

64416-5

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No. 64416-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DEGALVEZ WILLIAMSON,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2019 OCT 22 PM 4:41

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Catherine Shaffer

REPLY BRIEF

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A. REPLY ARGUMENT

1. APPELLANT ACKNOWLEDGES THE RESPONDENT'S CONCESSION THAT MR. WILLIAMSON IS ENTITLED TO REMAND FOR A NEW SENTENCING HEARING.

The Respondent concedes that the trial court erroneously concluded Williamson's conviction for indecent exposure carried a seriousness level of four, where the crime in fact is an unranked felony. Importantly, crimes not assigned a seriousness level are considered unranked felonies, and the Legislature has provided these offenses should be sentenced as follows:

If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; ... and ... a term of community custody not to exceed one year[.]

RCW 9.94A.505(2)(b). Therefore, as the State concedes, Brief of Respondent, at pp. 24-27, Mr. Williamson's case must be remanded for a new sentencing hearing to determine if an exceptional sentence is appropriate under existing law. Because no standard sentence range has been provided for Williamson's crime (felony indecent exposure not involving a person under the age of fourteen),

Williamson's offense is an unranked felony and the sentence range is 0-12 months confinement. RCW 9.94A.505(2)(b).

2. RCW 10.58.090 VIOLATES THE SEPARATION OF POWERS DOCTRINE.

Mr. Williamson relies on his Appellant's Opening Brief in arguing that RCW 10.58.090 is void. ER 101 makes clear that in the event of an irreconcilable conflict between a rule and a statute, the rule will govern. ER 101 ("These rules govern proceedings in the courts of the state of Washington"). Where a statute directly conflicts with ER 404(b) and overturns centuries of common law, which RCW 10.58.090 does, it is void.

Furthermore, the Respondent erroneously contends that this argument need not be addressed by this Court, on ground that the Appellant did not challenge the admission of the evidence under ER 404(b). Mr. Williamson urges the Court to consider his RAP 10.1 Statement of Additional Grounds, in which the Appellant did address inadmissibility under ER 404(b). Statement of Additional Grounds (filed September 1, 2010). That pro se Statement is entitled to be considered a part of Mr. Williamson's arguments on direct appeal.

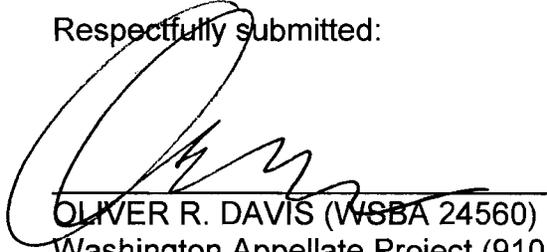
RAP 10.1(a) et seq., State v. Williams, 137 Wn. App. 736, 740 n. 4,
154 P.3d 322 (2007).

B. CONCLUSION

Based on the foregoing and on his Appellant's Opening Brief,
this Court should reverse Michael Williamson's conviction and
sentence.

DATED this 21 day of October, 2010.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "O. R. Davis", is written over a horizontal line.

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Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 64416-5-I
v.)	
)	
MICHAEL WILLIAMSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF OCTOBER, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 22ND DAY OF OCTOBER, 2010.

X _____ 

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