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THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,) NO. 90552-5
Respondent,)
) MOTION TO STRIKE
v.)
)
TODD DALE PHELPS,)
Petitioner.)
_____)

1. IDENTITY OF MOVING PARTY

Respondent State of Washington, by and through Sara I. Beigh, Senior Deputy Prosecuting Attorney for Lewis County, requests the relief set out below.

2. STATEMENT OF RELIEF SOUGHT

The State requests that this Court strike the following attachments or portions of attachments and related arguments from Todd Dale Phelps's petition for review:

1. Declaration of Bregg W. Phelps
2. Declaration of Allen Phelps
3. Declaration of Amanda Phelps.

3. FACTS RELEVANT TO THIS MOTION

Todd Phelps was charged in the State of Washington v. Todd Phelps, Lewis County Superior Court Cause No. 11-1-00790-6, by information filed on November 10, 2011, with one count of Rape in the Third Degree and one count of Sexual Misconduct with

a Minor in the Second Degree. In April 2012 Phelps was convicted by a jury of his peers as charged.

Phelps' convictions were reviewed by Division II of the Washington State Court of Appeals, Case No, 43557-8-II, and the COA affirmed Phelps' convictions on June 17, 2014. Phelps has now petitioned this Court for review without the aid of counsel. Included in his argument and attached as appendixes are three declarations. These declarations contain inadmissible evidence, but of even more importance, are not part of the record on review below. The State, therefore, is filing this timely motion to strike.

4. ARGUMENT

RAP 9.1 governs the composition of the record of review for direct appeals. "The record on review may consist of (1) a report of proceedings, (2) clerk's papers, (3) exhibits, and (4) certified record of administrative proceedings." RAP 9.1(a) (internal quotations omitted). RAP 10.3 governs the contents of briefs in a direct appeal, and includes that arguments must contain citations to the relevant parts of the record. RAP 10.3(a)(6). RAP 13.4 requires citation to the relevant record in a petition for review. RAP 13.4(c).

The declarations of Bregg W. Phelps, Allen Phelps, and Amanda Phelps, contained in Appendix F attached to the petition, are not contained with the record on review. See VRP; CP. These

declarations contain extrinsic evidence, which may be presented in a personal restraint petition, but not in a matter on direct review. See RAP 9.1, RAP 10.3, RAP 16.7. A party who wishes to supplement the record on direct review must file a motion with the COA or this Court. RAP 9.10. Further, a party may request, under limited circumstances, to present additional evidence on review, which is usually handled through a reference hearing in the trial court. RAP 9.11. There have been no such motions to the Court of Appeals in this case. The declarations should be stricken as improper and all references to and arguments based upon these declarations in Mr. Phelps' petition should also be stricken. See Petition, pages 7, 9, 16-17.

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4. CONCLUSION

The State respectfully requests this Court strike the three declarations listed above which can be found in Appendix F attached to Mr. Phelps' petition for review. The State further requests that this Court strike the facts cited to in the petition which are contained in the declarations and any arguments that are based upon the declarations. The declarations of Bregg W. Phelps, Allen Phelps, and Amanda Phelps are not part of the record on review and should not be considered by this Court.

RESPECTFULLY SUBMITTED this 1st day of August, 2014.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



SARA I. BEIGH, #35564
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent

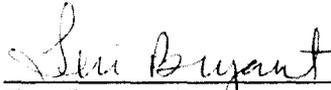
SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 90552-5
Respondent,)	
vs.)	DECLARATION OF
)	MAILING
TODD DALE PHELPS,)	
Petitioner.)	
)	
)	
)	

Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: August 1, 2014, the petitioner was served with a copy of the State's **Motion to Strike** by depositing same in the United States Mail, postage pre-paid, to the petitioner at the name and address indicated below:

Todd Dale Phelps, DOC #357684
Coyote Ridge Corrections Center
1301 N Ephrata Ave.
Connell, WA 99326

DATED this 1st day of August, 2014, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

OFFICE RECEPTIONIST, CLERK

To: Teri Bryant
Subject: RE: State v. Todd D. Phelps, No. 90552-5

Received 8/1/14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Teri Bryant [mailto:Teri.Bryant@lewiscountywa.gov]
Sent: Friday, August 01, 2014 9:28 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: State v. Todd D. Phelps, No. 90552-5

Attached for filing in the above referenced case is the State's Motion to Strike.

Thanks,

Teri Bryant, Paralegal
Lewis County Prosecuting Attorney
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Chehalis, WA 98532
(360) 740-1258