

NO. 74205-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

TIMOTHY J. FERNANDEZ,

Respondent.

FILED
Feb 22, 2016
Court of Appeals
Division I
State of Washington

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE WESLEY SAINT CLAIR

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

1) The trial court erred by determining that conclusions of law 1, 2, and 3 were mitigating circumstances that constitute substantial and compelling reasons to depart from the standard range.

2) The trial court erred in imposing an exceptional sentence below the presumptive sentencing range.

B. ISSUES PRESENTED

An exceptional sentence under the Sentencing Reform Act of 1981 (SRA) may be based only on factors pertaining to the crime or the defendant's criminal history, and the factors must demonstrate a substantial and compelling reason to distinguish the crime from others in the same category. Factors unrelated to the crime or those considered by the legislature when it created the standard range may not be a basis for mitigation. The trial court based the exceptional sentence on factors common to escape, considered by the legislature when it created the standard range, and unrelated to the crime. Was the sentence inappropriate?

C. STATEMENT OF THE CASE

On February 13, 2015, Timothy Fernandez was sentenced under King County Cause Numbers 14-1-04087-0 SEA and 14-1-03003-3 SEA to the department of corrections for a period of 14 months based on convictions for Violation of the Uniform Substances Act (VUCSA possession of cocaine) and identity theft in the second degree, respectively. CP 25. On April 29, 2015, he was transferred to the Reynolds Work Release program to serve the remainder of his sentence. CP 25.

Reynolds Work Release program, run by Washington State Department of Corrections (DOC), required Fernandez to remain at the detention facility when not provided a temporary "pass" for job-related purposes. CP 25. On April 30, 2015, the first full day Fernandez was in the work release program, he was granted a pass at 1pm to search for jobs. CP 25. Fernandez was required to be back at the detention facility by 4pm. CP 25. Fernandez left the detention facility, got high, and never returned. 10/22/2015 RP 20. A warrant was subsequently issued. CP 25. Fernandez was caught approximately two months later. 10/22/2015 RP 17.

Fernandez was charged by information with one count of escape in the first degree, a seriousness level IV crime. CP 1. His

criminal history included convictions for VUCSA (three counts -- 2015), Identity Theft (2015), VUCSA (New Jersey 2012), Credit Card Theft (New York 2011), Larceny Wrongful Appropriation (New York 2011), Theft in the Third Degree (Connecticut 2005), DUI (New York 2000), and Attempted Burglary (New York 1997). CP 27. This gave Fernandez an offender score of 6. CP 43. The presumptive standard range was 33 to 43 months.

The State amended the information down to escape in the second degree after plea negotiations. 10/22/2015 RP 3. This lowered the presumptive standard range to 22 to 29 months. CP 29. The State and Fernandez agreed on a recommendation of 22 months to run consecutive to any other hold. 10/22/2015 RP 9. Defense counsel recognized the significant difference in the standard ranges and that he "did the best [he] could under the constraints [he] had." 10/22/2015 RP 17. Fernandez acknowledged that the court was bound to sentence within the standard range. 10/22/2015 RP 9.

The Honorable Wesley Saint Clair accepted the plea and found Fernandez guilty of escape in the second degree. 10/22/2015 RP 14. Judge Saint Clair, who normally sits in juvenile court and previously presided over drug court, experienced a "visceral

response” to imposing the standard range in this case and made the following comments:

You know, I am just astounded at what we’re doing as a system. You know, when I look at the most recent reports that law enforcement - - I think your prosecutor was recently in New York City meeting with John Legend talking about the sentences, that, whether the sentences make sense with - - especially the, kind of the nonviolent offenders. And so what I have here is somebody who walked away from work release now looking at another two year sentence. For what purpose? To warehouse him?

I’m just, I am, I got this gut reaction at this point in time that what we’re doing is misguided. Our Sentencing Reform Act is talking about this model that says repeat offenders who have substance abuse mental health issues, which I think historically when you look at the record, many of the underlying offenses, at least one or two, appear to be related to that. But we’re not addressing those issues because when you go to Monroe, Walla Walla, there’s no treatment. It’s warehousing. And they let you out and they say, they give you no skills. They give you no tools and they say good luck. So I’m having this visceral response. I’m working hard to change our system at juvenile court because it bleeds into what happens to fold when they hit big boy land.
10/22/2015 RP 16-17.

* * *

But, you know, I’m saying that am I supposed to be - - I have been a passive participant in this process for many years. I was a prosecutor for several years, and now I’ve been a judge for almost 25 years. And, you know, when we look to say we as a community are saying, “Oh, we need to build a new prison” at the cost of a billion dollars because our prisons are full. And when you see where what’s happening at the federal level where, I mean, it’s really inconsistent

because they say, "Well, we, we, we have these mandatory sentences. We want them imposed, but also we want more money." And then we, we're realizing that what we're doing isn't working. 10/22/2015 RP 17.

* * *

This is, this is appalling. So, you know, I may not, I can't change the state legislature and what they do, and I'm trying to figure out - - see, here's my challenge, Mr. Newcomb. It's been so long since I've done adult work. I've been at juvenile for the last five years. Prior to that, I was drug court judge, so my, you know, what are the options I have? I mean, I must sentence within the standard range of 22 to 29 months unless - - in juvenile land, it's called a manifest injustice. What's it called here? 10/22/2015 RP 18-19.

* * *

But what I am saying is that because of my visceral reaction to this particular case, that there has to be a sense, I have to say - - because in the morning, I got to look up and look in the mirror, Mr. Fernandez and say, "Hey, Wesley, how'd you do today, yesterday?" And were I to sentence you to 22 to 29 months, I couldn't look in the mirror. I don't like this at all. You don't need to say anything. 10/22/2015 RP 20.

* * *

I mean, there's nothing rehabilitative about - - this is a pure unitive model. And it is, it doesn't engender or make our public safer by imposing this what from my perspective is draconian response to someone who is suffering from a medical condition that we have determined by legislation to be criminalized, to become criminalized. And as well is where our institutions have failed to address the medical condition when he was incarcerated before, nor provide the appropriate services for it. Then to me, it is in - - it's actually in contradiction to looking to create a safer public environment by not addressing it, and it is almost cruel, the process that is in place. And this is specific to this case. 10/22/2015 RP 26.

Judge Saint Clair asked how he could impose an exceptional sentence downward so as to survive an appeal. 10/22/2015 RP 25.

He requested counsel to direct him to the guiding statute.

10/22/2015 RP 23. Judge Saint Clair viewed RCW 9.94A.535, which controls departures from the standard range, but he did not find one that fit Fernandez's circumstances. 10/22/2015 RP 25.

Judge Saint Clair directed defense counsel to draft written findings of fact and conclusions of law over the weekend to support a downward departure. 10/22/2015 RP 27. The following Monday, Judge Saint Clair entered the following findings of fact and conclusions of law:

Findings of Fact

1. Mr. Fernandez pled guilty to Escape 2 after having walked away from work release. He was gone approximately two months.
2. The underlying offenses that Mr. Fernandez was held on were non-violent offenses, to wit Identity theft 2 and Vuca Possession of cocaine.
3. Both Counsel for the State of Washington and counsel for defendant, Jonathan Newcomb, presented the same agreed upon recommendation of 22 months at sentencing. Defense counsel adhered in full to the plea agreement.
4. Mr. Fernandez's escape by walking away from Reynolds Work Release did not endanger the

work release facility, its employees or other inmates.

5. Mr. Fernandez, as a direct result of his escape, lost his "good time" via a Department of Corrections hearing and will not be eligible for future work release placements with DOC including on the current escape charge.

Conclusions of Law

The court finds that there are substantial and compelling reasons to impose an exceptional sentence on Mr. Fernandez for the crime of Escape 2 under this cause, to wit,

1. The underlying offenses that Mr. Fernandez was held on and escaped from were non-violent offenses, to wit Identity theft 2 and Vuca Possession of cocaine.
2. Mr. Fernandez's escape by walking away from Reynolds Work Release did not endanger the work release facility, its employees or other inmates.
3. Mr. Fernandez, as a direct result of his escape, lost his "good time" via a Department of Corrections hearing and will not be eligible for future work release placements with DOC including on the current escape charge.

CP 47-48. Judge Saint Clair further incorporated all oral statements

as well. CP 48. During sentencing, Judge Saint Clair stated:

I have a proposed findings of fact, conclusions of law for exceptional sentence in this matter. I think they kind of comport with what the court's intent was. I was really focusing on the larger dialogue that I think we're having on a nationwide basis that talks about what is the appropriate use of secure detention, secure confinement. In this particular case, the court does find, and continues to find, that a standard range of 22 to 29 months for an escape from the Reynolds Work

Release as described in this instance is not an appropriate use of resources. And I find, further incorporate by reference the conclusions of law that were the conclusions of law that are proposed, and I'm noting in that that the court is incorporating all oral statements as well made in the course of this.

And so in this instance, I do understand the sentencing recommendations that are made and I'm going to impose an exceptional sentence down, imposing 30 days with credit for time served, as well as any financial obligations that are associated with this matter: the mandatory victim penalty assessment, DNA fee. Waive all other nonmandatory fees in this matter.

10/26/2015 RP 35-36. Judge Saint Clair sentenced Fernandez to 30 days with credit for time served. CP 50-60. The State objected to the sentence, 10/26/2015 RP 35, and then filed a notice of appeal. CP 49.

D. ARGUMENT

Courts are generally required to sentence within the SRA's standard range. The Act was designed to reduce disparities in sentences absent substantial and compelling reasons justifying an exceptional sentence. Pursuant to plea negotiations, Fernandez pleaded guilty to escape in the second degree with a standard range of 22 to 29 months. The trial court relied upon improper reasons to support a sentence that was a small fraction of the sentence deemed appropriate by the legislature. Because no

proper mitigating factors warrant the departure, the exceptional sentence should be reversed, and the matter should be remanded for resentencing within the standard range.

1. THE BASES FOR EXCEPTIONAL SENTENCES ARE LIMITED TO FACTS RELATING TO THE CRIME OR THE OFFENDER'S CRIMINAL HISTORY.

The SRA was designed to reduce disparities in sentences arising from differences among the individual sentencing philosophies of superior court judges. RCW 9.94A.010; State v. Barnes, 117 Wn.2d 701, 710-11, 818 P.2d 1088 (1991)(Utter, J., lead opinion). Courts are to give deference to the legislature's well-settled role of fixing penalties for criminal offenses. State v. Law, 154 Wn.2d 85, 92, 110 P.3d 171 (2005). "Generally, a trial court must impose a sentence within the standard range." Id. at 94; RCW 9.94A.505(2)(a)(i).

The SRA permits exceptional sentences below the standard range if the trial court finds "substantial and compelling reasons justifying an exceptional sentence" and it sets out its reasons for the departure in written findings of fact and conclusions of law. RCW 9.94A.535. The legislature has provided an illustrative list of 10 non-exhaustive circumstances that may justify a downward

departure.¹ RCW 9.94A.535(1). "While the statutory mitigating factors listed are 'illustrative' it should be noted that all the examples relate directly to the crime or the defendant's culpability for the crime committed." Law, 154 Wn.2d at 94-95.

Additional considerations beyond those contained within the statute are limited by the SRA's non-discrimination requirement:

The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant.

RCW 9.94A.340; Law, 154 Wn.2d at 99 ("RCW 9.94A.340 operates to regulate and constrain departures from the sentencing

¹ RCW 9.94A.535's list includes: (1) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident; (2) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained; (3) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct; (4) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime; (5) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded; (6) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim; (7) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010; (8) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse; (9) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose; and (10) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

guidelines”). “In adopting [the non-discrimination] sentencing requirement, the legislature provided the *only* basis on which discrimination is allowed: any element that relates to the crime or previous record.” Law, at 97 (italics in original).

2. THE BASES RELIED ON BY THE TRIAL COURT IN THIS CASE ARE IMPROPER.

Challenges to an exceptional sentence are governed by

RCW 9.94A.210(4), which states:

To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

Washington courts have construed this statute to allow for challenges under three prongs, each with its own corresponding standard of review.² State v. Ha'mim, 132 Wn.2d 834, 840, 940 P.2d 633 (1997). The second prong, whether the reasons given by the sentencing court justify a departure from standard range, is reviewed de novo. Id.

² The three prongs are: 1) whether the reasons given by the sentencing judge are supported by evidence in the record, 2) whether the reasons given by the sentencing judge justify a departure from the standard range, and 3) whether the sentence is clearly too excessive or lenient. Ha'mim, 132 Wn.2d at 840.

When determining whether a factor legally supports departure from the standard sentence range, reviewing courts employ a two-part test: first, a trial court may not base an exceptional sentence on factors necessarily considered by the legislature in establishing the standard sentence range; second, the asserted factor must be sufficiently substantial and compelling to distinguish the crime in question from others in the same category. Id. (citing State v. Alexander, 125 Wn.2d 717, 725, 888 P.2d 1169 (1995)).

Here, the trial court made the following written conclusions of law in support of a downward departure:

The court finds that there are substantial and compelling reasons to impose an exceptional sentence on Mr. Fernandez for the crime of Escape 2 under this cause, to wit,

1. The underlying offenses that Mr. Fernandez was held on and escaped from were non-violent offences, to wit Identity theft 2 and Vucsa Possession of cocaine.
2. Mr. Fernandez's escape by walking away from Reynolds Work Release did not endanger the work release facility, its employees or other inmates.
3. Mr. Fernandez, as a direct result of his escape, lost his "good time" via a Department of Corrections hearing and will not be eligible for future work release placements with DOC including on the current escape charge.

CP 48.

The court erred in considering the nonviolent nature of the underlying offenses as a mitigating factor. In State v. Calvert, 79 Wn. App. 569, 581, 903 P.2d 1003 (1995), the court held that as a matter of law, “[t]he fact that Mr. Calvert’s prior and current offenses are not, by definition, violent may not be a mitigating factor.” Id. The court reasoned that mitigating because the crimes were nonviolent would duplicate two factors already considered in determining the standard range. Id. First, the “[c]riminal history is one of the components used to compute the presumptive range and may not be used as a mitigating factor.” Id. (citing State v. Freitag, 127 Wn.2d 141, 144, 896 P.2d 1254 (1995)). Second, “the Legislature ranked the various crimes in the “seriousness score” on the basis of their comparative violence to society.” Id. (citing RCW 9.94A.310).³ So, while Fernandez’s two underlying offenses of VUCSA and second degree identity theft were each nonviolent, that was already considered by the legislature when it determined the appropriate punishment for his escape and thus cannot be the basis for mitigation.

³ RCW 9.94A.010(1) states: Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender’s criminal history.

The court also erred in considering that Fernandez's method of escape placed no one in danger. The method of Fernandez's escape was necessarily considered by the legislature when it determined the standard range, and his escape is indistinguishable from other escapes.

RCW 9A.76.120(1)(a) states: "A person is guilty of escape in the second degree if he or she knowingly escapes from a detention facility...." "Detention facility' means any place used for the confinement of a person ..., or (e) in any work release, furlough or other such facility or program." RCW 9A.76.010(3). In 2001, the legislature amended RCW 9A.76.120 to provide the following affirmative defense: "It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from ... or *returning* to custody or to the detention facility..." RCW 9A.76.120(2) (italics added); Laws of 2001, ch. 264, § 2. At the same time it added the affirmative defense to escape, the legislature repealed RCW 72.66.060 and RCW 72.65.070, which had provided alternative charges for felons failing to return from furlough or work release. Laws of 2001, ch. 264, § 7. Now all failures to return from furlough or work release are charged under the SRA as escape. Clearly, the legislature intended RCW

9A.76.120 and its proscribed punishment to include people failing to return from work release.

Fernandez's escape without placing anyone in danger is not a substantial and compelling reason to warrant distinction from other escapes. The day after Fernandez was transferred to the Reynolds Work Release program, Fernandez was given permission to leave the facility to job search. CP 25. As Fernandez told the court, "The day I got to work release, I got high. I'm not going to lie to you. And once they let me out on a pass, I didn't come back. [...] I just went to the races." 10/22/2015 RP 20. Fernandez's crime is indistinguishable from other escapes. See State v. Kent, 62 Wn. App. 458, 461, 814 P.2d 1195 (1991)(Kent left the jail with permission for work but failed to return. Court held, "Nothing in [escape in the second degree] suggests that an escape only occurs when one is subject to direct physical control. To escape, one need not run or flee from custody; as the court stated in Peters, *one need only be where he or she is not supposed to be or fail to be where he or she is supposed to be.*")(italics added). State v. Peters, 35 Wn. App. 427, 667 P.2d 136 (1983). Clearly, courts and the legislature have long recognized escapes from circumstances

where no one was placed in danger. Thus, Fernandez's escape does not warrant distinction.⁴

The court erred in considering the loss of "good time" as a mitigating factor. The loss of "good time" as a result of an escape was rejected as a mitigating factor in State v. Akin, 77 Wn. App. 575, 586, 892 P.2d 774 (1995). Akin lost 6 months of "good time," his right to conjugal visits, and he had more restrictive security status with the Department of Corrections (DOC). Id. The court stated:

Sanctions do not make the commission of the crime of escape less egregious. Moreover, the sanctions are not "sufficiently substantial and compelling to distinguish the crime of escape from others in the same category." The sanctions are the normal, expected consequences of the crime of escape. Finally, loss of "good time" was more likely than not considered by the Legislature in setting the standard sentencing range for escape. The court erred in using this factor as a basis for an exceptional sentence downward.

Id. Here, Fernandez lost "good time" and become ineligible for future work release programs. Like Akin, these are normal, expected consequences directly stemming from his escape. As

⁴ Reliance on this factor is dubious for another reason: Fernandez's escape fit the elements of escape in the first degree. He had already received a substantial benefit through the plea bargain and, thus, was already receiving less punishment than authorized by law.

such, these sanctions may not be the basis for a downward departure.

The trial court's statements on the record make plain that it simply disagreed with the standard range as set by the legislature:

You know, I am just astounded at what we're doing as a system. ... And so what I have here is somebody who walked away from work release now looking at another two year sentence. For what purpose? To warehouse him?

I'm just, I am, I got this gut reaction at this point in time that what we're doing is misguided. ... So I'm having this visceral response. I'm working hard to change our system at juvenile court because it bleeds into what happens to fold when they hit big boy land. 10/22/2015 RP 16-17.

* * *

This is, this is appalling. So, you know, I may not, I can't change the state legislature and what they do, and I'm trying to figure out ... what are the options I have? 10/22/2015 RP 18-19.

* * *

But what I am saying is that because of my visceral reaction to this particular case, that there has to be a sense, I have to say - - because in the morning, I got to look up and look in the mirror, Mr. Fernandez and say, "Hey, Wesley, how'd you do today, yesterday?" And were I to sentence you to 22 to 29 months, I couldn't look in the mirror. I don't like this at all. You don't need to say anything. 10/22/2015 RP 20.

* * *

I mean, there's nothing rehabilitative about - - this is a pure unitive model. And it is, it doesn't engender or make our public safer by imposing this what from my perspective is draconian response to someone who is suffering from a medical condition that we have determined by legislation to be criminalized, to

become criminalized. And as well is where our institutions have failed to address the medical condition when he was incarcerated before, nor provide the appropriate services for it. Then to me, it is in - - it's actually in contradiction to looking to create a safer public environment by not addressing it, and it is almost cruel, the process that is in place. And this is specific to this case. 10/22/2015 RP 26.

* * *

I have a proposed findings of fact, conclusions of law for exceptional sentence in this matter. I think they kind of comport with what the court's intent was. I was really focusing on the larger dialogue that I think we're having on a nationwide basis that talks about what is the appropriate use of secure detention, secure confinement. In this particular case, the court does find, and continues to find, that a standard range of 22 to 29 months for an escape from the Reynolds Work Release as described in this instance is not an appropriate use of resources. 10/26/2015 RP 35-36.

The court's oral statements allude to purposes (1), (3), (4), (5), and (6) of the SRA. The SRA's stated purpose provides:

- The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:
- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
 - (2) ...
 - (3) Be commensurate with the punishment imposed on others committing similar offenses;
 - (4) Protect the public;
 - (5) Offer the offender an opportunity to improve himself or herself;
 - (6) Make frugal use of the state's and local government's resources; and

(7)

RCW 9.94A.010.

Washington courts have consistently held that the purposes of the SRA, as stated in RCW 9.94A.010, cannot justify a departure from the guidelines because the legislature has already considered them when it established the presumptive ranges. State v. Pascal, 108 Wn.2d 126, 137, 736 P.2d 1065 (1987); Freitag, 127 Wn.2d at 145; State v. Fowler, 145 Wn.2d 400, 409, 38 P.3d 335 (2002); Law, 154 Wn.2d at 97. A court's disagreement with the legislature's determinations, regardless of merit, does not authorize it to encroach upon the province of the legislature. Law, at 101. Thus, "although sentencing within the standard range may at times appear unnecessary or even unjustified, it is the function of the judiciary to impose sentences consistent with legislative enactments." Id. (quoting Freitag, 127 Wn.2d at 144). Thus, the trial court's disagreement with the legislature on the appropriate punishment for Fernandez cannot be the basis for mitigation.

The balancing of prison, resources, and drug treatment is made by the legislature; re-balancing by a trial court judge is not a basis for mitigation. See State v. Allert, 117 Wn.2d 156, 169, 815 P.2d 752 (1991)(lack of threat to public); State v. Paine, 69 Wn.

App. 873, 880-81, 850 P.2d 1369 (1993)(history of chemical dependency and need for treatment rather than incarceration); State v. Powers, 78 Wn. App. 264, 270, 896 P.2d 754 (1995)(would not make frugal use of resources).

When a reviewing court determines that all of the conclusions of law relied upon by the trial court are insufficient to justify an exceptional sentence, the court will remand for resentencing within the standard range. Ha'mim, 132 Wn.2d at 847. Here, all of the reasons given by the court, either written or through oral statements, are improper bases for departing from the standard sentencing range. As such, Fernandez should be resentenced within the standard range.

E. CONCLUSION

The factors relied on by the court to justify the exceptional sentence were improper mitigating circumstances. The trial court therefore erred in sentencing Fernandez below the standard range. The State respectfully requests this case be remanded for resentencing within the standard range.

DATED this 22ND day of February, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the respondent, Jonathan Newcomb with Association of Counsel for the Accused, at Jonathan.Newcomb@kingcounty.gov, containing a copy of the Brief of Appellant, in STATE V. TIMOTHY J. FERNANDEZ, Cause No. 74205-1-I, in the Court of Appeals, Division I, for the State of Washington.

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



Date 2/22/2016