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Washington State  
Supreme Court

No. 94289-7

No. 49447-7-11

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

Norman-Calvin: Rouse, Jr., Petitioner,  
and

CALVIN NORMAN ROUSE, JR., Defendant.

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MOTION FOR DISCRETIONARY REVIEW

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Norman-Calvin: Rouse, Jr.,  
Petitioner, Private Attorney General  
Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue, 821206-WA131L  
Walla Walla, WA 99362

A. IDENTITY OF PETITIONER

Norman, Petitioner, by and through his sovereign capacity as 'private attorney general' is the real party of interest in the above-entitled action, acting as Representative for Defendant, Rouse, do ask this court to accept review of the decision designated in Part 'B' of the motion.

B. DECISION

Norman, want review of Section 'A' of the unpublished opinion of page Four (4) of the Washington Court of Appeals (WCCA) filed and or entered on March 14, 2017; affirming Pierce County Superior Court's, dismissing Norman's motion to dismiss for lack of subject matter jurisdiction. The decision has departed from the accepted and usual course of proceedings when this court based its decision on an assumption and speculation of a vague order entered on August 24, 2015; by WCCA, which would render further proceedings useless because the defendant would be deprived of a remedy. A copy of the decision and vague order is in the Appendix at pages A- 10 through 11 .

MOTION FOR  
DISCRETIONARY REVIEW - 1 -

Norman-Calvin: Rouse, Jr., Appellant,  
Private Attorney General, Sui Juris  
Washington State Penitentiary  
1313 N. 13 Avenue; 621206-4E125  
Walla Walla, WA 99362

C. ISSUES PRESENTED FOR REVIEW

No. 1. Did the Washington Court of Appeals (WCOA) committed 'obvious error' when it departed from the accepted and usual course of proceedings, when its decision is based upon speculation of interpreting a unframed order too vague to understand what the order intend to require, and whether a unframed order should be enforced?

No. 2. Did the Washington Court of Appeals (WCOA) committed 'obvious error' when it departed from the accepted and usual course of proceedings, when it decided that a motion which have a substantial showing be entitle to a 'fact finding hearing based upon the facts of the motion and does a court abuses its authority when the record does support the decision?

MOTION FOR  
DISCRETIONARY REVIEW - 2 -

Norman-Calvin: Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue; 821206-4E12SL  
Walla Walla, WA 99362

D.        STATEMENT OF THE CASE

On August 2nd, 2016, the justice's of a special department of department of Washington supreme court unanimously considered this matter and agreed to transfer the matter to Washington court of appeals division two without giving Appellant or that court any reason why the transfer is necessary or what the justice's considered as an result. (See W.S.Ct., **Order**). Prior to this transaction, The Washington court of appeals (WCOA) **Order** dated August 24 th, 2015; did not frame the **Order** with what it intend to require of the Washington superior court, these **Order's** are too vague to understand of what action should be taken. March 14th, 2017, unpublished opinion appear to be the same as August 24th, 2015, and August 24th, 2015, **Order's** mentioned above. The justice's of WCOA, by their own admission agree that the court did not frame its order and it speculated its interpretation, thus, this **Order** cannot be enforced., March 14, 2017.

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March 14, 2017, **Order** is too vague to understand what action should be taking under CrR 7.3(c)., this unpublished opinion cannot be enforced.

MOTION FOR  
DISCRETIONARY REVIEW - 3 -

Norman-Calvin: Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue; #821206-48125L  
Walla Walla, WA 99362

**D. STATEMENT OF THE CASE**

On August 2nd, 2015, the justice's of a special department of department of Washington superior court unanimously considered this matter and agreed to transfer the matter to Washington court of appeals division two without giving Appellant or that court any reason why the transfer is necessary or what the justice's considered as an result. (see W.S.Ct., Order). Prior to this transaction, the Washington court of appeals (WCA) Order dated August 24th, 2015; did not state the Order with what it intend to require of the Washington superior court, those Order's are too vague to understand of what action should be taken. March 14th, 2017, unpublished opinion refer to as the same as August 24th, 2015, and August 24th, 2015, Order's mentioned above. The justice's of WCA, by their own admission agree that the court did not frame its order and it speculated its interpretation, thus, this Order cannot be enforced., March 14, 2017.

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March 14, 2017, Order is too vague to understand what action should be taking under CrR 7.3(c)., this unpublished opinion cannot be enforced.

MOTION FOR  
DISCRETIONARY REVIEW - 3 -

Roman-Calvin Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue; #2120-2125L  
Walla Walla, WA 99159

under Rule 'CrR 7.8(c)', Appellant motion would have to have a hearing under 'Rule, CrR 7.8(c)(4), is the proper statute for all motion's to vacation of final judgment's. The trial court did not ask the state why final judgment should not be granted, or why the judgment is not void. The subject-matter of a criminal offense is the crime itself.<sup>2</sup>

Subject-matter in its broadest sense means the cause; the object; 'the thing in dispute.' Appellant pointed out those things in dispute in his Motion and Memorandum in support. Appellant did not receive a hearing on those merit's. The injury and confusion is that the 'Order' is unfraed. It could have possibly could have meant to have a fact finding hearing upon the merits of Appellant's motion, that Appellant's motion made a substantial showing that he is entitled to relief, and the motion could not be resolved without a factual hearing. This is the requirement under Rule 'CrR 7.8(c)', See, State v. Smith, 144 Wn. App. 860 (Div. II., 2008).

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<sup>2</sup> The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute. Stillwell v. Markham, 10 P.2d 15, 15 145 Kan. 206 (1932). An indictment, information, complaint in a criminal case is the main means by which a court obtains subject matter jurisdiction, and is "the jurisdictional instrument upon which the accused stand trial. State v. Chatron, 671 P.2d 538 (Kan. 1983). The complaint is the foundation of the jurisdiction of the magistrate or court. Thus if these charging instruments are invalid, there is a lack of subject matter jurisdiction.

MOTION FOR  
DISCRETIONARY REVIEW - 5 -

Norman-Calvin: Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N 13 Avenue; #821206-WA125L  
Walla Walla, WA 99362

This motion for discretionary review is sought on the error's whether the court finds, 'probable or obvious error's'. The facts of this case, do however, require a Vertex into the reasonableness of the WCOA's interpretation of the 'unframed Order' of August 24, 2015, of that court. Every order granting an injunction, restraining order and should in criminal cases shall set forth the reason for its issuance; shall be specific in terms; shall describe in reasonable detail. The WCOA's unpublished opinion is based upon its own interpretation of what it assume the 'Order' intends. It is a well-established rule that a "vague" order may not be enforced. Congress responded by requiring a federal court's to frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid. Because the decree of the District Court was not so framed, it cannot stand., quoting, 774 F. 3d 935 9th Cir. 2014:, Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y., A "vague order may not be enforced, citing, Int'l Longshoremen's Ass'n, Local 1291 v. Phila. Marine Trade Ass'n, 389 U.S. 64, 76, 88 S. Ct. 201, 19 L. Ed. 2d 236, judgment founded upon a decree too vague to be understood. This court should grant Appellant's relief sought in his motion to dismiss, appellant, complied with 'Rule, CrR 7.8(c)(1), Appellant is entitled to a hearing based upon the concise statement of the facts and grounds the motion was based on.

MOTION FOR  
DISCRETIONARY REVIEW - 6 -

Norman-Calvin: Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue; #821206-4E125L  
Walla Walla, WA 99362

In any event, the error would render further proceedings useless, because appellant will be deprived of a remedy upon the grounds set out in 'Rule, CrR 7.8(c)(1),' a finding based upon those grounds, and CrR 7.8(b)(4),' the trial court did not ask why the judgment void or did not explain why it not void, rather its authority under the constitution. March 14, 2017, decision is manifestly unreasonable because its factual findings are unsupported by the record as it states on page four (4) 2nd paragraph as well as it misstate the law by holding, the order contained the "show cause" language required in CrR 8.3(c)(3)., thus, it is clearly a abuse of discretion. See State v. Rohrich, 149 Wn. 2d 647, 654, 71 P. 2d 638 (2003).

**F. CONCLUSION**

This court should accept review for the reasons indicated in Part E and not enforce the WCOA's unpublished opinion as it is based upon assumption and speculation on an interpretation of unintelligent, vague order. This court should also grant Appellant His relief set out in His Motion and Memorandum in Support of His Motion to Dismiss.

Executed this 11th, day of April, 2017, in the County of Walla Walla, Washington.

Respectfully, submitted,

MOTION FOR  
DISCRETIONARY REVIEW - 7 -

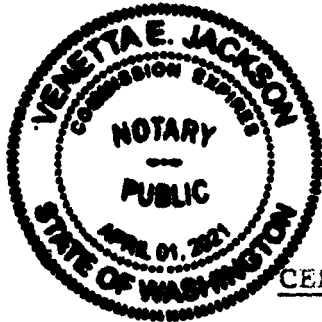
Norman-Calvin Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue; #821206-WE125L  
Walla Walla, WA 99362



*Norman Calvin Rouse, Jr.*  
Norman Calvin Rouse, Jr., Appellant,  
Private Attorney General, Sui juris  
Washington State Penitentiary  
1313 N. 13 Avenue; #821206-48125L  
Walla Walla, WA 99362

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SUBSCRIBED AND SWORN to before me this 11 day of April, 2017;  
in the County of Walla Walla, WA 99362



*Venetta E. Jackson*  
Notary Public in and for the State of  
WASHINGTON. Residing in Walla Walla  
WASHINGTON.  
My Commission Expires: April 1, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that on this date Appellant delivered by mail and through Washington State Penitentiary mailing system to have placed in the U.S. Mail to deliver herewith, Appellant's Motion for Discretionary Review w/ Appendix of a Copy of the WCOA's unpublished opinion, and Order at 8-10 and 11, upon Derek H. Byrne, Clerk for the Washington Court of Appeals Division II, 950 Broadway, Suite 300 Tacoma, WA 98402-3656 and James S. Schacht, Deputy Prosecuting Attorney, 930 Tacoma Avenue S. Room 946, Tacoma, WA 98402-2102. This statement is certified to be true and correct under penalty of Perjury of the Laws of the State of Washington, on the date below.

4/11/17 *Norman Calvin Rouse, Jr.*  
Date Signature

A P P E N D I X ' A '

No. 49447-7-II

and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.” CrR 7.8(c)(3).

Here, the superior court initially transferred Rouse’s motion to this court, but the court rejected the transfer and sent the motion back to the superior court. At that point, the superior court apparently ordered a hearing on the motion. The superior court’s order is not in the record, so we cannot determine whether the order contained the show cause language required in CrR 8.3(c)(3). But a hearing did take place and that hearing addressed Rouse’s motion.

At the hearing on Rouse’s CrR 7.8(b)(4) motion, the superior court asked the State “do we have subject matter jurisdiction?” in order to determine whether Rouse’s requested dismissal for lack of subject matter jurisdiction should be granted. Report of Proceedings at 9. Although the court did not frame its question using “show cause” language, we hold that the superior court sufficiently required the State to show cause why Rouse’s motion should not be granted. And the State responded that there was subject matter jurisdiction under article IV, section 6 of the Washington Constitution and RCW 2.08.010, which both give the superior court jurisdiction over any criminal proceeding that amounts to a felony.

Accordingly, we hold that the superior court complied with the requirements of CrR 7.8(c) by holding a hearing and asking the State why granting Rouse’s motion for dismissal was not warranted.

B. RIGHT TO ATTEND THE HEARING

Rouse argues that the superior court denied his right to be present at the hearing, which prejudiced him by limiting his ability to present documents and evidence. He also argues that the superior court acted arbitrarily and capriciously and in bad faith because Rouse had

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY DEPUTY

In re the  
Personal Restraint Petition of  
  
CALVIN NORMAN ROUSE.  
Petitioner

No. 48007-7-II

ORDER REJECTING TRANSFER

On August 18, 2015, this court received an August 17, 2015 Pierce County Superior Court order purporting to transfer Calvin Norman Rouse's August 17, 2015 CrR 7.8 motion under cause no. 02-1-02929-1 to this court for consideration as a personal restraint petition under CrR 7.8(c)(2). The filing dated August 17, 2015, however, is a letter concerning previous motions Rouse filed with copies of other documents Rouse purports to have filed, not a CrR 7.8 motion. Because the August 17, 2015 filing is not a CrR 7.8 motion and the superior court did not transfer the earlier motion or the subsequent motion to dismiss the earlier motion that Rouse mentions in his letter, this transfer is not proper.

Accordingly, it is hereby

ORDERED that the order transferring is rejected and the matter is returned to the superior court for further action. CrR 7.8(e).

DATED this 24<sup>th</sup> day of August, 2015.

Johanson, C.J.  
Chief Judge

cc: Calvin Norman Rouse  
Pierce County Clerk  
County Cause No(s). 02-1-02929-1  
Kathleen Proctor

A-11

March 14, 2017

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

CALVIN NORMAN ROUSE, JR.,

Appellant.

No. 49447-7-II

UNPUBLISHED OPINION

MAXA, A.C.J. – Calvin Rouse pleaded guilty to second degree murder in 2003 and is serving a 340 month sentence. In 2015, he filed in superior court a motion to dismiss his conviction for lack of subject matter jurisdiction under CrR 7.8(b). Rouse appeals the superior court’s denial of his motion.

We hold that (1) the superior court properly followed the procedures outlined in CrR 7.8(c) at the motion hearing because it required the State to show cause why Rouse’s requested relief should not have been granted, (2) the superior court did not deny Rouse’s right to be present at the motion hearing because Rouse was present by telephone, and (3) the law under which Rouse was charged (RCW 9A.32.050) was not void for failure to comply with article II, section 18 of the Washington Constitution because the law as passed by the legislature contained the necessary enacting clause. Accordingly, we affirm the superior court’s denial of Rouse’s motion to dismiss for lack of subject matter jurisdiction.

## FACTS

On August 25, 2003, the State charged Rouse by amended information with second degree murder. The information cited RCW 9A.32.050, the statute on second degree murder. Rouse pleaded guilty and was sentenced to 340 months in prison. Rouse filed a direct appeal. This court affirmed his conviction in an unpublished opinion filed in November 2004. *State v. Rouse*, noted at 124 Wn. App. 1015, 2004 WL 2650995, at \*1.

On June 11, 2015, Rouse filed a postconviction motion to dismiss in superior court for lack of subject matter jurisdiction. He argued that the superior court did not have jurisdiction because the laws under which he was charged did not include the necessary enacting clause. The superior court ultimately ordered the transfer of Rouse's motion to this court as a personal restraint petition (PRP). However, this court rejected the transfer and ordered the matter back to the superior court for further action under CrR 7.8(c).

On October 16, 2015, the superior court heard argument on the motion to dismiss for lack of subject matter jurisdiction as well as two other motions not at issue in this appeal. Rouse appeared by telephone. He initially objected to not being at the hearing in person. But after some discussion the hearing continued. The superior court asked the State whether the court had subject matter jurisdiction. The State responded that there was jurisdiction under article IV, section 6 of the Washington Constitution and RCW 2.08.010. The superior court then denied Rouse's motion to dismiss for lack of subject matter jurisdiction.

Rouse appeals.

ANALYSIS

A. PROCEDURE ON CrR 7.8 MOTION

Rouse argues that the superior court violated the procedure set out in CrR 7.8(c)(3) by failing to order the State to show cause why Rouse’s requested relief should not be granted.<sup>1</sup> We disagree.

CrR 7.8 allows for relief from a judgment or order for certain reasons, which are listed in CrR 7.8(b).<sup>2</sup> Under CrR 7.8(b)(4), one of the grounds for relief is that the judgment is void. A judgment is void if it is entered by a court which lacks subject matter jurisdiction. *State v. Reanier*, 157 Wn. App. 194, 200, 237 P.3d 299 (2010). We review a superior court’s ruling on a CrR 7.8 motion for abuse of discretion. *State v. Robinson*, 193 Wn. App. 215, 217, 374 P.3d 175 (2016). The superior court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds or reasons. *Id.* at 217-18.

CrR 7.8(c) outlines the procedure for handling a motion for relief from judgment. The superior court shall transfer the motion to this court unless the superior court determines that the motion is not barred by RCW 10.73.090 and either the defendant has made a substantial showing that he is entitled to relief or resolution of the motion will require a factual hearing. CrR 7.8(c)(2). If the superior court does not transfer the motion, “it shall enter an order fixing a time

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<sup>1</sup> Rouse also argues that the superior court erred in transferring his motion to this court. But this court already corrected any error by rejecting the transfer. Therefore, we do not address this argument.

<sup>2</sup> Rouse also references CR 60(b) in his opening brief. But he does not explain how a civil rule could apply to his criminal conviction.

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and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.” CrR 7.8(c)(3).

Here, the superior court initially transferred Rouse’s motion to this court, but the court rejected the transfer and sent the motion back to the superior court. At that point, the superior court apparently ordered a hearing on the motion. The superior court’s order is not in the record, so we cannot determine whether the order contained the show cause language required in CrR 8.3(c)(3). But a hearing did take place and that hearing addressed Rouse’s motion.

At the hearing on Rouse’s CrR 7.8(b)(4) motion, the superior court asked the State “do we have subject matter jurisdiction?” in order to determine whether Rouse’s requested dismissal for lack of subject matter jurisdiction should be granted. Report of Proceedings at 9. Although the court did not frame its question using “show cause” language, we hold that the superior court sufficiently required the State to show cause why Rouse’s motion should not be granted. And the State responded that there was subject matter jurisdiction under article IV, section 6 of the Washington Constitution and RCW 2.08.010, which both give the superior court jurisdiction over any criminal proceeding that amounts to a felony.

Accordingly, we hold that the superior court complied with the requirements of CrR 7.8(c) by holding a hearing and asking the State why granting Rouse’s motion for dismissal was not warranted.

**B. RIGHT TO ATTEND THE HEARING**

Rouse argues that the superior court denied his right to be present at the hearing, which prejudiced him by limiting his ability to present documents and evidence. He also argues that the superior court acted arbitrarily and capriciously and in bad faith because Rouse had



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previously arranged with the State and the superior court to be present at the hearing. We disagree.

The due process clause of the Fourteenth Amendment to the United States Constitution grants a criminal defendant “a fundamental right to be present at all critical stages of a trial.” *State v. Irby*, 170 Wn.2d 874, 880, 246 P.3d 796 (2011). The right to be present is rooted in the defendant’s right to be allowed to present a full defense. *Id.* at 881. The right to be present is not absolute, but exists to the extent that the defendant’s absence would prevent a fair and just hearing. *Id.*

Here, Rouse *was* present at the hearing by telephone. And the hearing involved postconviction motions. Rouse provides no authority for the proposition that appearance by telephone at a hearing involving a defendant’s postconviction motions violates his right to be present at trial. Further, Rouse does not explain why his telephone appearance rather than an in person appearance prevented a fair and just hearing. Therefore, we hold that the superior court did not deny Rouse the opportunity to attend the hearing.

C. VALIDITY OF RCW 9A.32.050

Rouse argues that the superior court did not have jurisdiction because former RCW 9A.32.050 (1975) – the law under which he was charged – as published in the Revised Code of Washington failed to comply with article II, section 18 of the Washington Constitution by omitting the phrase “Be it enacted by the Legislature of the State of Washington.” We disagree.

We review *de novo* the interpretation of a constitutional provision. *State v. Patterson*, 196 Wn. App. 451, 456, \_\_\_ P.3d \_\_\_ (2016). Generally, we presume that legislative enactments

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are constitutional. *Id.* The party challenging the statute bears the burden of proving its unconstitutionality beyond a reasonable doubt. *Id.*

Article II, section 18 states:

The style of the laws of the state shall be: “Be it enacted by the Legislature of the State of Washington.” And no laws shall be enacted except by bill.

The legislature authorizes a code reviser to compile the laws as enacted by the legislature into an organized “Revised Code of Washington.” RCW 1.08.013, .015(1). When compiling the codes, the reviser may not make any substantive change or alter the legislature’s purpose or intent. RCW 1.08.013. However, RCW 1.08.017(1) expressly provides that the reviser may omit enacting clauses.

Here, Rouse was convicted of second degree murder under former RCW 9A.32.050. As the statute appears in the Revised Code of Washington, there is no enacting language. But the bill as written and passed includes the phrase “Be it enacted by the Legislature of the State of Washington.” LAWS OF 1975, 2d Ex. Sess., ch. 38. Therefore, the law *as passed by the legislature* complies with article II, section 18 because it contains the necessary language. And the fact that those words do not appear in the version published in the Revised Code of Washington does not void the law because the code reviser is authorized by the legislature to omit those words. RCW 1.08.017(1).

Rouse notes that the State cited to the RCW section and not the session law in the information and argues that the RCW is not authoritative because it was not written by the legislature. Although the legislature does not directly compile and write the Revised Code of Washington, the legislature authorized the code reviser to do so and mandated that the revised

No. 49447-7-II

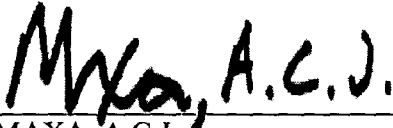
code contain the laws as enacted by the legislature without any substantive changes. Therefore, the Revised Code of Washington is authoritative as a statement of the legislature.

We hold that former RCW 9A.32.050 complied with article II, section 18 and therefore that Rouse's conviction was not void for lack of jurisdiction. Accordingly, we hold that the superior court did not err in denying Rouse's motion.

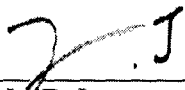
CONCLUSION


We affirm the superior court's denial of Rouse's motion to dismiss for lack of subject matter jurisdiction.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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MAXA, A.C.J.

We concur:

  
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LEE, J.

  
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MELNICK, J.