

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 JAN 30 PM 1:40

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
RAMON E D. ECHOLS,)
(your name))
)
Appellant.)

No. 68734-4-I
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, RAMON E D. ECHOLS, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

See attached brief

Additional Ground 2

N/A

If there are additional grounds, a brief summary is attached to this statement.

Date: 1/25/13

Signature: Ramon E Echols

WASHINGTON STATE COURT OF APPEALS
DIVISION I

RAMONE D. ECHOLS,
Appellant,

v

STATE OF WASHINGTON,
Respondent,

NO: 68734-4-I

STATEMENT OF
ADDITIONAL GROUNDS

A. S.A.G ASSIGNMENT OF ERROR

- 1) **The trial court erred by basing its Order denying Mr. Echols' Motion on facts unsupported by the record thus being based upon untenable grounds and constituting an abuse of discretion.**

B. S.A.G. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- 1) **Whether The Trial Court Abused It's Discretion When It Denied a Mr. Echol's Motion based upon untenable grounds?**

C. STATEMENT OF THE CASE

Mr. Echols accepts his Appellate Counsel's statement of the case as set forth in part B of its "Anders" brief, Pg.'s 4 through 6, and adopts and incorporates the same by reference as if set forth in full herein, with the following addendum:

On July 23, 2012 Judge Lori K. Smith entered an Order denying Mr. Echols's April 30, 2012 Motion to Reconsider. On August 13, 2012 Mr. Echols filed Notice of Appeal as it regards the trial court's July 23, 2012 Order denying Motion to Reconsider.

D. AUTHORITY AND PRESENTMENT

1). The Trial Court Abused Its Discretion When It Denied Mr. Echols's February 1, 2012 CrR 7.8 Motion Based Upon Untenable Grounds.

Appellate Courts review a trial Court's decision on a CrR 7.8 Motion for abuse of discretion. **PRP of Cadwallader**, 155 Wn.2d 303, 317, 123 P.3d 456 (2005)(citing **State v Hardesty**, 129 Wn. 2d 303, 317, 915 P.2d 1080 (1996)). A trial Court abuses its discretion when it's decision is exercised on untenable grounds. **State v. Powell**, 126 Wn. 2d 244, 258, 893 P.2d 615 (1995). A Court's decision is based on untenable grounds if the factual findings are unsupported by the record. **In re Marriage of Littlefield**, 133 Wn. 2d 39, 47, 870 P.2d 1362 (1997).

Here, Mr. Echols filed his underlying CrR 7.8 Motion to Modify/Correct his Judgment and Sentence (J&S) as it has an incorrect designated Sentencing Range. CP 25 – 39. Mr. Echols showed that the J&S does not evince any special verdict or finding, and that the Trial Court neither found substantial and compelling reasons to exist nor ordered an exceptional sentence. CP 29. Mr. Echols also showed that the J&S “does not evince that any additional current offense sentencing data was attached/incorporated” in the J&S. CP 33, ¶ 6. Mr. Echols presented

that, without further elaboration, his J&S was invalid on its face as it incorrectly designated his Standard Sentencing Range as 262 – 345 months when it should designate 250 – 333 months. CP 29.

In its “Memorandum in Opposition to Defendant’s Motion to Modify/Correct” J&S, the State concedes that Mr. Echols’s claim that his J&S must be amended is correct. CP 57, 59. The State then contradicts itself and presents that Mr. Echols’s Motion should be denied because the Motion should be made by the State. CP 59. The State presented documents beyond the face of the J&S to purport the unsupported assumption that the Court committed a Scriveners error by failing to check a “deadly weapon” box. CP 59.

Mr. Echols objected and replied correctly bringing it to the Courts attention that the claim is that without further elaboration the J&S does not incite any special verdicts being returned. CP 100-104.

In denying the Motion, a different Judge, from a different venue, - Judge Lori K. Smith - entered an unsupported finding that: “it appears that the box regarding the special verdict finding on the Judgment and Sentence Order was inadvertently left unchecked.” CP 97. Yet the record does not support such a finding.

The Original Sentencing Transcripts for September 22, 1995, (1 RP), evince that Judge Ann Schindler was misinformed by the State that Mr. Echols’s Standard Sentencing range was 262-345 months. 1 RP. Nowhere is it discussed the entry of a deadly weapon finding or

enhancement. 1 RP. Rather, the Judge actually states that Mr. Echols's standard range sentence is 262-345 and that she intends to impose a sentence near the high end of that Standard Range – 340 months. 1 RP 13, 14 - 15.

Except that without the Court formally entering the Special Verdict, Mr. Echols's high end standard range sentence would be 333 months. CP 29.

The 1 RP unequivocally show that it was not the Judges intent to enter the Special Verdict at sentencing. Rather it shows that the State misinformed the Court as to the correct standard range and the trial Court relied on this misinformation to impose its erroneous sentence. 1 RP 1, 14 – 15.

As such, the Courts finding of April 6, 2012 that it appears that the special verdict finding on the J&S was inadvertently left unchecked is belied by the RP's. Without formal entry of the special verdict by the Court, Mr. Echols's J&S is invalid on its face and must be corrected. The State so concedes. CP 57, 59. As the Court's April 6, 2012 finding is unsupported by the record the Court's decision is based upon untenable grounds. **Littlefield**, supra at 47.

Based upon the foregoing, this Court must reverse the Court's April 6, 2012 Order denying Mr. Echols's Motion and remand to the trial Court for a resentencing hearing. Mr. Echols, respectfully requests so.

E. CONCLUSION

The trial court abused its discretion when it based its decision to deny Mr. Echols's CrR 7.8 Motion on findings which are unsupported by the record.

Based upon the foregoing this Court must reverse the trial Courts April 6, 2012 Order Denying Mr. Echols's CrR 7.8 Motion and remand to the trial Court for a resentencing hearing. Mr. Echols, respectfully requests so.



RAMONE D. ECHOLS
DOC #725548, SCCC, H5 B121
191 Constantine Way
Aberdeen, WA 98520

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, RAMONE D. ECHOLS, declare and say:

That on the 28 day of JANUARY, 2013, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 08734-4-1:

STATEMENT OF ADDITIONAL GROUNDS ;
DECLARATION OF SERVICE BY MAIL GR3.1 ;

addressed to the following:

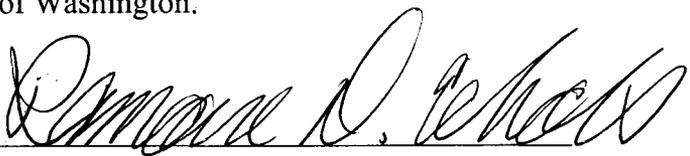
JENNIFER SWEIGERT
NIELSEN, ROMAN, & KOCH P.L.L.C.
1908 E. MADISON ST
SEATTLE, WA
98122-2842

COURT OF APPEALS
DIVISION I
ONE UNION SQUARE
600 UNIVERSITY STREET
SEATTLE, WA
98101-4170

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 28 day of JANUARY, 2013, in the City of Aberdeen, County of Grays Harbor, State of Washington.

SCOTT O'TOOLE
KING COUNTY PROS OFFC
516 3RD AVE STE W554
SEATTLE, WA
98104-2390


Signature

RAMONE D. ECHOLS
Print Name

DOC 725548 UNIT H5B124
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520