No. 53606-4-II

100283-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

KENNETH MOORE

PETITION FOR REVIEW

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A. Identity of Petitioner

Kenneth Moore seeks review in this Court of the Court of Appeals decision terminating review designated in Part B of this Petition.

B. Court of Appeals Decision

The Court of Appeals affirmed Mr. Moore's convictions for first degree murder and second degree assault, but reversed his sentence. A copy of the decision is in the Appendix.

C. Issues Presented for Review

1. Is the decision by the trial court to grant interpreter services for a hearing-impaired defendant but deny the same defendant the use of interpreter services for attorney-client conferences a violation of the Sixth Amendment and Washington statutory law?

2. Is Washington's jurisprudence on whether there has been a breakdown in the attorney-client relationship such that a new attorney must be appointed, an issue this Court has not reviewed for two-and-a-half decades, inconsistent with the Sixth Amendment as interpreted by the Ninth Circuit Court of Appeals?

D. Statement of the Case

Valentine's Day, 2017 was, as described by an understated Court of Appeals, a "sad and gruesome" day in the life of Kenneth Moore and his mother, Lisa Holt. After spending a romantic night in a hotel with her boyfriend, Ms. Holt returned home carrying chocolates and an oversized teddy bear. What happened next, based upon the autopsy and state of the crime scene, was an oedipal rage resulting in inexplicable matricide. After stabbing his mother multiple times before strangling her to death, Mr. Moore proceeded to chop off his mother's legs and pose her in the bathtub with her hand down the front of her panties.[1] Mr. Moore was arrested on February 17, 2017 and charged with first degree murder.[2] This was a case that cried out for a "not guilty by reason of insanity" plea. But because Mr. Moore's counsel was either unwilling or unable to establish an attorney-client relationship, the plea never happened. The relationship was further hampered by the trial court's refusal to provide interpreter services for a hearing impaired defendant despite finding that interpreter services were necessary for court hearings. Despite being repeatedly and timely advised of the breakdown in the attorney-client relationship, the

[1] A complete recitation of the facts can be found in the Court of Appeals briefing. Relevant facts from the trial are referenced in the Argument section.

[2] He was also charged and convicted with second-degree assault for pointing a gun at one of the arresting officers. Mr. Moore argued in the Court of Appeals the facts were insufficient to convict of that charge, but the Court affirmed.

trial court refused to substitute of counsel, and the Court of Appeals affirmed. This Court should grant review to correct this grave miscarriage of justice.[3]

Mr. Moore was represented throughout the case by court appointed attorney Louis Byrd. The first few court hearings are unremarkable. But starting on September 26, 2017 and at every hearing thereafter, Mr. Moore and Mr. Byrd had communication difficulties that increased exponentially. The problem started with Mr. Moore complaining that he suffered severe hearing loss due to an assault in the jail. The judge, attorneys, and other professionals disagreed whether his hearing loss was real or whether he was fabricating it and the record is replete with discussion about the extent of his hearing problems. But what cannot be disputed is that the hearing and communication difficulties substantially slowed down the proceedings, interfered with Mr. Moore's relationship with Mr. Byrd, and increasingly proved to be a source of irritation for the judge. On September 26, the judge tried to address the issue by providing Mr. Moore with headphones. RP, 21. When that proved inadequate, the judge ordered a transcript prepared of the September 26 hearing to be paid for by "indigent defense." RP, 24-25.

[3] The Court of Appeals reversed the sentence for reasons not relevant to this petition. In the event the petition is denied, remand for resentencing is still required.

Starting on October 18, 2017, Mr. Moore started communicating almost exclusively by way of written notes, a pattern that continued throughout the case. RP, 28. Defense counsel also suggested it might be necessary to get a court reporter to transcribe all hearings in real time to allow Mr. Moore to read the proceedings as they occurred. RP, 28. The Court ordered such a transcriptionist for all subsequent hearings with "[f]unds to come from indigent defense." RP, 31, 34. The Court ordered defense counsel to "go to indigent defense and get some money for that." RP, 33.

The next hearing took place on December 7, 2017 without the benefit of the transcriptionist, despite the court's earlier order. RP, 35. The judge and defense counsel got into a conflict over who's responsibility it was to arrange for the transcriptionist. RP, 37. The Court concluded the real time transcriptionist was necessary in the same way any other "interpreter services" would be necessary. RP, 34. The Court expressed a concern that it was "not even sure Mr. Moore even understands what we're saying or hearing or talking about here." RP, 39. The Court also declined to make a ruling on whether Mr. Moore was "feigning" his hearing loss. RP, 39. The purpose of the hearing was to review a competency evaluation from Western State Hospital, dated

November 22, 2017. RP, 35, CP, 36. Defense counsel reported he had not had a chance to talk to Mr. Moore about the evaluation. RP, 38.

Western State's competency evaluation opined that Mr. Moore does not suffer from mental disease or defect and was competent. CP, 36. When the psychologist attempted to interview him, he initially requested an attorney. CP, 37. All of the communication was in writing because of Mr. Moore's hearing impairment and his inability to communicate using American Sign Language (ASL). Mr. Byrd was contacted by telephone. CP, 37. When Mr. Moore was told Mr. Byrd was on the phone, Mr. Moore wrote a message asking, "How do I communicate with him?" CP, 37. Mr. Moore did not think it was wise for him to participate in the interview and asked the evaluator to communicate that to Mr. Byrd. CP, 37. Mr. Byrd's response is not in the record and it does not appear any attempt was made for Mr. Byrd to appear in person to help facilitate the interview. No interview ever took place. CP, 37.

Starting on December 15, 2017, the Court provided Mr. Moore with a transcriptionist at every hearing who used "real time" transcription[4] to allow Mr. Moore to read the court proceedings as they happened. RP,

[4] The "real time" transcription, or Certified Record of Applicable Proceedings, allowed Mr. Moore to follow along with the proceedings on a computer screen. The first few times it was used, it did not work properly, prompting an exasperated Mr. Byrd at one point to exclaim, "Well, this is CRAP." RP, 84. The parties were able to work the bugs out by the time of trial.

42. The State asked the Court to find Mr. Moore competent based upon the November 22 report. RP, 44. Defense counsel strongly disagreed with the Western State Hospital report, saying, "I don't know how Mr. Moore has been able to assist me in preparing his defense and/or preparing for trial in this matter. He has not had the ability to communicate sufficiently to meet the requirements for competency assistance of the attorney. It's just not there." RP, 44. Mr. Byrd made a motion for an independent competency evaluation. RP, 45. Mr. Byrd also moved to allow him to take a transcriptionist into the jail with him for attorney-client meetings. RP, 46. The Court refused to authorize a transcriptionist, saying, "I'm not wading into that. That's jail policy – you have to go through your coordinator to get the funds to hire that. I just ordered the State to pay for the court hearing transcriptionist. I am not ordering them to pay for a private jail meeting transcriptionist." RP, 46.

The next hearing occurred on January 26, 2018. RP, 50. The Court began the hearing by asking Mr. Moore if he was able to "review and read" the real time transcriptions and Mr. Moore gave a thumbs up signal. RP, 51. The defense had hired a defense psychologist, Dr. Stanulis. Mr. Byrd updated the court on Dr. Stanulis' progress:

> So I think the benchmark has been established that Mr. Moore has problems communicating. Why? I don't know. I'm not a audiologist or a psychologist or anything like that. I

> can tell you that these are very difficult circumstances for one to attempt to defend an individual. So that's obvious. I was talking with Dr. Stanulis last night who has been appointed in this matter. . . He sent me an email. This is an update: Mr. Moore has been minimally cooperative and there are few collateral sources. As you know I asked for an investigator that would look to – would look to shed light on his living and squalor. A marker of major mental illness but not dispositive to help make – and that was in parenthesis – to help make a diagnosis. Unfortunately this was interpreted as looking for mitigation not diagnostic information. I would like to renew and clarify my request that I need historical information for diagnostic purposes – not mitigation. I then need to meet with him again and attempt to make a more definitive diagnosis.

RP, 52-53. Mr. Byrd made an oral motion for a "mitigator because we don't know anything about Mr. Moore, his folks." RP, 53. Mr. Byrd continued, "So we don't know a lot about Mr. Moore. Really this is going to baffling [sic]. . . So the discovery lays out the names of individuals that had limited contact with the mo – Mr. Moore and his mother throughout the course of – I guess – the last decade. And it's just very little information. We don't know anything about his youth, about his upbringing." RP, 53-54. The court responded, "[W]e may never know a lot of that stuff. I mean – I'm not sure how relevant that is to what we're here today for." RP, 54. Mr. Byrd then reported, "Indigent defense is [sic] denied any funding for what Dr. Stanulis is asking for." RP, 57. He then reiterated he was seeking "appointment of a investigator that has expertise in getting

background information." RP, 57. The Court responded, "And I'm not going to tell you you cannot file motions but it's going to relate to competency." RP, 57.

The next hearing took place on March 2, 2018. RP, 61. Dr. Stanulis's report was not yet ready and the case was again continued RP, 67. Again, the issue came up of who was going to pay for the transcriptionist. RP, 63. Defense counsel suggested it should be paid by the District Court rather than indigent defense. RP, 63. The Court again iterated the transcriptionist was "something akin to an interpreter" and indigent defense would pay for it. RP, 63, 66.

The parties were back on April 13, 2018. RP, 69. The hearing began with the Court asking Mr. Moore to confirm his name. RP, 70. The defendant responded by writing, "Your honor" on a piece of paper. The Court said, "That's not your name. Can you state your name for the record." RP, 70. The defendant responded, according to the official report of proceedings, "(Guttural sound) Kenneth Moore." RP, 70. Just as things were starting to be addressed, there was a problem with the real time computer Mr. Moore was using. RP, 71. While the problem was being addressed, Mr. Moore held up a sign that read "something about [wanting] to have a copy of some video of the officer attack on [his] ears." RP, 72. The Court said, "I

don't know what there is out there that you're talking about," and moved on to address competency issues. RP, 72. Mr. Byrd reported he did not get an independent competency evaluation and had "nothing at this point in time to suggest that the evaluation of Western State Hospital is incorrect." RP, 72-73. The prosecutor moved to have Mr. Moore declared competent based upon the November 22, 2017 evaluation. RP, 73. Mr. Byrd objected saying, "I can advise the court Your Honor that I question the ability to be able to effectively represent Mr. Moore under the current circumstances. I think it would be ineffective assistance of counsel to – to go forward." RP, 73. At that point, Mr. Moore interrupted the proceedings with hand gestures and, at the Court's invitation, wrote a note to the Court. RP, 73-74. The note read, "Can the Court replace Mr. Byrd." RP, 74. The Court answered, "From what I've heard so far the answer is no." RP, 74. Mr. Byrd interjected, "I would join in the request Your Honor." RP, 74. The Court responded, "Then I would tell you no as well." Mr. Byrd emphasized the need to be replaced, "I think the – what is of record today – the use of hand written notes back and forth – I think it establishes my point that it would be ineffective assistance of counsel." RP, 74. The Court suggested it might be amenable to appointing a second chair attorney

at assist Mr. Byrd. RP, 75. The Court continued, "I am not going to allow you to withdraw or substitute as his attorney because it's not met the threshold requirements of ding [sic] such a thing. I have *sua sponte* pro-offered [sic] to appoint a second attorney to assist you in this defense." RP, 76.

The Court found Mr. Moore competent and discussed possible trial dates. RP, 77. After determining there were only 38 more days left of speedy trial, there was a break in the proceedings to allow Mr. Moore and Mr. Byrd to discuss speedy trial. RP, 79-80. The verbatim report of proceedings reads, "(Defense is consulting with client at attorney table using notes from Defendant to attorney. Recording continues – nothing spoken on the record by anyone.)" RP, 80. At the end of the discussion, Mr. Moore signed a speedy trial waiver. RP, 81-82. After picking a trial date, Mr. Byrd again moved to withdraw, saying, "And Your Honor with all due respect I don't think I can sign off on the Order finding Defendant Competent. I still have reservations about that and his – so –" RP, 83. The Court responded, "I said no." RP, 83. The colloquy continued:

> Mr. Byrd: And – and Your Honor just for the record part of my concern with ineffective assistance of counsel is this – I don't know if this is going to be the procedure where there's notes back and forth – yeah –
> Judge: Well what is it you want me to do?

> Mr. Byrd: - rec – just recognize the difficulty –
> Judge: I do! I said that.
> Mr. Byrd: - okay. Thank you.
> Judge: I put it on the record – I recognize the difficulty.
> Mr. Byrd: Thank you.
> Judge: But I don't know what else you want me to do.
> Mr. Byrd: Understood.

RP, 83-84.

The parties returned on September 7, 2018. RP, 85. The day before, Mr. Byrd filed a written motion to withdraw. RP, 85; CP, 50. Attached to the motion was a Declaration of Louis Byrd which read, in relevant part:

> 2.) Due to the voluminous amount of discovery associated with the instant allegations, attorney client communication is crucial! Defendant has refused to meet with me on recent attempted jail visits (7/10, 7/27, and 8/9). Defendant did meet with me for 5 minutes on August 16, 2018. To my surprise, we had an extended meeting lasting approximately 1.5 hours on August 24, 2018.
>
> 3.) Consistent with the record of ongoing court proceedings, defendant's claimed deafness has negatively impacted my representation due to the insistence of nonverbal communication. Defendant's limitation on communication implicates ethical considerations enumerated in RPC 1.16 (b)(4), (6), or (7). As currently postured, I cannot effectively continue representing the defendant without being exposed to a claim of ineffective assistance of counsel.
>
> 4.) Based upon my past and ongoing interactions, and attempted interactions with the defendant, I am requesting that the court allow me to withdraw as his attorney of record.
>
> 5.) Furthermore, based upon the ongoing communication concern, I do not believe the defendant is competent to assist me in the development of his defense to the instant charges. As such, I am

> requesting that he be reevaluated by WSH as, to date, he has refused to be evaluated by his court appointed psychologist.

CP, 51. After Mr. Byrd read his declaration into the record, the Court asked Mr. Moore what his position on the new attorney was. The following colloquy occurred:

> Judge: I don't want you to say anything about the case Mr. Moore but do you have anything you want to say about the attorney's request to be disqualified?
> (Defendant writes note.)
> Mr. Byrd: Well I'll show it to [DPA] Mr. Vu first? I don't know.
> Judge: The answer –
> Mr. Byrd: Just for the record – I guess I can just read it into the 1 record Your Honor?
> Judge: - yes.
> Mr. Byrd: I did not lose my hearing. An officer attacked my ears.
> Judge: So you can hear?
> (Defendant writes another note.)
> Judge: Can you speak?
> Mr. Byrd: If there is an association to my hearing and the ambient sounds it is transposing as clicks maybe.
> Judge: Can you speak?
> (Defendant writes another note.)
> Mr. Byrd: See we can part ways.
> Judge: See we can part ways? I've not decided that yet. I – I've just asked if there's anything you want to say about his request. Do you want your trial on October 15th?
> (Defendant writes another note.)
> Mr. Byrd: New lawyer please.

RP, 92. Mr. Byrd repeatedly stated he was unable to communicate with his client, at one point saying, "[W]hen he stopped meeting with me that put it into a whole – totally different situation." RP, 93-96. The judge continually expressed frustration with the request to withdraw, calling it

"extraordinary," (RP, 94) the proceedings, and the note passing, at one point saying, "I don't know why I'm doing this." RP, 92. The Court again offered to appoint a second chair, which Mr. Byrd this time accepted. RP, 97. The Court appointed Greg Schile as second chair. RP, 101. Mr. Byrd again objected to the denial of his motion to withdraw. RP, 101.

There was then an extended discussion about whether Mr. Moore was presently competent. RP, 102. Mr. Byrd reiterated a point from his Declaration that Mr. Moore also refused to meet with his court-appointed psychologist. RP, 103-06. Mr. Byrd stated, "I'm limited in the ability to assist this man in a defense because we just – we can't communicate and there is no participation with things that could help. Arguably a relevant defense might be insanity and I can't even explore that because I don't have the professional involvement of a psychologist. I have him but no one is willing to use him." RP, 106. The Court denied all motions, including the motion to withdraw and the motion for a second competency evaluation, saying, "I know it puts the attorney in a very difficult position but the attorney is duty-bound to do the best job they can with the – the ability – with the skills and ability they have." RP, 106-07.

The next hearing was September 28, 2018 for the omnibus hearing. RP, 109. Mr. Byrd indicated the defense was "general denial" while reserving the defense of "insanity." RP, 110. Mr. Moore continued to be

non-communicative. RP, 110. Mr. Byrd continued to believe Mr. Moore was incompetent. RP, 113. At one point, Mr. Byrd said, "There has been absolutely no communication about the case with Mr. Moore." RP, 117. He later added, "I can advise the court that I haven't filed documentation from the investigator, from the psychologist and from the mitigation expert outlining their inability to communicate with Mr. Moore. But the documentation is available." RP, 122. Mr. Byrd also brought a motion to continue the trial, explaining that the State had endorsed 36 witnesses and the defense had not interviewed any of them. RP, 118. When the Court asked Mr. Moore if he had a position on the proposed continuance, Mr. Moore wrote a note to the Court "indicating that he had asked that this lawyer be fired. [He] was ready more than a year ago." RP, 120.

On January 31, 2019, the trial was again continued because defense counsel was unprepared RP, 126. Defense counsel had only interviewed four or five of the State's witnesses. RP, 127. Significantly, Mr. Moore was not advised by his attorneys prior to the hearing of the continuance motion. RP, 126. Mr. Byrd continued to complain about the communication difficulties. RP, 128-29.

The Court held a readiness hearing on May 30, 2019 where the attorneys announced they were ready for trial. RP, 313. In the middle of the hearing, Mr. Moore passed up a note asking for new counsel. RP, 320.

When the Court asked if he was seeking to replace one attorney or both, Mr. Moore responded with a note indicating "if that's what it requires to make Mr. Byrd dismissed – yes." RP, 320. Mr. Moore further clarified, "I don't want his lies representing me in Motions or at trial." RP, 320-21. The Court responded, "Your request for a new attorney is denied. There is not a basis at this point in the process to do that." RP, 321.

The case was called for trial on June 3, 2019. RP, 323. Mr. Byrd immediately moved to withdraw, which was denied. RP, 323. Later that morning, with the jury venire in the room and the judge giving his opening remarks, Mr. Moore held up a sign for the jury to read. RP, 327. The Court promptly terminated the proceedings and excused the jury. RP, 327. The sign read, in all capital letters, "I ASKED TO REPRESENT MYSELF." RP, 328. The Court noted that this was the first time Mr. Moore had asked to represent himself; his previous position had been requesting Mr. Byrd be removed, apparently he was content with Mr. Schile. RP, 338. The Court asked Mr. Moore if he wanted to proceed with just Mr. Schile and Mr. Moore wrote a note saying, "I have not time with him to make such a decision." RP, 340. The Court immediately denied any further motions to change the defense attorneys. RP, 340.

A few minutes later, Mr. Moore wrote a note to the judge. Mr. Byrd walked over to counsel table to retrieve the note in order to read it into the record and the following exchange occurred.

> Judge: Mr. Byrd could you read his response?
> Mr. Byrd: Excuse me.
> Judge: Why don't you wait –
> Mr. Byrd: Well I'll –
> Judge: - why don't you just wait one second.
> Deputy Prosecutor: Just – just wait for Mr. Schile.
> Judge: Just wait.
> Mr. Byrd: - pardon me?
> Deputy Prosecutor: Or perhaps the – custody officer –
> Mr. Byrd: Excuse me?
> Deputy Prosecutor: - I'm sorry.
> (Attorney Byrd walks over to Defendant to obtain note to be read to the court – Defendant yanks note away from attorney not allowing him to read same.)
> Mr. Byrd: Okay.
> Judge: That seemed pretty clear the first go around. Mr. Schile he would like you to read his response – he seems to be at conflict stage with Mr. Byrd and won't even let him read the note.

RP, 343.

From this record, it does not appear that defense counsel was discussing trial strategy with Mr. Moore during the trial. During the CrR 3.5 hearing, which occurred in the middle of trial, Mr. Byrd represented he had not discussed with Mr. Moore his right to testify, and, even after the Court took a recess to allow that to happen, did not discuss it with him. RP, 823-25. The defense team did not discuss jury instructions either with themselves or with Mr. Moore prior to the end of the testimony. RP, 1270.

After the State rested, the Court inquired of defense counsel if they had discussed with Mr. Moore his right to testify and Mr. Byrd answered, "I have not." RP, 1350. The Court then took a one hour and twenty minute recess to allow that to happen. RP, 1352, 1362. After the recess, Mr. Byrd announced Mr. Moore would not be testifying. RP, 1352. The jury was brought back into the courtroom and the defense rested. RP, 1353. The jury was then excused for the day and the court took a recess. RP, 1353. After the recess, Mr. Moore passed up a note saying, "I'd better testify." RP, 1354. This caused a lengthy and detailed discussion about whether the defense should be allowed to reopen its case-in-chief and how Mr. Moore would testify. The judge granted the motion to re-open and declared that Mr. Byrd would ask the questions while Mr. Schile sat with the defendant and read his written answers to the jury. RP, 1357. After extensive discussion, Mr. Moore declared his final decision was to testify. RP, 1363. The Court then took a recess until the morning. The next morning, Mr. Moore declared he was not going to testify. RP, 1364. Mr. Moore did not testify in the trial. RP, 1366.

E. Argument Why Review Should be Granted

1. The trial court erred by refusing to authorize transcription services for attorney-client conferences, thereby interfering with Mr. Moore's Sixth Amendment right to confer privately with his counsel.

Washington has declared a strong public policy interest in ensuring that deaf and hard of hearing persons are provided with a means to participate in legal proceedings. RCW 2.42.010 reads, "It is hereby declared to be the policy of this state to secure the constitutional rights of deaf persons and of other persons who, because of impairment of hearing or speech, are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them." For purposes of this statute, "impaired person" means, means a "person who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, speech impaired, or hard of hearing." RCW 2.42.110(1). RCW 2.42.120(1) requires a qualified interpreter be appointed for any hearing impaired person to be paid for the "appointing authority." Specifically, "[w]here it is the policy and practice of a court of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified interpreter for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case." RCW 2.42.120(6).

Similarly, RCW 2.43.040(2) requires all foreign language interpreter services in a criminal case to be paid "by the governmental body initiating the legal proceedings."

In Mr. Moore's case, he qualifies, either as a deaf person or hard of hearing person, as an "impaired person" because he could not readily understand or communicate in spoken language. The Court concluded a real time transcriptionist was necessary for court hearings in the same way any other "interpreter services" would be necessary. RP, 34. But the Court denied a similar request for interpreter services for attorney-client conferences. To grant a request for interpreter services for court hearings, but deny it for confidential conferences was a denial of Mr. Moore's Sixth Amendment right to counsel and his statutory right to an interpreter. This is a significant question under the Constitution and an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(3)-(4).

2. The trial court erred by denying defense counsel's motion to withdraw due to a breakdown in the attorney-client relationship.

A criminal defendant who is dissatisfied with appointed counsel must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant. *State v. Stenson*,

132 Wn.2d 668, 734, 940 P.2d 1239 (1997). Factors to be considered in a decision to grant or deny a motion to substitute counsel are (1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion. *Stenson* at 723-24.

In the two-and-a-half decades since this Court decided the *Stenson* case, the Ninth Circuit has developed significant body of law in this area demonstrating that Washington's jurisprudence is out-of-step with federal law and the Sixth Amendment. For instance, in *United States v. Nguyen*, 262 F.3d 998, 1002 (9th Cir. 2001) the Ninth Circuit found an abuse of discretion in the "the face of Nguyen's persistent complaints that he did not trust his attorney, and the attorney's own acknowledgment that attorney-client communications had broken down completely, the Court repeatedly denied the request without explanation, simply repeating 'your request is denied,' and urging the defense attorney to 'do the best you can.'" A defendant is denied his Sixth Amendment right to counsel when he is "forced into a trial with the assistance of a particular lawyer with whom he is dissatisfied, with whom he will not cooperate, and with whom he will not, in any manner whatsoever, communicate." *Nguyen,* citing *Brown v. Craven*, 424 F.2d 1166 (9th Cir. 1970). In those cases where the Ninth Circuit has held that the adequacy-of-inquiry factor was satisfied, the trial court typically held at least one hearing during which it

asked specific questions pertaining to the breakdown, usually in an *en camera* hearing. *United States v. Valasquez*, 855 F.3d 1021, 1035 (9th Cir. 2019) (citing multiple cases where the *en camera* inquiry was sufficient). The *Stenson* case is a unique case involving the death penalty where the request for substitution of counsel was not made until twenty-one days into voir dire. The question of when a breakdown in the attorney-client relationship justifies the substitution of counsel is a significant question under the Constitution and it is high time for this Court to address it in light of the Ninth Circuit jurisprudence. RAP 13.4(b)(3).

The extent of the conflict between Mr. Moore and his counsel was profound. Mr. Byrd's written motion to withdraw, filed on September 6 and argued the next day, cited three reasons for seeking to withdraw from the case. First, he believed Mr. Moore was refusing to communicate with him. Second, Mr. Byrd expressed frustration with Mr. Moore's "insistence of nonverbal communication." Mr. Byrd was worried he was "being exposed to a claim of ineffective assistance of counsel." Third, Mr. Byrd disagreed with Western State's competency evaluation, noting Mr. Moore "refused to be evaluated by his court appointed psychologist."

According to the Court of Appeals, the reasons cited by Mr. Byrd constituted a "disagreement with the court's competency decision" and did not implicate "attorney-client communications." Opinion, 12. On this

record, the Court of Appeals' conclusion that there was not a complete breakdown in the attorney-client relationship is not sustainable. It is clear Mr. Moore and Mr. Byrd were not communicating and this lack of communication resulted in actual and appreciable prejudice. In fact, there is a direct nexus between Mr. Byrd's neglect of the case arising from Mr. Moore's communication difficulties with him and the competency evaluation he was complaining about. When Mr. Moore arrived at Western State Hospital, he requested his attorney be present for the evaluation, as was his right. *State v. Hutchinson*, 135 Wn.2d 863, 873, 959 P.2d 1061 (1998). Western State Hospital notified Mr. Byrd of the request and arranged for him to be available by telephone, but providing legal counsel over the phone to a client who cannot hear proved instantly impossible. Despite this, Mr. Byrd made no attempt to set up an in person meeting. A timely visit to Western State Hospital at that juncture would have allowed Mr. Byrd to communicate effectively with his client and would have substantially aided the evaluation process. It also would have allowed the psychologist to see Mr. Moore and Mr. Byrd work together, which would have aided the determination when Mr. Moore could assist his attorney in his own defense.

Mr. Byrd's second complaint was Mr. Moore's "insistence of nonverbal communication." The communication difficulties presented by

Mr. Moore's hearing loss are attributable at least in part to the Court's refusal to make reasonable accommodations as required by RCW 2.42.010. But Mr. Byrd also bears significant responsibility as well. Communicating by written memos may be slow and cumbersome, but the alternative is to not communicate at all. And this appears to be the avenue Mr. Byrd chose. Over and over, the Court would inquire if Mr. Byrd had discussed a particular issue with Mr. Moore, only to be told he had not. The breakdown in communication is attributable to Mr. Byrd's decision to not communicate and Mr. Moore repeatedly expressed his displeasure through his requests for new counsel. Instead of expressing fears that he as being set up for an ineffective assistance of counsel claim, Mr. Byrd should have done his job.

Mr. Byrd also bears responsibility for providing no background information to either Western State Hospital or the defense psychologist that would have greatly aided them. Matricidal fury followed by dismemberment is not normal and must have originated somewhere. To the extent that the record reflects anything about Mr. Moore's background, we know that his mother got pregnant by an unknown father and gave birth to him when she was just 14 years old. Fast forward 45 years and we know Ms. Holt was caring for her agoraphobic son, forced to race home every day to care for him while her co-workers socialized after work. Her

commencement of a romantic relationship with Mr. Hesterley seems to have triggered something in Mr. Moore to the point that, when she came home on Valentine's Day after an overnight rendezvous carrying chocolates and an oversized teddy bear, he savagely attacked her in the style of Norman Bates, systematically cut off her legs, and posed her with her hand down the front of her panties. Competent counsel would have made efforts to fill in the gaps between his birth to a teenage mother and this savage attack.

But Mr. Byrd declined to get this information, even when given the resources to do so. Although the "indigent defense" office apparently appointed both an investigator and mitigation specialist, Mr. Byrd refused to maximize their resources, instead complaining to the judge that they were trying to investigate possible mitigation. RP, 52-53. But issues of competency, insanity, and mitigation are not mutually exclusive and could have been explored simultaneously. Mr. Byrd's complete failure to explore the circumstances of this case substantially contributed to the breakdown in the attorney-client relationship.

The second issue for this Court is the trial court's own evaluation of counsel. This factor weighs in favor of Mr. Moore. The record here reflects that the judge dismissed both Mr. Byrd's and Mr. Moore's concerns out of hand without any meaningful inquiry. The trial court never

held an *en camera* hearing to determine the extent of the conflict and never asked the "specific and targeted questions" that are normally required in this circumstance. *United States v. Adelzo-Gonzalez*, 268 F.3d 772, 778 (9th Cir. 2001).

Finally, the Court of Appeals concluded the request was not timely, stating the "most adamant requests for new counsel [coming on] the eve of trial." Opinion, 12. This is not accurate. The first request for substitution of counsel came on April 13, 2018, fourteen months before the commencement of trial on June 3, 2019. Oral motions were subsequently brought on September 7, 2018, September 28, 2018, May 30, 2019, and the trial date itself, June 3, 2019. The "most adamant" motion was Mr. Byrd's written motion filed, not on the eve of trial, but on September 6, 2018, nine months before trial. This is in stark contrast to the facts in *Stenson*, where a request twenty-one days into voir dire was deemed untimely.

On each of the five dates Mr. Byrd brought oral or written motions to withdraw, Mr. Moore communicated in some fashion that he wanted Mr. Byrd replaced. On April 13, 2018, Mr. Moore wrote a note to the Court saying, "Can the Court replace Mr. Byrd." RP, 74. On September 7, 2018, Mr. Moore wrote a note saying, "New lawyer please." RP, 92. On September 29, 2018, Mr. Moore wrote a note "indicating that he had asked

that this lawyer be fired." RP, 120. On May 30, 2019, Mr. Moore passed up a note asking for new counsel. RP, 320. He also indicated his primary objection was to Mr. Byrd, not Mr. Schile, saying he wanted both counsel replaced "if that's what it requires to make Mr. Byrd dismissed – yes." RP, 320. On June 3, 2019, Mr. Moore expressed an interest in self-representation, although it appears he was more interested in having Mr. Byrd removed than actually representing himself. RP, 340.

All three *Stenson* factors weigh in favor of Mr. Moore. Mr. Byrd's motion to withdraw and substitute counsel should have been granted. Reversal is required.

F. Conclusion

The petition for review should be granted and the convictions reversed.

DATED this 15th day of September, 2021.

Allyson Barker WSBA 35448 for
Thomas E. Weaver, WSBA #22488
Attorney for Defendant/Appellant

FILED
AUGUST 26, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. KENNETH JAY MOORE, Appellant.	)))))))))	No. 37989-2-III UNPUBLISHED OPINION

PENNELL, C.J. — Kenneth Jay Moore killed his mother and assaulted an investigating officer. He was convicted of first degree murder and second degree assault. We affirm Mr. Moore's convictions, but reverse his sentence and remand for resentencing.

FACTS

Leisa Holt was Kenneth Moore's mother. She began dating Jeff Hesterley in 2016. Ms. Holt and Mr. Hesterley celebrated Valentine's Day 2017 by spending the night of February 13 at a hotel. After enjoying lunch together on February 14, the couple amicably parted ways. That was their last contact.

On February 17, Mr. Hesterley grew worried. He had not heard from Ms. Holt, despite several calls and text messages. Ms. Holt also had not shown up at work. Mr. Hesterley went to Ms. Holt's home to investigate. Receiving no answer to his knocks at the door, Mr. Hesterley let himself inside using a key given to him by Ms. Holt.

Upon entering the home, Mr. Hesterley was confronted by Kenneth Moore. Although Mr. Moore lived with his mother, Mr. Hesterley had yet to meet Mr. Moore. It was Mr. Hesterly's understanding that Mr. Moore had some level of disability and relied on his mother for care. Mr. Hesterly observed Mr. Moore was covered in scratches. Mr. Moore ordered Mr. Hesterley out of the house and slammed the door in his face. Mr. Hesterley called the police to request a welfare check.

Multiple officers responded to the scene. They entered the home and saw Kenneth Moore standing against a hallway wall. Mr. Moore appeared to be trying to hide himself, preparing for an ambush. Mr. Moore was holding a metallic object that appeared to be a rifle. One of the officers observed the barrel of the rifle pointed at his head.[1] The officers left the home in order to avoid a confrontation.

The officers summoned a SWAT (special weapons and tactics) team for assistance. The team successfully ordered Mr. Moore out of the home, thereby giving officers an

[1] This interaction formed the basis of Mr. Moore's second degree assault charge.

opportunity to go inside for a search. In the home's kitchen, officers discovered trash bags containing severed human legs. A search of the bathroom revealed Leisa Holt's partially dismembered body, which was lying in a shower with a carving board underneath and various cutting instruments nearby.

In Mr. Moore's bedroom, officers found a disassembled rifle. The rifle was in three pieces—the wood stock, the barrel, and the magazine tube. After seizing the rifle pieces, a detective determined the rifle was missing screws necessary to perform a firearm function check. Police later found various screws in Mr. Moore's bedroom.

The three rifle pieces were sent to the Washington State Patrol Crime Laboratory for an operability analysis. Without the missing screws, it was impossible to reattach the stock of the firearm to the receiver and barrel. A firearms analyst reassembled the rifle using screws from a different rifle of the same model, and subsequently fired the rifle three times. According to the analyst, the rifle could also be fired without the stock attached. In addition, the screws recovered from Mr. Moore's bedroom were determined to fit the rifle.

PROCEDURE

The State charged Kenneth Moore with one count of first degree murder and one count of second degree assault with a deadly weapon. The murder charge included

a sentencing aggravator for egregious lack of remorse. The assault charge included an aggravator for assault on a law enforcement officer. Mr. Moore received court-appointed counsel and was referred for a competency evaluation at Western State Hospital.

Prior to his competency evaluation, Mr. Moore began presenting communication difficulties. At one point, Mr. Moore indicated he had lost his hearing due to an assault at the jail. The trial court initially tried accommodating Mr. Moore by providing headphones. When that did not work, the court ordered Mr. Moore be provided real-time transcripts of his court hearings. Mr. Moore communicated with his attorney through the use of written notes.

Western State Hospital completed Mr. Moore's competency evaluation in November 2017. The evaluation did not uncover any mental disease or defect. The evaluation report also noted Mr. Moore appeared capable of speaking and hearing. Mr. Moore's case was then scheduled for a competency determination.

Mr. Moore's defense counsel disagreed with the competency evaluation's findings. Counsel complained Mr. Moore was unable to communicate, thereby hindering counsel's ability to prepare a defense. At one point in during the subsequent competency proceedings, Mr. Moore wrote a note to the court, asking for a new attorney. Counsel joined this request, claiming he could not effectively represent an incompetent person.

In April 2018, the court decided Mr. Moore was competent and declined to appoint a new attorney. The court explained counsel was duty-bound to represent his client, regardless of any disagreement with the court's competency decision. The court offered to appoint a second chair attorney, who could help ensure Mr. Moore was able to review information provided by the transcriptionist. Mr. Moore did not act on this offer.

Approximately five months after the competency determination, Mr. Moore's attorney filed a written motion to withdraw. The motion was accompanied by a declaration of counsel. In the declaration, counsel explained Mr. Moore remained largely uncommunicative. Mr. Moore often refused to meet with defense counsel, although there had been a productive meeting about two weeks prior to the filing of the motion. According to defense counsel, Mr. Moore's claimed deafness negatively impacted counsel's ability to provide effective representation. Defense counsel continued to opine that Mr. Moore was not competent to assist in his defense and stand trial.

The court held a hearing on defense counsel's motion. During the hearing, Mr. Moore passed a note to the court reading, "New lawyer please." 1 Report of Proceeding (RP) (Sep. 7, 2018) at 92. Appointed counsel explained he had limited ability to help Mr. Moore because of Mr. Moore's communication problems. The State pointed out that the problems presented by Mr. Moore were not specific to existing counsel; thus,

replacing defense counsel would not solve the problems raised by Mr. Moore's communication difficulties. The court did not remove Mr. Moore's existing attorney, but now appointed a second chair attorney to provide assistance.

An omnibus hearing was held a few weeks later. At the hearing, defense counsel told the court Mr. Moore had not been in communication with anyone about the case, including an appointed investigator, psychologist, and mitigation expert. Defense counsel continued to assert Mr. Moore was not competent. Counsel asked for a continuance, which was granted. Mr. Moore objected to the continuance via a written note. He again asked for a new attorney. The court denied this request. The case was ultimately set for trial commencing June 3, 2019.

Four days before the start of trial, the parties appeared for a readiness hearing. Mr. Moore wrote a note to the court again asking for a new attorney. The court engaged Mr. Moore in a colloquy. Mr. Moore indicated he wanted a new lawyer for a "bunch of reasons," including his belief that his attorney was engaged in "lies." 2 RP (May 30, 2019) at 320-21. The trial court declined to appoint new counsel.

At the outset of trial on June 3, defense counsel renewed his motion to withdraw. The court denied the motion. During the court's opening statements to the jury venire, Mr. Moore held up a handwritten sign for the potential jurors which read, in all capital

letters, "I asked to represent myself." 2 RP (Jun. 3, 2019) at 337-38. After excusing the jury, the court denied the request to change attorneys or to allow Mr. Moore to represent himself. Defense counsel then moved for a mistrial, which the court also denied.

Trial was peppered with conflicts between Mr. Moore and his attorney. A jury ultimately convicted Mr. Moore as charged, including the egregious lack of remorse sentencing aggravator.

Mr. Moore's first degree murder conviction carried a standard range sentence of 261 to 347 months. The range for second degree assault was 12 to 14 months, plus a 36-month firearm enhancement. The court imposed an exceptional sentence totaling 410 months in prison. In addition to an egregious lack of remorse, the court found the first degree murder charge involved an aggravating circumstance of exceptional cruelty. The court relied on both factors to impose the exceptional sentence on the murder charge.[2]

Mr. Moore appeals his judgment and sentence. A Division Three panel considered Mr. Moore's appeal without oral argument after receiving an administrative transfer of this case from Division Two.

[2] The range for the assault charge was enhanced based on the jury's finding a sentence aggravator for assault on a law enforcement officer. This aggravator is not at issue on appeal.

ANALYSIS

Sufficiency of the evidence—firearm

Mr. Moore challenges the sufficiency of the State's evidence in support of his second degree assault conviction. Specifically, Mr. Moore claims the evidence was insufficient to support a finding that his offense involved a deadly weapon. He argues the device at issue was nothing more than an inoperable rifle barrel. According to Mr. Moore, this does not meet the definition of a deadly weapon.

We review Mr. Moore's sufficiency challenge de novo. *State v. Berg*, 181 Wn.2d 857, 867, 337 P.3d 310 (2014). The question is whether, construing the evidence in the light most favorable to the State, any rational fact finder could have found the elements of the crime charged beyond a reasonable doubt. *State v. Marohl*, 170 Wn.2d 691, 698, 246 P.3d 177 (2010).

As charged in this case, the crime of second degree assault requires proof of a deadly weapon. RCW 9A.36.021(1)(c). A firearm constitutes a deadly weapon. RCW 9A.04.110(6). A firearm is defined as "a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder." Former RCW 9.41.010(9) (2013). Our case law requires a firearm to "be capable of being fired." *State v. Tasker*, 193 Wn. App. 575, 594, 373 P.3d 310 (2016). "Evidence that a device appears

to be a real gun and is being wielded in committing a crime is sufficient circumstantial evidence that it is a firearm." *Id.*[3]

The evidence here was sufficient to prove Mr. Moore committed assault while armed with an operable firearm. The officers who encountered Mr. Moore all testified they saw Mr. Moore holding a rifle or the barrel of a rifle. No one claimed Mr. Moore possessed only the barrel of a rifle. The manner in which Mr. Moore held the device indicated he was on the attack with a real, operable weapon. Although law enforcement subsequently found a disassembled rifle, this does not mean the rifle was disassembled at the time of the assault. At least one hour passed between the assault and Mr. Moore's forced exit from the home. This afforded plenty of time for dismemberment. In addition, the uncontested trial testimony was that the pieces of the rifle were capable of discharging ammunition even in a partially disassembled state. The jury could easily infer that the

[3] Our case law holds that a device can meet the definition of a firearm so long as it is "capable of being fired, either instantly or with reasonable effort and within a reasonable time." *Id*. Mr. Moore claims this definition only applies to firearm possession offenses. When it comes to actively using a firearm to perpetrate second degree assault, Mr. Moore argues the firearm must be operable immediately, at the time of the offense. We need not decide whether Mr. Moore is correct about the proper scope of the firearm definition. As explained in the body of this opinion, the evidence in this case meets Mr. Moore's proffered definition of a firearm.

device possessed by Mr. Moore at the time of his initial contact with law enforcement met the definition of a functioning firearm.

Request for real-time transcriptionist for jail meetings

Mr. Moore contends the trial court impaired his right to communicate with his attorney by refusing a real-time transcriptionist to help defense counsel communicate with him during jail meetings. We disagree. Although defense counsel and Mr. Moore had communication problems, Mr. Moore fails to explain how a transcriptionist would have improved things. Unlike a court hearing with multiple participants, a jail meeting is a one-on-one encounter. It is not apparent why a transcriptionist would be more effective in facilitating one-on-one communication than the parties' use of a laptop, tablet, or notepad. If Mr. Moore has evidence showing that a transcriptionist could have made a difference, he can bring this factual information to the court's attention through a personal restraint petition. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). His claim is not amenable to review on direct appeal.

Denial of motion to withdraw as counsel

Mr. Moore argues the trial court violated his rights under the Sixth Amendment to the United States Constitution by denying various requests for withdrawal or substitution of counsel. We review the trial court's assessment of these requests for abuse

of discretion. *State v. DeWeese*, 117 Wn.2d 369, 376, 816 P.2d 1 (1991); *State v. Hegge*, 53 Wn. App. 345, 350-51, 766 P.2d 1127 (1989).

The Sixth Amendment confers the right to appointed counsel. But there is no right to choose a specific attorney as appointed counsel. Nor is a defendant empowered to receive a change in appointed counsel by refusing to cooperate. *State v. Schaller*, 143 Wn. App. 258, 271, 177 P.3d 1139 (2007). Nevertheless, effective assistance of counsel requires a defendant be provided a fair opportunity for a meaningful attorney-client relationship. "[A] complete breakdown of communication which may lead to an unjust verdict is considered a good and sufficient reason for withdrawal" or substitution of counsel. *Hegge*, 53 Wn. App. at 351.

Appellate courts look at three issues in determining whether a trial court abused its discretion in refusing a request for substitute counsel: "(1) the extent of the conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion." *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 723-24, 16 P.3d 1 (2001).

Here, our review is largely driven by the first factor. The primary issue raised by the requests for withdrawal or substitution was defense counsel's disagreement with the trial court's competency determination. Counsel repeatedly told the court that he wanted to withdraw because he could not ethically represent an incompetent person. The trial

court correctly recognized this was not an appropriate reason for terminating representation. The remedy for an erroneous competency determination is appellate review. It does not provide a basis for withdrawing from representation.

Mr. Moore's independent requests for new counsel did not provide the court with additional reasons for appointing a new attorney. The record indicates Mr. Moore's communication problems were not specific to his attorney. He refused to meet with various professionals appointed to help him at trial, including a psychologist, an investigator, and a mitigation expert. He also rebuffed communication efforts made by his second chair attorney. The record fails to show there was a conflict between Mr. Moore and his attorney that could have been resolved by the appointment of new counsel.

With respect to the second factor, the trial court afforded Mr. Moore and his attorney numerous opportunities to explain the need for new counsel. At each instance, appointed counsel emphasized his disagreement with the court's competency decision. The court was never supplied information suggesting that a change of counsel could have made a difference in attorney-client communications. We therefore defer to the trial court's assessment.

With respect to timeliness, Mr. Moore's most adamant requests for new counsel were not made until the eve of trial. This was not timely. We defer to the trial court's

assessment that Mr. Moore's belated requests for a new attorney did not warrant court action.

Sentence aggravators

Mr. Moore challenges the two aggravators used to enhance his sentence on the first degree murder conviction. He claims there was insufficient evidence to support an aggravator for egregious lack of remorse. He also points out the aggravator for deliberate cruelty was procedurally flawed. The State concedes both errors. We accept these concessions.

Because a sentence aggravator enhances a defendant's sentence beyond the statutory standard range, it must be supported by pretrial notice and then proven to a jury beyond a reasonable doubt. RCW 9.94A.537(1), (3)-(4). The facts necessary for a sentence aggravator must be supported by sufficient evidence. The sufficiency analysis asks "whether any rational trier of fact could have found the presence of the aggravating circumstances beyond a reasonable doubt." *State v. Zigan*, 166 Wn. App. 597, 601-02, 270 P.3d 625 (2012).

Here, the State did not present evidence supporting the aggravator of egregious lack of remorse. Although the facts of the case are both sad and gruesome, this goes only to the heinousness of the crime, not Mr. Moore's mindset after the offense. Mr. Moore's

general denial of guilt is not sufficient to establish lack of remorse. Because there was no evidence of lack of remorse after commission of the crime, Mr. Moore is entitled to resentencing.

While Mr. Moore's case certainly seemed to involve deliberate cruelty, this sentence aggravator was never the subject of pretrial notice, nor was it specifically proven to the jury at trial. As a result of these procedural flaws, imposition of an exceptional sentence based on deliberate cruelty was unwarranted. Resentencing is required. *State v. Van Buren*, 136 Wn. App. 577, 580, 150 P.3d 597 (2007).

Assistance of counsel

Mr. Moore contends his right to effective assistance of counsel was violated by his attorneys' failure to investigate mitigating circumstances regarding sentencing. The current record fails to substantiate this claim. Regardless, Mr. Moore's claim is mooted by our order granting resentencing.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

In a statement of additional grounds for review, Mr. Moore asks to be stripped of his United States citizenship and sent into exile in Mexico with a backpack full of survival equipment. To the extent we have power to do so, we deny this request.

CONCLUSION

Mr. Moore's conviction is affirmed. The sentence is reversed and this matter is remanded for resentencing.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, C.J.

WE CONCUR:

Lawrence-Berrey, J.

Staab, J.

Tristen L. Worthen
Clerk/Administrator

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August 26, 2021

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CASE # 379892
State of Washington v. Kenneth Jay Moore
CLARK COUNTY SUPERIOR COURT No. 171003808

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received by this court on or before the dates each is due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:btb
Attachment

c: **E-mail** Honorable Nancy N. Retsinas (Judge Stahnke's case)

c: **E-mail** Kenneth J. Moore (DOC #417825 – Washington State Penitentiary)

THE LAW OFFICE OF THOMAS E. WEAVER

September 16, 2021 - 2:28 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
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Superior Court Case Number:	17-1-00380-8

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

STATE OF WASHINGTON, Plaintiff/Respondent, vs. KENNETH MOORE, Defendant/Appellant.	Court of Appeals No.: 53606-4-II DECLARATION OF SERVICE OF PETITION FOR REVIEW

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

I, Alisha Freeman, declare that I am at least 18 years of age and not a party to this action.

On September 16, 2021, I e-filed the Motion to File an Overlength Brief and the Petition for Review in the above-captioned case with the Washington State Court of Appeals, Division Two; and designated copies of said documents to be sent to Rachael Rogers at the Clark County Prosecuting Attorney's Office via email to: rachael.rogers@clark.wa.gov through the Court of Appeals transmittal system.

On September 16, 2021, I deposited into the U.S. Mail, first class, postage prepaid, true and correct copies of the Motion to File an Overlength Brief and the Petition for Review to the defendant:

Kenneth Moore, DOC #417825
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

////

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: September 16, 2021, at Bremerton, Washington.

Alisha Freeman

The Law Office of Thomas E. Weaver
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THE LAW OFFICE OF THOMAS E. WEAVER

September 16, 2021 - 2:28 PM

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