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A. ASSIGNMENT OF ERROR

I. THE TRIAL COURT ERRED IN ENTERING AN ORDER VACATING ITS PREVIOUS ORDER DISMISSING CASE NUMBER 89-1-01173-5.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

I. THE TRIAL COURT ERRED WHEN IT RULED THAT ITS ORDER, DATED FEBRUARY 2, 1996, DISMISSING CAUSE NUMBER 89-1-01173-5 WAS THE RESULT OF A CLERICAL ERROR.

C. STATEMENT OF THE CASE

On February 1, 1990 William Chead Justice pleaded guilty to one count of Attempted Child Molestation in the First Degree under cause number 89-1-01173-5. CP 22. A probation violation was filed in 1996, alleging he failed to pay LFOs. CP 22. On January 25, 1996 the Clerk of the court filed a Satisfaction of Judgment reflecting that Mr. Justice paid his LFOs. CP 22. On February 2, 1996 the State presented a motion to the court asking it to dismiss the Information under cause number 89-1-01173-5 and to terminate supervision on that case. CP 22. The court granted the motion and signed the order dismissing the case. CP 16, 22.

Thirteen years later the State, represented by deputy prosecuting attorney Michael Dodds, brought a motion under CrR 7.8 (a) seeking relief from the order and asking the court to delete the language referring to dismissal of the Information and to replace it with language that would

reflect dismissal only of the “January 17, 1996 Motion and Affidavit for Order Imposing Sanctions.” CP 21. The State argued that the order of dismissal was the result of a clerical mistake, or alternatively, that the order was void. CP 21-28.

In support of its motion, the State submitted a declaration by Mike Dodds, in which he declared that the true purpose of his motion was to dismiss the pending probation violation and to terminate Mr. Justice’s supervision. CP 31. Mr. Dodds averred that the dismissal language was included in the motion by reason of a clerical mistake, oversight, or omission on the part of the State. CP 31. He declared that the State never intended that Mr. Justice’s underlying conviction be dismissed, nor his obligation to register as a sex offender terminated. CP 32.

The Honorable Edwin Poyfair, who signed the original order, conducted a hearing on the State’s motion. The court noted that the State was “dilatatory” in waiting thirteen years to bring this motion. RP 27. The State responded that it was only bringing the motion because they were getting motions to arrest judgment in “downstream cases.” RP 32. The court ultimately granted the motion, finding that the language in the Motion and Order of Dismissal and Terminating Supervision from February 2, 1996 which purported to dismiss the 89-1-01173-5 cause number was the result of a clerical mistake, oversight or omission. CP

224. The court ordered that the language referring to dismissal of the cause number be stricken and replaced with language referring to dismissal of the “January 17, 1996 Motion and Affidavit for Order Imposing Sanctions.” CP 224.

This timely appeal followed. CP 223.

D. ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE STATE’S MOTION TO VACATE UNDER CrR 7.8 (a) BECAUSE THE STATE SUBMITTED INSUFFICIENT PROOF THAT IT WAS A CLERICAL MISTAKE.

CrR 7.8 (a) provides:

CrR 7.8. Relief From Judgment or Order

(a) Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

To determine whether a clerical exists under CrR 7.8, the reviewing court uses the same test used to determine clerical error under CR 60 (a), the civil rule governing amendment of judgments. *State v. Rooth*, 129 Wn.App. 761, 770, 121 P.3d 755 (2005); *State v. Snapp*, 119 Wn.App. 614, 626, 82 P.3d 252, *review denied* 152 Wn.2d 1028 (2004). “The court looks at ‘whether the judgment, as amended, embodies the trial

court's intention, as expressed in the record at trial' to determine if the error is clerical...If it does, then the amended judgment merely corrects the language to reflect the court's intention or adds the language the court inadvertently omitted." *Rooth* at 770, citing *Presidential Estates Apartment Associates v. Barrett*, 129 Wn.2d 320, 326, 917 P.2d 100 (1996).

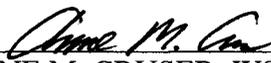
However, "an intentional act of the court, even if in error, cannot be corrected under [CrR 7.8]." Here, the only evidence presented by the State was the declaration of Mike Dodds that, according to his recollection, he didn't intend that the 89-1-01173-5 case be dismissed. For his part, Judge Poyfair did not have a specific recollection of the case, or a recollection of his intent when he signed the order. In its motion, the State referred to the clerical error as its own, rather than the court's. Moreover, the trial court recognized that it had the authority to dismiss the case, pursuant to the State's motion, and the order was not void. CP 224. This order did not simply misstate the case number, or the name of the parties. It was an order, *prepared by the State* and signed by the court, dismissing a case after LFOs had been discharged. This is not the type of error that can be considered clerical, and the State presented insufficient proof that this order, when it was signed, did not reflect the intent of the

court. The trial court erred and this Court should reverse the trial court's order vacating the order of dismissing cause number 89-1-01173-5.

E. CONCLUSION

This Court should reverse the trial court's order.

RESPECTFULLY SUBMITTED this 24th day of September, 2009.



ANNE M. CRUSER, WSBA#27944
Attorney for Mr. Justice

COURT OF APPEALS

CLERK OF COURT

STATE OF WASHINGTON

BY: 

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

STATE OF WASHINGTON,

Respondent,

vs.

WILLIAM CHEAD JUSTICE,

Appellant.

) Court of Appeals No. 39279-8-II
) Clark County No. 89-1-01173-5

) DECLARATION OF MAILING

ANNE M. CRUSER, being sworn on oath, states that on the 24th day of September,

2009 declarant placed a properly stamped envelope in the mails of the United States

addressed to:

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9 and that said envelope contained the following:

- 10 (1) BRIEF OF APPELLANT
11 (2) RAP 10.10 (TO MR. JUSTICE)
12 (3) VRP (TO MR. CURTIS)
13 (4) AFFIDAVIT OF MAILING

14 Dated this 24th day of September, 2009.

15 
16 ANNE M. CRUSER, WSBA #27944
17 Attorney for Appellant

18
19 I, ANNE M. CRUSER, certify under penalty of perjury of the laws of the State of
20 Washington that the foregoing is true and correct.

21
22 Date and Place: September 24, 2009, Kalama, WA

23
24 Signature: Anne M. Cruser