

Received
Washington State Supreme Court

OCT 22 2015

Ronald R. Carpenter
Clerk

92013-3

THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:)	
)	
TINA CASE, nka Mendoza,)	RESPONSE TO PETITION
)	FOR REVIEW
Respondent,)	
v.)	
)	
RICHARD A. CASE,)	
)	COA No. 71605-1-I
Appellant.)	

Before the Court is a petition for review. We have been directed by letter from the Court dated September 28, 2015 to file and serve this Response to the petition by October 28, 2015. Respondent is hereby responding to the petition for review.

(1) Is the local rule confirmation requirement unconstitutional when applied to indigent litigants who cannot afford an attorney, a telephone or internet access?

Answer in Brief: First, this issue is not properly before the Supreme Court as the Court of Appeals never reached the merits of the appeal.

Second, if this matter ever got to the merits, Mr. Case had a hearing on the merits of his motion to vacate in which he did participate via telephone. The complaint is about a hearing which due to the appeal which was never stayed to allow trial court action, was not properly before the trial court. Even if properly back in the trial court, the local rules do not require or necessarily allow oral argument on a reapplication on the same facts.

Expanded Answer: The matter was dismissed for failure the Appellants failure follow to procedure. That is the only decision available under RAP 13.4(a) upon which Mr. Case can file a petition for review. The merits of whether he should have had a second hearing on a motion to vacate are not before the Supreme Court.

Mr. Case claims he was denied a hearing on the question of whether or not the default order from December 21, 2001 should be vacated because he could not confirm the hearing he filed February 11, 2015.

Mr. Case has already had a hearing on a motion to vacate the 2001 order and he did confirm apparently and did participate

by telephone. The motion was denied. See minute entry, dated February 10th 2014, Susan Gaer Commissioner. Order entered March 17th 2014.

Mr. Case moved for revision. The minute entry from April 11, 2014 references the motion for revision was noted by Mr. Case requesting there be no oral argument. Neither Mr. Case nor the undersigned counsel appeared. An order entered that same day.

This appeal followed. Before the Court of Appeals dismissed the appeal July 1, 2015 Mr. Case sought to return to the trial court and have another hearing on the question of vacating the judgment. It is this motion that he now complains could not be confirmed due to his incarceration. Our answer to this issue is procedural rules all litigants on appeal must follow preclude this motion being heard at all absent a stay being issued from the Court of Appeals. RAP 7.2(e). He sought but did not obtain this authority.

Additionally, even if a stay had issued Snohomish County Local Rule 7 (b) (C) 6. Reapplication on Same Facts, contemplates subsequent motions on the same facts previously

heard. Under the rule motions for reconsideration are heard without oral argument. This is what the Feb 11, 2015 motion seeks to do, raise more arguments about why the Dec. 21, 2001 order should be vacated on the same record. He is not entitled to a hearing on oral argument.

Mr. Case had his hearing. He lost. He filed an appeal which he sought to stall, we believe to preclude collection of our judgment, by bringing additional redundant motion in the trial court. It is not a violation of due process or other failing of a constitutional dimension to be denied oral argument on a second motion for the same relief which his own appeal had denied the trial court jurisdiction to hear, or local rules preclude after an initial hearing with oral argument.

(2) Does use of the term “should” outlining rules of appeal for appellant preclude dismissal for his failure to follow the rules?

Answer in Brief. No.

Expanded Answer. The burden is on the appellant to advance the record to the Court of Appeals for review. *State vs. Sisouvanh* 175 Wash. 2nd 607, 290 P. 3d 942 (2012). Use of the

term “should” does not mean a litigant does not need to present a record. Instead as is referenced in the case cited by the appellant, when directed to do what he “must” and fails to do so, dismissal is an appropriate sanction. *State v. Ashbaugh* 90 Wash. 2nd 432, 583 P.2nd 1206 (1978).

This appeal was dismissed for repeated failures to designate clerk papers. RAP 9.2 (a) states an person seeking review “should” file a designation of clerk’s papers within 30 days of the notice of appeal. Here, by letter from the Court of Appeals dated July 25th 2014 the court instructed appellant his designation of clerk’s papers is due by August 24th 2014. A reasonable man would take this instruction from the court as a “must” and dismissal is an appropriate sanction particularly since he claims indigence, and financial sanctions are likely to have no effect and the wide discretion the court has in fashioning a remedy narrowed by circumstances. *Ashbaugh* at 438.

Further the significant time appellant has been allowed while constantly under the threat of dismissal means the reference to “should” in the rule has been modified to “must”. He was reminded of this necessity in following correspondence from

the Court of Appeals dated October 13th, 2014. He sought more time and the hearing was set for Dec. 5th 2014. By July 1, 2015 when the case was dismissed he had still not designated clerk's papers.

It is not the case he cannot do so. In the petition for review we are responding to here, appellant has designated clerk papers he wishes the Supreme Court to reference. Why he was not able do so for the Court of Appeals has more to do with his agenda of delay than any actual disability.

This appeal was also dismissed for a failure to make a statement of arrangements. RAP Rule 9.2 does not use the term "should" with respect to this requirement. The rule says the person seeking review "must" file a statement of arrangements. There is no room for equivocation.

(3) Does the case present cause for accepting discretionary review?

Answer in brief. No.

Expanded answer. The appellant first argues that the local rule which requires him to confirm by a given date and time as to whether or not a hearing will take place is in conflict with

the ruling in *Whitney v. Buckner*, 107 Wash. 2nd 861, 734 Pac. 2d 485 (1987) and therefore presents as a consideration governing acceptance of review under RAP 13.4(b)(1) if the decision of the Court of Appeals is in conflict with the decision of the Supreme Court. In other words it appears that the appellant is maintaining that the Court of Appeals should have stayed his appeal rather than dismissing it so as to allow him to conduct this second hearing on the question of the motion to vacate, and that conduct was in conflict with the ruling in *Whitney v. Buckner*.

The reliance on *Whitney* is misplaced. All *Whitney* says is that prisoners' due process right of access to the courts includes the right to bring actions for dissolutions of marriage and for related matters. It does not say that because appellant is a prisoner he is allowed multiple hearings or deference in discretionary calls such as whether to stay an action in the Court of Appeals. He has had meaningful access to the court and he lost.

In the second ground in which appellant believes a review should be accepted is that the Court of Appeals ruling is in conflict with *State ex. rel. Taylor v. Dorsey*, 81 Wash. App. 414,

914 Pac. 2d 773 (1996), claiming consideration for acceptance of reviews held under RAP 13.4(b)(2) the decisions of the Court of Appeals is in conflict with another decision of the Court of Appeals. Much the same as the first point, *Dorsey* does not say that appellant has an opportunity to have multiple hearings in the trial court notwithstanding his Notice of Appeal and the Court of Appeals' election not to stay his proceedings. All *Dorsey* says is that prisoners have due process rights to access to the courts including civil proceedings but then says very clearly the right is not absolute. Prisoners are only required to have meaningful access to the courts. He has already had one hearing and he has lost.

The third claim Mr. Case makes for purposes of determining whether the court should grant discretionary review is to baldly say that the question he presents under RAP 13.4(b)(3) presents a significant question of law under the constitution of the State of Washington or of the United States. For reasons cited above and in particular the fact that he participated and the revision hearing that was dismissed prior to

him bringing this supplemental motion to vacate with different arguments, there is no significant question of law.

Fourth, the appellant claims that under RAP 13.4(b)(4) that the petition involves an issue of substantial public interest that should be determined by the Supreme Court. For reasons stated above, this petition simply does not. Appellant cites *State v. Watson*, 155 Wash. 2d 574, 122 Pac. 3d 903 (2005) which is a case involving sentencing in every proceeding in Pierce County for a significant period of time. Conversely this case does not present a general public interest and is simply a matter of child support being owed by the appellant to the responding mother seeking to defend this judgment.

CONCLUSION

Mr. Case has been afforded a considerable amount of due process by the Superior Court of the State of Washington for Snohomish County. He has been afforded considerable patience on the part of the Court of Appeals. The Court of Appeals clearly mandated a Statement of Arrangements and Designation of Clerk's Papers. This case presents no grounds

for acceptance of a review under RAP 13.4 and review should be denied.

Respectfully Submitted this 19 day of October, 2015

NEWTON KIGHT LLP

By



Mark T. Patterson II, WSBA #13777
Attorney for Respondent

TINA M. CASE
(PETITIONER)
AND

RICHARD A. CASE
(RESPONDENT)

CAUSE NO. 85-3-02405-4
COMMISSIONER: JACALYN D. BRUDVIK
CLERK: LISA WHITE
DATE: 11-19-13 @ 9:00 AM
DIGITALLY RECORDED

THIS MATTER CAME ON FOR: SHOW CAUSE RE CONTEMPT
CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:
HEARING DATE SET/TIME/CALENDAR CODE:
ACTION:

HEARING STRICKEN/CODE:
PETITIONER APPEARED: NO
RESPONDENT APPEARED: NO

COUNSEL: NOT PRESENT
COUNSEL: NOT PRESENT

DOCUMENTS FILED:
ORDERS ENTERED:

PROCEEDINGS/COURT'S FINDINGS:

DUE TO RESPONDENT'S REQUEST TO APPEAR BY TELEPHONE, THIS MATTER HAS BEEN CONTINUED TO 12-10-13 AT 1:00 PM ON THE EXTENDED HEARINGS CALENDAR. PETITIONER'S COUNSEL WAS DIRECTED TO FILE AND SERVE NOTICE OF THIS NEW HEARING DATE AND TIME.

TINA M CASE
(PETITIONER)
AND
RICHARD A CASE
(RESPONDENT)

CAUSE NO.: 85-3-027
COMMISSIONER: LESTER H. STEWART
CLERK: CAROLE MACY
DATE: 12/10/13 @ 1:00 PM
DIGITALLY RECORDED

THIS MATTER CAME ON FOR: ORDER TO SHOW CAUSE #65

CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE: 1-2-14 @ 9 AM (D2)

ACTION: PRESENTATION OF ORDERS

ACTION: **RESPONDENT TO APPEAR TELEPHONICALLY AT 10:00 AM**

ACTION: **CONFIRMED/COURT**

HEARING STRICKEN/CODE:

PETITIONER APPEARED: NO

RESPONDENT APPEARED: YES, TELEPHONICALLY

GUARDIAN AD LITEM APPEARED: NOT PRESENT

FACILITATOR APPEARED: NOT PRESENT

COUNSEL: MARK PATTERSON II
COUNSEL: NOT STATED

DOCUMENTS FILED:

ORDERS ENTERED:

PROCEEDINGS/COURT'S FINDINGS:

BASED UPON THE FACTS PRESENTED TO THE COURT AND UNDER THE RELEVANT STATUTORY CONSIDERATIONS; THE TIME FRAME FOR TODAY'S MOTION BEING SOUGHT IS TIMELY; THE AMOUNT PRESENTED APPEARS TO BE A SUM CERTAIN JUDGMENT THAT WAS ENTERED AND IS RELEVANT; THE PARTIES' CHILD HAS EXCEEDED THE AGE OF 18 AND IS PAST THE AGE OF 28; AND TODAY'S MOTION IS FOR POST-SECONDARY SUPPORT.

THE COURT IS DENYING THE RESPONDENT'S MOTION FOR DISMISSAL AND WILL GRANT THE PETITIONER'S MOTION. THERE IS STILL A COLLECTION ACTION ACTIVE FOR CHILD SUPPORT.

ATTORNEY'S FEES ARE GRANTED.

****THIS HEARING IS SET FOR PRESENTATION ON THE ABOVE DATE.

D2
MTJ
70

MINUTE ENTRY



CL16429642

**SUPERIOR COURT OF
WASHINGTON
FOR SNOHOMISH COUNTY**

**COUNTY CLERK
SNOHOMISH CO WA**

TINA M CASE
(PETITIONER)
AND

CAUSE NO. 85-3-02405-4
COMMISSIONER: LESTER H. STEWART
CLERK: CAROLE MACY
DATE: 01/28/14 @ 10:30 AM
DIGITALLY RECORDED

RICHARD A CASE
(RESPONDENT)

THIS MATTER CAME ON FOR: MOTION TO RECONSIDER WITHOUT ORAL ARGUMENT BEFORE
COMMISSIONER STEWART IN DEPARTMENT A

CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE:

ACTION:

HEARING STRICKEN/CODE:

PETITIONER APPEARED: NO

COUNSEL: NOT PRESENT

RESPONDENT APPEARED: NO

COUNSEL: NOT PRESENT

GUARDIAN AD LITEM APPEARED: NOT PRESENT

FACILITATOR APPEARED: NOT PRESENT

DOCUMENTS FILED:

ORDERS ENTERED:

PROCEEDINGS/COURT'S FINDINGS:

THIS MATTER IS TAKEN UNDER ADVISEMENT WITH WRITTEN DECISION TO BE
ISSUED.

Superior Court of the State of Washington for Snohomish County

JUDGES

LARRY E. MC KEEMAN
THOMAS J. WYNNE
ANITA L. FARRIS
LINDA C. KRESE
GEORGE N. BOWDEN
ELLEN J. FAIR
MICHAEL T. DOWNES
ERIC Z. LUCAS
DAVID A. KURTZ
BRUCE I. WEISS
GEORGE F. APPEL
JOSEPH P. WILSON
RICHARD T. OKRENT
JANICE E. ELLIS
MARYBETH E. DINGLEDY
MILLIE M. JUDGE

SNOHOMISH COUNTY COURTHOUSE

M/S #502
3000 Rockefeller Avenue
Everett, WA 98201-4060
425)388-3421 (425)388-3536

PRESIDING JUDGE
MICHAEL T. DOWNES

COURT COMMISSIONERS
ARDEN J. BEDLE
LESTER H. STEWART
JACALYN D. BRUDVIK
TRACY G. WAGGONER
SUSAN C. GAER

RECEIVED

FEB 07 2014

MARK T. PATTERSON II

COURT ADMINISTRATOR
SUPERIOR AND
JUVENILE COURT
BOB A. TERWILLIGER

February 3, 2014

Mark T. Patterson II
Attorney at Law
P.O. Box 79
Everett, WA 98206

Richard A. Case #896282
Airway Heights Correction Ctr
P.O. Box 2049/M-Unit
Airway Heights WA 99001-2049

RE: Case vs Case, Cause No: 85-3-02405-4
Respondent's Motion for Reconsideration

Dear Litigant and Counsel:

Procedurally, I will admit to being more than a little confused by the several documents filed recently by Respondent, but will attempt to outline my understanding as follows.

A hearing on Petitioner's Motion for Judgment on post-secondary educational support came before me on December 10, 2013, conducted telephonically at Respondent's request due to his incarceration. The Court ruled in Petitioner's favor, the entry of an order on which (document #74) did not occur until January 2, 2014.

Confusingly, Respondent filed both a Motion for Revision (document #70) and a Motion for Reconsideration (document #72) on December 27, 2013 – 6 days before the Order to which he objects was even entered. On January 6, 2014, Respondent simultaneously filed a Motion to Vacate (document #76)(presumably the underlying original child support order) and a Calendar Note (document #73) for "Reconsideration/Revision" setting both matters (reconsideration/revision) on the 9:00 a.m Family Law Motions Calendar for January 28, 2014. Additionally, Respondent filed yet another Calendar Note (document #78) on January 6, 2014, setting a "Show Cause & Vacate Order & Judgment" hearing for the same Family Law Calendar of January 28, 2014.

Aside from the fact that Respondent filed his separate motions to revise and reconsider prior to entry of the January 2, 2014 Findings & Order, he's noted multiple motions involving

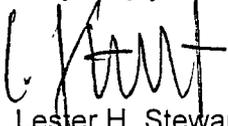
COPY SENT TO CLIENT

2-7-14

different judicial officers at a singular time and place. Under Washington Court Rule CR 59 and Snohomish County Local Civil Rule 59, motions for revision of a court commissioner's ruling are heard by a judge, and motions for reconsideration revert to the jurist making the ruling of which reconsideration is sought. As such, I am only addressing Respondent's Motion for Reconsideration. He will, if he chooses to do so, pursue the Motion for Revision separately and properly noted on the Judges' Civil Motion Calendar. As to Respondent's Motion to Vacate, that shall remain on the Family Law Calendar to be heard by the Commissioner presently assigned to that rotation. I am not involved with either of those motions

As to Respondent's Motion for Reconsideration, I am unable to find any legitimate basis for changing the December 20, 2013 ruling or the Findings and Order entered January 2, 2014 upon which it was based. Accordingly, I am respectfully denying Respondent's Motion for Reconsideration. A copy of the Order doing so being enclosed for your reference.

Very truly yours,



Lester H. Stewart
Superior Court Commissioner

cc: Court file
Enclosure (1)

TINA CASE

(PETITIONER)

AND

COMMISSIONER: SUSAN C. GAER

CLERK: PATRICIA BUNDY

DATE: 02-10-14 @ 1:00 P.M.

DIGITALLY RECORDED

RICHARD A. CASE

(RESPONDENT)

THIS MATTER CAME ON FOR: SHOW CAUSE/VACATE ORDER AND JUDGMENT #76

CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE:

ACTION:

HEARING STRICKEN/CODE:

PETITIONER APPEARED: NO

COUNSEL: MARK T. PATTERSON

RESPONDENT APPEARED: YES, TELEPHONICALLY

COUNSEL: PRO SE

GUARDIAN AD LITEM APPEARED: NO

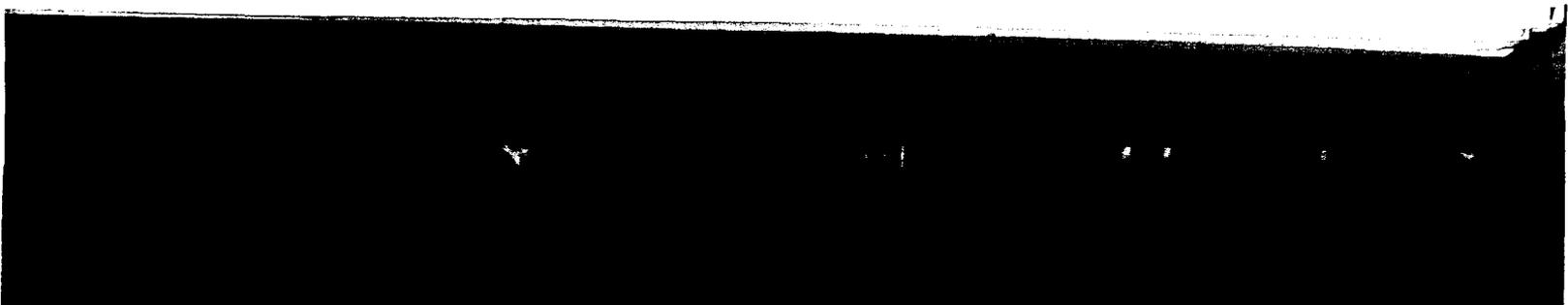
OTHER PARTIES PRESENT: COUNSELOR MR. JUSTIN GRIMES ALSO PRESENT TELEPHONICALLY

DOCUMENTS FILED:

ORDERS ENTERED:

PROCEEDINGS/COURT'S FINDINGS:

THE MOVING PARTY'S BASIS FOR THIS MOTION APPEARS TO BE A LACK OF NOTICE. THE COURT FINDS THAT THE RESPONDENT WAS PROPERLY SERVED UNDER THE STATUTE, HAD MORE THAN SUFFICIENT NOTICE, AND IN FACT HE FILED A RESPONSE. HE WAS ALSO GIVEN NOTICE OF THE HEARING ASKING THE COURT TO STRIKE THE RESPONDENT'S PLEADINGS. ONCE THE COURT STRUCK THE RESPONDENT'S PLEADINGS, THE PETITIONER THEN ASKED THE COURT TO ENTER AND ORDER OF DEFAULT. THE MAJORITY OF THE RESPONDENT'S ARGUMENT IS LACK OF NOTICE, AND THAT IS SIMPLY NOT THE CASE IN THIS MATTER. THE RESPONDENT WAS PROVIDED WITH SUFFICIENT NOTICE. THIS COURT HAD JURISDICTION OVER THIS MATTER AND THE ORDER WAS ENTERED. EVEN IF THERE WERE NOTICE ISSUES, WHICH THERE ARE NOT, OR JURISDICTION ISSUES, WHICH THERE ARE NOT, THE RESPONDENT DID NOTHING FOR TWELVE YEARS. THE COURT FINDS THAT THE RESPONDENT COMES TO COURT WITH UNCLEAN HANDS. THE RESPONDENT DOES NOT



ALLEGE MANY FACTS AS TO WHY HE WAS TOTALLY UNRESPONSIVE FOR ALL THIS TIME. HE DOES NOT PRESENT ANY FACTS AS TO WHY HE WAITED SO LONG OR WHY HE FAILED TO FILE FOR A REVISION OR RECONSIDERATION.

AN ORDER SHALL ENTER. COUNSEL SHALL NOTE THE MATTER FOR PRESENTATION ON AN EXTENDED CALENDAR SO THAT IF RESPONDENT WISHES TO APPEAR AND PRESENT ANY OBJECTIONS TO THE ORDER, HE MAY.



CL16287263

**SUPERIOR COURT OF
WASHINGTON
FOR SNOHOMISH COUNTY**

2014 MAR 17 PM 1:56

SONYA KRACKI
COUNTY CLERK
SNOHOMISH COUNTY, WASH.

TINA M. CASE
(PETITIONER)
AND
RICHARD A. CASE
(RESPONDENT)

CAUSE NO.: 85-3-02405-4
COMMISSIONER: SUSAN C. GAER
CLERK: PATRICIA BUNDY
DATE: 03-17-14 @ 1:00 P.M.
DIGITALLY RECORDED

THIS MATTER CAME ON FOR: PRESENTATION OF ORDER ON MOTION TO VACATE #76

CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE:

ACTION:

HEARING STRICKEN/CODE:

PETITIONER APPEARED: NO

COUNSEL: MARK T. PATTERSON II

RESPONDENT APPEARED: YES, TELEPHONICALLY

COUNSEL: PRO SE

GUARDIAN AD LITEM APPEARED: NO

DOCUMENTS FILED:

ORDERS ENTERED: ORDER ON MOTION TO VACATE ENTERED, TO BE FILED BY COUNSEL PATTERSON

PROCEEDINGS/COURT'S FINDINGS:

THE COURT EXPLAINS TO THE RESPONDENT THAT HE HAS SET HIS HEARINGS ON THE WRONG CALENDARS, AND THAT HE MUST CONFIRM THOSE HEARINGS. IT IS SUGGESTED THAT HE INCLUDE A NOTE TO THE CONFIRMATIONS CLERK ASKING HOW HE MIGHT GO ABOUT CONFIRMING HIS HEARINGS.

THE COURT APPROVES THE ORDER AS PROPOSED BY COUNSEL PATTERSON AND AMENDED BY THE COURT.



CL16338781

WASHINGTON
FOR SNOHOMISH COUNTY

TINA M. CASE
(PETITIONER)
AND
RICHARD A. CASE
(RESPONDENT)

CAUSE NO.: 85-3-02405-4
JUDGE: LINDA C. KRESE
REPORTER: NOT REPORTED
CLERK: DEBBIE J. HORNER
DATE: 4-11-14 @ 9:30 A.M.

THIS MATTER CAME ON FOR: MOTION FOR REVISION - DE NOVO
CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE:

ACTION:

HEARING STRICKEN/CODE:

PETITIONER APPEARED: NO

RESPONDENT APPEARED: NO, IN CUSTODY

GUARDIAN AD LITEM APPEARED: NO

COUNSEL: MARK PATTERSON

COUNSEL: PRO SE

DOCUMENTS FILED:

ORDERS ENTERED:

PROCEEDINGS/COURT'S FINDINGS:

RESPONDENT'S MOTION FOR REVISION DE NOVO: THIS MATTER WAS NOTED BY
RESPONDENT WITHOUT ORAL ARGUMENT. THE COURT WILL TAKE THE MATTER UNDER
ADVISEMENT AND ISSUE A WRITTEN DECISION.





16338781

SUPERIOR COURT OF
WASHINGTON
FOR SNOHOMISH COUNTY

COUNTY CLERK
SNOHOMISH CO. WASH

PLAINTIFF)	CAUSE NO.:	85-3-02405-4
AND	JUDGE:	LINDA C. KRESE
DEFENDANT)	REPORTER:	NOT REPORTED
	CLERK:	DEBBIE J. HORNER
	DATE:	4-11-14 @ 9:30 A.M.

REASON FOR: MOTION FOR REVISION - DE NOVO

DATE/TIME/CALENDAR AND CONTINUANCE CODE:

PRE SET/TIME/CALENDAR CODE:

CLERK/CODE:

APPEARED: NO	COUNSEL: MARK PATTERSON
APPEARED: NO, IN CUSTODY	COUNSEL: PRO SE
AD LITEM APPEARED: NO	

FILED:

ENTERED:

REMARKS/COURT'S FINDINGS:

DEFENDANT'S MOTION FOR REVISION DE NOVO: THIS MATTER WAS NOTED BY THE COURT WITHOUT ORAL ARGUMENT. THE COURT WILL TAKE THE MATTER UNDER CONSIDERATION AND ISSUE A WRITTEN DECISION.

MINUTE ENTRY

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