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SUPREME COURT
STATE OF WASHINGTON
Jun 30, 2014, 2:50 pm
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NO. 90407-3

Court of Appeals No. 69906-7-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RODNEY L. GARROTT,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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A. IDENTITY OF RESPONDENT

Respondent, the State of Washington, asks this Court to deny the petition for review.

B. FACTS AND COURT OF APPEALS OPINION

Rodney Garrott seeks review of the Court of Appeals' decision affirming his resentencing following a personal restraint petition. In 2011, Garrott filed a personal restraint petition challenging two cause numbers that were final in 2004 ("2004 cases"). In the petition, Garrott challenged the inclusion of two prior felony convictions in his offender scores on the grounds that the prior convictions were reversed in 2005, after the 2004 sentencing hearing had taken place. CP 91-92, 163-64.

In 2005, just two weeks after the mandate issued reversing the prior convictions at issue, Garrott pled guilty to two more felonies—one pursuant to a plea bargain on the reversed cause number itself, and one stemming from a new criminal offense Garrott committed while his direct appeal was pending in 2005. CP 91, 136, 144. Also in 2005, the State discovered additional criminal history from Illinois that it had previously been unaware of. CP 142, 150. In early 2006, Garrott was sentenced on the case mandated in 2005 and the new 2005 case. CP 136-43, 144-51. A month later, Garrott was found guilty by a jury of

yet another felony charge that had occurred in 2005; he was sentenced on that case in April of 2006. CP 153-61. Garrott has been continuously incarcerated since that time. CP 132.

When Garrott filed the 2011 collateral attack challenging his 2004 final judgments, the State pointed out that if Garrott was resentenced on the 2004 cases, his offender scores would properly include all of his convictions discovered and committed after the original 2004 sentencing hearing. CP 164. This Court's Commissioner directed Garrott to indicate in a supplemental memorandum, "[W]hether it is still his desire to be resentenced under a potentially higher offender score." CP 164. Garrott insisted on pursuing his claim and he was resentenced in 2013. CP 165, 186-93, 419-26. He appealed, and in an unpublished opinion, Division I of the Court of Appeals affirmed. State v. Garrott, No. 69906-1-I (Div. I, April 21, 2014) (attached to Petition for Review). He now seeks review of that decision.

C. **ARGUMENT**

THE COURT SHOULD DENY THE PETITION FOR REVIEW.

RAP 13.4(b) governs consideration of a petition for review. It provides that 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). Garrott's petition cannot meet this standard. He has not established that the decision in this case conflicts with another Court of Appeals decision or with a decision of this Court, nor has he raised an issue presenting a significant question of constitutional law or substantial public interest.

Garrott argues that the State had an affirmative obligation in 2006 to move to reopen his final 2004 judgments and resentence him without any points for his subsequently committed and subsequently discovered convictions. The State's response brief in the Court of Appeals adequately addresses why this argument should be rejected. The State files this answer to the petition for review simply to point out that all of Garrott's criminal history had occurred and was discovered

by 2006. CP 136-43, 144-51, 153-61. Therefore, even assuming for the sake of argument that the State had an affirmative obligation to move to resentence Garrott in 2006, his offender scores would have been the same then as they are now. Garrott's claim that, "Had the State moved timely for resentencing in 2006, Mr. Garrott's offender score would not have been as high as it was when he was subsequently resented in 2013,"¹ is thus incorrect. He would have had the same increased offender scores if he had been resented in 2006.

The State had no interest in altering the status quo or increasing Garrott's 2004 sentences. Garrott filed a personal restraint petition asking to be resented. He prevailed, and cannot now complain that he is aggrieved by the trial court's implementation of this Court's remand order. See State v. Tarrer, 140 Wn. App. 166, 170, 165 P.3d 35 (2007) (defendant who successfully moved to vacate his conviction for second-degree felony murder predicated on assault was not entitled to appeal trial court's implementation of remand order, based on his desire to vacate the conviction but leave his guilty plea intact).

¹ Pet. for Review at 6.

Garrott's argument that this Court should reexamine and overrule State v. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992), ignores the clear mandate of the Sentencing Reform Act, that, at a resentencing hearing following a collateral attack, all of the defendant's criminal history shall be presented to the court and included in the offender score. RCW 9.94A.525(22); RCW 9.94A.530(2). Garrott has failed to establish that review under RAP 13.4(b) is appropriate. The petition for review should be denied.

D. CONCLUSION

For above-stated reasons, the State respectfully asks that the petition for review be denied.

DATED this 30th day of JUNE, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

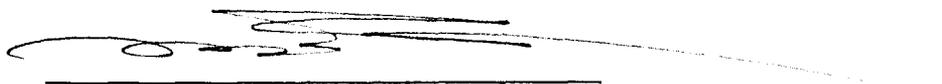
By: 
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the ANSWER TO PETITION FOR REVIEW, in STATE V. RODNEY LOUIS GARROTT, Cause No. 90407-3, 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.

Dated this 30 day of June, 2014



Name
Done in Seattle, Washington

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From: OFFICE RECEPTIONIST, CLERK
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Subject: RE: Rodney L. Garrott/Case # 90407-3

Rec'd 6-30-14

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Cc: Meckling, Amy
Subject: Rodney L. Garrott/Case # 90407-3

Attached for filing in the above-referenced case, please find the State's Answer to Petition for Review.

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

Thank you,

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For

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Senior Deputy Prosecuting Attorney
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