

73617-5

FILED
October 29, 2015
Court of Appeals
Division I
State of Washington

73617-5

NO. 73617-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

TODD KINGMA,

Appellant.

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

The Honorable David A. Kurtz, Judge
The Honorable Thomas J. Wynne, Judge

BRIEF OF APPELLANT

JARED B. STEED
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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 COURT’S FAILURE TO COMPLY WITH CrR 3.6(b) REQUIRES REMAND FOR ENTRY OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	2
D. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Cannon
130 Wn.2d 313, 922 P.2d 1293 (1996)..... 2

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

State v. Greco
57 Wn. App. 196, 787 P.2d 940 (1990)..... 2

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

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

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

RULES, STATUTES AND OTHER AUTHORITIES

CrR 3.6 1, 2, 3

RCW 69.50 1

Uniform Controlled Substances Act 1

A. ASSIGNMENT OF ERROR

The trial court erred when it failed to enter written findings of fact and conclusions of law pursuant to CrR 3.6(b).

Issue Pertaining to Assignment of Error

Did the trial court err by failing to enter written findings of fact and conclusions of law following a CrR 3.6 suppression hearing?

B. STATEMENT OF THE CASE

The Snohomish County prosecutor charged appellant Todd Kingma with one count of Violation of the Uniform Controlled Substances Act, chapter 69.50 RCW, for unlawfully possessing methamphetamine. CP 81-82. The trial court held a CrR 3.6 hearing on the parties' motions, and entered a ruling adverse to Kingma. 1RP¹ 2-15. The court failed to enter written findings of facts and conclusions of law pursuant to CrR 3.6.

A jury found Kingma guilty. CP 28; 2RP 136. Kingma stipulated that he was on community custody at the time of the charged offense. CP 45-46; 2RP 13, 20-21. The court sentenced Kingma to 10 months imprisonment and 12 months community custody. CP 13-23; 3RP 8. Kingma timely appeals. CP 1-12.

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – May 21, 2015; 2RP – June 2 & 3, 2015; 3RP – June 15, 2015.

C. ARGUMENT

THE COURT'S FAILURE TO COMPLY WITH CrR 3.6(b) REQUIRES REMAND FOR ENTRY OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

After a hearing on a motion to suppress evidence, the trial court "shall enter written findings of facts and conclusions of law." CrR 3.6(b). The trial court and the prevailing party share the responsibility to see that appropriate findings and conclusions are entered. See State v. Vailencour, 81 Wn. App. 372, 378, 914 P.2d 767 (1996).

"Without comprehensive, specific written findings, the appellate court cannot properly review the trial court's resolution of the disputed facts and its application of the law to those facts." State v. Greco, 57 Wn. App. 196, 204, 787 P.2d 940 (1990); accord State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996). The court's oral findings are not binding and cannot replace written findings and conclusions. State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998); State v. Hescoek, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). The appellate court should not have to comb through oral rulings to determine if appropriate findings were made, nor should an appellant be forced to interpret oral rulings. Head, 136 Wn.2d at 624. Thus, the proper remedy is to vacate the judgment and sentence and remand to the trial court for entry of written findings and

conclusions. Id. at 624-26; State v. Denison, 78 Wn. App. 566, 572, 897 P.2d 437 (1995).

After denying Kingma's motion to suppress, the trial court entered a written order which stated:

The court finds the officer's actions were reasonable and the defense motion to suppress is denied. Further findings and conclusions to be presented.

CP 67.

The written order does not contain any of the court's oral findings of fact or conclusions of law. No subsequent written findings of fact and conclusions of law were entered. The written order is therefore insufficient to constitute written findings and conclusions under CrR 3.6(b)

Although remand is the typical remedy, the Head court recognized the possibility that reversal may be appropriate where the individual can show actual prejudice resulting from the absence of findings and conclusions or following remand for entry of the same. 136 Wn.2d at 624-25. Kingma therefore requests this Court remand for entry of written findings of fact and conclusions of law, and reserves the right to offer further argument depending on the content of any written findings. Id. at 625-26.

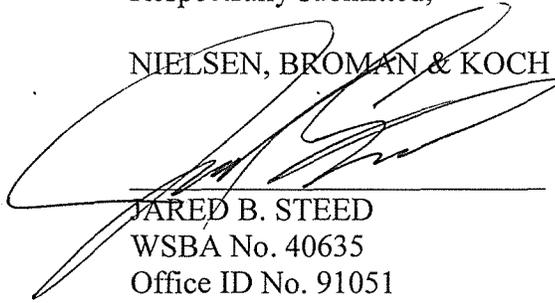
D. CONCLUSION

This Court should vacate the judgment and sentence and remand to the trial court for entry of written findings and conclusions.

DATED this 28th day of October, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



JARED B. STEED

WSBA No. 40635

Office ID No. 91051

Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 73617-5-I
)	
TODD KINGMA,)	
)	
Appellant.)	

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 29TH DAY OF OCTOBER, 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] TODD KINGMA
 NO. 317283
 SNOHOMISH COUNTY JAIL
 3025 OAKES AVENUE
 EVERETT, WA 98201

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF OCTOBER, 2015.

x *Patrick Mayovsky*