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COURT OF APPEALS
DIVISION II

08 OCT 17 AM 11:08

STATE OF WASHINGTON
BY *JW*
DEPUTY

No. 37031-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

James Stogsdill,

Appellant.

Pierce County Superior Court

Cause No. 04-1-03718-4

The Honorable Judges Lisa Worswick and James R. Orlando

Appellant's Reply Brief

Manek R. Mistry
Jodi R. Backlund
Attorneys for Appellant

BACKLUND & MISTRY
203 East Fourth Avenue, Suite 404
Olympia, WA 98501
(360) 352-5316
FAX: (866) 499-7475

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ARGUMENT

I. MR. STOGSDILL’S CASE MUST BE REMANDED TO THE TRIAL COURT FOR A HEARING ON THE ISSUE OF CONTACT WITH HIS BIOLOGICAL CHILDREN.

Respondent concedes that the trial court acted erroneously. Brief of Respondent, p. 6. Accordingly, the case must be remanded with instructions for the trial court to enter a show cause order scheduling a hearing pursuant to CrR 7.8(c)(3).

II. THIS COURT SHOULD ALLOW MR. STOGSDILL TO WITHDRAW HIS GUILTY PLEA.

Respondent concedes that the trial court violated CrR 7.8(c), but does not address the merits of Mr. Stogsdill’s argument. Brief of Respondent, p. 7. Instead, Respondent seeks to limit review to the grounds raised in Mr. Stogsdill’s motions to the trial court. Brief of Respondent, pp. 7-8, *citing State v. Gaut*, 111 Wn.App. 875, 46 P.3d 832 (2002). But *Gaut* is inapposite; the holding of that case was that “a conviction may not be collaterally attacked upon a nonconstitutional ground that could have been raised on appeal but was not.” *Gaut*, at 880.

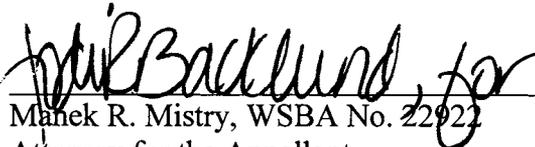
There is no reason to restrict Mr. Stogsdill’s appeal in this case. If the court’s summary denial of Mr. Stogsdill’s CrR 7.8 motion were

vacated and remanded without a ruling on the merits of his appeal, Mr. Stogsdill would have the opportunity to incorporate the arguments made here into his motion to the trial court. The trial court would then either transfer the case back to this Court as a PRP, or it would consider the merits. If the trial court denied the motion, Mr. Stogsdill would once again appeal to this Court.

Judicial economy would not be served by Respondent's suggested procedure. The merits of the appeal should be addressed, and Mr. Stogsdill should be allowed to withdraw his plea.

Respectfully submitted on October 16, 2008.

BACKLUND AND MISTRY


Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant


Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

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CERTIFICATE OF MAILING

STATE OF WASHINGTON
BY _____
DEPUTY

I certify that I mailed a copy of Appellant's Reply Brief to:

James Stogsdill, DOC# 713484
Washington State Penitentiary
1313 N 13th Ave.
Walla Walla, WA 99362

and to:

Pierce County Prosecuting Atty Ofc
930 Tacoma Ave. S Rm. 946
Tacoma, WA 98402

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on October 16, 2008.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF
THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE
AND CORRECT.

Signed at Olympia, Washington on October 16, 2008.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant