

TABLE OF CONTENTS

A. Introduction

B. Assignments of error

C. Issues pertaining to assignments of error

D. Supplemental Statement of the case

E. Argument

1. The appellant contends that the state is in procedure default by the failing to file a brief within 60 days after service of the appellant's opening brief.

F. Conclusion

A. Introduction

The appellant challenges the state by not filing a brief on or before Dec 28, 2009. Which is the states 60th day.

B. Assignments of Error

the state failed to submit an extension of time or alert this court, what it's intentions were in filing a brief in this court. The state will rely on Rap rule 10.2 (c). **Or, if a defendant files a pro se supplemental brief, within 30 days after service of the pro se supplemental brief.**

C. Issues pertaining to assignments of Error.

The appellant's opening brief what was filed on or about 11-28-09. Main issues were that appellant was not allowed to argue his theory of the case. In which violation his fourteenth amendment, and fundamental fairness.

D. Supplemental statement of the case.

The appelant, rely's on his opening brief and the prima facie error rule.

E. Argument

The states failing to file an opening brief within the 60 days or waiting for the appellant to file his supplemental brief, without notifying the court or the appellant. Is denying the appellant Equal Protection under article 1, section 12 and the fourteenth amendment.

Under Rap 10.2 (c) provides:

Brief of respondent in criminal case. the brief of a

respondent in a criminal case **should** be filed with the appellate court within 60 days after service of the brief of appellant or petitioner or, **If a defendant files a pro se supplemental brief, within 30 days after service of the pro se supplemental brief.**

The appellant is relying on his opening brief, and State v. Wilburn. We conclude that under the present rules (1). A respondent is obligated to submit a brief, and that coercive monetary sanctions may be employed to effect compliance, but (2). If a respondent does not file a brief, the prima facie error rule, first announced in *Aquarian Found. V. KTVW, Inc.* Supra continues in force. Accord, *Hobart Corp. v. North Cent. Credit Serus.* 29 Wn.App. 302, 628 P.2d 842 (1981). Citing 51 Wn.App. 829, 755 P.2d 842.

With this court granting the appellant 90 days extension of time to file his statement of additional grounds under Rap 10.10. The state will contest that they should not be preclude, since the appellant was granted 90 days and rely on Rap rule 10.2 (c) for there argument.

The appellant states that everything in his opening brief is accurate and true. Litigants are entitled to a fair trial not a perfect trial. Citing *Det. of Broten* 130 Wn.App. 336

This court has long held the defendant is entitled to a fair trial but not a perfect one, for there are no perfect trials. Quoting *Brown v. U.S.* 93 S.ct 1570 Supra 231.

With the state failing to file under the 60 days.

When the respondent in a criminal appeal fails to file a brief the appellant will prevail if he presents a prima facie showing of reversible error. *State b. Wilburn* 51 Wn.App. 827, 755 P.2d 842.

Under Rap rule 18.8 (A) Generally. The appellate court may,

on it's own initiative or on of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case on order to serve the ends of justice, subject to the restrictions in section (b) and (c).

F. Conclusion

The appellant states that under these circumstances the state and the court did not notify the appellant thus he is asking this court to preclude the state for filing a brief.

Dated this 11th Day of January, 2010. Respectfully submitted,

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Certificate Of Service

I hereby Certify that I gave my S.A.G to my Institutional Counselor for mailing to the Washington Court of Appeals Division II, and the Prosecutor's Office on this 11th Day of January 2010

Marian George

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