

WASHINGTON STATE SUPREME COURT

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Washington State
Supreme Court

State of Washington ,
Respondent ,
V.
BOBBY D. COLBERT ,
Appellant .

No. 96221-9

Memorandum In Support
Of Petition For Review

COMES NOW Colbert and submits this memorandum to support his Petition for Review and requests this Court issue an order directing the Respondent to address what authority did the Skagit County Superior Court rely on to impose an exceptional sentence outside the standard conditions in its August 4, 2017, Order Correcting Judgment and Sentence.

In addition, Colbert requests this Court also directs the Respondent to provide a copy of the notice of their intent to seek "special conditions" prior to the entry of the order.

Issue

Did The Skagit County Superior Court's Order Correcting Judgment And Sentence Reimpose An Unconstitutional Appendix That Contains Conditions Of Supervision Beyond The Standard Conditions ?

Relevant Facts

1) On August 1, 2017, this Supreme Court issued a ruling stating: " The motion for discretionary review is denied on the condition that the State take steps necessary to strike the victim cost reimbursement community custody condition. "

2) On August 4, 2017, the State presented an order stating: " The judgment and sentence filed herein on March 31, 2005, is corrected at Appendix F to strike Condition of Supervision number 3. "

3) Appendix F states: " In addition to the standard conditions, I recommend the following special conditions. "

Memorandum

Both the United States Constitution and Washington Constitution guarantee Colbert the right to notification of "special conditions" of confinement. See U.S. Const. amend. 6 ; Wash. Const. art. 1, sec. 22.

Long before Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (2004) and the Washington State Legislature's amendment to the Sentencing Reform Act of 1981 (SRA), chapter 9A RCW (Laws of 2005, ch. 68, sec. 1 brought into immediate effect by Laws of 2005, ch. 68, sec. 7), this Court has recognized that Colbert has a right to have a jury determine beyond a reasonable doubt any aggravating fact that is used to impose greater punishment other than "standard range" or "standard conditions." State v. Frazier, 81 Wn.2d 628 (1972).

Similarly, the Washington State criminal rules apply and authorize Colbert's jury to make special findings such as the "special conditions," CrR 6.16(b)

Conclusion

The key inquiry regarding justification to issue an order directing a response can be simply determined by noting that Colbert's judgment and sentence remains invalid on its face based on the mere existence of the impermissible Appendix F.

A reasonable jurist could assume that the trial court's order striking 1 of 9 exceptional components within the appendix is the functional equivalent of reimposing the 8 remaining conditions. This assumption is not without foundation.

Indeed, this Court's August 1, 2017, ruling determined that there was no time limitation precluding Colbert's collateral attack against the now stricken condition. A subsequent attack against 8 individual conditions is legally permissible. However, judicial economy requires the entire Appendix F be stricken in this forum based on the State's concession. A response is necessary.

Bobby D. Colbert

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August 30, 2018