

NO. 72211-5-1

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

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STATE OF WASHINGTON,

Respondent,

v.

STEVEN TSUJI,

Appellant.

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

The Honorable Charles R. Snyder, Judge

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BRIEF OF APPELLANT

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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION ONE  
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**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENT OF ERROR</u> .....	1
<u>Issue Pertaining to Assignment of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	2
THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED UNDER CrR 6.1(d). ....	2
D. <u>CONCLUSION</u> .....	4

**TABLE OF AUTHORITIES**

Page

WASHINGTON CASES

State v. Alvarez  
128 Wn.2d 1, 904 P.2d 754 (1995)..... 2, 3

State v. Denison  
78 Wn. App. 566, 897 P.2d 437  
review denied, 128 Wn.2d 1006 (1995) ..... 2, 3

State v. Head  
136 Wn.2d 619, 964 P.2d 1187 (1998)..... 2, 3

State v. Hescok  
98 Wn. App. 600, 989 P.2d 1251 (1999)..... 3

State v. Vailencour  
81 Wn. App. 372, 914 P.2d 767 (1996)..... 2

RULES, STATUTES AND OTHER AUTHORITIES

CrR 6.1 ..... 1, 2, 3

A. ASSIGNMENT OF ERROR

The trial court erred when it failed to enter written findings of fact and conclusions of law following appellant's bench trial.

Issue Pertaining to Assignment of Error

When a case is tried to the court, CrR 6.1(d) requires the trial judge to enter written findings of fact and conclusions of law. Did the trial judge violate this rule in appellant's case?

B. STATEMENT OF THE CASE

On March 1, 2012, the Whatcom County Prosecutor's Office charged appellant Steven Tsuji with unlawful issuance of a bank check and second degree theft. CP 3-4. Tsuji's petition to enter "drug court" was granted on July 12, 2012. CP 12. Under the terms of the order, Tsuji waived his right to jury trial and agreed to a stipulated bench trial if he failed to complete the drug court program. CP 8-12.

Tsuji was voluntarily terminated from the drug court program prior to completion by ordered entered May 15, 2014. CP 30. A bench trial was held before the Honorable Charles R. Snyder on June 26, 2014. RP 3-25.<sup>1</sup> The court gave an oral opinion finding Tsuji guilty as charged. RP 21-25.

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<sup>1</sup> There is a single volume of verbatim report of proceedings for the dates of June 26, 2014 and July 10, 2014, referenced herein as "RP."

On July 10, 2014, the court imposed concurrent 27-month sentences on each count. CP 45-55; RP 41. Tsuji appeals. CP 56-67.

C. ARGUMENT

THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED UNDER CrR 6.1(d).

CrR 6.1(d)<sup>2</sup> requires the trial court to enter written findings of fact and conclusions of law after a bench trial. State v. Head, 136 Wn.2d 619, 621-22, 964 P.2d 1187 (1998). The trial court and the prevailing party share the responsibility to see that appropriate findings and conclusions are entered. State v. Vailencour, 81 Wn. App. 372, 378, 914 P.2d 767 (1996). The written factual findings should address the elements of the crimes separately and state the factual basis for the legal conclusions as to each element. State v. Denison, 78 Wn. App. 566, 570, 897 P.2d 437 (1995). “Written findings are essential to permit meaningful appellate review.” State v. Alvarez, 128 Wn.2d 1, 16, 904 P.2d 754 (1995) (citation and internal quotation marks omitted).

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<sup>2</sup> CrR 6.1(d) provides:

Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days’ notice of presentation to the parties.

The factual findings, whether written or oral, must adequately identify the factual basis relied on to support each element of each count. Head, 136 Wn.2d at 623; Alvarez, 128 Wn.2d at 16. Although the court here gave an oral opinion as to Tsuji's guilt on both counts (RP 21-25), “A court’s oral opinion is not a finding of fact.” State v. Hescoek, 98 Wn. App. 600, 605, 989 P.2d 1251 (1999). Rather, an oral opinion is no more than a verbal expression of the court’s informal opinion at the time and “has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment.” Head, 136 Wn.2d at 622 (citation omitted). “An appellate court should not have to comb an oral ruling to determine whether appropriate ‘findings’ have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” Id. at 624.

Where there is a complete failure to comply with CrR 6.1(d), the proper remedy is to vacate the judgment and sentence and remand to the trial court for entry of the required findings and conclusions. State v. Head, 136 Wn.2d 619, 624-26, 964 P.2d 1187 (1998); State v. Denison, 78 Wn. App. 566, 572, 897 P.2d 437, review denied, 128 Wn.2d 1006 (1995).

D. CONCLUSION

In the absence of written findings and conclusions, Tjusi's judgment and sentence should be vacated and the matter remanded.

DATED this 7<sup>th</sup> day of December 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to be 'C. Gibson', written over a horizontal line.

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 17<sup>TH</sup> DAY OF DECEMBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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- [X] STEVEN TSUJI  
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**SIGNED** IN SEATTLE WASHINGTON, THIS 17<sup>TH</sup> DAY OF DECEMBER 2014.

X *Patrick Mayovsky*

2014 DEC 17 PM 4:16  
COURT OF APPEALS DIV 1  
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