Supreme Court No. 99932-5
No. 79806-5-I
(Consolidated with No. 80148-1-I)

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,

Respondent,

v.

JAMES GRIEPSMA, Jr.,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

James Griepsma, the petitioner, asks this Court to grant review of the Court of Appeals' decision terminating review. The Court of Appeals issued its opinion on May 24, 2021. The Court granted a motion to publish the opinion on June 24, 2021. The opinion and order publishing are attached in the appendix.

B. ISSUES FOR WHICH REVIEW SHOULD BE GRANTED

1. Defendants have the constitutional right to an impartial jury. This right is violated by the seating of a biased juror. Near the end of jury selection, several jurors affirmatively agreed that they would give more weight to testimony from law enforcement witnesses simply because they were law enforcement. There was no follow up or assurance that these jurors could set aside this bias and be impartial. Three of these jurors sat on the jury and deliberated. Did this violate the constitutional guarantee of trial by an impartial jury?

2. Custodial assault under RCW 9A.36.100 punishes assaults against corrections officers. After enacting the custodial assault statute, the legislature amended the third degree assault statute so that it would punish assaults against law enforcement officers or other employees of a law enforcement agency. Statutes are generally interpreted so as to not make another statute redundant. Given this principle and the history of the two

statutes, does the custodial assault statute exclusively punish assaults against corrections officers?

3. When offenses are concurrent, the prosecution must charge the special statute, not the general statute. If the custodial assault and third degree assault statutes both punish assaults against corrections officers, must the prosecution charge custodial assault because it is the special statute designated to be charged for assaults against corrections officers?

C. STATEMENT OF THE CASE

James Griepsma boarded a bus at the Skagit Transit Station. RP 111-12, 174; Ex. 1. He placed a large box of food items on the floor in the mid-section of the bus. Ex. 1. Unfortunately, some eggs in the box had broken and began to leak. Ex. 1. Rather than try to find a way to stop the leak and clean up the spill, the driver of the bus demanded that Mr. Griepsma remove the box and get off. Ex. 1. Mr. Griepsma refused and law enforcement was called. Ex. 1.

Mr. Griepsma spoke to the driver and others on the bus about prior unpleasant experiences with Skagit County law enforcement. Ex. 1. Due to these experiences, he was distrustful and hostile toward them. See Ex. 1. When law enforcement officers arrived, Mr. Griepsma got into a verbal dispute with them. Ex. 1. Unfortunately, this became physical and Mr.

Griepsma was arrested. Ex. 1. The prosecution charged Mr. Griepsma with assaulting law enforcement officers. CP 1-2.

The prosecution later amended the information, alleging Mr. Griepsma assaulted corrections officers at the Skagit County jail. The prosecution alleged that in two separate incidents, Mr. Griepsma assaulted the same correctional officer in the jail by spitting on him. CP 6-7, 9, 12-14, 27, 28-30. The prosecution further alleged that in a different incident, Mr. Griepsma removed a shower door and damaged a couple of windows. CP 19, 134-44. The prosecution alleged that Mr. Griepsma assaulted three of the corrections officers who detained Mr. Griepsma during this incident. CP 134-44.

Mr. Griepsma waived his right to counsel and represented himself. CP 31-33.

After several amendments of the charging document, the prosecution ultimately charged Mr. Griepsma with nine counts of assault arising out of the four different alleged incidents, along with one count of malicious mischief in the third degree, a misdemeanor. CP 202-04.

For the alleged incident at the transit center, the prosecution charged Mr. Griepsma with three counts of third degree assault, alleging that Mr. Griepsma assaulted Officers Paul Shaddy, Elizabeth Paul, and Colin Robinson while they were performing their official duties. CP 202-

04 (counts 1, 3, and 4). For the same alleged act of assault against Officer Paul, the prosecution charged Mr. Griepsma with second degree assault. CP 202-04 (count 2).

For the two separate alleged acts in the jail of spitting on corrections Officer Tyrone Smith, the prosecution charged Mr. Griepsma with two counts of third degree assault. CP 202-04 (counts 5 and 9).

For the alleged incident in the jail where corrections officers forcibly detained Mr. Griepsma after he removed a shower door, the prosecution charged Mr. Griepsma with two counts of third degree assault, alleging he assaulted deputies Jaime Freeburn and Christian Andersen. CP 202-04 (counts 6 and 8). Based on the same alleged assaultive act against Officer Andersen, the prosecution charged Mr. Griepsma with second degree assault. CP 202-04 (count 7). For the alleged damage to jail property, the prosecution charged one count of malicious mischief in the third degree, a misdemeanor. CP 202-04 (count 10).

Near the end of jury selection, Mr. Griepsma elicited from six potential jurors that they would "give more weight to a police officer just because - - a police officer's testimony just because they were a police officer." RP 63-64. There was no follow up by the court or the parties about these jurors' disposition to favoring testimony from law enforcement officers. RP 67-72. Three of the seated jurors, numbers 13,

22, and 30, were part of the group that had stated they would give more weight to testimony from law enforcement officers. RP 63-64, 74-75. After hearing testimony from many law enforcement and corrections officers, these jurors deliberated and issued the verdicts. CP 280-83, 298-304; RP 542.

The jury convicted Mr. Griepsma of six counts of third degree assault along with the charge of malicious mischief in the third degree. CP 256. The jury did not convict Mr. Griepsma on the two counts of second degree assault. CP 256-57. The jury also did not find Mr. Griepsma guilty on the charge of third degree assault in count 4 concerning Officer Robinson. CP 256-57.

The court sentenced Mr. Griepsma to 55 months of confinement. CP 267-68.

On appeal, Mr. Griepsma argued that he was deprived of his right to an impartial jury because several of the jurors were biased. He argued four of the convictions for third degree assault should be reversed because the evidence established these were corrections officers within the meaning of the custodial assault statute, not law enforcement officers or employees of a law enforcement agency under the third degree assault statute. Alternatively, he argued that several of these convictions should be reversed because even if the evidence was sufficient to prove the persons

were law enforcement officers or employees of a law enforcement agency, the prosecution was required to charge the specific statute of custodial assault.

The Court of Appeals rejected these arguments. The Court, however, remanded for resentencing due to a failure to prove Mr. Griepsma's offender score and to remedy a sentencing error related to community custody.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. Review should be granted to decide whether affirmative agreement by potential jurors that they will give more weight to law enforcement testimony than other testimony establishes bias.

a. Defendants have a right to trial by an impartial jury. The seating of a juror who has a bias in favor of law enforcement violates this right.

Criminal defendants have a federal and state constitutional right to trial by an impartial jury. U.S. Const. amends. VI, XIV; Const. art. I, §§ 21, 22; State v. Irby, 187 Wn. App. 183, 192, 347 P.3d 1103 (2015); United States v. Kechedzian, 902 F.3d 1023, 1027 (9th Cir. 2018). To protect this constitutional right and guard against unfair trials, the trial court has an independent obligation to ensure that the empaneled jurors are not biased. State v. Guevara Diaz, 11 Wn. App. 2d 843, 855, 456 P.3d 869 (2020), review denied, 195 Wn.2d 1025, 466 P.3d 772. If a biased

juror sits on the jury and deliberates, the defendant has been deprived of their constitutional right to an impartial jury trial. State v. Berhe, 193 Wn.2d 647, 658, 444 P.3d 1172 (2019); Guevara Diaz, 11 Wn. App. 2d at 851-52.

Admitting a bias in favor a class of persons, such as law enforcement witnesses, establishes juror bias. State v. Gonzales, 111 Wn. App. 276, 281, 45 P.3d 205 (2002) (bias in favor of law enforcement testimony over testimony from others); State v. Fire, 100 Wn. App. 722, 728, 998 P.2d 362 (2000) (bias in favor of testimony of children over testimony from adults), reversed on other grounds, 145 Wn.2d 152, 34 P.3d 1218 (2001); State v. Witherspoon, 82 Wn. App. 634, 638, 919 P.2d 99 (1996) (bias against African-Americans).

Because rooting out juror bias in favor of law enforcement witnesses is critical for a fair jury trial, several federal circuit Court of Appeals hold it is reversible error to not permit a defendant to question jurors about this potential bias. E.g., United States v. Contreras-Castro, 825 F.2d 185, 187 (9th Cir. 1987). As recognized long ago in a decision authored by Chief Justice Warren Burger when he was a federal circuit court judge:

> when important testimony is anticipated from certain categories of witnesses, whose official or semi-official status is such that a juror might reasonably be more, or less,

> inclined to credit their testimony, a query as to whether a juror would have such an inclination is not only appropriate but should be given if requested.

Brown v. United States, 338 F.2d 543, 545 (D.C. Cir. 1964). Indeed, when "a case turns on the credibility of law enforcement officers, the [trial] court has a responsibility to ensure the jurors are not predisposed to believe the testimony of the officers is inherently more credible than that of other witnesses." United States v. Amerson, 938 F.2d 116, 118 (8th Cir. 1991) (abrogated on other grounds by United States v. Sithithongtham, 192 F.3d 1119, 1123 (8th Cir. 1999)); accord United States v. Jones, 193 F.3d 948, 951 (8th Cir. 1999).

Once bias in favor of law enforcement testimony is established, there must be assurance that the juror can put aside this bias and be impartial; otherwise the juror must be dismissed. Gonzales, 111 Wn. App. at 281-82; Irby, 187 Wn. App. at 195; Jones, 193 F.3d at 951-52.

b. Three jurors who sat on the jury affirmatively acknowledged they would give more weight to testimony from law enforcement witnesses. This established bias and, without any follow up to ensure impartiality, their sitting on the jury violated the constitutional guarantee of an impartial jury.

Before voir dire began, the court read the charges to the juror pool, informing the jurors that Mr. Griepsma was charged with assaulting law enforcement officers. RP 18-21.

Near the end of voir dire, Mr. Griepsma elicited that six potential jurors would "give more weight to a police officer just because - - a police officer's testimony just because they were a police officer." RP 63-64.

Neither the court nor the parties followed up with these jurors to ensure that they could set aside this bias and be impartial. RP 64-73. Three of the seated jurors, numbers 13, 22, and 30, were part of the group that stated they would give more weight to testimony from law enforcement officers than that of other witnesses. RP 63-64, 74-75.

This deprived Mr. Griepsma of his right to an impartial jury. The jurors were aware that the case concerned charged assaults against law enforcement witnesses. Absent rehabilitation, meaning an assurance of impartiality, the jurors' admitted predispositions to credit law enforcement witnesses established actual bias. Gonzales, 111 Wn. App. at 281. Here, there was no rehabilitation. Thus, there was a presumption of bias that was unrebutted. Guevara Diaz, 11 Wn. App. 2d at 855 ("If the court has only a statement of partiality without a subsequent assurance of impartiality, a court should always presume juror bias."). Consequently, these jurors should have been dismissed. Gonzales, 111 Wn. App. at 281 (a juror who admits bias in favor of police witnesses is actually biased absent some assurance the juror can set aside this bias); see Irby, 187 Wn. App. at 195

(juror's statements that she was predisposed to believe police officers did not establish actual bias because follow up questions showed juror could put aside her predisposition). Given the lack of follow up or rehabilitation, these jurors remained biased and should have been dismissed. See Irby, 187 Wn. App. at 197 (complete lack of follow up questions to juror's statement that she "would like to say he's guilty" meant actual bias was established,); Guevara Diaz, 11 Wn. App. 2d at 857-58 (juror's statement in questionnaire that she could not be fair to the defendant established actual bias because this was all the record clearly showed).

The Court of Appeals concluded that the jurors' answers "express[ed] a mere preference in favor of police testimony," and did not establish actual bias. Slip op. at 5-6. In support, the Court quoted language from Gonzales stating that, "A prospective juror's expression of preference in favor of police testimony does not, standing alone, conclusively demonstrate bias." Slip op. at 5 (quoting Gonzales, 111 Wn. App. at 281). But what this means is that the juror can (and must) be rehabilitated. Absent rehabilitation, meaning an adequate subsequent assurance of impartiality, actual bias is established. Gonzales, 111 Wn. App. at 281; Jones, 193 F.3d at 951-52; State v. Prtine, 784 N.W.2d 303, 309-11 (Minn. 2010).

The Court of Appeals cited statements made by the three jurors earlier during voir dire as indicating the jurors were not biased in favor of law enforcement witnesses. Slip op. at 6 & n.2. If anything, this only shows that these jurors did not understand being impartial meant not giving greater weight to a witness's testimony simply because the witness is a law enforcement officer. As explained by the Eighth Circuit, a juror's previous statements do not mean that follow up is not required when the juror expresses bias in favor of police officers:

> the trial court gave no additional instructions to, and asked no additional questions of, Juror No. 27 after she revealed her bias. All relevant instructions and questions from the trial court to Juror No. 27 during voir dire came prior to her statement of bias, and evidently did not convince her that no special credence is owed to the testimony of police officers.

Jones, 193 F.3d at 952 (emphases added). In other words, earlier statements by a juror indicating impartiality do not mean that the juror remains impartial after later making statements establishing bias. Thus, the Court of Appeals erred in relying on earlier statements by these jurors which arguably indicated impartiality towards all witnesses.

c. Whether a statement by a juror favoring testimony from law enforcement establishes bias requiring follow up to ensure impartiality is an issue of substantial public interest and presents a significant constitutional question. Review should be granted.

Although the nature of the charges in this case made the testimony from law enforcement witnesses a critical component of the case, law enforcement testify in virtually all criminal jury trials. And they usually testify against defendants. Juror bias in favor of law enforcement witnesses deprives defendants of fair and impartial jury trials. Jones, 193 F.3d at 952. But the published Court of Appeals decision incorrectly holds that a juror is not actually biased even if the juror affirmatively states the juror will give greater weight to testimony from police officers. Contrary to the rule stated in other cases, no follow up to ensure impartiality is required under the opinion. Review is warranted to resolve the conflict. RAP 13.4(b)(2). Trial courts that follow this opinion, as they must, will deprive defendants of their constitutional rights. Review of this issue is warranted as one of substantial public interest. RAP 13.4(b)(4). And whether bias is established by a statement favoring police testimony is a significant constitutional question meriting review. RAP 13.4(b)(3). Review should be granted.

2. Review should be granted to decide whether the third degree assault statute, which punishes assaults against law enforcement officers, applies to assaults against corrections officers, which are already punished under the custodial assault statute.

Mr. Griepsma was convicted of several counts of third degree assault under RCW 9A.36.031(1)(g). CP 256-57. This required the prosecution to prove that Mr. Griepsma assaulted "a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault." RCW 9A.36.031(1)(g).

The prosecution did not meet its burden as to the charges of third degree assault in counts 5, 6, 8, and 9. The evidence at trial did not prove that the named victims in these counts—Tyrone Smith,[1] Jaime Freeburn, and Christian Andersen—were law enforcement officers or other employees of a law enforcement agency at the time of the purported assaults. Rather, the evidence affirmatively showed they were corrections officers at the Skagit County Jail, a local detention facility. RP 269-70, 292-93, 314-15. Accordingly, the evidence was insufficient. This conclusion follows from a proper interpretation of RCW 9A.36.031(1)(g). The terms "law enforcement officer" and "law enforcement agency" as

[1] Tyrone Smith was the named victim in both counts 5 and 9.

used in the third degree assault statute are undefined. RCW 9A.04.110. Thus, interpretation is necessary.

Statutory interpretation is a legal issue reviewed *de novo*. State v. K.L.B., 180 Wn.2d 735, 739, 328 P.3d 886 (2014). In interpreting a statute, the court considers the text, the context of the statute, related provisions, amendments, and the statutory scheme as a whole. State v. Conover, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015).

The offense of third degree assault under RCW 9A.36.031(1) can be contrasted with the offense of custodial assault under RCW 9A.36.100. The custodial assault statute is structured similarly to the third degree assault statute. It applies where a person assaults a staff member or any other personnel at a corrections institution or detention facility who was performing his or her official duties at the time of the assault. RCW 9A.36.100(1).[2]

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[2] The statute reads:

> (1) A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:
>
> (a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault;
>
> (b) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any adult corrections institution or local adult detention facilities who was performing official duties at the time of the assault;

The terms "law enforcement officer" and "law enforcement agency" should be given a narrow construction that excludes corrections officers or staff members of a detention facility. To interpret it broadly, as the Court of Appeals did in this case, renders the custodial assault statute largely redundant or superfluous. It is well established that statutes should be interpreted so that other provisions are not made superfluous. K.L.B., 180 Wn.2d at 742. For example, in K.L.B., this Court rejected a broad reading of the term "public servant" because it would have rendered other terms in the statutory scheme superfluous. Id. at 740-45.

This analysis is further supported by the history of the two statutes. In 1987, the legislature enacted the custodial assault statute. Laws of 1987, ch. 188, § 1. The act was described as "AN ACT Relating to assault at state corrections institutions and local detention facilities." Id. A year later, the legislature expanded this statute to include assaults against community correction officers and other employees of a community corrections office. Laws of 1988, ch. 151, § 1. Against this background, in

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(c)(i) Assaults a full or part-time community correction officer while the officer is performing official duties; or

(ii) Assaults any other full or part-time employee who is employed in a community corrections office while the employee is performing official duties; or

(d) Assaults any volunteer who was assisting a person described in (c) of this subsection at the time of the assault.

1989, the legislature enacted the provision of the third degree assault statute that makes it a felony to assault a law enforcement officer or other employee of a law enforcement agency performing their official duties. Laws of 1989, ch. 169, § 1.

In interpreting a statute, this Court "presume[s] the legislature enacts laws with the full knowledge of existing laws." Lenander v. Washington State Dep't of Ret. Sys., 186 Wn.2d 393, 407, 377 P.3d 199, 207 (2016). Thus, when the legislature enacted the provision of the third degree assault statute punishing assaults against law enforcement, the legislature was aware that it was already a felony to assault a corrections officer or staff member of a detention facility. It must be presumed that the legislature was not intending to make the custodial assault statute redundant. See In re Recall of Pearsall-Stipek, 141 Wn.2d 756, 769, 10 P.3d 1034 (2000) ("We are not so quick to assume redundancy on the part of our Legislature.").

In sum, given the existence of the custodial assault statute, the only reasonable interpretation is that correction officers and other personnel of a detention facility are not "law enforcement officers" or employees of a "law enforcement agency" within the meaning of RCW 9A.36.031(1)(g).

At the least, this is a reasonable interpretation. If there are multiple reasonable interpretations of a criminal statute, the statute is ambiguous

and the rule of lenity applies. City of Seattle v. Winebrenner, 167 Wn.2d 451, 462, 219 P.3d 686 (2009). Under the rule of lenity, ambiguous statutes are resolved in a criminal defendant's favor. Id. at 462-63. Applying the rule of lenity, correction officers or staff members of a detention facility do not fall within the scope of RCW 9A.36.031(1)(g).

In concluding otherwise, the Court of Appeals failed to take into account the history of the two statutes or to abide by these canons of statutory interpretation. Instead, the Court simply read the language, "employee of a law enforcement agency" in isolation. This is error because plain meaning analysis does not view the statutory language in isolation. State, Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 10-12, 43 P.3d 4 (2002). Rather, plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Id. at 11 (emphasis added). Under this approach, "'[r]eference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes.'" Id. at 11 (quoting 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16, at 809-10 (6th ed. 2000)). No determination of "ambiguity" must made before related statutes are examined. Id. at 11-12.

Criminal statutes should be interpreted narrowly and given the proper scope. Review is warranted because this issue is one of substantial public interest. RAP 13.4(b)(4). The mode of analysis by the Court of Appeals in construing the statute is also contrary to precedent, further meriting review. RAP 13.4(b)(1), (2).

3. If the third degree assault statute and the custodial assault statute both punish assaults against corrections officers, review should be granted to decide whether such assaults must be charged exclusively under the custodial assault statute.

Assuming the two statutes do apply and that corrections officers are also law enforcement officers under the third degree assault statute, Mr. Griepsma should have only been charged under the custodial assault statute for any assault against a corrections officer. This is because the two offenses are concurrent, and the prosecution must charge the special statute rather than the general statute. State v. Shriner, 101 Wn.2d 576, 580, 681 P.2d 237 (1984).

The Court of Appeals concluded the two statutes were not concurrent because an "assault against any volunteer, vendor, service provider, or staff member of a corrections institution who is not employed by a law enforcement agency would not trigger the third degree assault provision." Slip op. at 10. But here the assaults did not concern a volunteer or vendor of a detention or correctional facility. Rather, they concerned

staff members of a detention or correctional facility. Thus, as charged and proved in this case, there is overlap. See State v. Freeman, 153 Wn.2d 765, 776, 108 P.3d 753 (2005) (in double jeopardy analysis, court "consider[s] the elements of the crimes as charged and proved, not merely as the level of an abstract articulation of the elements"). In other words, the analysis should use the facts in the case before it, which here concerns staff members of a detention or correctional facility.

This analysis is supported by State v. Haley, 39 Wn. App. 164, 692 P.2d 858 (1984). There, the Court of Appeals held "that where the facts support either a manslaughter or negligent homicide charge, it is the prosecutor's duty, where an automobile is involved, to charge the more specific negligent homicide." Haley, 39 Wn. App. at 169 (emphasis added). That it was possible to commit negligent homicide without committing manslaughter did not matter. See id. at 166 n.2 (setting out language of the two offenses). What mattered was that, "[i]n the facts before us, both the negligent homicide (RCW 46.61.520) and the first degree manslaughter (RCW 9A.32.060) statutes are applicable." Id. at 168 (emphasis added). To permit the State to charge manslaughter in these cases would "emasculate the negligent homicide statute." Id.

In the facts of this case, Mr. Griepsma purportedly assaulted staff members of a detention or correctional facility. That the custodial assault

statute also criminalized assaults against volunteers or vendors at a detention or correctional facility is immaterial. See Haley, 39 Wn. App. at 168-69. That these staff members may have been employees of a law enforcement agency did not permit the prosecution to charge third degree assault. Rather, the prosecution was obliged to charge custodial assault because it is the specific statute.

The Court of Appeals' contrary determination conflicts with the mode of analysis in Haley and therefore conflicts with precedent. RAP 13.4(b)(2). Further, this Court has not considered whether the general-specific rule should use the actual facts of the case, rather than an abstract analysis involving portions of the statute that are not applicable in the case. This is an issue of substantial public interest meriting review. RAP 13.4(b)(4).

E. CONCLUSION

For the foregoing reasons, this Court should grant Mr. Griepsma's petition for review.

Respectfully submitted this 28th day of June, 2021.

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Appendix

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

STATE OF WASHINGTON, Respondent, v. JAMES DAVID GRIEPSMA, JR., Appellant.	No. 79806-5-I (consolidated with 80148-1-I) ORDER GRANTING MOTION TO PUBLISH OPINION
In the Matter of the Postsentence Review of JAMES DAVID GRIEPSMA, JR., Respondent.	

Appellant James Griepsma Jr. has filed a motion to publish the opinion filed on May 24, 2021. Respondent State of Washington has filed a response to appellant's motion. The panel has determined that appellant's motion to publish the opinion should be granted. Now, therefore, it is hereby

ORDERED that the opinion filed on May 24, 2021, shall be published and printed in the Washington Appellate Reports.

FOR THE COURT:

Judge

FILED
5/24/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JAMES DAVID GRIEPSMA, JR., Appellant.	No. 79806-5-I (consolidated w/80148-1-I) DIVISION ONE UNPUBLISHED OPINION
In the Matter of the Postsentence Review of JAMES DAVID GRIEPSMA, JR., Respondent.	

SMITH, J. — A jury found James Griepsma Jr. guilty of six counts of third degree assault and one count of third degree malicious mischief. Griepsma appeals, contending that the court allowed jurors with actual bias to sit on the jury, that the State failed to prove several of the assault charges, that the State was required to charge him under a more specific statute, and that the State failed to prove his criminal history. The Department of Corrections (DOC) filed a postsentence petition, alleging that the court erred by not ordering community custody. We conclude that the State properly charged and proved third degree assault and that Griepsma has failed to establish juror bias. Therefore, we affirm his convictions. However, we agree that the State failed to prove Griepsma's

criminal history and that the court was required to impose community custody, and we therefore remand for resentencing.

FACTS

In February 2018, after a bus driver asked Griepsma to get off a bus and Griepsma refused, Griepsma got into a conflict with Skagit Transit employees at a transit station in Mount Vernon. Police officers arrived, and in the subsequent interaction, Griepsma punched the officers, resulting in charges for assault and resisting arrest. While in the Skagit County Jail, Griepsma twice spit on a corrections officer and, in one incident, swung a door at one corrections officer and pushed a different officer's head to the floor, leading to a concussion. The State added several additional third degree assault charges for these incidents on the basis that Griepsma had assaulted "a law enforcement officer or other employee of a law enforcement agency." The State also charged Griepsma with two counts of second degree assault, one against an arresting officer and one against a corrections officer. Finally, the State dismissed the resisting arrest charge and added a charge for third degree malicious mischief.

At trial, Griepsma represented himself. The jury found him guilty of malicious mischief and all but one of the third degree assault charges. The jury left the verdict form blank for the other third degree assault charge and the two second degree assault charges. The court determined that there was a mistrial as to those three charges and dismissed them without prejudice.

At sentencing, the State alleged that Griepsma's sentencing score was 9+, and it recommended the maximum sentence of 60 months under the standard

range. The court ordered a midrange sentence of 55 months for each of the assault charges, to be served concurrently, and it did not order community custody. Griepsma appeals.

ANALYSIS

Griepsma contends that biased jurors sat on the jury, that the State erroneously charged and failed to prove several counts of assault, and that the State failed to prove Griepsma's criminal history. DOC challenges the court's failure to impose community custody. Finally, Griepsma raises several additional issues in a statement of additional grounds for review (SAG).[1]

Juror Bias

Griepsma first contends that the court allowed jurors with actual bias to serve on the jury and that therefore he is entitled to a new trial. We disagree.

An appellant may raise the issue of juror bias for the first time on appeal, and if a juror exhibited actual bias, the appellant is entitled to a new trial. State v. Irby, 187 Wn. App. 183, 192-93, 347 P.3d 1103 (2015). "The trial judge is in the best position to evaluate whether a particular potential juror is able to be fair and

[1] Griepsma also contends that the court erred by dismissing the second degree assault charges without prejudice instead of with prejudice. If "(1) the State charges a person with greater and lesser offenses and the jury is unable to agree regarding the greater offense but finds the defendant guilty of the lesser offense and (2) the defendant's conviction for the lesser offense is reversed on appeal," then recharging the greater offense does not violate double jeopardy. State v. Glasmann, 183 Wn.2d 117, 119, 349 P.3d 829 (2015). However, if the conviction for the lesser offense "'is not overturned on appeal, the conviction, once final, terminates jeopardy.'" State v. Ervin, 158 Wn.2d 746, 758, 147 P.3d 567 (2006) (emphasis omitted) (quoting State v. Linton, 156 Wn.2d 777, 792, 132 P.3d 127 (2006) (Sanders, J., concurring)). Because we affirm Griepsma's convictions for third degree assault, the second degree assault charges must be dismissed with prejudice on remand.

impartial based on observation of mannerisms, demeanor, and the like." State v. Gonzales, 111 Wn. App. 276, 278, 45 P.3d 205 (2002). We review the court's failure to dismiss a biased juror for a manifest abuse of discretion. Gonzales, 111 Wn. App. at 278.

Actual bias is "the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2). However, even if a juror appears to have formed an opinion, the court need not dismiss the juror unless the court is "satisfied, *from all the circumstances*, that the juror cannot disregard such opinion and try the issue impartially." RCW 4.44.190 (emphasis added); State v. Lawler, 194 Wn. App. 275, 281, 374 P.3d 278 (2016).

Here, Griepsma challenges the seating of five jurors for the first time on appeal. First, he claims jurors 32 and 34 said that they expected Griepsma to testify and "that they would hold his failure to testify against him." This claim arises from the following interaction during voir dire:

> THE DEFENDANT: . . . Will -- would anyone here be disappointed if the Defendant does not present any evidence or burden of proof?
>
> . . . .
>
> NUMBER 21: Is he asking that since -- if the Defendant doesn't say anything, that we won't hold that against him? Is that the question?
>
> THE DEFENDANT: Yes, ma'am.
>
> NUMBER 21: Thank you.
>
> THE DEFENDANT: Does anyone expect me to testify?

Jurors 32 and 34, who were ultimately selected for the jury, raised their hands to this last question. This exchange is significantly more ambiguous than

Griepsma contends. Griepsma's questioning was somewhat confusing, so it is unclear from the context whether the jurors were saying that they would hold a failure to testify against him or simply whether they expected him to testify. Because the court is in the best position to determine whether a juror is biased, we defer to the court's assessment of which question the jurors were responding to and defer to its decision to place jurors 32 and 34 on the jury. Gonzales, 111 Wn. App. at 278.

Griepsma next challenges jurors 13, 22, and 30 on the basis that they were biased toward law enforcement. These jurors answered yes to the question: "[W]ould anybody give more weight to . . . a police officer's testimony just because they were a police officer." They were not asked follow-up questions.

"A prospective juror's expression of preference in favor of police testimony does not, standing alone, conclusively demonstrate bias." Gonzales, 111 Wn. App. at 281. However, if this stated preference rises to a preconceived opinion or belief about the issues, then actual bias is established. See Gonzales, 111 Wn. App. at 281 (juror's statement that she would have a "'very difficult'" time disbelieving a police officer and was not certain she could apply the presumption of innocence was clear indicator of actual bias); Irby, 187 Wn. App. at 196 (a juror who said she was "predisposed to believe" police officers but would try to decide the case fairly did not demonstrate actual bias, but a juror who said she "'would like to say he's guilty'" because of her predisposition in favor of the State did demonstrate actual bias.). Here, the jurors' answers express a mere

preference in favor of police testimony. Therefore, Griepsma has not established actual bias on the part of these jurors.

Furthermore, the entire context of voir dire supports a determination that these jurors could be impartial. Juror 13 stated, "I don't feel I could have any problem with being biased in this case." Juror 30 indicated that their brother-in-law was in law enforcement but that they could decide "based upon the evidence [they heard] and the law, not outside influences." Finally, although juror 22 indicated they would give greater weight to a police officer's testimony, they also indicated that they had had a negative experience with law enforcement that led them to believe that police officers "sometimes . . . take their duties a little above and beyond." Accordingly, we conclude that the trial court did not abuse its discretion when it allowed these jurors to sit on the jury.[2]

Sufficiency of the Evidence for Third Degree Assault

Griepsma contends that the prosecution failed to prove every element of third degree assault under RCW 9A.36.031(1)(g) as charged in counts 5, 6, 8, and 9. Specifically, Griepsma contends that the State failed to prove that the victims in these incidents qualified as law enforcement officers or other employees of a law enforcement agency. Because the record establishes that

[2] Griepsma disagrees that these statements support a finding of juror impartiality, contending that the trial court was required to rehabilitate the jurors by inquiring into their ability to be neutral *after* they expressed their preference for police testimony. While we have noted that expressions of bias can be "neutralized by further questioning," rehabilitation was not required here because the jurors did not in fact demonstrate actual bias. Gonzales, 111 Wn. App. at 282. Furthermore, even if they had, the law is clear that in judging juror impartiality, the court has broad discretion to consider *all* the circumstances. Irby, 187 Wn. App. at 193.

the victims in these incidents were all corrections officers employed by the Skagit County Sheriff's Office, we disagree.

In order to "'ensure that the defendant's due process right in the trial court was properly observed,'" we review the record to ensure the State provided sufficient evidence to support a conviction. State v. Berg, 181 Wn.2d 857, 867, 337 P.3d 310 (2014) (quoting State v. Phuong, 174 Wn. App. 494, 502, 299 P.3d 37 (2013)). In doing so, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). We review issues of statutory interpretation, such as the elements of a crime, de novo. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). If the plain language of the statute is "unambiguous, meaning it is subject to only one reasonable interpretation, our inquiry ends." State v. K.L.B., 180 Wn.2d 735, 739, 328 P.3d 886 (2014).

Here, the plain language of the statute is clear. RCW 9A.36.031(1)(g) defines third degree assault to include assault against "a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault." "[L]aw enforcement" means "the department of people who enforce laws, investigate crimes, and make arrests." MERRIAM-WEBSTER'S ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/law%20enforcement (last visited May 14, 2021); see also In re Det. of J.N., 200 Wn. App. 279, 286, 402 P.3d 380 (2017) ("Where the

legislature has not defined a term, we may look to dictionary definitions, as well as the statute's context, to determine the plain meaning of the term."). A sheriff's office is a law enforcement agency. See RCW 36.28.010(1) (county sheriff "[s]hall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses"); Yakima County Deputy Sheriff's Ass'n v. Bd. of Comm'rs for Yakima County, 111 Wn.2d 854, 856-57, 765 P.2d 1297 (1989) (citing a different statutory definition of "law enforcement officer" as including county and deputy sheriffs); State v. Ramos, 149 Wn. App. 266, 271, 202 P.3d 383 (2009) (describing county sheriff's actions as authorized by a statute delegating power to "law enforcement agencies"). Therefore, although corrections officers who are employed by a sheriff's office may not be "law enforcement officer[s]," they are nonetheless "employee[s] of a law enforcement agency." RCW 9A.36.031(1)(g).

The State established that the victims in counts 5, 6, 8, and 9 were employed by the Skagit County Sheriff's Office. Accordingly, they fall into the class of victims described by RCW 9A.36.031(1)(g). We therefore conclude that there is sufficient evidence to support these convictions.

Griepsma disagrees and contends that we should read the statute narrowly to exclude corrections officers because to do otherwise would "render the custodial assault statute largely redundant or superfluous." While it is true that we do not "interpret a statute in any way that renders any portion meaningless or superfluous," Jongeward v. BNSF R. Co., 174 Wn.2d 586, 601, 278 P.3d 157 (2012), the plain reading of the third degree assault statute does

not render the custodial assault statute meaningless or superfluous. The custodial assault statute punishes the assault of a "staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof" at any corrections institution. RCW 9A.36.100(1). This list includes many individuals who are not covered by the third degree assault statute, including volunteers as well as corrections staff members who are employed by entities other than law enforcement agencies. Therefore, Griepsma's contention fails.

Failure To Charge Griepsma with Custodial Assault

Griepsma next contends that for assault against corrections officers, the State was required to charge him with custodial assault instead of third degree assault. He contends that the custodial assault statute is a special statute punishing the same conduct as RCW 9A.36.031(1)(g) and that therefore the general/special rule of statutory construction applies. We disagree.

The general/special rule of construction provides that "'where a special statute punishes the same conduct which is punished under a general statute, the special statute applies and the accused can be charged only under that statute.'" State v. Shriner, 101 Wn.2d 576, 580, 681 P.2d 237 (1984) (quoting State v. Cann, 92 Wn.2d 193, 197, 595 P.2d 912 (1979)). This rule only applies where the statutes are concurrent, which means that "the general statute will be violated in each instance where the special statute has been violated." Shriner, 101 Wn.2d at 580.

The general/special rule does not apply here because the statutes are not

concurrent. As noted above, the custodial assault statute punishes the assault of a "staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof" at any corrections institution. RCW 9A.36.100(1). By contrast, the third degree assault provision at issue here punishes assault against "a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault." RCW 9A.36.031(1)(g). Griepsma's argument fails because the third degree assault statute will not be violated each time the custodial assault statute is violated. For instance, assault against any volunteer, vendor, service provider, or staff member of a corrections institution who is not employed by a law enforcement agency would not trigger the third degree assault provision. Therefore, the statutes are not concurrent and the general/special rule does not apply.[3]

Griepsma disagrees and contends that the court should address whether the statutes overlap in the specific facts at issue here, rather than whether the statutes are concurrent under any set of facts. But this is not the test. Griepsma's reliance on our decision in State v. Haley, 39 Wn. App. 164, 692 P.2d 858 (1984), is misplaced. There, we stated that "where the facts support

[3] This conclusion is consistent with our decision in State v. Lavery, No. 50196-1-II, slip op. at 4 (Wash. Ct. App. July 31, 2018) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2050196-1-II%20Unpublished%20Opinion.pdf ("[C]ustodial assault and assault in the third degree are not concurrent."). We also explained in that case that because the two statutes set equivalent punishments, the choice to charge one or the other does not implicate equal protection concerns. Lavery, No. 50196-1-II, slip op. at 4. Griepsma does not raise equal protection concerns here, so we do not address this issue.

either a manslaughter or negligent homicide charge, it is the prosecutor's duty . . . to charge the more specific negligent homicide." Haley, 39 Wn. App. at 169. This language does not imply that statutes can be concurrent solely based on the facts in one specific scenario but instead acknowledges that facts will not always support a charge under the more specific statute even where they support a more general charge. The law is clear that the test for whether statutes are concurrent is whether "the general statute will be violated in *each instance* where the special statute has been violated." Shriner, 101 Wn.2d at 580 (emphasis added).

Because the general/special rule does not apply, we affirm Griepsma's third degree assault convictions.

Calculation of Offender Score for Sentencing

Griepsma next contends that the State failed to prove his criminal history by a preponderance of the evidence and that therefore we should remand for resentencing. He points to the State's failure to produce a judgment and sentence for an alleged 1994 burglary and the State's production of only an uncertified judgment and sentence for four prior offenses in 2017. We agree that the State failed to prove that the 1994 burglary should be included in Griepsma's offender score and therefore remand for resentencing.

We review a sentencing court's calculation of an offender score de novo. State v. Moeurn, 170 Wn.2d 169, 172, 240 P.3d 1158 (2010). However, the existence of a prior conviction is a question of fact, which we review for substantial evidence. In re Pers. Restraint of Adolph, 170 Wn.2d 556, 566, 243

P.3d 540 (2010); Interstate Prod. Credit Ass'n v. MacHugh, 90 Wn. App. 650, 654, 953 P.2d 812 (1998).

At sentencing, the State has the burden to prove prior convictions by a preponderance of the evidence. Adolph, 170 Wn.2d at 566. This includes proving any misdemeanor convictions that prevent other convictions from washing out. State v. Cross, 156 Wn. App. 568, 586-87, 234 P.3d 288 (2010), modified on remand, 166 Wn. App. 320, 271 P.3d 264 (2012). The rules of evidence do not apply to a sentencing hearing. State v. Strauss, 119 Wn.2d 401, 418, 832 P.2d 78 (1992); ER 1101(c)(3). "'The best evidence of a prior conviction is a certified copy of the judgment.'" Adolph, 170 Wn.2d at 566 (quoting State v. Ford, 137 Wn.2d 472, 480, 973 P.2d 452 (1999)). However, the State's burden "may be satisfied by evidence that bears some 'minimum indicia of reliability'" including "'other comparable documents of record or transcripts of prior proceedings.'" Adolph, 170 Wn.2d at 568-69 (quoting Ford, 137 Wn.2d at 480-81). "[A] certified copy of the judgment is not required to prove the existence of a conviction." Adolph, 170 Wn.2d at 568. For instance, our Supreme Court has held that the State established criminal history through a Department of Licensing driving record abstract and a Judicial Information System printout. Adolph, 170 Wn.2d at 569-70. Additionally, we have noted in the context of proving out-of-state criminal history that where the State provided minute orders, guilty pleas, charging documents, and an abstract of judgment, it was immaterial whether the documents were certified. State v. Winings, 126 Wn. App. 75, 92, 107 P.3d 141 (2005).

We first conclude that substantial evidence supports the trial court's finding that Griepsma's criminal history included the four 2017 convictions. Although the judgment and sentence presented by the State is not certified, it exhibits at least "minimum indicia of reliability." Ford, 137 Wn.2d at 481. The judgment and sentence bears the stamp of the superior court clerk and lists identifying information for Griepsma, including his date of birth and ID numbers. Furthermore, because it is from Skagit County, and not an out-of-state judgment, the Skagit County Superior Court was well positioned to assess its reliability. Accordingly, we decline to substitute our judgment for the trial court's and conclude that substantial evidence supports the court's findings with respect to these charges.

Next, we accept the State's concession that it failed to establish the 1994 burglary. The State's only evidence supporting the burglary charge was the 2017 judgment and sentence, which listed the burglary in Griepsma's criminal history. Even if this were sufficient evidence of the burglary itself, the 1994 burglary would wash out under RCW 9.94A.525(2)(b) unless Griepsma committed a crime in the interim. Because the State provided no evidence of any intervening crime, we conclude that the court erred by including this charge in Griepsma's criminal history. See Cross, 156 Wn. App. at 586-87 (stating that the State can meet its burden to show a felony did not wash out with evidence of intervening misdemeanors).

Finally, we cannot conclude that the inclusion of the burglary in Griepsma's criminal history was harmless error. "When the sentencing court

incorrectly calculates the standard range . . . remand is the remedy unless the record clearly indicates the sentencing court would have imposed the same sentence anyway." State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575 (1997). In this case, Griepsma's offender score was listed as "9+," based on the State's calculation of his score as 10. Without the burglary conviction, Griepsma's offender score is 9, resulting in the same sentencing range. The State recommended the high end of the sentence range, 60 months, and the court ordered a midrange sentence of 55 months. Some cases have held that when the sentencing range remains the same after recalculation of the offender score, the calculation error is harmless. State v. Priest, 147 Wn. App. 662, 673, 196 P.3d 763 (2008). However, elsewhere, we have held that the error is not harmless, even if the sentencing range is the same, because the "record does not clearly indicate that the sentencing court would have imposed the same sentence" without the erroneous offender score. State v. McCorkle, 88 Wn. App. 485, 499-500, 945 P.2d 736 (1997), aff'd, 137 Wn.2d 490, 973 P.2d 461 (1999). Because we cannot discern from the record that the court would have imposed the same sentence given Griepsma's correct offender score, we remand for resentencing.

Imposition of Community Custody

DOC in its postsentence petition asserts that the court erred by not ordering community custody. We agree.

As an initial matter, Griepsma asserts that DOC lacks standing to bring this petition because it failed to make reasonable efforts to resolve the issue

below. RCW 9.94A.585(7) permits DOC to "petition for a review of a sentence committing an offender to the custody or jurisdiction" of DOC. The petition must be filed within 90 days of DOC knowing the terms of the sentence and must "include a certification by [DOC] that all reasonable efforts to resolve the dispute at the superior court level have been exhausted." RCW 9.94A.585(7). If DOC fails to make these reasonable efforts at the trial court level, it will not have standing to file its petition. In re Sentence of Hilborn, 63 Wn. App. 102, 106-07, 816 P.2d 1247 (1991). While DOC does not need to formally file a motion, it must at least inform the court of the perceived errors. In re Sentence of Chatman, 59 Wn. App. 258, 264, 796 P.2d 755 (1990). For instance, in Hilborn, DOC mailed a letter to inform the court that the law did not authorize a defendant's sentence and then filed its postsentence petition four days later. Hilborn, 63 Wn. App. at 103-04. Because "the trial court was simply not given a fair opportunity to analyze DOC's concerns about the sentence, or to make any appropriate corrections," we held that DOC had not made reasonable efforts and therefore did not have standing to file the petition. Hilborn, 63 Wn. App. at 105-07.

In this case, DOC e-mailed the prosecutor to inform him of the sentencing error on April 10, 2019. The prosecutor replied, agreeing that community custody had not been imposed, but did not agree to seek an amendment of the error. DOC then e-mailed the prosecutor as well as the trial court on June 7, stating that if the sentence was not amended, DOC would file a postsentence petition. The prosecutor again replied but did not indicate that he would seek to

amend the sentence, and the court apparently did not reply. DOC filed its petition on July 3, 2019. Because DOC gave the State and the court notice and sufficient time to reply, we hold that DOC made reasonable efforts and accordingly has standing to file its petition.

As to the merits, DOC contends that the court erred by failing to impose a community custody term on Griepsma. We review the sentence for errors of law. RCW 9.94A.585(7). RCW 9.94A.701(3)(a) requires the court to sentence the defendant "to community custody for one year when the court sentences the person to the custody of" DOC for committing a crime against persons. Third degree assault is a crime against persons, meaning this community custody requirement applies to Griepsma. Former RCW 9.94A.411(2)(a) (2017). However, the "term of community custody . . . shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum." RCW 9.94A.701(9).

Griepsma was sentenced to 55 months but had a maximum sentence of 60 months. Therefore, under RCW 9.94A.701(9) the court could only sentence Griepsma to a combined 60 months of incarceration and community custody. Accordingly, we "remand to the trial court to either amend the community custody term or resentence" the defendant in accordance with RCW 9.94A.701(9). State v. Boyd, 174 Wn.2d 470, 473, 275 P.3d 321 (2012).

Statement of Additional Grounds for Review

In his SAG, Griepsma raises several additional issues. None have merit.

A defendant may file a SAG "to identify and discuss those matters related to the decision under review that the defendant believes have not been adequately addressed by the brief filed by the defendant's counsel." RAP 10.10(a). "[T]he 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." RAP 10.10(c). Furthermore, we are "not obligated to search the record in support of claims made in a defendant's statement of additional grounds for review." RAP 10.10(c).

Griepsma contends that he was denied effective access to discovery and legal research while incarcerated. He also claims that he was denied effective assistance of counsel by his standby counsel and denied confidentiality with his investigator. He raised these issues before the trial court, who concluded that he had meaningful access to legal resources. Griepsma fails to inform the court of the error in the court's decision on these issues. RAP 10.10(c); see also State v. Blockman, 198 Wn. App. 34, 43, 392 P.3d 1094 (2017) ("The record reveals that the trial court already addressed [the issues raised in the SAG] at length. Blockman gives us no reason to revisit the trial court's resolution of these issues."), aff'd, 190 Wn.2d 651, 416 P.3d 1194 (2018). Furthermore, the record indicates that Griepsma had his standby counsel dismissed and does not establish that Griepsma's communications with his investigator would be subject to attorney-client privilege. See Morgan v. City of Federal Way, 166 Wn.2d 747, 755, 213 P.3d 596 (2009) (evidence did not support contention that investigator's report was protected by attorney-client privilege because investigator was not

hired to provide legal advice).[4]

We affirm Griepsma's convictions but remand for resentencing with a recalculated offender score and to impose community custody in accordance with RCW 9.94A.701.

WE CONCUR:

[4] Griepsma raises several other issues that he argued below and the court addressed, such as the denial of a motion to dismiss, prosecutorial retaliation, potential juror prejudice, and the denial of a fair trial. Griepsma does not point to any errors which would give us "reason to revisit the trial court's resolution of these issues." State v. Blockman, 198 Wn. App. at 43. Griepsma also raises issues which do not affect the validity of his convictions or sentence, such as wrongful imprisonment and judicial misconduct in allowing him to be transferred to a prison, but which could perhaps be raised in a personal restraint petition.

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. 79806-5-I**, 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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