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NO. 89628-3

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RAMONE ECHOLS,

Petitioner.

REPLY BRIEF OF RESPONDENT

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King County Prosecuting Attorney

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 ORIGINAL

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A. RESTATEMENT OF ISSUES PRESENTED

1. The record before the trial court, including the original Judgment and Sentence, the special verdict form and the defendant's failure 18 years ago to object to the sentence imposed, established the sentencing court's original intention. Did the trial court properly deny Echols' motion to modify or amend the Judgment and Sentence?

2. The record before the trial court, including the original Judgment and Sentence, the special verdict form and the defendant's failure 18 years ago to object to the sentence imposed, established the sentencing court's original intention. Did the trial court properly refer to that record in denying Echols' motion to correct his judgment and sentence?

3. The Criminal Rules, specifically CrR 7.8, give the trial court the authority to correct clerical errors in the record. Did Echols have the right to have his motion to correct his judgment and sentence heard by a different judge?

4. Scrivener's errors, or clerical mistakes, may be corrected without vacating the original Judgment and Sentence; the defendant's presence is not required for such a correction. Did the trial court properly deny Echols' motion to correct the original

Judgment and Sentence without transporting him to the courthouse for a hearing?

B. STATEMENT OF THE CASE

On Christmas Eve 1994 – almost exactly 19 years ago to the day – the petitioner, Ramone Echols (hereinafter “Echols”), entered a residence located at 724 North Alvord Street, in Kent, and shot Gregory Arthur Ferris nine times: eight times in his upper torso and once in his left eye. Kent Police recovered a total of 10 shell casings from next to the victim's body. Echols subsequently was arrested in Chicago, where he fled following the shooting. Evidence subsequently developed during the police investigation led to the conclusion that the victim was murdered in a case of mistaken identity.

On August 17, 1995, a jury found Echols guilty of Murder in the First Degree, both premeditated murder and felony-murder. The jury also found, by special verdict form, that Echols was armed with a deadly weapon.

Following conviction, Echols' sentencing range was computed as follows: standard range sentence of 250-333 months¹,

¹ Echols' sentencing range was based on a seriousness level of XIV (Murder in the First Degree) and an offender of 1 (for prior juvenile convictions for Burglary in the Second Degree and Assault in the Third Degree).

plus 12 months for the deadly weapon enhancement, for a total sentencing range: 262-345 months. On September 22, 1995, Echols was sentenced by the Honorable Ann Schindler to 340 months in prison, near the top of his sentencing range.

On February 10, 2012 – 17 years following his conviction for murder – Echols filed a Motion to Modify/Correct the Judgment and Sentence. He claimed that his proper sentencing range for Murder in the First Degree was 250-333 months and that his sentence of 340 months exceeded that range by seven months. Echols requested that his Judgment and Sentence be amended accordingly.

The State opposed Echols' motion to amend his Judgment and Sentence, noting that Echols nowhere in his motion mentioned the deadly weapon finding by the jury. The State also noted that Echols also did not include Verdict Forms A and B, or, most important, the Special Verdict Form. The State urged the trial court, the Honorable Lori K. Smith presiding,² to conclude that Echols' claim that his sentencing range "should have been designated 250-333 months" was incorrect. The correct sentencing

² Judge Smith sits in Department 5 of the King County Superior Court, the same department occupied by Judge Schindler before her elevation to the Court of Appeals in January 2002.

range is, as set forth in the original Judgment and Sentence, 262-345 months in prison.

On April 9, 2012, the trial court issued an Order on Criminal Motion denying Echols' motion to modify or amend the Judgment and Sentence. The court found the following:

- The jury found the defendant guilty of Murder in the First Degree (premeditated), Murder in the First Degree (felony-murder) and returned a special verdict by answering yes to the question of whether the defendant was armed with a deadly weapon at the time of the commission of the crime;
- The standard sentencing range was 250-333 months plus an additional 12 months for the deadly weapon enhancement, for a total range of 262-345 months;
- The defendant's sentence of 340 months falls within the standard sentencing range for the crimes for which the jury found him guilty; and
- It appears that the box regarding the special verdict finding on the Judgment and Sentence was inadvertently left unchecked.

Echols' subsequent motion for reconsideration was denied by the trial court.

On April 2, 2012, Echols filed a personal restraint petition. The Court of Appeals denied that petition and, on December 27, 2012, issued an Order of Dismissal and Certificate of Finality. The

Court of Appeals found that Echols' appeal was time-barred under RCW 10.73.090 and that, in any event, the error claimed by Echols "is merely a scrivener's error." The Court of Appeals noted that Echols "does not provide the charging document, verdict forms, or sentencing transcript to demonstrate otherwise."

On May 2, 2012, Echols filed a notice of appeal. On October 7, 2013, the Court of Appeals filed its decision dismissing Echols' appeal.

On November 26, 2013, Echols filed the current petition for review.

In summary, the original Judgment and Sentence accurately listed Echols' appropriate sentencing range and enhancement. Moreover, neither Echols nor his counsel objected at the time of sentencing to the enhanced sentencing range, or to the sentence imposed, as being unwarranted by the jury's verdicts.

C. ARGUMENT IN REPLY

1. ECHOLS HAS FAILED TO MEET THE THRESHOLD REQUIREMENTS OF RAP 13.4(b) IN SEEKING DISCRETIONARY REVIEW.

RAP 13.4 provides, in relevant part:

(b) Considerations Governing Acceptance of Review.
A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b)(1)-(4).

Echols has failed to allege, let alone demonstrate, that review is warranted based upon a conflict between decisions of the Court of Appeals, or between the Court of Appeals and the Supreme Court, or that a significant question of constitutional law is involved, or the existence of an issue of substantial public interest that should be determined by the Supreme Court. He simply disagrees with the trial court's denial of his Motion to Modify/Correct the Judgment and Sentence, and the Court of Appeals' denial of his appeals. For this reason alone, Echols' petition for review should be denied.

2. THE TRIAL COURT DID NOT ERR IN DENYING ECHOLS' MOTION TO CORRECT HIS JUDGMENT AND SENTENCE BECAUSE THE SENTENCE ORIGINALLY IMPOSED WAS PROPER.

As noted in the statement of the case, above, Echols was convicted of Murder in the First Degree in August 1995. The jury also returned a special verdict form finding that Echols was armed with a deadly weapon. CP 68. Based upon an offender score of 1, his sentencing range for Murder 1 was 250-333 months. CP 69. However, because the jury also found that he was armed with a deadly weapon, which added 12 months to his sentence, Echols' proper sentencing range was 262-345 months. CP 7, 38, 69. He was sentenced within the standard sentencing range, to 340 months in prison. CP 8. Neither he nor his counsel at the time disputed that sentencing range. See RP (9/22/95).

The failure to check the special verdict form box on the Judgment and Sentence clearly was a scrivener's error. It is undisputed that the jury answered "yes" to the deadly weapon interrogatory on the special verdict form. Moreover, the Judgment and Sentence itself utilized the enhanced sentencing range of 262-345 months, which reflected inclusion of the deadly weapon finding. The trial court thus did not err in denying Echols' motion to

correct the original judgment and sentence because the sentence originally imposed was correct and proper.

The Criminal Rules give the trial court the authority to correct clerical errors in the record. In particular, CrR 7.8 provides as follows:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

CrR 7.8(a). Further, “[a] clerical mistake is one that when amended would correctly convey the intention of the court based on other evidence.” *State v. Priest*, 100 Wn. App. 451, 456, 997 P.2d 452 (2000) (citing to *Presidential Estates Apartment Assoc. v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996) (involving the civil rule counterpart to CrR 7.8(a))).

Here, the error was not, as Echols claims, in imposing a sentence based upon a standard sentencing range of 262-345 months in prison. The clerical error was merely the failure to check the special verdict form box on the Judgment and Sentence. The original Judgment and Sentence itself utilized the enhanced sentencing range of 262-345 months, which reflected inclusion of the deadly weapon finding by the jury in the special verdict form.

Not surprisingly, the defendant did not object 18 years ago to the sentence imposed. Echols was sentenced within the proper standard range of 262-345 months.

3. THE TRIAL COURT PROPERLY REFERRED TO THE RECORD IN DENYING ECHOLS' MOTION TO CORRECT HIS JUDGMENT AND SENTENCE.

As noted immediately above, CrR 7.8 gives the trial court the authority to correct clerical errors in the record. In turn, the trial court may refer to the entire record in correcting clerical errors. In *Priest*, 100 Wn. App. 451, for example, the Court of Appeals held that the trial court could correct a clerical error so long as the correction "correctly convey[s] the intention of the court based on other evidence." *Id.* (emphasis added). In *Priest*, that "other evidence" was "the verbatim report [that] clearly show[ed] the sentencing court did not intend to have Mr. Priest register as a sex offender." *Id.* at 456. See also *State v. Davis*, 160 Wn. App. 471, 478-79, 248 P.3d 121, 123-24 (2011) (citing to *Priest* and noting that a court may correct a clerical mistake at any time).

In *State v. Snapp*, 119 Wn. App. 614, 82 P.3d 252 (2004), a prosecution for violating a no-contact order, the defendant objected on appeal to the trial court's requirement that he complete a batterer's treatment program and have no contact with his victim

until approved by his care provider. The defendant “assert[ed] that the trial court did not include these provisions in the initial judgment and sentence and, therefore, lost the authority to amend the judgment to include these conditions.” *Id.* at 626. The Court of Appeals disagreed, citing to CrR 7.8 and noting the following:

A trial court may correct a clerical error in the judgment and sentence document. . . . To determine whether an error is clerical or judicial, we look to ‘whether the judgment, as amended, embodies the trial court’s intention, as expressed in the record at trial.’ If it does, then the amended judgment should either correct the language to reflect the court’s intention or add the language the court inadvertently omitted. . . .

Here, . . . the trial court reviewed the clerk’s minutes . . . and found that the treatment program was intended to be included. Because the record establishes the court’s original intention to include this provision, its omission was a clerical error and the trial court had the authority to correct the judgment and sentence document to reflect its original intention.

Id. at 626-27 (citing to and quoting *State v. Klump*, 80 Wn. App. 391, 397, 909 P.2d 317 (1996), and *Presidential*, 129 Wn.2d at 326; emphasis added).

Priest and *Snapp* thus establish that the trial court may look to “other evidence” and the case record to satisfy itself that the

correction requested is appropriate. Indeed, Echols appears to concede the same.³

In the present case, the "other evidence" could not be more compelling: the special verdict form that answered "Yes" to the question "Was the defendant, Ramone Depar Echols, armed with a deadly weapon at the time of the commission of the crime?" The subsequent omission of a checkmark from the box 2.1(a) on the Judgment and Sentence, memorializing the special jury verdict/finding that the defendant was armed with a deadly weapon when he committed Murder in the First Degree, was merely a clerical error.

The record before the trial court, including the original Judgment and Sentence, the special verdict form and Echols' failure 18 years ago to object to the sentence imposed, establishes the sentencing court's original intention. It also provides the factual basis to conclude that the trial court did not err in denying Echols'

³ Echols' claim that the trial court improperly referred to "documents outside the four corners of the judgment and sentence" would appear to be in conflict with his argument that "courts cannot look beyond the verdict, judgment, sentence to determine facial invalidity." Petition for Review, at 5 (emphasis added). Here, the special verdict form confirms the jury's finding that he was armed with a deadly weapon at the time he murdered Gregory Ferris.

motion to correct the original judgment and sentence because the sentence originally imposed was correct and proper.⁴

4. ECHOLS HAD NO RIGHT TO HAVE HIS MOTION TO CORRECT THE JUDGMENT AND SENTENCE HEARD BY THE ORIGINAL TRIAL JUDGE.

Echols noted his motion to correct the judgment and sentence before the Honorable Ann Schindler, the trial judge who sentenced him in 1995, at the King County Courthouse in Seattle. He objects to his motion being heard by the Honorable Lori K. Smith at the Maleng Regional Justice Center in Kent and, further, he claims that the reassignment of judge and location was done without giving him an opportunity to object.

Echols cites to CrR 5.1 regarding the requirement that venue in a criminal case lies in the county where the offense was committed. However, both the King County Courthouse in Seattle and the Maleng Regional Justice Center in Kent are located in King County, where the crime occurred.

Echols also claims that his motion was improperly assigned to Judge Smith without affording him an opportunity to object.

⁴ In fact, Echols concedes that he "did not challenge the underlying conviction, nor did he claim that the jury failed to return a Special Verdict." Sub. 102; CP 100 (Defendant's Objection and Reply to State's Memorandum in Opposition to Defendant's Motion to Modify/Correct Judgment and Sentence, at 1; emphasis added).

However, he cites to no authority in support of this claim. As a result, this Court should disregard it entirely. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments unsupported by citations to authority or persuasive reasoning will not be considered on appeal). In any event, as noted above, the original trial judge, the Honorable Ann Schindler, now sits on the Washington State Court of Appeals.

5. THE TRIAL COURT DID NOT ERR BY DENYING ECHOLS' MOTION TO CORRECT THE JUDGMENT AND SENTENCE WITHOUT TRANSPORTING HIM TO THE KING COUNTY COURTHOUSE FOR A HEARING.

Echols claims that he had a right to be present when the trial court corrected the Judgment and Sentence. However, Washington is clear that clerical mistakes may be corrected without vacating the original Judgment and Sentence, and that the defendant's presence is not required for such a correction. As discussed above, the trial court has the authority under CrR 7.8 to correct "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission[.]" CrR 7.8(a). Washington law further "permits correction of purely clerical mistakes in judgments and sentences in criminal cases without the necessity or expense of resentencing." *State v. Danley*,

9 Wn. App. 354, 354-55, 513 P.2d 96, 97 (1973) (citing *State v. Jones*, 67 Wn.2d 506, 408 P.2d 247 (1965)).

In *Jones*, the Judgment and Sentence erroneously failed to indicate that a vagrancy count against the defendant had been dismissed; in fact, the Judgment and Sentence stated on its face that the defendant had been convicted of the dismissed charge. In determining that “[t]hese errors should be corrected to make the judgment and sentence conform to the proceedings,” *id.* at 507-08, the Washington Supreme Court concluded that “[t]hese recitals being formal and apparently not affecting the validity of the judgment and sentence may, on notice to the defendant, be corrected by the trial court without its vacating the judgment and sentence.” *Id.* at 513.

It therefore was not necessary to transport Echols in order to address his motion or for the trial court to correct the clerical error in the original judgment and sentence. Echols’ claim is completely without merit.

6. ECHOLS' CLAIM THAT THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT REFERRED TO THE RECORD IN DENYING HIS MOTION TO CORRECT THE JUDGMENT AND SENTENCE IS MERELY A RESTATEMENT OF THE PREVIOUSLY-STATED ISSUE AND UNSUPPORTED BY ARGUMENT OR AUTHORITY.

Finally, Echols claims that the trial court "erred and abused its discretion when it denied his motion based upon facts not supported by the record." This appears to merely be a restatement of the same issue raised earlier in his petition. (See Echols' claim that "courts cannot look beyond the verdict, judgment, sentence to determine facial invalidity," discussed in section C.3, above.) This claim is difficult to address because Echols offers no factual allegations or support regarding it. Moreover, the only legal authority cited by Echols are generalized statements of the law regarding appellate review of a trial court's decision pursuant to CrR 7.8. He offers no authority supporting his claim that the trial court abused its discretion in reviewing the facts in the record, nor is there any argument in support of that claim. As a result, this Court should reject it and deny Echols' petition for review. See *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

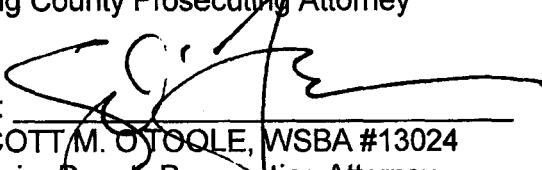
D. CONCLUSION

For the foregoing reasons, the State asks this Court to deny Echols' Petition for Review.

DATED this 27 day of December, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

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Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Ramone D. Echols, #725548, Stafford Creek Correctional Center, 191 Constantine Way, Aberdeen, WA 98520, appearing pro se; and to Jennifer J. Sweigert, Nielsen Broman & Koch, PLLC, past counsel for the petitioner, at 1908 E. Madison Street, Seattle, WA 98122-2842, containing a copy of the Reply Brief of Respondent, in State of Washington v. Ramone Echols, Cause No. 89628-3, in the Supreme Court 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.



Bora Ly

December 27, 2013

Done in Seattle, Washington

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Dear Supreme Court Clerk:

Attached for filing in the above-subject case, is the Reply Brief of Respondent.

Please let me know if you should have problems opening the attachment.

Thank you,

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