97318-1

No. 76042-4-I

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

STATE OF WASHINGTON, Respondent

v.

Gardner, Kier KEANDRE, Appellant-Petitioner.

PETITION FOR REVIEW

Authored by: Keandre, Petitioner
on behalf of Gardner, Kier Keandre

Gardner, Kier Keandre (875822)
Washington State Penitentiary
West Complex-Fox Unit- E721-L
1313 N 13th Ave
Walla Walla, WA 99362

No. 76042-4-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

Gardner, Kier KEAND'E, Appellant(s).

PETITION FOR REVIEW (OF COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I, UNPUBLISHED OPINION)

Gardner, Kier KEAND'E,
Appellant(s), Pro se

Kier Keand'e Gardner (875822)
Washington State Penitentiary
West Complex - Fox Unit - E121-T
1313 N 13th Ave
Walla Walla, WA 99362

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Washington Constitution

United States Constitution

Washington Supreme Court

Washington Court of Appeals

Statutes

Court Rules

A. Identity of Petitioner

The person filing this petition is Keand'e whose full name is Kier Keand'e Gardner. Keand'e is a descendant of Gardner. Keand'e is the mind residing in Kier. Keand'e is the middle name / second Christian name of Petitioner.

B. Citation to Court of Appeals Decision

Petitioner wishes to have reviewed the Court of Appeals Unpublished Opinion filed 4/15/2019 in the Court of Appeals for the State of Washington, Division 1, under Case No. 76042-4-1.

An order denying a motion for reconsideration of the Unpublished Opinion above-mentioned was filed 5/21/2019 in the Court of Appeals of the State of Washington, Division 1.

C. Issues Presented for Review

(1) Is the decision of the Court of Appeals, in the present case, in conflict with a decision of the Supreme Court?

(2) Is the decision of the Court of Appeals, in the present case, in conflict with a published opinion of the Court of Appeals?

(3) Under Article 1, section 1 of the Constitution of the State of Washington, it has been declared that "all political power is

inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights." Therefore:

(a) Does a person convicted of crime lose such political power?

(b) Prior to conviction, does a person charged with crime lose such political power?

(c) Does the petitioner have or did the Petitioner ever have such political power?

(d) Are the rights which were given to the Petitioner on 10-6-2014, included in those individual rights which governments are established to protect and maintain?

(e) Are the rights of the accused guaranteed by Article 1, section 22 of the Const. of Wash. or the Sixth Am. of the U.S. Const. included in those individual rights which governments are established to protect and maintain.

(f) Were the appellant's individual rights protected and maintained in the present case?

(4) Under Article 1, section 5 of the Const. of Wash., every person is guaranteed the right to freely speak, write and publish on all subjects. Therefore:

(a) In a criminal setting, does a defendant give up such right if he has appointed counsel?

(b) If an appellant, prior to trial, wishes to waive

counsel, and the Court refuses to permit him to waive counsel, how does that not impede upon such right?

(c) Can assigned counsel impede upon such right?

(d) Does assigned counsel give up his right to freely speak or write on all subjects, particularly on assigned counsel's client's life, case, etc., when representing that client in a criminal setting.

(e) In a criminal setting, who has such right the defendant/appellant or assigned counsel?[1]

D. Statement of the Case

1. On or around 10-6-2014, the undersigned, appellant, received several ~~rights~~ substantial rights, including but not limited to: (a) the right to representation by a lawyer; (b) the right to plead guilty. See Attachment A.

2. On or around 10-6-2014, the undersigned appellant, exercised his substantial right to representation by a lawyer, and Whatcom County Public Defender's Office was appointed to represent him. See RP (Vol. I) 1-12. Alan Chalfie was ultimately the attorney from said office assigned. See RP (THE HONORABLE IRA J. UHRIG, JUDGE) 4, ln 19-20.

3. Due to conflicts of interest between Alan Chalfie and the

1- Issues 3 and 4 are presented under RAP 13.4(b)(3)

undersigned appellant, amongst other things, the appellant moved to have counsel substituted, see RP(Vol II) 29, Ln. 7-20, which motion was ultimately denied, see Id, so the appellant then moved to proceed pro se, see RP(Vol II) 29, Ln 21-22, which motion was ultimately granted, see RP(Vol II) 51, Ln 11-12.

4. On or around June 19, 2015, the court attempted to arraign the appellant-defendant on a First Amended Information, see RP(Vol. III) 60-68. The arraignment was ultimately continued until June 24, 2015, because the court said that the appellant-defendant was "going to have to see the Judge," see RP(Vol III) 65, Ln 4, because the appellant-defendant was attempting to "accept for value all charges and all bonds," see RP(Vol III) 64, Ln 23-RP 65, Ln 1.

5. On or around June 24, 2015, a motion hearing was had in the trial court, see RP(Vol IV) 69, wherein the Judge went over the "order allowing Defendant to represent himself and order relieving the public defender as the attorney of record," see RP (Vol IV) 74, Ln 5- RP 75, Ln 20. The defendant-appellant informed the Court that his name is not Mr. Gardner and that no one could force him to be somebody who he is not, and doing so constitutes slavery, see RP(Vol IV) 80, Ln 18-21. The Court then proceeded to arraign the defendant-appellant on the First Amended Information, see RP(Vol IV) 88, Ln 25-RP 89, Ln 2. The defendant-appellant objected to the name in which he was

being arraigned under, see RP(Vol IV)90, Ln 15-20, and asked to be arraigned in his true and proper name, see RP(Vol IV) 91, Ln 21-23. The Court never asked the defendant for his true and proper name, see RP(Vol IV) 69-102, but did ask the defendant-appellant if he wanted standby counsel or not, see RP(Vol IV)97, Ln 10-11, to which the defendant-appellant respectfully responded, "no, I do not need standby counsel," see Id, Ln 12-13.

6. On or around July 1, 2015, another motion hearing was had in the trial court, see RP(Vol V)103. The defendant-appellant did not attend, and the Court on its own motion ordered a competency evaluation. See RP(Vol V) 109, Ln 15-17. The Court also reversed its decision to allow the defendant-appellant to represent himself and reappointed counsel. See RP(Vol V)108, Ln 9-17. The defendant-appellant was never notified that the purpose of said motion hearing was to go over his "competency" to represent himself. See RP(Vol V) 103-113.

7. After the defendant-appellant was found competent to stand trial, assigned counsel, Alan Chalfie, on or around September 10, 2015, challenged the report of competency made by Western State, see RP(Vol VIII) 141, Ln 10-22. The appellant-defendant made an objection to counsel's decision, see RP(Vol VIII) 145, Ln 1-20; RP146, Ln 6-12.

8. On or around September 17, 2015, in a competency review hearing, the Court stated that it understood that the defendant-appellant is not Mr. Gardner. See RP(Vol IX) 152, Ln 15-19. The defendant-appellant also objected to the suggested continuance proposed by counsel, see RP(Vol IX) 151-152, Ln 14. The defendant-appellant also informed the Court that by Washington Court Rules RPC 1.2 "Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation," see RP(Vol IX) 152, Ln, 23 - RP 153, Ln 3. The Court said it would address that in the defendant-appellant's special set, set for November 3, 2015. See RP(Vol IX) 153, Ln 4-5.

9. On or around November 10, 2015,[2] in a Competency Hearing, the reviewing doctor, Henclrickson, testified that the defendant-appellant "exhibited no symptoms of mental disorder that might impair his level of functioning," see RP(Vol X) 186, Ln 14-25, his thinking is very organized, see RP(Vol X) 191, Ln 5, and therefore concluded that he possessed the capacity to have a rational and a factual understanding of the court proceedings, see RP(Vol X) 187, Ln 1-6.

10. On or around February 16, 2016, for a second time, the defendant-appellant was found competent. See RP(Vol XIII) 282, Ln 8-14.

11. On or around March 14, 2016, at an arraignment

2 - Notice that no hearing was ever held on November 3, 2015 as stated ~~one~~ would be held in the previous hearing, so the Court never addressed the issue regarding legal representation.

hearing on charges under a separate case (No. 16-1-00259-8) than the one currently on appeal, the defendant-appellant attempted to enter a plea of guilty, see RP (Vol XIV) 301, Ln 6 - RP 302, Ln 15, which the Court ultimately denied because it felt that the defendant did not have a full appreciation of the charges in front of him, see RP (Vol XIV) 302, Ln 13-15. The defendant-appellant than requested an Omnibus Hearing pursuant to CrR 4.5, so that he could change his original plea of not guilty to a plea of guilty, see RP (Vol XIV) 309, Ln 12-13. The Court responded that "any change of plea [...] would require the defendant to be remanded to the custody of DOC for a prison term[;][and] it could also include a fine;[...] not one or the other as [the defendant was] describing." See RP (Vol XIV) 309, Ln 20 - RP 310, Ln 1. As the colloquy between the Court and the defendant on this issue proceeded, the Court admitted that the sentence could be, for example, "60 months to 90 months (...) and/or a fine." See RP (Vol XIV) 313, Ln 18 - RP 314, Ln 4 (emphasis added).

12. On or around March 17, 2016, in a hearing wherein counsel put forth another motion to continue, see RP (Vol XV) 329, counsel, Alan Chalfie, for a second time, challenged appellant-defendant's competency, see RP (Vol XV) 331-345.

13. On or around June 9, 2016, assigned counsel stated that "Keandre is present." See RP (Vol XVII) 356, Ln 5-9.

14. On or around August 24, 2016, after the appellant-

defendant was found competent, for a third time, counsel stated that he did not "have any basis at [that] point for a mental health defense." See RP (THE HONORABLE IRA J. UHRIG, JUDGE) 16, Ln 15-16.

15. On or around September 6, 2016, a CrR 3.5 Hearing was had, which hearing the defendant-appellant was not fully apprised of, having been told that his trial was being had on that day, see RP (Vol XVIII) 372, Ln 5-7; RP Vol (XVIII) 380, Ln 19; RP (Vol XVIII) 381, Ln 24, nor did the Court inform him that he may but need not testify at the CrR 3.5 Hearing on the circumstances surrounding any statements he made, see RP (Vol (XVIII) 365-423. The defendant-appellant also attempted to waive Counsel, see RP (Vol XVIII) 383, Ln 2-10, and informed the Court that the Court cannot force counsel upon him, see RP Vol (XVIII) 382, Ln 18-25. The Court ultimately rejected his waiver because it said it found he could not proceed without counsel, see RP Vol (XVIII) 381, Ln 1-3, even though no such finding is in the record, and the defendant was found competent on three separate occasions. After the CrR 3.5 Hearing, which commenced after the defendant-appellant left the courtroom, see RP (Vol XVIII) 433, Ln 21, 23; RP 423, Ln 12, the Court did not set forth in writing the undisputed facts, the disputed facts, conclusions as to the disputed facts and conclusions as to whether the statement or statements was/were admissible and the reasons therefor. See RP (Vol XVIII).

16. On or around September 7, 2016, bench trial commenced. See RP(Vol XIX) 523.[3] The defendant-appellant alerted the Court that his true name is Kier Keanel'e, and that Kier Keanel'e is not his alias, and that pursuant to RCW 10.40.050 and CrR 4.1(e) such name must be entered in the minutes of the court. See RP Vol(XIX) 575, Ln 4-13. The defendant also let the Court and state know that he is Kier Keanel'e, as opposed to known as Kier Keanel'e. See RP (Vol XIX) 577, Ln 25 - RP 578, Ln 1; RP(Vol XIX) 579, Ln 22-23. The defendant let the Court and state know such while he was being arraigned on a third amended information. See RP(Vol XIX) 575, Ln 24-RP 583, Ln 21. The Court entered a not guilty plea on behalf of the defendant, before the defendant was ever given a chance to plea, as the Court entered such right after counsel read the third amended information into the record, see RP(Vol XIX) 583, Ln 22-25, with RP Vol(XIX) 575, Ln 24 - RP 583, Ln 25. The defendant objected to the Court's plea, see RP (Vol XIX) 584, Ln 1-3, and again attempted to waive counsel, see Id, Ln 3-5. The defendant then tried to demur, pursuant to RCW 10.40.110, see RP (Vol XIX) 584, Ln 21-RP 585, Ln 3. The defendant then plead guilty, see RP(Vol XIX) 586, Ln 19-20. Trial concluded on or around September 14, 2016, see RP(Vol XIX) 1057, Ln 25. Findings of Fact and Conclusions of

3- At times, like in Point 16 herein, I simply cite to the Title page of the Volume, since the Title page shows when such event happened, and is titled after the event.

law were never entered by the Court at the close of trial. See RP 1057-1072. The Court just gave an oral opinion, See Id.

17. On or around October 31, 2018, the appellant-defendant appealed to the Court of Appeals, Division One, of the conviction and sentencing, and the Judgment and Sentence dated October 18, 2016. See Notice of Appeal (Attachment B).[4] The Court of Appeals entered an Unpublished Opinion April 15, 2019, affirming ~~[illegible]~~ in part and reversing in part the trial court's decision. The appellant-defendant, pro se, moved to have such opinion reconsidered, which motion was denied May 21, 2019.

E. Argument

RAP 13.4(b) sets forth the reasons when the Supreme Court will accept review, some of which reasons are: "(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published ~~opinion~~ decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved." See RAP 13.4(b)(1),(2),(3). To the Petitioner's belief and understanding, all ~~of the~~ three ~~reasons~~ reasons just mentioned are present in the present case, thereby warranting review.

4- There ~~are~~ are several other facts relevant to sentence and this petition, but the Petitioner has not presented such herein due to the 20 page limit, and in hopes that his motion for Accelerated Sentence Review will be granted he has left those issues to be decided thereon said motion. I also tried to waive counsel on appeal three times, and appellate counsel argued that I suffer mental -10- health issues contrary to my directives.

(a) Court of Appeals Opinion

IN THE UNPUBLISHED OPINION of the Court of Appeals, the Court of Appeals alleges that the Petitioner "argues the trial court erred by refusing to allow him to plead guilty," see p. 7 of the Unpublished Opinion, and that the Petitioner contends the trial court erred by denying his request to represent himself," see Id., p. 8, and that the Petitioner "maintains insufficient evidence supports his conviction for burglary," see Id., p. 12. The Court concluded and found against everything it alleged that the Petitioner presented in his SAG, see Id., and concluded that all other issues that the Petitioner raised in his SAG lack merit, see Id., footnote 3 at p. 7. The Court also denied all other motions made in relation to Petitioner's SAG, including but not limited to petitioner's Motion to Accept Reply as Filed, see Id., footnote 4, at p. 7.

(b) Petitioner's Answer to Opinion

FIRST, as will be seen, the Court of Appeals' Unpublished Opinion did not address petitioner's SAG according to the Errors or Issues presented in petitioner's SAG.[5]

(i) First Allegation

To the Court of Appeals' first allegation that the Petitioner "argues the trial court erred by refusing to allow him to

5- Such act by the Court of Appeals could give off an appearance of unfairness on appeal, to the Petitioner's knowledge, belief, and understanding.

plead guilty," see p. 7 of the Unpublished Opinion (the Opinion), that was not what I, the Petitioner, argued in my SAG. I argued that the judge misrepresented the law.

(I) SAG

In my SAG, on p. 30 thereof, I stated that, "[O]n or around March 14, 2016, [...], I, the undersigned, tried to plead guilty to all charges, but the Court refused to accept my plea of guilty, and, asserted that if it were to accept my plea of guilty it must sentence I to a term of prison [ ]. The Court further stated that it had no authority to sentence I to a fine at all [ ] but stated that it could sentence I to both a fine and imprisonment. Said assertions made by the Court judge MONTOYA-LEWIS are clearly a **misrepresentation of law** [ ]," (emphasis added). I then began to expand upon how such was a misrepresentation of law by providing the definition of misrepresentation of law, see f. 30 of SAG, and I cited Brown v. Hereford, as authority supporting my assertion that such act of misrepresentation of law is presumed to be prejudicial. See Id. The rest of that argument, see p. 31-32, even further expanded upon my misrepresentation of law claim. That all clearly shows that I did not argue that the trial court erred by refusing to allow I to plead guilty, as the Court of Appeals alleged in the Opinion, see p. 7 of the

Opinion, but that I argued that the trial court gave off an appearance of unfairness, and showed prejudice by her misrepresentation(s) of law made in the present case.

(2) Why That Matters

That all matters because, "in this state, a defendant in a criminal case has a constitutional right to appeal, which guarantees a full, fair and meaningful appeal," see Art I, § 22; See also State v. Larson, 62 Wn. 2d 64, 67, 381 P.2d 120 (1963), and the petitioner is a defendant in a criminal case on appeal; so the Court of Appeals' act of misreading my SAG, and not addressing my SAG according to the Errors or Issues presented therein makes the present appeal look as if the appellant is not being afforded a full, fair and meaningful appeal, as guaranteed by Art I, § 22 of the Const. of the state of Wash.

(3) What It looks Like

It looks as if, going by the Opinion, the Court of Appeals read my argument only up to the point where I stated "on or around March 14, 2016, I tried to plead guilty and the Court refused to accept my plea," and then stopped reading right at that point. How else could it had've missed the fact that I was arguing/claiming misrepresentation of Law (since I repeatedly said such all throughout that argument), and appearance of unfairness, and prejudice.

(4) Opinion is wrong as is

But even going by the Opinion, and taking it as is, the authorities cited by the Court of Appeals do not show that the SRA mandated that I had to serve time in confinement.

(5) Authorities cited

The Court of Appeals cites RCW 9.94A.505(1)-(2)(a)(i); RCW 9.94A.510; and RCW 9.94A.530, in support of its statement that "the SRA mandates [the petitioner] serve time in confinement." See p. 8 of the Opinion.

RCW 9.94A.505(1) says, "When a person is convicted of a felony, the court shall impose punishment as provided **in this chapter**," (emphasis added). And in 9.94A RCW, in section 9.94A.550 RCW, a person can be sentenced to a fine, which, when read with RCW 9.94A.20.021, clearly shows that a person can be solely punished by a fine. So that does not support the Court of Appeals' statement above-mentioned.

RCW 9.94A.505(2)(a)(i) is not to be read apart from the above subsection [RCW 9.94A.505(1)], otherwise, the words "in this chapter" would have no meaning. We have to remember that the provisions of the SRA are sentencing guidelines, which is why 9.94A.010 RCW even says that, "The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, **but does not eliminate**, discretionary decisions affecting sentences."

So that does not support the Court of Appeals' statement either.

RCW 9.94A.510 is just a sentencing grid. Nowhere in that section does it say that a certain person has to serve time in confinement.

And RCW 9.94A.530, simply explains how to read 9.94A.510. RCW 9.94A.530 even says that "[a]ll standard ranges are expressed in terms of total confinement." See RCW 9.94A.530(1). And an expression is just an articulation, or depiction of what can happen. Plus, we know that going by the SRA, one can be sentenced to partial confinement, see RCW 9.94A.731; 9.94A.030(36), so the words "in terms of total confinement," as used in RCW 9.94A.530, cannot be taken to mean that one has to be sentenced solely to total confinement.

That all shows that taking the Opinion as is, the Opinion is still wrong.

That brings us to my first issue presented for review:

Are the rights of the accused guaranteed by Art. I, §22 of the Const. of the State of Wash. included in those individual rights which governments are established to protect and maintain, as declared under Art I, § 1 of the Const. of the State of Wash.?

6- A plain reading of a statute must consider the sequence of all statutes relating to the same subject matter. State v. Hirschfelder, 170 Wn. 2d 536 (2010).

(6) Significance of Question/Issue

The significance of the above-presented issue is, if they are included in those individual rights which governments are established to protect and maintain, then they were to be protected and maintained in the present case. And one of the rights included in the Rights of the Accused guaranteed by Art. I, §22 is the right to appeal, which, we just learned above, "guarantees a full, fair and meaningful appeal."

And as ~~shown~~ shown above, the argument in my SAG was regarding appearance of unfairness, prejudice, and misrepresentation of law, which argument the Court of Appeals misread, even though I repeatedly accused the judge of making several misrepresentations of law.

That brings us to my next issue presented for review:

Were the appellant's individual rights protected and maintained in the present case.

(7) Significance of Issue

The significance of this issue is, if the appellant's individual rights were not protected and maintained in the present case then review should be accepted.[7]

7- Due to page limits, I will not be able to address or present every issue I wish to present for review as presented in Section C of this petition, but please do keep such issues in mind.

(ii) Second Allegation

NOW, TO THE Court of Appeals' second allegation: the Petitioner "contends the trial court erred by denying his request to represent himself," see p. 8 of the Opinion, the trial court did err, and the Court of Appeals' Opinion is in conflict with a decision of the Supreme Court with respect to this allegation.

The decision which it is in conflict with is State v. Madsen, 166 Wn.2d 496, 500, 229 P.3d 714 (2010).

(I) Similarities of Madsen and the Present Case

In Madsen, the Court [this court] held that "the trial court's denial of Madsen's motion for pro se status was error. Madsen was entitled as a matter of law to an order allowing him to defend in person as guaranteed by the Washington Constitution." See Madsen, at 510, ¶31. And therefore reversed the Court of Appeals decision and remanded for further proceedings. See Id. Madsen showed similar "signs" as Petitioner.

For starters, "[t]he court had concerns with Madsen's competency." See Madsen, at 501, ¶4. In the present case, the trial court had concerns with the Petitioner's competency. See Statement of the Case herein, esp. Point 6 and Point 15 therein. But unlike the Petitioner's case, where competency evaluations were had on three separate occasions, see Statement of the Case, from Point 6 on, "no competency hearing or exam was ever ordered

[in Madsen's case]," see Madsen, at 501, ¶4, yet this court still held that the trial court's denial of Madsen's motion for pro se status was error. Madsen, at 510.

Further, it was "reported that, Madsen interrupted the court on several occasions." See Id., ¶3. The Petitioner did the same, see Statement of the Case; the Opinion; SAG. Yet, this court still held that the trial court's denial of Madsen's motion for pro se status was error. See Madsen, at 510.

Furthermore, the order denying Madsen's pro se motion "stated that during the May 2 hearing, Madsen had been 'extremely disruptive,' 'repeatedly addressed the court at inopportune times,' and 'constantly showed an inability to follow or respect the court's directives.' Clerk's Papers (CP) at 21. Court also found that Madsen 'at first was equivalent' in his pro se request." Id., at ¶3. In the present case, after the Petitioner was granted pro se status, see Statement of the Case, Point 3, the court reversed its decision of granting the petitioner pro se status based on competency concerns. The petitioner was never found to be extremely disruptive, though he did address the court at inopportune times and did not follow some of the court's directives, see Statement of the Case.

Even further, Madsen requested to proceed pro se on a few different occasions. See Madsen. The petitioner, after being found competent, did also. See statement of the case, Point 15 and 16.

That all shows that Madsen is very similar to the present case with respect to this issue, and as stated above, in Madsen, this Court held that the trial court's denial of Madsen's motion for pro se status was error, and reversed the Court of Appeals and remanded for further proceedings. See Madsen, at 510, 911 31. And even though, in the present case, the trial court denied petitioner's latter requests for pro se status after it had previously granted his request then reversed due to competency concerns, after the Petitioner was found competent on three separate occasions, the Court's denial appear to be error, especially since the Court's ~~decision~~ reason for denying was never given; all the Court said was that it found petitioner could not proceed without counsel, see Statement of the Case, Point 15; RP 381, Ln 1-3, but such findings are nowhere in the record, nor did the Court say if such alleged findings were based on competency concerns or simply lack of skill concerns. That calls for review.

(iii) Third allegation

To the Court of Appeals' third allegation that Petitioner "maintains that insufficient evidence supports his conviction for burglary," see the Opinion, p. 12, what the Court of Appeals omitted is the fact that that argument actually comes from my Reply. It is ~~not~~ in my SAG, but not as an argument, it was only included in a question, see p. 9 of SAG, Material Issue 13, but the actual argument on Material Issue 13 dealt with the trial court failing to fully apprise I, the Petitioner, of the CrR 3.5 hearing

scheduled to be had, see Id., p. 42. The CrR 3.5 Issue was one of the issues that the Court of Appeals found lacked merit, see footnote 3 of the Opinion, even though the trial court also failed to fulfill its duty to make a written record of such hearing. As a matter of fact, the trial court failed to fulfill its duty to make a written record of any hearings, in accordance with the criminal rules, including but not limited to trial, since the trial court did not make or enter written findings of fact or conclusions of law following trial, as mandated by CrR 6.1(d). These are issues that the Petitioner addressed in his Reply, which the Court of Appeals denied to accept as filed, which, appears to further show that the Court of Appeals is not protecting and maintaining petitioner's individual rights, since his right to appeal was also a right given to the Petitioner, see Attachment A. And I believe the rights given to the Petitioner in Attachment A are included in those individual rights which governments are established to protect and maintain, are they not?

Further, and with respect to the CrR 3.5 Hearing Issue, and the CrR 6.1(d) issue, the Opinion is in conflict with State v. Head, 136 Wn.2d 619 (1998); State v. McCorvey, 70 Wn. App. 103, 851 P.2d 1234 (1993)(Div. 1); State v. Cruz, 88 Wn. App. 905, 909, 946 P.2d 1229 (1997)(Div. 1); and State v. Smith, 68 Wn. App. 201, 842 P.2d 494 (Div. 1), since a complete disregard for a rule requiring written findings and conclusions requires reversal because

the disregard for procedure creates an appearance of unfairness, See State v. Heal, at 625, footnote 2, thus showing that the Opinion is in conflict with decisions of this Court and with published decisions of the Court of Appeals.

F. Conclusion

FOR THESE REASONS, this Court should grant petitioner's Petition for Review.[X]

HUMBLY AND RESPECTFULLY SUBMITTED this 5th day of June, 2019, by the undersigned.

Keande

KEANDE
Petitioner, Pro Se

X- DO NOTE THAT: The petition would be under 20 pages if the Petitioner had access to a type writer, so the Petitioner requests this Court please accept his petition as filed in spite of it being 21 pages.

ALSO NOTE THAT: Due to page restraints, the Petitioner could not address all of the errors of the Opinion, and therefore requests that if his petition is granted he be given the chance to present all the errors of the Opinion, as well as fully present all Issues Presented for Review mentioned herein that he was not able to present herein.

APPENDIX

ATTACHMENTS

A. DEFENDANT'S ACKNOWLEDGMENT OF RIGHTS

B. NOTICE OF APPEAL

SCANNED 2

COPY

FILED IN OPEN COURT
10-6 2014
WHATCOM COUNTY CLERK
By Deputy

[ATTACHMENT A]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON, Plaintiff,	No. 14-1-01135-3 ~~14-1-00135-3~~
vs.	DEFENDANT'S ACKNOWLEDGMENT OF RIGHTS
KIEER GARDNER, Defendant.	Event # 14B45335

1. My true name is as above.
2. My age is 30.
3. My lawyer's name is Public Defender.
4. I have been informed that I am charged with the crime(s) of **BURGLARY FIRST DEGREE, Class A Felony, FELONY VIOLATION OF A NO CONTACT ORDER, Class C Felony, ASSAULT FOURTH DEGREE, Gross Misdemeanor** and **MALICIOUS MISCHIEF THIRD DEGREE, Gross Misdemeanor**

   the maximum penalty/penalties for which is/are **20 yrs/Life/$50,000 for the Class A Felony , 5 yrs/$10,000 for the Class C Felony , 1 yr/$5,000 for the Gross Misdemeanor and 1 yr/$5,000 for the Gross Misdemeanor**

5. I have been informed that:

   a. I have the right to representation by a lawyer, and that if I cannot afford to pay for a lawyer, one will be provided at public expense.
      I have the right to have my lawyer present during questioning and any statement I make may be used at trial against me.
   b. I have the right to a speedy and public trial by an impartial jury in the place where the crime is alleged to have been committed.
   c. I have the right to remain silent before and during trial, and I need not testify against myself.
   d. I have the right at trial to confront witnesses who testify against me.

Whatcom County Prosecuting Attorney
311 Grand Avenue Suite 201
Bellingham, WA 98225
(360) 676-6784
(360) 738-2532 (FAX)

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e. I have the right at trial to call witnesses to testify. These witnesses can be made to appear at no expense to me.
f. I am presumed innocent until a charge is proved beyond a reasonable doubt, or I enter a plea of guilty.
g. I have the right to appeal a finding, after trial, of guilt.
h. If I decide to plead guilty, I will have no right to trial on the charge to which I plead guilty. All that will remain for the Court to do will be to sentence me. I will be unable to appeal the question of my guilt on the charge to which I plead guilty.

Defendant

The above statement was read by or to the Defendant and signed by or offered to the Defendant for signature, in the presence of the undersigned.

DATED: 10/6/14

Attorney for State (SRC)

~~Judge~~/Commissioner

Whatcom County Prosecuting Attorney
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(360) 676-6784
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SCANNED 22

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COUNTY CLERK
2016 OCT 31 PM 1:30
WHATCOM COUNTY
WASHINGTON
BY_____

[ATTACHMENT B]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON, **Plaintiff,** **v.** **KIER KEANDE GARDNER,** **Defendant.** **DOB 06/19/1984**	**No. 14-1-01135-3** **NOTICE OF APPEAL**

COMES NOW the Defendant, KIER KEANDE GARDNER, by and through his attorney, Alan Chalfie, Whatcom County Deputy Public Defender, and seeks review by the designated appellate court of the conviction and sentencing on one count of Burglary in the First Degree, one count of Assault in the Second Degree, Domestic Violence, two counts of Felony Violation of a No Contact Order, Domestic Violence, and one count of Malicious Mischief in the Third Degree, Domestic Violence, and the *Judgment and Sentence* dated October 18, 2016 in the above-captioned cause of action.

DATED this 31st day of October 2016.

WHATCOM COUNTY PUBLIC DEFENDER

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Gardner, Kier Keand'e (875822)
Washington State Penitentiary • West Complex - Fox Unit - EI21-1 •
1313 N 13th Ave • Walla Walla, WA 99362

Wednesday, June 5, 2019

Richard D. Johnson, Clerk
Court of Appeals, State of
Washington, Division I
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Seattle, Washington 98101

Hilary A. Thomas, Attorney
Whatcom County Pros. Atty
311 Grand Ave., Ste. 201
Bellingham, WA 98225

Re: Contents Enclosed
STATE OF WASHINGTON v. GARDNER, KIER KEAND'E
COA No. 76042-4-I
Superior Court No. 14-1-01135-3

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUN 10 PM 12:30

Dear Clerk and Counsel:

Please find enclosed a Petition for Review (of Court of Appeals of the state of Washington, Division I, Unpublished Opinion). Since I am indigent, I believe the filing fee does not apply, or so I was told by assigned counsel, GREG LINK.

If you have any questions, concerns or directives for I, do not hesitate to write. Also, I sent two cover ~~letters~~ pages, because I was not sure which court was to be written in the "heading."

Humbly & Respectfully

KEAND'E
Appellant, Pro se and on
behalf of Gardner, Kier Keand'e

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

STATE OF WASHINGTON, Respondent, v. KIER KEANDE GARDNER, Appellant.	No. 76042-4-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Kier Keande Gardner, filed a motion for reconsideration of the opinion filed on April 15, 2019. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Andrus, J.

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. KIER KEANDE GARDNER, Appellant.	)	No. 76042-4-I DIVISION ONE UNPUBLISHED OPINION FILED: April 15, 2019

ANDRUS, J. — Kier Keand'e Gardner[1] was convicted of two counts of felony violation of a no-contact order (VNCO), as well as one count each of first degree burglary, second degree assault, and third degree malicious mischief. He challenges the two VNCO convictions on double jeopardy grounds. He also challenges the imposition of a 12-month community custody term in light of his 60-month sentence on the felony VNCO convictions. Keand'e also seeks a waiver of

[1] In his Statement of Additional Grounds (SAG), Appellant contends Kier Keand'e and Gardner are two different individuals. This argument appears to be consistent with arguments he repeatedly raised with the trial court, contending he was the "representative of Mr. Gardner." Although Appellant expressed a preference to be addressed as "Kier Ke'Ande," "Kier Keand'e," or "Mr. Keand'e," he admitted at arraignment that his full name was Kier Keande Gardner. And the State produced testimony to establish that Kier Keand'e and Gardner are the same person, thereby proving for criminal liability purposes, that Appellant, regardless of the name he answers to, committed the offenses for which he was convicted.

Nonetheless, because Appellant has expressed a strong and consistent preference regarding his identity—that he is Keand'e and not Gardner—we will refer to him as Keand'e here.

any discretionary legal financial obligations (LFOs) based on his mental health status.

In a Statement of Additional Grounds (SAG), Keand'e argues the trial court erred in not allowing him to plead guilty and in denying his request to represent himself. He also argues there is insufficient evidence supporting the burglary conviction.

Based on the State's concession of error as to the felony VNCO convictions, we remand for the trial court to vacate one of these convictions and to strike the community custody associated with the remaining felony VNCO conviction. Additionally, on remand, the trial court should determine whether Keand'e's mental health status requires a waiver of LFOs under RCW 9.94A.777. We otherwise affirm Keand'e's convictions and sentence.

FACTS

Marilyn Gardner[2] had a no-contact order protecting her from Keand'e. Charitie Wells, Keand'e's girlfriend, lived with Marilyn.

On October 5, 2014, Wells and Keand'e argued with each other via text message for most of the day. That night, Wells was startled by a banging on the front door. Wells, assuming Keand'e was the person knocking, joined Marilyn in her upstairs bedroom to avoid having to listen to him.

After five minutes, the banging stopped. Wells and Marilyn then heard a loud noise that Wells described as a pop or a bang. Wells testified that it "freaked

[2] Because Keand'e and his mother share a last name, we refer to Keand'e's mother by her first name, Marilyn, when necessary, to reduce any possible confusion between Keand'e and his mother. No disrespect is intended.

[her] out because it was so loud." She later discovered Keand'e had forced his way into the home, damaging the sliding glass door in the process. Wells heard Keand'e rummaging in a silverware drawer in the kitchen, and then stomp upstairs. She was so scared she backed herself into the corner on the bed behind Marilyn.

Keand'e appeared holding a kitchen knife with an eight-inch blade. Marilyn positioned herself between her son and Wells, to protect Wells. Keand'e stood about a foot away from Marilyn, with the knife pointed downward, and he told his mother that he just wanted to talk to Wells. Keand'e then pushed Marilyn aside. Wells screamed as she moved to the other side of the bed. Marilyn tried to pull Keand'e away but he brushed her off. Keand'e then cornered Wells and swung the knife toward her like he was trying to stab her. Wells continued to scream for help.

Marilyn was ultimately able to pull Keand'e off of Wells. Wells heard someone outside yell that the police were on their way. Keand'e told his mother and Wells to sit on the bed, calm down, and be quiet. He sat down with them, still holding the knife. When Keand'e loosened his grip on the knife, Marilyn grabbed it and tossed it under the bed.

When the police arrived, Marilyn and Wells fled downstairs. Police and a K-9 dog found Keand'e hiding under Marilyn's bed. Wells later discovered that Keand'e had nicked her several times with his knife when he waved it at her.

The State charged Keand'e with several domestic violence crimes: one count of first degree burglary, two counts of second degree assault, two counts of felony VNCO, and one count of third degree malicious mischief. Following a bench

trial, Keand'e was acquitted of one count of second degree assault and convicted on all other counts.

Because of Keand'e's extensive criminal history and aggravating factors found by the court, it imposed an exceptional sentence of 130 months for burglary, 70 months for assault, 60 months for both felony VNCO convictions, and 364 days for malicious mischief. The trial court also imposed terms of community custody—18 months each for the burglary and assault and 12 months for each of the felony VNCO convictions. Keand'e appeals.

ANALYSIS

Keand'e, through counsel, challenges three issues on appeal: (1) whether his convictions of two counts of felony VNCO violate double jeopardy, (2) whether his 12-month community custody term for the VNCO crimes exceeds the time allowed by statute, and (3) whether, in light of Keand'e's mental health, the trial court erred by not waiving discretionary LFOs. The State concedes error as to the first two issues and has no objection to a remand for the trial court to consider the third. We conclude the concessions are well-founded and agree a remand is appropriate for reconsideration of LFOs.

First, the two felony VNCO convictions arise out of the same "unit of prosecution," and both cannot stand. The Fifth Amendment to the United States Constitution and article I, section 9 of the Washington State Constitution provide protections against double jeopardy. State v. Brown, 159 Wn. App. 1, 9, 248 P.3d 518 (2010). These double jeopardy clauses prohibit the State from punishing an offender multiple times for the same offense. State v. Linton, 156 Wn.2d 777, 783,

132 P.3d 127 (2006). Claims of double jeopardy are questions of law that we review de novo. State v. Hughes, 166 Wn.2d 675, 681, 212 P.3d 558 (2009).

Under the "unit of prosecution" test, double jeopardy precludes multiple convictions for committing just one "unit" of the crime. State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998). In Brown, this court held that RCW 26.50.110 punishes each separate contact with a protected party as a separate violation of a no-contact order. 159 Wn. App. at 10-11 (each phone call occurring on consecutive days constituted distinct violations of the protection order); see also State v. Allen, 150 Wn. App. 300, 307, 207 P.3d 483 (2009) (same regarding email).

However, a unit of prosecution may be either a single act or a course of conduct. See State v. Tvedt, 153 Wn.2d 705, 710, 107 P.3d 728 (2005). For example, this court identified contacts with a protected person over the course of a single incident to be just such a course of conduct. State v. Spencer, 128 Wn. App. 132, 137-38, 114 P.3d 1222 (2005).

In count 4, the State charged Keand'e with a violation of Marilyn's no-contact order by entering her home on October 5, 2014, in violation of RCW 26.50.110(5). In count 5, the State charged Keand'e with a violation of the no-contact order by assaulting Marilyn in violation of RCW 26.50.110(4). The State concedes that Keand'e's actions were a single course of conduct and thus constitute only a single VNCO, and not two. We agree, and one of these two felony VNCO convictions must be vacated.

Second, the State concedes the trial court erred in imposing community custody for the VNCO conviction. Under RCW 9.94A.701(9), a sentence of confinement and community custody cannot exceed the statutory maximum term for the crime. Keand'e's conviction for violating the no-contact order is a Class C felony. RCW 26.50.110(4)-(5). Class C felonies are punishable by a maximum term of 60 months. RCW 9A.20.021(1)(c). The trial court sentenced Keand'e to 60 months of total confinement, plus 12 months of community custody. This it cannot do under RCW 9.94A.701(9). We remand for the trial court to strike the community custody term for Keand'e's remaining felony VNCO conviction.

Lastly, Keand'e argues the trial court erred by not waiving his LFOs based on his mental health condition. RCW 9.94A.777 provides that before imposing any discretionary LFOs, a trial court must determine whether a defendant who suffers from a mental health condition has the means to pay them. Our Supreme Court held "that a trial court has a statutory obligation to make an individualized inquiry into a defendant's current and future ability to pay before the court imposes LFOs." State v. Blazina, 182 Wn.2d 827, 830, 344 P.3d 680 (2015). And the Court of Appeals held that Blazina extends to a defendant who suffers from a mental health condition under RCW 9.94A.777. State v. Tedder, 194 Wn. App. 753, 756-57, 378 P.3d 246 (2016). On remand, the trial court should consider whether Keand'e suffers from a mental health condition, and if so, whether he has the ability to pay discretionary LFOs. See id. at 757.

Keand'e raises a myriad of issues in his SAG under RAP 10.10, only three of which merit consideration here[3]—(1) whether the trial court erred by refusing to let him plead guilty, (2) whether the trial court erred by denying his request to represent himself on the day of trial, and (3) whether sufficient evidence supports his conviction for burglary.[4]

First, Keand'e argues the trial court erred by refusing to allow him to plead guilty. "The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d); see also State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006) (guilty plea must be knowing, voluntary, and intelligent). A trial court's refusal to accept a guilty plea is within its sound discretion. United States v. Crosby, 739 F.2d 1542, 1544 (11th Cir. 1984). We will not disturb the ruling on appeal, unless the refusal is without justification and thus an abuse of discretion. Id.

The trial court did not abuse its discretion in finding that Keand'e's decision to enter pleas of guilty was neither knowing nor intelligent. Keand'e insisted that he had "stipulated to the facts" so there was no need to have a trial. Keand'e appeared convinced that if he pleaded guilty, he could merely pay a fine and be released from custody. The trial court correctly determined that Keand'e misunderstood the sentencing statutes.

Keand'e focuses on the language of RCW 9A.20.021, which sets out the maximum sentences for crimes—both for confinement and for monetary fines.

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[3] We conclude the other issues Keand'e raises in his SAG lack merit.
[4] Keand'e also filed several pro se motions related to his SAG, RAP 17.1, which we deny.

Keand'e claims that the "or" in RCW 9A.20.021 allows the trial court to punish him by confinement or by fine, and factoring in the rule of lenity requires that the interpretation most favorable to him—being punished solely with a fine—be adopted.

Keand'e, however, ignores the sentencing ranges set out in the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW. Unless a statutory exception applies or a standard range sentence has not been established, trial courts shall impose sentences within the standard range. RCW 9.94A.505(1)-(2)(a)(i). For Keand'e, with his extensive criminal history and extraordinarily high offender score, the SRA mandates he serve some time in confinement. RCW 9.94A.530; RCW 9.94A.510. Keand'e's inability, or refusal, to understand this concept showed that he did not understand the consequences of the plea, rendering his guilty plea unknowing and unintelligent—no matter how voluntary it may have been. Therefore, the trial court did not err in refusing to accept his plea.

Next, Keand'e contends the trial court erred by denying his request to represent himself. Keand'e's right to represent himself is protected by the Sixth Amendment of the United States Constitution and article I, section 22 of the Washington State Constitution. Faretta v. California, 422 U.S. 806, 819-21, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); State v. Madsen, 168 Wn.2d 496, 500, 229 P.3d 714 (2010). When a defendant who has been found competent to stand trial seeks waiver of counsel, the waiver of counsel must be voluntary, knowing, and intelligent. In re Rhome, 172 Wn.2d 654, 667, 260 P.3d 874 (2011). In determining whether a waiver of counsel is knowing and intelligent, the trial court may consider

a defendant's mental health history and status when competency has been questioned, even where the defendant has been found competent to stand trial. Id.

The trial court's decision to grant or deny a defendant's request to represent himself is reviewed for abuse of discretion. State v. Curry, 191 Wn.2d 475, 483, 423 P.3d 179 (2018). A trial court abuses its discretion only if its decision is manifestly unreasonable, rests on facts unsupported in the record, or was reached by applying the wrong legal standard. Id. at 483-84. We give great deference to the trial court's determination. Id. at 484. Even if we disagree with the trial court's ultimate decision, we do not reverse that decision unless it falls outside the range of acceptable choices because it was reached by applying the wrong legal standard, it rests on facts unsupported by the record, or it is manifestly unreasonable. Id. Moreover, self-representation determinations must be made on a case-by-case basis, taking into consideration the circumstances of each request. Id. at 490.

We conclude the trial court did not abuse its discretion when it denied Keand'e's request to represent himself at trial. Keand'e first moved to represent himself on June 4, 2015. The trial court granted this motion in an oral ruling. On June 24, 2015, the trial court held a hearing to address objections Keand'e had to the written order documenting the ruling. During the hearing, the trial court struggled to control Keand'e and considered appointing standby counsel for him over his objection. Keand'e continued to interrupt the trial court and to object to everything the court said. The trial court had to suspend the hearing and could not

proceed to arraign Keand'e on the third amended information because of his disruptive behavior. Before recessing, the trial court agreed not to appoint standby counsel.

The next day, the Whatcom County Sheriff's Office sent a memo to the trial court, expressing "serious concerns" over whether the Sheriff's Office could accommodate Keand'e's self-representation. The Chief indicated Keand'e was unable to follow the rules of the court system and his misunderstanding about these rules was interfering with his ability to adequately represent himself. Specifically, the Sheriff's Office notified the court that Keand'e asserted he was not Keand'e and had refused to identify himself to deputies, claiming his name was "private property." The Chief also expressed concern, confirmed by Corrections Mental Health Staff, that Keand'e "may have some underlying behavioral health issues that are hindering his abilities to make reasonable decisions and understand how to utilize the processes of our criminal justice system to move his case forward."

The trial court set a hearing for July 1, 2015, to reassess Keand'e's ability to represent himself given his disruptive behavior during the earlier hearing, but Keand'e declined to attend the hearing. The trial court found good cause to reverse its decision to allow Keand'e to represent himself, and reappointed Keand'e's former attorney to represent Keand'e. The trial court ordered a competency evaluation of Keand'e. In fact, twice in less than six months, the trial court entered orders staying the proceedings and ordering mental health evaluations for Keand'e. Doctors at Western State Hospital were only successful

in observing Keand'e from afar, as he would not cooperate with the evaluations. Doctors, including a private physician retained by Keand'e's public defender, found Keand'e competent to stand trial.

On the first day of trial, September 6, 2016, Keand'e claimed he had waived his right to counsel. The trial court indicated it had found he was not capable of proceeding without counsel and did not reconsider this decision. Keand'e's demeanor then became even more combative, and he eventually proclaimed he was "done with this" and told the trial court that it was not proceeding without him, even though he was voluntarily absenting himself from the courtroom.

The trial court's decision to reappoint counsel for Keand'e and its refusal to allow him to represent himself during trial was not manifestly unreasonable. First, the record amply reveals that Keand'e's mental health condition interfered with his ability to represent himself.

Second, the "right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." Faretta, 422 U.S. at 834 n.46. The trial judge may "terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." Id.; see also Madsen, 168 Wn.2d at 509 ("A court may deny pro se status if the defendant is trying to postpone the administration of justice."); accord United States v. Weast, 811 F.3d 743, 748 (5th Cir. 2016) (upholding trial court's refusal to allow defendant to represent himself due to "obstreperous conduct," including refusing to answer basic questions, such as his name, and "interrupt[ing] the court ad nauseam"), cert. denied, 137 S. Ct.

126, 196 L. Ed. 2d 99 (2016). In 2015, when the trial court reversed the decision to allow Keand'e to represent himself, it did so only after Keand'e engaged in persistent disruptive behavior during legal proceedings he attended and refused to attend other proceedings. Keand'e refused to accept the trial court's clear directions regarding how to conduct himself in the courtroom or its clear summary of applicable law and rules of procedure. For these reasons, the trial court did not abuse its discretion in refusing to allow Keand'e to represent himself before or during trial.

Lastly, Keand'e maintains insufficient evidence supports his conviction for burglary, arguing he did not enter his mother's home with the intent to commit any crime. "The standard of review for a challenge to the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Sweany, 174 Wn.2d 909, 914, 281 P.3d 305 (2012) (internal quotation marks omitted). Keand'e was convicted of burglary in the first degree, domestic violence. A person is guilty of burglary in the first degree:

> if, with the intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor . . . (a) is armed with a deadly weapon or (b) assaults any person.

RCW 9A.52.020(1).

There was substantial evidence at trial from which a rational fact-finder could conclude that Keand'e entered or remained in his mother's home unlawfully with the intent to assault Wells or his mother. He was overheard rummaging in the

silverware drawer in the kitchen before he climbed the stairs and was seen holding a knife. A rational fact-finder could conclude he formed the intent to commit assault by intentionally seeking out a weapon. The evidence also supports a finding that the knife was large enough to constitute a deadly weapon. Finally, Wells's testimony supports a finding that Keand'e assaulted her and his mother while present inside his mother's home. For these reasons, we conclude there was sufficient evidence to support the burglary conviction.

We remand to the trial court to vacate one of the two felony VNCO convictions, to strike the 12-month community custody term on the remaining VNCO conviction, and to consider whether Keand'e has a mental health condition sufficient to require a waiver of discretionary LFOs under RCW 9.94A.777. Otherwise, we affirm Keand'e's remaining convictions.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

Andrus, J.

WE CONCUR:

Gardner, Kier Keandre (875822)
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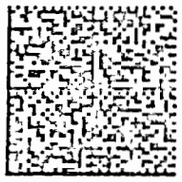

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