion for revision?

2. Should the court find that Grande fails to establish the extraordinary circumstances necessary to waive his use of his 2013 notice of appeal to pursue relief in an appeal of his criminal conviction and treat it as a timely civil appeal of a forfeiture order under RCW 69.50.505?

## **III. STATEMENT OF THE CASE**

On April 24, 2013, Grande attended a forfeiture hearing before the Skagit County Interlocal Drug Enforcement Task Force Hearings Examiner. CP 39. The hearing examiner issued his decision forfeiting the two vehicles on May 17, 2013. The hearing examiner's order concluded:

NOTE: It is the responsibility of a person seeking review of a Hearings Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

CP 45.

Grande filed a Notice of Appeal to Court of Appeals on June 10, 2013, in *State v. Grande*, Skagit County Superior Court cause no. 11-1-00530-4 in which Grand had been criminally prosecuted. CP 36. Grande's notice of appeal provided, in part:

My attorney Corbin T. Volluz told me it was part of my plea agreement that if I pled guilty I would be allowed to retain the two vehicles easily (sic) in a forfeiture hearing as a result I entered a plea of guilty in Skagit County Superior Court . . .

CP 37.

In a Notation Ruling issued on October 3, 2013, the court of appeals advised Grande:

In the limited documents before me, it is not clear whether Mr. Grande was attempting to appeal a district court decision to the superior court under the Rules for Appeal of Decisions of Court of Limited Jurisdiction (RALJ), or whether he was attempting to seek review in the superior court of a ruling by a hearing examiner, see Tri-city Drug Task Force, 129 Wn. App. at 653, or whether he was attempting to challenge the plea agreement, or something else.

Similarly, from the documents before me, it is not clear whether Mr. Grande sought to proceed in the superior court at public expense or sought to appeal to this court at public expense. **If Mr. Grande is seeking review of a district court decision or a decision of a hearing examiner, his initial appeal would be to the superior court, not to this court.** If he is seeking review of the

superior court denying the expenditure of public funds, then review in this court is only by motion for discretionary review. See RAP 15.2(h).

CP 4-5 (emphasis added).

Despite this advice, Grande elected to continue pursue his motion for discretionary review arguing that he was “under the impression that as part of the plea agreement, Petitioner would forfeit (sic) most of the items seized (exhibit #1(a)(b)), but retain the 1949 Chevrolet Fleetline . . . and the 1973 Chevrolet Pick up truck.” CP 11. He also argued that the hearing examiner lacked jurisdiction because “[t]his forfeiture (sic) hearing is a stage and proceeding of Superior Court Criminal Cause and is subject to review under RAP 2.2(1) with respects to the final judgement (sic) of the forfeiture (sic) court and back to the sentencing court in Skagit County Superior Court as a timely direct appeal as a matter of right under the Rules of Appellate Procedure.” CP 14-15. Grande further argued that the superior court “lacked the authority to transmit to the Skagit County Interlocal Drug Enforcement Unit (S.C.I.D.E.U.) Administrative forfeiture (sic) court for the City of Burlington for the forfeiture (sic) hearing initially.” CP 15.

In a letter dated July 8, 2014, the Skagit County Superior Court advised Grande:

The procedure to appeal a Hearing Examiner's decision is to file a notice of appeal as a civil lawsuit in Superior Court. The appeal is heard in the Superior Court and not the Court of Appeals. The filing fee for a civil law suit is \$240.00. . . . A lawsuit would need to be filed within 30 days of the Hearing Examiner's ruling. It is your responsibility to file the transcript from the forfeiture hearing and not your matter before the court. . . . If you plan on representing yourself, you must do your own legal research and prepare your own legal documents.

CP 26.

The court of appeals terminated review of Grande's appeal on August 14, 2014. CP 27.

On June 9, 2015, Grande filed a Motion for Leave to File Notice of Appeal *Nunc Pro Tunc*. CP 28. Grande argued that "the problem was that the form I was given by [the Department of Corrections] was an appeal form to the court of appeals." CP 30. Grande did not argue that the hearing examiner's decision failed to give him notice of where to file an appeal. (Grande raises that issue for the first time in his Brief of Appellant at 8.)

Skagit County opposed Grande's motion, arguing that Grande's 2013 notice of appeal "was not an act of the court" amenable to a revision *nunc pro tunc*. CP 52. The county also argued that Grande's appeal was untimely and not excused. CP 53-57. Grande did not file a reply.

The superior court denied “Mr. Grande’s motion for a nunc pro tunc order reframing his 2013 notice of appeal.” CP 48.

#### **IV. ANALYSIS**

Despite the fact that he fully accrued the benefit – appellate review – of his 2013 Notice of Appeal, Grande asked the trial court to reframe the notice of appeal that he filed in *State v. Grande*, a Skagit County criminal cause, as a timely appeal of the hearing examiner’s 2013 decision forfeiting two of his vehicles. The superior court properly denied Grande’s motion for an order *nunc pro tunc*.

##### **A. The standard of review.**

It falls within the trial court’s discretion to enter or deny a *nunc pro tunc* order. “Such discretionary action may not be disturbed on appeal except upon a clear showing that the ruling was manifestly unreasonable.” *State v. Rosenbaum*, 56 Wn. App. 407, 410, 784 P.2d 166, 167 (1989) citing *In re Estate of Carter*, 14 Wn. App. 271, 276, 540 P.2d 474 (1975). Thus, review of the denial of a motion for a nunc pro tunc order is for abuse of discretion. See *State v. Rosenbaum*, 56 Wn. App. at 410.

**B. The superior court properly denied Grande’s motion to reframe his 2013 notice of appeal challenging the state’s compliance with his plea agreement as a civil appeal of a hearing examiner’s decision because a notice of appeal is not a record that is amenable to revision nunc pro tunc.**

**1. Grande’s 2013 Notice of Appeal is not an order amenable to revision nunc pro tunc.**

“A nunc pro tunc order allows a court to date a record reflecting **its action** back to the time the action in fact occurred.” *State v. Hendrickson*,

165 Wn.2d 474, 478, 198 P.3d 1029 (2009) (emphasis added). The

*Hendrickson* court explained:

“A retroactive entry is proper only to rectify the record as to acts which did occur, not as to acts which should have occurred.” **A nunc pro tunc order “records judicial acts done at a former time which were not then carried into the record.”** A nunc pro tunc order ““may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken.”” Thus, for example, a nunc pro tunc order is not appropriate to reopen a matter that was previously closed in order to resolve substantive issues differently. Instead, a nunc pro tunc order is generally appropriate to correct only ministerial or clerical errors, not judicial errors. A clerical or ministerial error is one made by a clerk or other judicial or ministerial officer in writing or keeping records.

*State v. Hendrickson*, 165 Wn.2d at 478-470 (citations omitted) (emphasis added).

Grande’s 2013 Notice of Appeal was not an act of the court, a judicial act, or a ministerial or clerical error made by a clerk or other

judicial officer. Grande does not allege otherwise. He prepared and filed his 2013 notice of appeal. It does not reflect an action by the superior court. Thus, Grande's notice of appeal is not a record that is amenable to judicial revision *nunc pro tunc*.

**2. Even if Grande's 2013 Notice of Appeal were amenable to revision *nunc pro tunc*, the trial court could not have changed its substance as Grande sought.**

Grande's effort to change the substance of his 2013 Notice of Appeal provides another reason for the superior court's denial.

Grande used his 2013 Notice of Appeal to challenge the hearing examiner's jurisdiction over the seized vehicles and to allege a violation of his plea agreement in *State v. Grande*, case no. 70543-1-I.<sup>1</sup> CP 14-16. Both of these issues were arguable within the scope of a criminal appeal. If Grande had prevailed on either, the forfeiture may have been negated.

In 2015, Grande sought to reframe his 2013 notice of appeal as a direct appeal of the hearing examiner's decision, an issue that he did not present in his criminal appeal. Thus, Grande asked the trial court to create a record that shows he did something contrary to his actual use of the 2013 notice of appeal – to challenge the hearing examiner's jurisdiction and the State's honoring of his plea agreement.

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<sup>1</sup> Grande did not argue that the evidence failed to support the hearing examiner's decision.

The *nunc pro tunc* remedy does not exist to give a litigant a second bite at the apple when his first bite has been chewed and swallowed. For example, it cannot be used to rectify the record as to acts which did not, but should have, occurred. *State v. Smissaert*, 103 Wn.2d 636, 641, 694 P.2d 654 (1985). It is not available to cure a failure to take an action at an earlier time. *State v. Mehlhorn*, 195 Wash. 690, 692-93, 82 P.2d 158 (1938); *City of Tacoma v. Cornell*, 116 Wn. App. 165, 171 n. 9, 64 P.3d 674 (2003) (“A nunc pro tunc order is appropriate only to record some act of the court done at an earlier time but which was not made part of the record.”)

Here, Grande is asking the court to change the record to reflect an act different from what occurred: an appellate challenge to the hearing examiner’s jurisdiction and the state’s honoring of a plea agreement in a criminal cause. These were valid arguments even though neither had any merit. To allow Grande to reframe his notice of appeal – after his criminal appeal was denied – as a civil appeal of a hearing examiner’s decision challenging the hearing examiner’s decision itself, would be to change the substance of Grande’s notice of appeal. This is not a proper use of the *nunc pro tunc* remedy. See *Pasco v. Napier*, 109 Wn.2d 769, 775, 755 P.2d 170, 172-173 (1988) (While a judgment or decree nunc pro tunc may correct procedural mistakes – in a prior judgment or decree – it cannot be

used to change matters of substance. ) citing *In re Marriage of Pratt*, 99 Wn.2d 905, 909-11, 665 P.2d 400 (1983); *State v. Mehlhorn*, 195 Wash. at 692-93.

**C. The hearings examiner's notice that Grande was responsible for determining where to file his appeal was proper and does not present an issue that the court should consider for the first time on appeal.**

Grande argues, for the first time on appeal, that the failure of the hearing examiner to expressly state how appeals of the hearing examiner's decision shall be filed excuses his decision to pursue a remedy for the forfeiture under a claim that the state violated the terms of his plea agreement in *State v. Grande*, Skagit County Superior Court cause no. 11-1-00530-4. Br. Appellant at 3-5.

Out of fairness to the trial court and the opposing party, theories advanced for the first time on appeal generally will not be considered. *Espinoza v. City of Everett*, 87 Wn. App. 857, 872-73, 943 P.2d 387 (1997), *review denied*, 134 Wn.2d 1016 (1998). Exceptions, however, are allowed:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time

the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

RAP 2.5(a).

Grande does not offer any facts or reasoned analysis to show that the trial court/hearing examiner lacked jurisdiction, that there was a failure to establish facts upon which relief could be granted, or that the hearing examiner committed a manifest error affecting a constitutional right.

**1. Because there is no constitutional or statutory right to appeal a forfeiture decision under RCW 69.50.505, the hearing examiner's notice was sufficient.**

Absent a statutory or constitutional obligation, no notice of appellate rights is required in a civil case. In civil cases, if the right to appeal exists, it is a right which is granted by the legislature or at the discretion of the court. *In re Groves*, 127 Wn.2d 221, 239, 897 P.2d 1252 (1995); *Housing Authority v. Saylor*, 87 Wn.2d 732, 740-41, 557 P.2d 321 (1976). *Also see Didlake v. State*, 186 Wn. App. 417, 431, 345 P.3d 43 (2015) (“there is no constitutional right to appeal civil cases where only financial or property rights are at stake”) *citing Downey v. Pierce County*, 165 Wn. App. 152, 167, 267 P.3d 445 (2011).

The right to appeal a criminal conviction, which is founded on the Washington constitution<sup>2</sup>, does not apply here because a forfeiture hearing under RCW 69.50.505 is not a criminal matter. It is a civil matter. *See Guillen v. Contreras*, 169 Wn.2d 769, 771, 238 P.3d 1168 (2010) (“Under Washington's civil forfeiture statute, law enforcement has the power to seize cash, property, and vehicles used in, or purchased with the proceeds from, drug dealing. RCW 69.50.505.”) Further, the legislature simply provides that “[a] hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW.” RCW 69.50.505(5). The legislature did not require the seizing agency to provide an explicit notice of appeal rights from the hearing examiner’s decision.

**2. Grande does not demonstrate the existence of extraordinary circumstances that would allow an extension of the time to file his appeal.**

The period for filing an appeal under the Administrative Procedure Act is jurisdictional and reflects the high value placed on finality in administrative processes. *King County v. Cent. Puget Sound Bd.*, 138 Wn.2d 161, 179, 979 P.2d 374 (1999) *citing JEM Broadcasting Co. v. Federal Communications Comm'n*, 306 U.S. App. D.C. 11, 22 F.3d 320

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<sup>2</sup> The right to appeal a criminal conviction is guaranteed by Washington’s Constitution. *See State v. Tomal*, 133 Wn.2d 985, 988, 948 P.2d 833 (1997) (Under article 1, section 22 of the Washington Constitution, a person who has been convicted of a crime has the right to appeal.); *Jones v. Rhay*, 75 Wn.2d 21, 23, 448 P.2d 335 (1968) (CrR 7.2(b) was adopted to safeguard that right.)

(D.C. Cir. 1994). *Also see Snohomish County Fire Prot. Dist. No. 1 v. Wash. State Boundary Review Bd. for Snohomish County*, 121 Wn. App. 73, 82, 87 P.3d 1187 (2004) (holding that compliance with the statutory filing deadline is a jurisdictional prerequisite), *aff'd*, 155 Wn.2d 70, 117 P.3d 348 (2005); *Graham Thrift Group, Inc. v. Pierce County*, 75 Wn. App. 263, 267-68, 877 P.2d 228 (1994) (holding that a 10-day mandatory filing period for administrative appeal acts as jurisdictional bar).

The jurisdictional time limit for filing a notice of appeal may only be extended in extraordinary circumstances. *See generally* RAP 18.8(b). Extraordinary circumstances will only be found when the defect is due to excusable error or circumstances beyond the party's control. *See Beckham v. DSHS*, 102 Wn. App. 687, 11 P.3d 313 (2000); *Reichelt v. Raymark Indus.*, 52 Wn. App. 763, 765-66, 764 P.2d 653 (1988). However, a "mistake" or "inattention to the rules" is insufficient to satisfy RAP 18.8(b)'s stringent test. *Id.* This holds true regardless of whether the opposing party can demonstrate prejudice. *Reichelt v. Raymark*, 52 Wn. App. at 766, n. 2.

Washington courts have been very selective in allowing any extensions to the filing deadlines for appeals. *See, e.g., Schaeferco, v. Gorge Comm'n*, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993) (finding that time limit for filing a notice of appeal not extended by earlier untimely motion

for reconsideration, no sufficient excuse for failure to file a timely notice of appeal, and no sound reason to abandon the preference for finality even where appeal "raises many important issues"); *Bostwick v. Ballard Marine Inc.*, 127 Wn. App. 762, 775-76, 112 P.3d 571 (2005) (finding no extraordinary circumstance where trial court did not notify party that it had entered an order and party lacked diligence in failing to monitor entry of order on pending motion); *Beckman v. DSHS*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000) (finding no extraordinary circumstances where the State missed the deadline for appealing a multi-million dollar judgment because the State was "obligated to monitor the actual entry of the judgments").

This high standard applies to pro se litigants. *See, e.g., State v. Smith*, 104 Wn.2d 497, 508, 707 P.2d 1306 (1985) (a pro se litigant is required to comply with court rules to the same degree that an attorney must comply with the rules); *State v. Breedlove*, 79 Wn. App. 101, 106, 900 P.2d 586 (1995) ("The right of self-representation cannot be permitted to justify a defendant's disrupting a hearing or trial, or as a license to a pro se defendant not to comply with rules of procedural and substantive law"); *Batten v. Adams*, 28 Wn. App. 737, 739 n. 1, 626 P.2d 984, *review denied*, 95 Wn.2d 1033 (1981) ("In undertaking the role of a lawyer, [a pro se

litigant] also assumes the duties and responsibilities and is accountable to the same standards of ethics and legal knowledge.”)

Grande, a pro se litigant, argues that he was confused because he was given the “wrong appeal form” by an unnamed person at a Department of Corrections prison and because the hearing examiner’s decision did not explicitly advise him that any appeal of the forfeiture order had to be filed in superior court. *See* Appellant’s Brief at 3, 8 (“Because I was not properly advised of my ‘rights and responsibilities relative to appeal’ by the hearing examiner . . . I did not file my appeal by the proper method in Skagit County Superior Court.”) This bare argument fails to establish grounds for confusion that excuses Grande’s decision to pursue relief in an appeal under his criminal cause.

Because the record fails to identify the alleged DOC official, whether Grande made a clear request clear, or whether Grande simply neglected to do as the hearing examiner advised – look up the law, Grande cannot show that anyone other than himself is responsible for his decision to pursue relief from the hearing examiner’s decision under a criminal appeal.<sup>3</sup>

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<sup>3</sup> Estoppel does not apply. *See PUD No. 1 of Douglas County v. Cooper*, 69 Wn.2d 909, 918, 421 P.2d 1002 (1966)(“Estoppels must be certain to every intent, and are not to be taken as sustained by mere argument or doubtful inference.”); *Campbell v. State, Department of Social and Health*

The hearing examiner properly advised Grande:

NOTE: It is the responsibility of a person seeking review of a Hearings Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

CP 45. The hearing examiner also advised that “[f]orfeiture proceedings before a Hearing Examiner are governed by Chapter 34.05 RCW. See RCW 69.50.505(5).” CP 44. As noted above, RCW 69.50.505(5) provides in part that “[a] hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW.” RCW 34.05.514(1) then provides:

Except as provided in subsections (2) through (4) of this section, proceedings for review under this chapter shall be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

The citations to the applicable statutes for appeals of forfeiture orders under RCW 69.50.505 fairly notified Grande where to look to determine one means to appeal the hearing examiner’s decision.

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*Services*, 150 Wn.2d 881, 903, 83 P.3d 999 (2004) (Where both parties can determine the law and have knowledge of the underlying facts, estoppel cannot lie.)

Where the "extraordinary circumstances" test has been met, "the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged." *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. at 776 (citing *Reichelt v. Raymark Indus.*, 52 Wn. App. at 765; *Weeks v. Chief of State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982) (notice timely filed but filed in wrong court); *State v. Ashbaugh*, 90 Wn.2d 432, 438, 583 P.2d 1206 (1978) (notice timely filed but rejected by court for lack of filing fee); *Structurals Northwest v. Fifth & Park Place*, 33 Wn. App. 710, 714, 658 P.2d 679 (1983) (notice timely when filed within 30 days of entry of stipulated 'amended' judgment)); *see also Scannell v. State*, 128 Wn.2d 829, 834-835, 912 P.2d 489 (1996) (error caused by recently amended Rules of Appellate Procedure.)

Unlike these examples of extraordinary circumstances, no aspect of Grande's 2013 notice of appeal was challenged. Grande does not deny that he raised and pursued a remedy that the court of appeals could have provided had he prevailed on the issues he raised. *See State v. Harrison*, 148 Wn.2d 550, 557, 61 P.3d 1104 (2003) ("Because a plea agreement is analogous to a contract, the defendant is entitled to a remedy which restores him to the position he occupied before the State breached.")

**3. Grande's delay in pursuing a direct appeal of the hearing examiner's decision precludes a finding of extraordinary circumstances.**

Grande's delay further demonstrates the lack of extraordinary circumstances. Grande did not seek to appeal the hearing examiner's decision in the superior court until ten months after his criminal appeal was terminated. This ten month delay is doubled by the court of appeals advice of October 3, 2013, that if Grande "is seeking review of a district court decision or a decision of a hearing examiner, his initial appeal would be to the superior court, not to this court." CP 4-5.

The court of appeals' 2013 and the county clerk's 2014 notices were clear and unambiguous advice that Grande had the option of a direct appeal. They contradict his implicit claim that he did not learn that he had the option of filing an appeal in superior court until he received Richard D. Johnson's August 18, 2014, letter.<sup>4</sup>

If any extraordinary circumstance ever existed, it waned after October 3, 2013, and expired on July 8, 2014, because the notices show

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<sup>4</sup> See Attachment A. Mr. Johnson wrote: ". . . I note that the hearing examiner's decision provides no information as to how or when a party can seek judicial review of the hearing examiner's decision and instead provides, "It is the responsibility of a person seeking review of a Hearing Examiner decision to consult the applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal."

that Grande knowingly elected to stay the course he started with his 2013 notice of appeal.

The principle of laches, an implied waiver arising from knowledge of existing conditions and acquiescence in them, may be applied here. The elements of laches are: first, knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; second, an unreasonable delay by the plaintiff in commencing that cause of action; and third, damage to the defendant resulting from the unreasonable delay.<sup>5</sup> *Lopp v. Peninsula School Dist. No. 401*, 90 Wn.2d 754, 759, 585 P.2d 801 (1978). Damage to a defendant can arise either from acquiescence in the act or from a change of conditions. *Lopp*, 90 Wn.2d at 759-60.

Grande cannot deny that he knew that he was responsible for determining how to appeal the hearing examiner's decision. Nor can he deny that he was specifically advised that he needed to file his appeal in the superior court. Thus, if there was any flaw in the hearing examiner's notice, Grande possessed notice and knowledge of how to appeal by at least October 3, 2013, and certainly by July 8, 2014. Either of those dates,

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<sup>5</sup> The record is silent on the damage to the county because Grande has raised this issue for the first time on appeal, but it is a reasonable assumption that the vehicles, which were forfeited in 2013, are no longer in the county's possession. Grande neglected to show otherwise.

should Grande establish the existence of extraordinary circumstances, would have started the 30-day clock on his time to file a direct appeal in superior court. *See Pierce v. King County*, 62 Wn.2d 324, 334, 382 P.2d 628 (1963) (In the absence of notice, the time to appeal a zoning enactment “begins with acquisition of knowledge or with the occurrence of events from which notice ought to be inferred as a matter of law.”)

Despite the 2013 and 2014 notices, Grande ignored the option of filing a direct appeal of the hearing examiner’s decision in superior court until June 9, 2015, when he filed his Motion for Leave to File Notice of Appeal *Nunc Pro Tunc*. CP 28. His argument that he was confused and made a “technical flaw” is not an excuse for this delay. *See* Brief of Appellant at 8, 10. Grande is held to the same responsibilities imposed on lawyers and is required to follow applicable statutes and rules. *In re Pers. Restraint of Connick*, 144 Wn.2d 442, 455, 28 P.3d 729 (2001). That Grande continued to pursue his argument that the state failed to honor his plea agreement is not a technical flaw. It was a knowing choice that demonstrated his intent to attempt to prevail on that argument. This intent contradicts his claims of confusion and “technical flaws.”

## V. CONCLUSION.

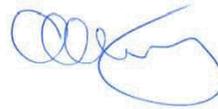
Grande cannot blame the hearing examiner for his failure to timely file a notice of appeal in the superior court. The maxim "ignorantia legis

neminem excusat"<sup>6</sup> applies here and holds Grande to the same rules of procedure and substantive law an attorney would have to meet. The court should find that Grande's election to continue his appeal of the forfeiture under a criminal cause was an informed choice that effectively bars his effort to recycle, *nunc pro tunc*, his notice of appeal in the criminal cause as a direct, civil appeal of the hearing examiner's decision.

For the reasons addressed above, the court should deny Grande's appeal.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January, 2016.

RICHARD A. WEYRICH  
Skagit County Prosecuting Attorney



By: \_\_\_\_\_  
A. O. DENNY  
Deputy Prosecuting Attorney  
WSBA #14021

#### DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the County's Response to: Jeremy Grande, addressed as General Delivery, Mount Vernon, WA 98273 on the 25th day of January, 2016, I certify under penalty of perjury under the laws of the State of Washington that the

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<sup>6</sup> "Ignorance of the law excuses no one." Black's Law Dictionary at 673 (5<sup>th</sup> Ed. 1979).

foregoing is true and correct. Executed at Mount Vernon,  
Washington this 25<sup>th</sup> day of January 2016.

A handwritten signature in blue ink that reads "Karen R. Wallace". The signature is written in a cursive style.

KAREN R. WALLACE, DECLARANT

# **APPENDIX A**

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

August 18, 2014

Skagit County Prosecuting Atty  
Attorney at Law  
605 So. Third St  
Courthouse Annex  
Mount Vernon, WA, 98273  
skagitappeals@co.skagit.wa.us

Erik Pedersen  
Attorney at Law  
Skagit Co Prosc Atty Ofc  
605 S 3rd St  
Mount Vernon, WA, 98273-3867  
erikp@co.skagit.wa.us

Jeremy D. Grande  
DOC 772839 Ozeette -G-5-L  
Olympic Correction Center  
11235 Hoh Mainline Rd.  
Forks, WA, 98331-9492

CASE #: 70543-1-I  
State of Washington, Respondent v. Jeremy D. Grande, Petitioner

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on August 18, 2014, regarding appellant's appeal of motion for discretionary review:

Jeremy Grande is attempting to obtain review of a decision of the hearing examiner decision forfeiting two vehicles. As is apparent from letters Mr. Grande has sent the court, he now states that he understands he should seek review in the district court and that he is attempting to do so. The State takes the position that review is unavailable in this court because Mr. Grande "never pursued a civil appeal of the forfeiture decision in a Superior Court civil cause as required by RCW 69.50.507."

At this juncture, review is unavailable in this court. I take no position as to whether review may be available in the district court, the superior court, or some other arena. I note that the hearing examiner's decision provides no information as to how or when a party can seek judicial review of the hearing examiner's decision and instead provides, "It is the responsibility of a person seeking review of a Hearing Examiner decision to consult the applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal."

Review is dismissed.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk