Supreme Court No. 99645-8

No. 53839-3-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

T-JAY DUANE DELO,

Petitioner.

PETITION FOR REVIEW

JAN TRASEN
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WASHINGTON APPELLATE PROJECT
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A. IDENTITY OF PETITIONER

T-Jay Delo missed three court appearances. He had explanations for his absences and cleared each warrant upon his appearance. Despite this, Mr. Delo was charged with and convicted of three counts of felony bail jumping. Following his trial but while Mr. Delo's case was on direct appeal, the legislature amended the bail jumping statute. The legislature decriminalized much of the conduct that had previously constituted the crime of bail jumping, and made other conduct a misdemeanor rather than a felony. Under the change in the law, Mr. Delo's conduct was a misdemeanor. The Court of Appeals held on March 9th that this change in law did not require that Mr. Delo's convictions be vacated.

Mr. Delo asks this Court to grant review of this decision terminating review, attached hereto. Because a decision from this Court is pending in State v. Jenks, No. 98496-4,[1] which involves a similar issue of retroactivity, this Court should stay consideration until that case is decided.

B. ISSUES PRESENTED FOR REVIEW

1. Do the 2020 amendments to the bail jumping statute apply to all cases on direct appeal which are not final? RAP 13.4(b)(1), (4).

[1] 196 Wn.2d 1001, 471 P.3d 211 (2020).

2. Do the 2020 amendments to the bail jumping statute apply retroactively to all bail jumping offenses? RAP 13.4(b)(1), (4).

3. This Court should also accept review of the issues raised in petitioner's pro se statement of additional grounds for review.

C. STATEMENT OF THE CASE

T-Jay Delo was riding as a passenger, allowing a friend to test-drive his truck. 7/29/19 RP 14; 8/6/19 RP 181-82.[2] When Mr. Delo's friend committed an apparent traffic infraction, the truck was pulled over by a Thurston County Sheriff's deputy. 7/29/19 RP 14; 8/6/19 RP 183.

When the deputy told Mr. Delo that he had an active warrant, Mr. Delo told the deputy that he was, instead, his brother, Paul Delo. Id. 7/29/19 RP 16-18, 22-24. Mr. Delo was charged with criminal impersonation in the first degree. CP 5; 8/6/19 RP 183-84.

Mr. Delo personally appeared at his court dates, including a CrR 3.5 hearing, where the trial court suppressed Mr. Delo's statements to the deputy, finding a Miranda[3] violation. After Mr. Delo's statements were suppressed, Mr. Delo entered a guilty plea to a reduced count of making false or

[2] The verbatim report of proceedings are referred to by date; the transcript from 8/7/19 is further labeled (am) and (pm), for clarity. The 7/29/19 volume relates to testimony from the CrR 3.5 hearing.

[3] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

misleading statements to a public servant, a gross misdemeanor. CP 85-91; 8/6/19 RP 7-10.

Despite Mr. Delo's resolution of the primary charge against him, the State proceeded to trial on three counts of bail jumping, due to Mr. Delo's failure to appear on three court dates during the pendency of the case. CP 48-49; RCW 9A.76.170(1).

The first count alleged that Mr. Delo failed to appear in court for his arraignment on January 9, 2018. CP 48. After Mr. Delo's arrest in the early morning hours of December 27, 2017, he was released on personal recognizance following a preliminary hearing. 8/6/19 RP 206-08. The order that Mr. Delo was given on his release indicated the arraignment date would be January 9, 2018; however, it also stated, "this order expires if charges are not filed by December 29, 2017." Ex. 1; 8/6/19 RP 209. Mr. Delo was never notified that charges had actually been filed, and thus, that the scheduling order was still valid. 8/7/19(am) RP 8-9.

Mr. Delo's failure to appear at arraignment resulted in the first count of bail jumping. RCW 9A.76.170(1). After Mr. Delo vacated the bench warrant, was released on bail, and was issued a subsequent scheduling order, he did not appear on August 6, 2018, the initial date set for the CrR 3.5 hearing. 8/6/19 RP 184-85. A bench warrant was issued and the State charged Mr. Delo with a second count of bail jumping. CP 43-44.

After this warrant was vacated and a new schedule set, Mr. Delo was again released on bail and he missed an additional court date on which the CrR 3.5 hearing had been re-set, February 25, 2019. 8/7/19(am) RP 29-32. The State charged Mr. Delo with a third count of bail-jumping. CP 45-46.

The jury convicted Mr. Delo of all three counts of bail jumping. CP 140-42.

Meanwhile, the legislature determined that a failure to appear under these circumstances is a gross misdemeanor, even if the individual had initially been charged with a felony. This change in law occurred while Mr. Delo's appeal is pending.

Mr. Delo timely appealed, but on March 9, 2021, the Court of Appeals rejected his challenges to his conviction. The Court held that recent amendments to the bail jumping statute did not apply to his conviction. This Court should grant review on this issue and reverse the Court of Appeals. RAP 13.4(b)(1), (4).

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

UNDER A CHANGE IN LAW MADE DURING MR. DELO'S APPEAL OF HIS CONVICTION, THE CONDUCT CONSTITUTING HIS CONVICTION IS NO LONGER A FELONY. THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER MR. DELO IS ENTITLED TO THE BENEFIT OF THIS REMEDIAL CHANGE IN THE LAW. RAP 13.4(b)(1), (4).

1. Recognizing the harshness and injustice of the bail jumping statute, the legislature revised the statute.

On March 7, 2020, the legislature passed House Bill 2231, changing the definition and classification of bail jumping. The Governor signed the bill on March 18, 2020. This changed the bail jumping statute. Laws of 2020, ch. 19, §§ 1, 2. The law took effect June 11, 2020. Id.

Under the prior law, felony bail jumping required only the failure to appear before any court in Washington. Former RCW 9A.76.170(1), (3). Due to the change in law, a failure to appear for any court date other than a date set for trial is a gross misdemeanor – or no crime at all – even if the underlying charge was a felony. Laws of 2020, ch. 19, § 1(1)(a), 2. Mr. Delo, whose appeal has not yet been litigated, should benefit from this change in law.

2. Mr. Delo is entitled to the benefit of the change in the law because his case is on direct appeal and is not final.

Mr. Delo failed to appear on a non-violent offense. He was not notified following his bail hearing that charges had been filed, and that he needed to appear at the arraignment. 8/7/19(am) RP 8-9; 8/7/19(pm) RP 40-

42. On the date of the suppression hearing, a warrant was issued for Mr. Delo when he was eight minutes late for court. 8/7/19(am) RP 29-32. This warrant was issued without defense counsel present. Id. at 38-39.

Under the change in the law, Mr. Delo's failures to appear were gross misdemeanors, because none were on dates the case was set for trial. Laws of 2020, ch. 19, § 2, (1)(b), 3(a). This is because the charged offense of criminal impersonation in the first degree is not a violent offense or a sex offense. Id. at § 1, (1)(b)(i); § 2, (1)(a).

Because his case is on direct appeal and is not final, Mr. Delo is entitled to the benefit of the change in the law. "[S]tatutes generally apply prospectively from their effective date unless a contrary intent is indicated." State v. Jefferson, 192 Wn.2d 225, 245, 429 P.3d 467 (2018). Another rule must also be considered in determining whether a statutory change applies to a given case: "the rule that a newly enacted statute or court rule generally applies to all cases pending on direct appeal and not yet final." Id. at 246.

A statutory amendment applies prospectively when the precipitating event for application of the statute occurs after its effective 7 date. State v. Ramirez, 191 Wn.2d 732, 749, 426 P.3d 714 (2018). "[A] newly enacted statute or court rule will only be applied to proceedings that occurred far earlier in the case if the 'triggering event' to which the new enactment might apply has not yet occurred." Jefferson, 192 Wn.2d at 246 (internal citation

omitted). To make this determination, a court analyzes "whether the new provision attaches new legal consequences to events completed before its enactment." Id.

In Ramirez, for example, this Court held the 2018 statutory amendments addressing legal financial obligations (LFOs) applied prospectively to cases pending on direct appeal. 191 Wn.2d at 747-49. The Court held the precipitating event for the imposition of LFOs was the termination of the defendant's case. Id. The 2018 amendments therefore applied to the imposition of LFOs in Mr. Ramirez's judgment and sentence because his case was pending on direct appeal and not final. Id. at 749.

Applying the analysis in Ramirez and Jefferson, the triggering event for imposition of Mr. Delo's sentence is the termination of his appeal, which had not yet happened. The legislature downgraded bail jumping from a felony to a gross misdemeanor or no crime at all, impacting his judgement and sentence. The amendments apply prospectively to his sentence "while the case is pending on direct appeal, even though the charged acts have already occurred." Jefferson, 192 Wn.2d at 24. Because the change in law applies prospectively to a triggering event that has not occurred (termination of the appeal), Mr. Delo is entitled to benefit of the change in law.

Ignoring both Jefferson and Ramirez, the Court of Appeals reasoned that under its own recent decision in State v. Brake,[4] the new bail jumping statute need not be applied retroactively. Slip op. at 3-4 (citing Brake, 15 Wn. App.2d 740, 743, 476 P.3d 1094 (2020)). The appellate court did not consider Jefferson, although in cleaving to its own Brake decision, the court's implicit holding is that Ramirez does not require the bail jumping statute be applied to all cases pending on direct appeal. Slip op. at 3-4. In Brake, the appellate court reasoned that Ramirez's holding was limited to costs imposed following conviction. 15 Wn. App.2d at 747. But while Ramirez involved costs, the Court of Appeals failed to explain why this was material. Id. Costs are part of the sentence. The difference is immaterial. Under Ramirez, Mr. Delo was entitled to the benefit of the change in the law because his case was on direct appeal and not final.

3. The change in the law applies retroactively.

The constitutional prohibition against ex-post facto laws forbids the retroactive application of laws that increase punishment or create punishment where none existed before. Dorsey v. United States, 567 U.S. 260, 275, 132 S.Ct. 2321, 183 L.Ed.2d 250 (2012). Consistent with the common-law, where a criminal statute is repealed or modified to the

[4] State v. Brake presents the same issue as Mr. Delo's case. On Jan 7, 2021, this Court stayed the Brake petition for review in light of State v. Jenks.

benefit of a defendant, the prior statute "is regarded as though it had never existed regarding all pending litigation." State v. Grant, 89 Wn.2d 678, 682, 575 P.2d 210 (1978).

In 1901, the legislature purported to modify this common-law rule by enacting the "savings statute," RCW 10.01.040. Laws of 1901 ex. s. ch. 6 § 1. Because this statute is in derogation of the common-law, this Court has interpreted it narrowly and reasoned that the legislature may enact a retroactive criminal law if the statute "fairly convey[s] that intention." Grant, 89 Wn.2d at 683; State v. Zornes, 78 Wn.2d 9, 13, 475 P.2d 109 (1970).

When the legislature reduces the maximum punishment for a crime, that reduction is presumed to apply to all cases. State v. Wiley, 124 Wn.2d 679, 687, 880 P.2d 983 (1994). In such cases:

> the legislature is presumed to have determined that the new penalty is adequate and that no purpose would be served by imposing the older, harsher one. This rule has even been applied in the face of a statutory presumption against retroactivity and the new penalty applied in all pending cases.

State v. Heath, 85 Wn.2d 196, 198, 532 P.2d 621 (1975).

Wiley recognized this is so because "the reclassification of a crime is no mere refinement of elements, but rather a fundamental reappraisal of the value of punishment." 124 Wn.2d at 687.

In contravention of these fundamental principles, the Court of Appeals reasoned that RCW 10.01.040 required explicit language stating the change in law is retroactive. Slip op. at 4. The Court held that because it found "no clear legislative intent that the 2020 amendments to the bail jumping statute apply retroactively, "'the version of the statute in effect on the date of . . . [the] offense is the one that applies.'" Slip op at 4 (quoting Brake, 15 Wn. App.2d at 747).

This reasoning flies in the face of this Court's precedents, which hold RCW 10.01.040 must be interpreted narrowly and that the proper inquiry is simply whether the fair import of a statute indicates it was intended to apply retroactively. Grant, 89 Wn.2d at 683; Zornes, 78 Wn.2d at 13. It is inconsistent with the United States Supreme Court's decision in Dorsey, which applied the same rule of narrow construction to the analogous federal savings statute. 567 U.S. at 274.

In short, the proper analysis for whether a change in the law applies retroactively is one of statutory interpretation. The meaning of a statute is an issue of law reviewed de novo. State, Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The court uses the "plain meaning" rule, which examines not only the text of the statute, but related statutes and other provisions of the same act. Id. at 10- 11. If there is ambiguity, it is appropriate to examine legislative history. Id. at 12. The

new bail jumping statute does not contain a formal statement of legislative intent. See Laws of 2020, ch. 19. The language of the statute does not expressly state whether the law was intended to have retroactive effect. The text of the law, however, impliedly indicates that retroactivity was intended.

The amended offense of bail jumping and the newly created lesser offense of failure to appear or surrender, do not impose criminal liability for missing non-trial hearings if (1) the person appears and moves to quash the resulting warrant within 30 days and (2) this is the first missed court appearance in the case where a warrant was issued. Laws of 2020, ch. 19, § 1 (1), § 2(1)(b). The new statute also recognizes that it is fundamentally unfair to impose felony criminal liability for missing a non-trial court appearance. Id. Given the legislature's determination of the injustice of imposing felony liability in circumstances like Mr. Delo's, no purpose is served by applying the old law to his case. See Heath, 85 Wn.2d 196 at 198 (when legislature has effectively created a new reduced penalty for a crime, "no purpose would be served by imposing the older, harsher one"). The fair implication or import of the law is that the legislature intended that his conduct no longer be charged as a felony, and that this change in the law should apply retroactively, or at least to cases that are not final.

To the extent that ambiguity remains, legislative history further supports a conclusion that the law was intended to apply retroactively. Consistent with the changes made in the law, legislative hearings show agreement that the existing scheme was overly harsh and not used as originally planned, which was to deter people from intentionally evading justice (whether to improve their cases through delay or avoid prosecution entirely). See, e.g., Hearing on HB 2231 Before H. Pub. Safety Comm., 66th Leg. 2020 (Jan. 14, 2020) (statements of Rep. Pellociotti, Sponsor, 41:50-46:57, 47:43-48:21) (statement of opponent Rep. Klippert, Member, 46:57-47:34).[5]

As discussed, the Court of Appeals was incorrect when it reasoned that any silence in the new bail jumping statute regarding retroactivity did not create ambiguity that must be resolved in Mr. Delo's favor. For these reasons, this Court should grant review. RAP 13.4(b)(1), (4).

4. This Court should grant review of and consider each of Mr. Delo's pro se statement of additional grounds for review raised in the Court of Appeals.

This Court should grant review of each of the several additional grounds raised in the pro se Statement of Additional Grounds. Mr. Delo

[5] Available at https://www.tvw.org/watch/?eventID=2020011091.

contends the Court of Appeals decision is in conflict with decisions of this Court, and with decisions of the Court of Appeals. RAP 13.4(b)(1), (2).

E. CONCLUSION

For the above reasons, the Court of Appeals decision should be reviewed, as it is in conflict with decisions of this Court and with decisions of the Court of Appeals. RAP 13.4(b)(1), (4).

DATED this 8th day of April, 2021.

Respectfully submitted,

s/ Jan Trasen

_____

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APPENDIX

Filed
Washington State
Court of Appeals
Division Two

March 9, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. T-JAY DUANE DELO, Appellant.	No. 53839-3-II UNPUBLISHED OPINION

VELJACIC, J. — T-Jay D. Delo appeals his three bail jumping convictions, arguing that the 2020 changes to the bail jumping statute, RCW 9A.76.170, require vacating his convictions. He also argues that the trial court improperly admitted irrelevant and prejudicial evidence contrary to ER 401 and 403. In his statement of additional grounds (SAG) for review, Delo alleges prosecutorial misconduct, ineffective assistance of counsel, speedy trial violation, and various other constitutional violations. Finding no error, we affirm.

FACTS

The State charged Delo with one count of first degree criminal impersonation for claiming to be his brother when stopped by police. First degree criminal impersonation is a class C felony. RCW 9A.60.040(2).

The trial court released Delo and notified him that he must appear at his arraignment on January 9, 2018. He failed to appear. Delo then failed to appear for a motion to suppress hearing on August 6, 2018 and a motion to suppress hearing on February 25, 2019.

As a result of Delo's failure to appear for his arraignment and the two motion hearings, the State charged Delo with three counts of bail jumping. Delo pleaded guilty to making a false or misleading statement to a public servant, a lesser included offense of first degree criminal impersonation, and proceeded to trial on the bail jumping charges.

Prior to trial, the State filed a motion in limine to exclude evidence that Delo subsequently pleaded guilty to a gross misdemeanor. Delo argued that the jury was required to find every fact of the case and that includes whether Delo was "held for, convicted of a class C felony." Report of Proceedings (RP) (Aug. 6, 2019) at 29. The trial court agreed with the State and excluded evidence that Delo subsequently pleaded guilty to a lesser offense. The court also noted that issues relating to the wording of the jury instructions would be addressed at a later time.

During trial, the State presented evidence, including a copy of the original information, showing that at the time of his failures to appear, Delo was charged with first degree criminal impersonation, a class C felony. Delo did not object.

Delo submitted jury instructions, asking the trial court to instruct the jury to consider whether Delo was "charged with, or convicted of a Class C Felony in each count." Clerk's Papers (CP) at 64. The trial court ultimately instructed the jury that to convict Delo of bail jumping under each count, it must find he "was charged with a class C felony." CP at 103-05. Delo did not object.

The State presented several PowerPoint slides during its closing argument, setting forth the elements of bail jumping and stating that Delo "was charged with a class C felony." CP at 112-14. Delo did not object.

The jury found Delo guilty of all three counts of bail jumping. He appeals.

ANALYSIS

I. RECENT CHANGES TO BAIL JUMPING STATUTE

We first address whether Delo's convictions should be vacated based on recent changes to the bail jumping statute, RCW 9A.76.170. LAWS OF 2020 ch. 19 § 1. Delo argues that the changes to RCW 9A.76.170 apply retroactively to his charges because his appeal is not final. This issue has been recently raised and rejected in *State v. Brake*, 15 Wn. App. 2d 740, 743, 476 P.3d 1094 (2020).

Delo committed his offenses on January 9, 2018, August 6, 2018, and February 25, 2019. At that time, former RCW 9A.76.170 (2001) stated, "Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state . . . and who fails to appear . . . is guilty of bail jumping."

On March 7, 2020, the legislature amended RCW 9A.76.170. LAWS OF 2020, ch. 19, §§ 1, 2. The law took effect on June 11, 2020. LAWS OF 2020, ch. 19, §§ 1, 2.

Under the prior law, felony bail jumping required only failure to appear "before any court of this state." Former RCW 9A.76.170(1), (3). Under the 2020 law, felony bail jumping requires a person to "fail[] to appear for trial." LAWS OF 2020, ch. 19, § 1(1)(a). The legislature also created a separate section for failure to appear for a court date other than trial and downgraded the crime to either a gross misdemeanor or no crime at all. RCW 9A.76.190. As part of the new crime of failure to appear or surrender for a non-trial court date, the State must either prove that the defendant did not appear and did not move to quash the warrant within thirty days of its issuance or that the defendant had a prior warrant issued for failing to appear in the case. RCW 9A.76.190(1)(b).

In *Brake*, we held that because there is no clear legislative intent that the 2020 amendments to the bail jumping statute apply retroactively, "the version of the statute in effect on the date of . . . [the] offense is the one that applies." *Brake*, 15 Wn. App.2d at 747. Based on *Brake*, we conclude former RCW 9A.76.170 applies to Delo's offenses. We now turn to Delo's other contentions.

II. ALLEGED EVIDENTIARY AND INSTRUCTIONAL ERRORS

For the first time on appeal, Delo contends the trial court abused its discretion by allowing the prosecutor to argue before the jury that Delo was originally charged with a class C felony and by instructing the jury likewise in the to-convict jury instructions. He argues this evidence was irrelevant and prejudicial and should have been excluded under ER 401 and ER 403. Delo has not preserved this issue for review.

A. Legal Principles

We review evidentiary rulings and the decision to exclude evidence for abuse of discretion. *State v. Garcia*, 179 Wn.2d 828, 846, 318 P.3d 266 (2014). We also generally review instructional errors for abuse of discretion. *State v. Wilson*, 10 Wn. App. 2d 719, 727, 450 P.3d 187 (2019). A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons. *Id.*

Under RAP 2.5(a)(3), a party may not raise an error for the first time on appeal unless it is a "manifest error affecting a constitutional right." "[T]o qualify as a claim of manifest error affecting a constitutional right, the defendant must identify the constitutional error and show that it actually affected his or her rights at trial." *State v. Lamar*, 180 Wn.2d 576, 583, 327 P.3d 46 (2014). ER 401 and 403 are not constitutional rules, thus, defense counsel's "failure to [object below] precludes appellate review." *State v. Ramirez*, 5 Wn. App. 2d 118, 130, 425 P.3d 534

(2018), *review denied*, 192 Wn.2d 1026 (2019). "We adopt a strict approach because trial counsel's failure to object to the error robs the court of the opportunity to correct the error and avoid a retrial." *State v. Powell*, 166 Wn.2d 73, 82, 206 P.3d 321 (2009).

Likewise, under the invited error doctrine, we will not review an alleged error that the party has set up at trial. *State v. Momah*, 167 Wn.2d 140, 153, 217 P.3d 321 (2009). Specifically, a party may not request an instruction and then later complain on appeal that the instruction was given. *State v. Winings*, 126 Wn. App. 75, 89, 107 P.3d 141 (2005).

B. Issue Not Preserved

Here, Delo argues for the first time that under ER 401 and ER 403, the trial court abused its discretion by admitting evidence that Delo was charged with first degree criminal impersonation, a class C felony. But nowhere in our record does it show an objection below based on ER 401 or ER 403 to this evidence. To the contrary, Delo wanted the jury to determine whether Delo was "held for, convicted of a class C felony." RP (Aug. 6, 2019) at 29. A party cannot set up an error below and then object on appeal. *Momah*, 167 Wn.2d at 153. The invited error doctrine prohibits such action as does RAP 2.5(a).

Delo also challenges the to-convict jury instructions regarding bail jumping because the instructions state that to convict Delo of bail jumping the jury must find he "was charged with a class C felony." CP at 103-05. But Delo proposed a jury instruction with similar wording and did not object on the record to the trial court's jury instructions. For the same reasons discussed above, we will not review an alleged error that the party has set up at trial. *Momah*, 167 Wn.2d at 153.

Because Delo did not object to the challenged evidence or jury instructions below, he may not raise his objections now for the first time on appeal.

III. SAG ISSUES

In his SAG, Delo contends he was denied a fair trial based on prosecutorial misconduct. Delo appears to argue that the prosecutor wrongly referred to the first degree criminal impersonation charge during trial; wrongly charged him with bail jumping because it was "fruit from the poisonous tree"; used PowerPoint slides during his closing arguments without first notifying Delo; coerced defense counsel to not allow Delo to testify during trial; and engaged in vindictive and malicious prosecution and prosecutorial bluffing. SAG at 1.

Regarding the allegation that the prosecutor wrongly referenced the first degree criminal impersonation charge, that issue has been adequately raised by counsel and will not be reviewed further. *See* RAP 10.10(a); *State v. Thompson*, 169 Wn. App. 436, 492-93, 290 P.3d 996 (2012) (allegations of error that have been adequately addressed by counsel are not proper matters for a SAG).

Regarding Delo's other prosecutorial misconduct contentions involving the prosecutor's charging decisions, communication with Delo and defense counsel, and motivations, these contentions rely on matters not in our record. We cannot consider matters outside our record. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). "If a defendant wishes to raise issues on appeal that require evidence or facts not in the existing trial record, the appropriate means of doing so is through a personal restraint petition." *Id.*

Next, Delo alleges ineffective assistance of counsel, speedy trial violation, and multiple constitutional violations. But Delo fails to apprise us of the nature of these alleged errors. RAP 10.10(c) states, "the appellate court will not consider a defendant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors." Delo's bare assertions are insufficient. Therefore, we decline to review these issues.

We affirm.

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.

Veljacic, J.

Veljacic, J.

We concur:

Worswick, J.

Worswick, J.

Lee, C.J.

Lee, C.J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 53839-3-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: April 8, 2021
Washington Appellate Project

WASHINGTON APPELLATE PROJECT

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