

69237-2

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NO. 69237-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

DAVID M. SHIRLEY,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JAN 15 PM 1:20

BRIEF OF RESPONDENT

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COURT RULES

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I. ISSUE

Does this appeal present any arguable issues?

II. STATEMENT OF THE CASE

The respondent accepts the appellant's statement of the case.

III. ARGUMENT

The appellant's brief identifies three potential issues. None of them have any merit.

The first issue is whether the State proved the existence of the defendant's 1991 juvenile adjudication for second degree assault. In the State's Motion to Transfer, it submitted a certified copy of the adjudication. CP 109-12. That adjudication was therefore properly proved.

The second potential issue is whether the amendment to the judgment was timely. CrR 7.8(a) allows a court to correct "[c]lerical mistakes in judgments" at any time. The test for a "clerical mistake" is whether the judgment, as amended, embodies the trial court's original intention as expressed in the record. State v. Booth, 129 Wn. App. 761, 770, 121 P.3d 755 (2005). Here, the record of the original sentencing shows that the court intended to count the juvenile adjudication. CP 15-16, 22. Amending the judgment to

reflect that intention was a correction of a clerical mistake, which could be done at any time.

The third potential issue is whether the defendant received ineffective assistance of counsel. To establish ineffective assistance, the defendant must show that (1) defense counsel's representation was deficient and (2) the deficient representation prejudiced the defendant. This must be shown by facts in the record. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Here, nothing in the record shows that the offender score was computed incorrectly. Consequently, the defendant cannot show either deficient performance or prejudice. Since none of the potential issues are arguable, the appeal should be dismissed.

IV. CONCLUSION

The appeal should be dismissed for absence of any arguable issues.

Respectfully submitted on January 14, 2013.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: *Seth A. Fine*
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,

Respondent,

v.

DAVID M. SHIRLEY,

Appellant.

No. 69237-2-1

AFFIDAVIT OF MAILING

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STATE OF WASHINGTON
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AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 14th day of January, 2013, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

NIELSEN, BROMAN & KOCH
1908 EAST MADISON STREET
SEATTLE, WA 98122

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 17th day of January, 2013.



DIANE K. KREMENICH
Legal Assistant/Appeals Unit