

NO. 46514-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JOEL PAUL REESMAN, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.07-1-01092-1

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

TABLE OF CONTENTS

A. ANSWERS TO ASSIGNMENTS OF ERROR..... 1

 I. THE STATE CONCEDES THAT THE TRIAL COURT
 ERRED BY FAILING TO COMPLY WITH CRR 7.8(C)..... 1

B. STATEMENT OF THE CASE..... 1

C. ARGUMENT 1

 I. THE TRIAL COURT’S ORDER SHOULD BE VACATED
 BECAUSE THE TRIAL COURT FAILED TO COMPLY
 WITH CRR 7.8(C). 1

D. CONCLUSION..... 3

TABLE OF AUTHORITIES

Cases

State v. Smith, 144 Wn.App. 860, 184 P.3d 666 (2008) 2

Rules

CrR 7.8(c)(2)(i)-(ii) 2

CrR 7.8 - Former 1

A. ANSWERS TO ASSIGNMENTS OF ERROR

I. THE STATE CONCEDES THAT THE TRIAL COURT ERRED BY FAILING TO COMPLY WITH CRR 7.8(C).

B. STATEMENT OF THE CASE

For the purposes of this response only, the State adopts Appellant's Statement of the Case. Br. of App. at 1-2.

C. ARGUMENT

I. THE TRIAL COURT'S ORDER SHOULD BE VACATED BECAUSE THE TRIAL COURT FAILED TO COMPLY WITH CRR 7.8(C).

Prior to September 1, 2007, CrR 7.8 allowed a trial court to deny a motion for relief from judgment without a hearing if the facts alleged in the affidavits did not establish grounds for relief. Former CrR 7.8. CrR 7.8 was amended in 2007 with the intent that the Court of Appeals would handle the vast majority of collateral attacks as personal restraint petitions. Under the current CrR 7.8, a trial court has no authority to rule on a CrR 7.8 motion except in the following limited circumstances:

1. The motion is not time-barred and the defendant has made a substantial showing that he is entitled to relief;

or,

2. The motion is not time-barred and resolution of the motion will require a factual hearing.

CrR 7.8(c)(2)(i)-(ii); *State v. Smith*, 144 Wn.App. 860, 863, 184 P.3d 666 (2008).

If a trial court does not transfer the motion to the Court of Appeals as a personal restraint petition, it must enter an order fixing a time and place for a hearing and directing the adverse party to appear and show cause why the relief sought should not be granted. In other words, a trial court is simply not empowered to deny a CrR 7.8 motion on its merits without first conducting a hearing of some sort.¹

Here, the trial court did not transfer Mr. Reesman's motion to the Court of Appeals, nor did it hold a hearing. Instead, the trial court ordered Mr. Reesman's motion to be dismissed. CP 62. As a result, the trial court's order failed to comply with CrR 7.8 and should be vacated.

¹ If a trial court proceeds under CrR 7.8(c)(i), the rule only requires a hearing. If a trial court proceeds under CrR 7.8(c)(ii), the hearing must be a factual hearing.

D. CONCLUSION

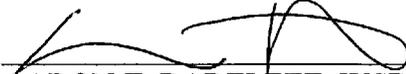
For the reasons argued above, the trial court's order dismissing Mr. Reesman's motion should be vacated and the matter remanded to the superior court for consideration consistent with CrR 7.8.

DATED this 5th day of March, 2015.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

CLARK COUNTY PROSECUTOR

March 05, 2015 - 11:42 AM

Transmittal Letter

Document Uploaded: 1-465141-Respondent's Brief.pdf

Case Name: State v. Joel Reesman

Court of Appeals Case Number: 46514-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Abby Rowland - Email: abby.rowland@clark.wa.gov

A copy of this document has been emailed to the following addresses:

ptiller@tillerlaw.com