The Supreme Court of the State of Washington

State of Washington Respondent v Cliff Alan Jones Appellant	Supreme Court No. 100637-3 COA No. 82533-0-I MOTION FOR DISCRETIONARY REVIEW Treated as a Petition for Review

Comes Now Cliff Alan Jones, Appellant, pro-se seeking a Discretionary Review from the Court of Appeals opinion issued october 10, 2021.

Mr. Jones argued in his SAG that the prosecuting attorney used evidence that was suppressed during resentencing. The opinion from the Court of Appeals "... Jones alledges prejudice only from a pretrial decision that he did not challenge in his first appeal..."

The error with this opinion is that the issue was not ripe for review because the use of the suppressed evidence did not become an issue until Mr. Jones was resentenced and the prosecuting attorney presented the suppressed evidence in the Memorandum of Athorities for resentencing.

The Prosecuting attorney did not file the Memorandum of Athorities in a timely manner as to allow appellant to provide a defense against the contents of the Memorandum. On Page 3 of the Appellant Courts Opinion in the foot note, " But a party's failure to, for example, properly designate a reviewable decision or raise an issue can affect the Scope of an appeal, " Clark County v. W. Wash. Groth Mgmt. Hearings Review Bd. 177 Wn. 2d 136, 144-45, 289 P. 3d 704 (2013) Page 8 of Appellant's SAG, Appellant argues that his 6th Amendment right to Control his defense was vidated. State v. Lynch (178, Wn. 2d 487) (2013) Due to the prosecuting attorney's failure to timely file his memorandum of Athorities, this denied Appellant the right to control his defense. This also denied Appellant to properly designate a reviewable decision; however, Appellant did have concerns and filed a Pro-Se Motion to issue a writ of Mandamus to prevent the State from using previously Suppressed evidence. See SAG Page 10 and Exhibit "c" provided with Appellant's SAG. That Motion is On Appellant's docett sheet and the Motion was designated as a (1) clerks paper by appellants appointed attorney. The trial court, Not hearing this motion, denied Appellant

(1) Appellant is unaware of the CP designation number

his 6th Amendment right to Counsel his defense and the Appellant Court failed to address this issue,

Filing any court document without the provision to review the documents prejudices appellant of his Confrontation Clause guaranteed in the 5th Amendment of the United States Constitution. Had the prosecuting attorney provided a copy of his Memorandum of Athorities to Appellant prior to resentencing Appellant would have argued against the use of Suppressed evidence in Prosecutor's Memorandum of Athorities. This would have properly presented a reviewable decision to the trial court and an appealable decision to the Appellant Court.

The question that has been avoided:

Is the Use of Court ordered Suppressed evidence a violation that elevates to Contempt of Court?

The answer is YES!

According to Cronquist v. Dept of corrections 196 Wn. 2d 564 (2020)

Intentional disobedience of [ANY*] lawful Court order is Contempt of Court. RCW 7.21.010(1) Allowing an officer of the court to willfully act in a manor that violates a lawful Court

*Emphasis added

order without penalty, is corrupt. When prosecuting attorneys are not held accountable for violating lawful court orders, than the actions of prosecuting attorneys ethnical standards are in question. A prosecuting attorney is not above the Constitution, Court Room Rules, Code of Judicial Conduct, Laws of the State, or Rules of professional conduct,

Justice Sheryl Gorden McCloud recently made a statement on similar aspects:

In Re Pers Restraint of Winton, 196 Wn.2d 270(2020)

"Any hope that an offender might be rehabilitated or have *Some Respect for the criminal justice System in the future would seem to follow more naturally from the imposition of a sentence that respects the rights and dignity of the offender than from the imposition of a sentence that shows a disregard for those vital issues. Andrew Horwitz, Coercion Pop-psychology, and Judicial Moralizing: Some proposal for curbing judicial abuse of Probation Conditions, 57 Wash & Lee L. Rev. 75 158(2000)

The Relief Appellant requests is to be resentenced and allowed the ability to contest any submississions of Athorities by the prosecuting Attorney.

ERROR #2

This issue was not Raised by petitioners

* Emphasis Added

Appellant attorney and petitioner failed to include this error in his SAG.

The trial court did not have personal jurisdiction over the Department of Corrections and could not make Department of Corrections a Supervisor for appellant to have visitation with his biological children. Mr. Jones was unaware that the court did not have personal jurisdiction over Department of Corrections at the time of resentencing or at the time he submitted his SAG. Mr. Jones was made aware of the error because he was incarcerated with an inmate named Mark [redacted], Gosett,

In Re the Matter of Gosett, 7 Wash. App. 2d 610 (2019)

> The trial court lacked personal jurisdiction to impose conditions on the Department of Corrections regarding an inmates visitation under the facts of the case. Because DOC cannot be made a Supervisor for an inmate to visit their minor children unless DOC has been made a party to the litigation.

Again, the trial court failed to follow proper due process or proper procedures. In an earlier

decision in 2017, an order is void if the court entered an order against a party that the Court did not have personal jurisdiction over, Dep't of Soc. & Health Servs. v. Zamora (198 Wn. App 44 (2017))

> A court does not have personal jurisdiction over a party if the individual or entity is not designated as a party by service of process

Martin v. Wilks, 490 U.S. 755, 761, 109 S. Ct 2180, 104 L. Ed. 2d 835 (1989); City of Seattle v. Fontanilla, 128 Wn. 2d 492, 502, 909 P. 2d 1294 (1996)
State v. G.A.H., 133 Wn. App. 567, 576, 137 P.3d 66 (2006)

> If a court lacks personal jurisdiction over a party *Any order entered against that party is void.

State v. Breazeale, 144 Wn. 2d 829, 841, 31 P.3d 1155 (2001); Marley v. Dep't of Labor and Industries, 125 Wn. 2d 533, 541, 886 P. 2d 189 (1994)

Due to the disfunctional trial courts action, Appellant has had to be extensively prevented from having any care, comfort, or companionship with his biological children. This includes phone calls, writing letters, sending electronic communications, and in person visitation. This manifest injustice has never been cured.

* Emphasis Added

This manifest injustice was due to a guilty plea where a colleteral consequence imposed a condition that continually violates Appellant's fundamental Right to parent under the 14th Amendment of the United States Constitution, According to State v. Mendoza, 157 Wn.2d 582, 589, 141 P.3d 49 (2006)

> If a colleteral Consequence is imposed due to a guilty plea and the circumstances rise to the level of Manifest Injustice, than the guilty plea was involuntary.

Mr. Jones is Challenging the voluntariness of his guilty plea due to the continual manifest injustice imposed against Mr. Jones and his biological children.

State v. Wakefield, 130 Wn. 2d. 464, 472, 925 P.2d 183 (1996)

> An Appellant may challenge the voluntariness of his plea for the first time on appeal,

Quoating State v. Mendoza," A defendant's misunderstanding of the Sentencing Consequences [direct or colleteral] when pleading guilty constitutes a manifest error affecting a constitutional right and therefore, the defendant is entitled to raise the issue for the

first time on appeal. A defendant may challenge the voluntariness of his plea eventhough he proceeds with a Sentencing hearing.

Mr. Jones has been dilligent on attempting to withdraw his guilty plea due to the violation of his constitutionaly protected right to parent his children being under attack since Mr. Jones entered into a global resolution. The misunderstanding of the collateral consquence that has trampled on Mr. Jones's 14th Amendment right to parent his children, is still in effect and has deprived Mr. Jones of his individual liberty without proper due process of law. U.S. Const. Amends. V, XIV.

Mr. Jones respectfully requests this court do consider that the trial court has egregiously continued to deprive him of his civil liberties of the constitutionally protected right to parent his children. Due to the trial courts blantent dis regards for appellants Constitutionally Right to parent his children, appellant would ask this court to allow him to withdraw his global plea agreement and allow him to put his cases back on a trial status. Appellant respectfully asks this from this court due to the trial courts draconian abuse of power

Which has deprived appellant of his fundamental liberty interest in the care comfort and companionship with his biological children.

If the unconstitutional actions conducted by the trial courts is never reprimanded, it will only encourage the trial court to enbuldge in corrupt and unconstitutional decisions in the future.

Due to the misunderstanding of the collateral consequences that has resulted in a severe manifest injustice and may question the voluntariness of appellant's global plea agreement, appellant respectfully ask this court to grant Relief by allowing him to withdraw his global plea agreement.

Respectfully Submitted this 8th Day of April 2022

Cliff Jones

Cliff Jones 815938
Stafford creek Corrections center
191 Constantine Way
Aberdeen, WA 98520

Declaration of Service

I hereby certify that on the 8th Day of April 2022, I using the Washington State Supreme Court portal, which will send Notification of such filing and an electronic copy to Attorney's of Record for the Respondent and any other party I'd serve;

Prosecuting Attorney's office for Pierce County Washington Kristie Barham 930 Tacoma Ave S Tacoma, WA 98402	Petitioners Attorney Jared Steed Nielsen Koch & Grannis PLLC The Benny Building 2200 Sixth Ave suite 1250 Seattle, WA 98121

I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct
Dated this 8th Day of April 2022

No. 100637-3

Cliff A. Jones

Cliff A. Jones #815938
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

INMATE

April 8, 2022 - 11:45 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,637-3
Appellate Court Case Title:	State of Washington v. Cliff Alan Jones
Superior Court Case Number:	15-1-05135-2

DOC filing of jones Inmate DOC Number 815938

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

STATE OF WASHINGTON, Respondent, v. CLIFF ALAN JONES, Appellant.	)	No. 82533-0-I UNPUBLISHED OPINION

VERELLEN, J. — When a defendant appeals a modified sentence entered after a successful appeal, he is generally not entitled to raise new issues he could have raised in his initial appeal. Cliff Jones's sentence was modified following a successful appeal, and he now raises multiple new alleged errors from his trial. Because Jones failed to raise these issues in his first appeal, his challenges are untimely.

Jones also contends the denial of a motion to continue resentencing harmed his right to present a defense. Because Jones alleges prejudice only from a pretrial decision he did not challenge in his first appeal, he fails to show the court abused its discretion by denying the motion.

Therefore, we affirm.

FACTS

On March 8, 2017, Cliff Jones entered a global plea agreement, pleading guilty to three counts of second degree child molestation and one count of second degree child assault.[1] He was sentenced that April and appealed.

Jones argued, among other issues, that a community custody condition interfered with his fundamental right to parent by prohibiting him from having any contact with minors, that his guilty plea was not entered into knowingly and should be withdrawn, and that several legal financial obligations (LFOs) were improperly imposed.[2] In February 2019, this court affirmed Jones's convictions.[3] We remanded for reconsideration of the community custody condition prohibiting Jones from having any contact with his biological children and "for the superior court to strike the DNA fee, criminal filing fee, and interest on nonrestitution LFOs."[4] The mandate for this appeal issued March 29, 2019.[5]

Jones was resentenced on June 14, 2019. At the outset of the hearing, Jones's counsel requested a continuance for time to complete a memorandum focused on the community custody condition. The court denied the motion. Relevant here, the court modified the community custody condition to let Jones

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[1] State v. Jones, No. 50398-1-II, slip op. at 3 (Wash. Ct. App. Feb. 26, 2019) (unpublished), http://www.courts.wa.gov/opinions/pdf/D2%2050398-1-II%20Unpublished%20Opinion.pdf.

[2] Id. at 1.

[3] Id.

[4] Id.

[5] Clerk's Papers (CP) at 56.

have supervised contact with his biological children and ordered the "$100.00 DNA and $200.00 Criminal Filing Fee . . . be stricken as well as all interest on non-restitution legal financial obligations."[6]

Jones appeals.

ANALYSIS

I. Legal Financial Obligations

Jones argues the court erred by not striking several additional LFOs from his original sentence, specifically, the costs of community custody and any costs related to a collection action for LFOs, and by not including a provision in his judgment and sentence prohibiting the use of any potential income from Social Security to pay off LFO debt. The State contends these issues are not properly raised and, pursuant to RAP 2.5, should not be considered.[7]

[6] CP at 84-85. The court also modified a community custody condition prohibiting all contact with any minors to restrict Jones from having contact with any minors except for his biological children when supervised by the Department of Corrections.

[7] The State also argues RAP 5.3(a) deprives this court of jurisdiction to consider the appeal because Smith "only seeks review of an order which has not been designated in the notice of appeal." Resp't's Br. at 6. The State is mistaken. Jones properly designated the order modifying his sentence for review, and RCW 2.06.030 provides this court jurisdiction over an appeal from a nondeath-penalty criminal case in superior court. But a party's failure to, for example, properly designate a reviewable decision or raise an issue can affect the scope of an appeal. Clark County v. W. Wash. Growth Mgmt. Hearings Review Bd., 177 Wn.2d 136, 144-45, 298 P.3d 704 (2013).

"The general rule is that a defendant is prohibited from raising issues on a second appeal that were or could have been raised on the first appeal."[8] Even if the issue is "critical," appellate courts "do not permit a party to ignore an issue on the first appeal only to raise the issue on remand."[9] "[F]inality and reviewability are intrinsically bound. . . . Once an appellate decision is final, review as a matter of right is exhausted.'"[10]

RAP 2.5 contains exceptions to this rule. The relevant subsection here is RAP 2.5(c)(1), which states an appellate court "may at the instance of a party review and determine the propriety of a decision of the trial court even though a similar decision was not disputed in an earlier review of the same case." But "'[t]his rule does not revive automatically every issue or decision which was not raised in an earlier appeal.'"[11] The exception in RAP 2.5(c)(1) applies "only if the trial court, on remand and in the exercise of its own independent judgment, considered and ruled again on that issue."[12]

[8] State v. Mandanas, 163 Wn. App. 712, 716, 262 P.3d 522 (2011) (citing State v. Suave, 100 Wn.2d 84, 87, 666 P.2d 894 (1983); State v. Jacobsen, 78 Wn.2d 491, 493, 477 P.2d 1 (1970)).

[9] State v. Fort, 190 Wn. App. 202, 228, 360 P.3d 820 (2015) (citing State v. Ramos, 163 Wn.2d 654, 663, 184 P.3d 1256 (2008)).

[10] State v. Kilgore, 167 Wn.2d 28, 36-38, 216 P.3d 393 (2009) (quoting State v. Hanson, 151 Wn.2d 783, 790, 91 P.3d 888 (2004)).

[11] State v. Gregory, 192 Wn.2d 1, 31, 427 P.3d 621 (2018) (quoting State v. Barberio, 121 Wn.2d 48, 50, 846 P.2d 519 (1993)).

[12] Id. (citing Barberio, 121 Wn.2d at 50).

Here, this court's 2019 opinion remanded with specific instructions to strike three particular LFOs, and the mandate issued that March.[13] On remand, the trial court struck only those three LFOs.[14] The parties agreed which LFOs would be stricken and did not discuss any others.[15] Jones did not challenge the LFOs he does now, and he did not raise the Social Security benefits issue. Jones agrees that during the resentencing hearing "[t]he parties never discussed the costs of community custody or the costs of collection."[16] The trial court did not consider the issues to which Jones now assigns error. Therefore, RAP 2.5(c)(1) does not apply. Because the alleged errors with LFOs and with Social Security income are no longer reviewable on direct appeal,[17] we decline to consider them.

II. Statement of Additional Grounds

Jones appears to argue the resentencing court's denial of a continuance prejudiced his right to present a defense.[18] A trial court has considerable

[13] Jones, slip op. at 1, 23.

[14] See Report of Proceedings (June 14, 2019) at 22.

[15] See id. (court noting, with defense counsel's agreement, that the LFOs were "stipulated to").

[16] Appellant's Br. at 7.

[17] See Hanson, 151 Wn.2d at 790 ("Once an appellate decision is final, review as a matter of right is exhausted."); cf. State v. Brown, 193 Wn.2d 280, 287, 440 P.3d 962 (2019) ("[W]hen a trial court does not exercise its discretion on remanded issues, those issues become final for purposes of reviewability."), cert. denied, 140 S. Ct. 546, 205 L. Ed. 2d 341 (2019).

[18] Statement of Add't'l Grounds (SAG) at 1, 8.

discretion whether to grant or deny a motion to continue.[19] To prove the court abused its discretion, the appellant must demonstrate prejudice from the denial.[20]

Jones argues he was prejudiced because the State's resentencing memorandum relied upon information that was not suppressed following a CrR 3.6 hearing held before he pleaded guilty.[21] But, in his first appeal, Jones did not assign error to the suppression decision.[22] After the mandate issued in March 2019, this unchallenged decision became final and unreviewable on direct appeal.[23] Because the only prejudice alleged is from an unreviewable final decision, granting the continuance could not have changed the outcome of resentencing. Jones fails to show the resentencing court abused its discretion.[24]

Jones contends he should be allowed to withdraw his 2017 guilty plea because it was not entered into knowingly or intelligently because he was not informed his right to parent his children could be affected by pleading guilty.[25]

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[19] State v. Deskins, 180 Wn.2d 68, 82, 322 P.3d 780 (2014) (citing State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974)).

[20] State v. Davis, 3 Wn. App. 2d 763, 786, 418 P.3d 199 (2018) (citing Eller, 84 Wn.2d at 95).

[21] SAG at 8-9.

[22] See Jones, slip op. at 1 (listing Jones's alleged errors).

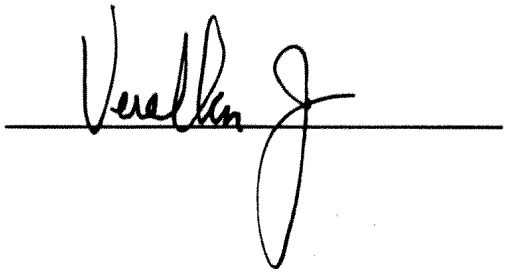
[23] See Kilgore, 167 Wn.2d at 36-38 (final appellate decisions become unreviewable on direct appeal) (quoting Hanson, 151 Wn.2d at 790).

[24] For similar reasons, we decline to review Jones's allegation that the prosecuting attorney committed misconduct when submitting his resentencing memorandum using the materials Jones wanted suppressed at the CrR 3.6 hearing. SAG at 2. Because the material was not suppressed and Jones failed to raise a timely challenge to that decision, the prosecutor was free to rely on it.

[25] SAG at 1, 3.

This argument is untimely. In his first appeal, Jones alleged he should be allowed to withdraw his plea because he was misinformed.[26] He also successfully argued the community custody conditions infringed on his right to parent.[27] Jones does not attempt to explain why the argument he makes in this second appeal was not available before nor why an exception applies to the usual rules on finality. Because Jones could have raised this issue in his first appeal and did not, he cannot raise it now.[28] We decline to review it.

Therefore, we affirm.



WE CONCUR:

[26] Jones, slip op. at 13.

[27] Id. at 7.

[28] Fort, 190 Wn. App. at 228 (citing Ramos, 163 Wn.2d 663). A defendant can file a personal restraint petition if he wants to attempt a collateral attack on issues we decline to review. Id. at 234 (citing Suave, 100 Wn.2d at 87).