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STATE OF WASHINGTON
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NO. 92094-0

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AMOS K. GYAU,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

MARK K. ROE
Prosecuting Attorney

SETH A. FINE
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The defendant, petitioner, Amos Gyau, was found guilty at a bench trial of second degree rape. The facts of the crime are set out in the Court of Appeals opinion in the companion case (71013-3-1).

The defendant was originally charged with this crime in juvenile court in September, 2011. Following a hearing, the juvenile court declined jurisdiction in February, 2012. 1 CP 25-26. Lengthy proceedings in adult court culminated in a bench trial in August, 2013. All of these proceedings were conducted in English. At trial, the defendant testified in English, with no apparent difficulties. 4 Trial RP 586-638; 5 Trial RP 646-764.

On August 21, the court orally announced its decision that the defendant was guilty. 1 CP 23. Sentencing was set for October 9. On that day, defense counsel told the court that "the defense has filed a motion for a new trial." 6 Trial RP 886-86. The record does not, however, include any motion filed at that time. The court

proceeded with sentencing. A motion for new trial was finally filed on April 18, 2014. 3 CP 64-83.

In this motion, the defendant claimed for the first time that he should have been provided with an interpreter. 3 CP 67-68. The sole factual support for this claim was the affidavit of the defendant's new attorney, who had been appointed after sentencing. She claimed that "there were some significant language and cultural barriers that effected [sic] communication between counsel and Mr. Gyau." She also recounted claims by the defendant's family members that "while Amos speaks English very well conversationally, he likely struggled to understand the legal proceedings." 3 CP 65-66.

At the hearing on the new trial motion, a probation counselor testified about the defendant's familiarity with English. 5/8 RP 8-12. The court held that the motion was untimely. Alternatively, the court denied the motion on its merits. 2 CP 62-63. The court found that the defendant had a "solid understanding of the English language" and "did not need an interpreter." 2 CP 59-60.

These proceedings resulted in two separate appeals. Under cause no. 71013-3-I, the Court of Appeals affirmed the judgment and sentence. A petition for review of that decision is pending in

this court under cause no. 92096-6. Under cause no. 72011-2-1, the Court affirmed the order denying a new trial. The current petition seeks review of that decision.

III. ARGUMENT

UNDER THE TRIAL COURT'S FACTUAL FINDINGS, THE DEFENDANT DID NOT REQUIRE AN INTERPRETER UNDER EITHER CONSTITUTIONAL OR STATUTORY STANDARDS.

The petitioner asks this court to review whether the absence of an interpreter denied him a fair trial. The legal standard does not appear to be in dispute. A defendant has a right to an interpreter if his language skills are inadequate to understand the trial proceedings and present his defense. State v. Woo Won Choi, 55 Wn. App. 895, 902, 781 P.2d 505 (1989), review denied, 114 Wn.2d 1002 (1990); see United State v. Carrion, 488 F.2d 12, 14-15 (1st Cir. 1973), cert. denied, 416 U.S. 907 (1973) (trial court should exercise discretion to appoint interpreter when defendant has "significant language difficulty"). This is similar to the legislative policy declared in RCW 2.43.010: interpreters should be appointed for persons who are "unable to readily understand or communicate in the English language." In accordance with that policy, RCW 2.43.020(4) defines a "non-English speaking person" as one who "cannot readily speak or understand the English language."

Here, the trial court entered the following findings of fact:

21. This court had an opportunity to listen to the defendant testify and notes that he has a solid understanding of the English language and appeared able to communicate clearly and to understand the questions asked of him. The defendant does have an accent but this does not appear to present any communication problems.

22. The defendant did not need an interpreter at trial or during any of the proceedings in this case, including when waiving his right to a jury trial.

2 CP 59-60.

The defendant did not assign error to finding no. 22. That finding is therefore treated as a verity on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). He did assign error to the portion of finding no. 21 that says he has a "solid understanding of the English language." Appellant's Opening Brief at 1. His brief, however, contained no argument relating to that finding. The assignment of error is therefore considered abandoned. State v. Motherwell, 114 Wn.2d 353, 358 n. 3, 788 P.2d 1066 (1990). In any event, the finding is supported by the court's observations of the defendant's testimony. Findings that are supported by substantial evidence are likewise treated as verities. Hill, 123 Wn.2d at 644.

These findings dispose of the defendant's claims. Because he had a solid understanding of English, he did not need an

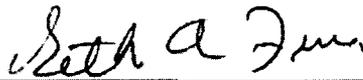
interpreter under the constitutional standard. For the same reason, he was not a "non-English speaking person" under the statutory definition. The lack of an interpreter neither denied the defendant a fair trial nor violated any statutory requirements. The facts of this case provide no reason for the court to review the application of those requirements.

IV. CONCLUSION

The petition for review should be denied.

Respectfully submitted on September 1, 2015.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

AMOS K. GYAU,

Petitioner.

No. 92094-0

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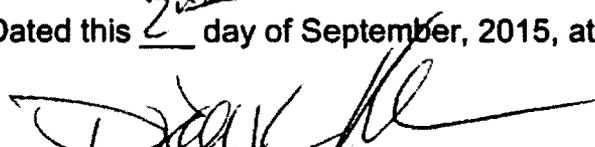
The undersigned certifies that on the 2nd day of September, 2015, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

ANSWER TO PETITION FOR REVIEW

I certify that I sent via e-mail a copy of the foregoing document to: The Supreme Court via Electronic Filing and Ms. Suzanne Lee Elliott, Attorney at Law, suzanne-elliott@msn.com

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

Dated this 2nd day of September, 2015, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

OFFICE RECEPTIONIST, CLERK

To: Kremenich, Diane; suzanne-elliott@msn.com
Subject: RE: State v. Amos K. Gyau

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; suzanne-elliott@msn.com
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Good Morning...

RE: State v. Amos K. Gyau
Supreme Court No. 92094-0

Please accept the attached for filing: State's Answer to Petition for Review

Thanks.

Diane.

Diane K. Kremenich
 Snohomish County Prosecuting Attorney - Criminal Division
Legal Assistant/Appellate Unit
Admin East, 7th Floor
(425) 388-3501
Diane.Kremenich@snoco.org

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