

COURT OF APPEALS

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STATE OF WASHINGTON

BY 

40048-1-II

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

State of Washington

Respondent

v.

JASON M. CHRISTEN

aka

MALACHI EZEKIEL MACGREGOR-REIGN

Appellant

40048-1-II

On Appeal from the Pacific County Superior Court

Cause No. 00-1-00069-1

The Honorable Michael S. Sullivan

REPLY BRIEF

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I. **SUMMARY OF THE CASE**

On August 21, 2000, in the Pacific County superior court, Jason Miles Christen, now known as Malachi Ezekiel Christen,¹ entered an *Alford*² plea of guilty to attempted second degree murder. Superior Court Commissioner Douglas E. Goelz accepted the plea. CP 2-15; 8/21 RP.³ Based on that plea, Pacific County Superior Court judge Joel Pennoyer entered judgment and sentenced Christen to a standard range sentence. CP 27-36; 9/8 RP 14.

On September 24, 2009, Christen filed a Motion to Vacate Sentence, asserting that his plea and the associated judgment and sentence were facially invalid because the Commissioner's subject matter jurisdiction did not include taking felony pleas. 10/9RP 5-11. CP 39. On October 9, 2009, Pacific County Superior Court Judge Michael S. Sullivan heard argument on the merits and denied the motion. CP 81-82; 10/9 RP.

Christen appealed. CP 83. This Court accepted his direct appeal and appointed counsel. Letter, January 27, 2010.

¹ We relent and designate Mr. MacGregor-Reign as 'Christen' to correspond to the pleadings.

² *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27L. Ed. 2d 162 (1970), adopted in Washington by *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

The question presented is whether a superior court commissioner lacked jurisdiction to accept Christen's felony guilty plea such that his judgment and sentence are facially invalid.

II. ARGUMENTS IN REPLY

1. THE MOTION TO VACATE WAS TIMELY.

The State claims Christen's motion to vacate the void judgment was time-barred by RCW 10.73.090. Brief of Respondent (BR) 21. This is an example of State's pattern throughout its brief whereby it spins an argument from a single thread of the law and simply ignores the bales of contrary authority.

The State is correct that RCW 10.73.090 bars the filing of a collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final, if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1). But "lack of original jurisdiction to hear and determine a case meets the 'exceptional circumstance' rule, and that evidence of lack of jurisdiction may be received for the first time and considered in an application for writ of habeas corpus." *Wesley v. Schneckloth*, 55 Wn.2d 90, 93-94, 346 P.2d 657 (1959). A prisoner in

custody may move the court to vacate an unlawful sentence at any time; there is no statute of limitations, no res judicata, and no doctrine of laches. *Heflin v. U.S.*, 358 U.S. 415, 420, 79 S. Ct. 451, 3 L. Ed. 2d 407 (1959).

The Washington constitution likewise preserves the right of our citizens to petition for release from unlawful confinement, also called “the privilege of the writ of habeas corpus.” Const. art. 1, § 13; *Petition of Runyan*, 121 Wn. 2d 432, 439-440, 853 P.2d 424 (1993). RCW 10.73.090 is constitutional only because it does not suspend this privilege. *Petition of Runyan*, 121 Wn. 2d 432, 440, 853 P.2d 424 (1993). Accordingly, the time limit does not apply to a motion asserting a facial constitutional infirmity, such as a sentence that exceeds the court’s jurisdiction. RCW 10.73.100(5). Specifically, Const. art. 1, § 13 protects the right of citizens to challenge the jurisdiction of the sentencing court. *Runyan*, 121 Wn. 2d at 441. Jurisdiction in this context includes subject matter jurisdiction. *Petition of Vehlewald*, 92 Wn. App. 197, 200-201, 963 P.2d 903 (1998).

The superior court correctly recognized that Christen’s motion was a timely collateral challenge. Otherwise, the court would have transferred the matter directly to this Court for consideration as a personal restraint petition. CrR 7.8 requires the court to do this unless the court determined (a) that the motion was timely and (b) that either (i) Christen made a substantial showing that he was entitled to relief, or (ii) the motion could

not be resolved without a factual hearing. Option (ii) clearly does not apply because the only issue was a question of law and no fact hearing was necessary. Therefore, since the court addressed the merits of Christen's motion, this was an implicit but unequivocal ruling that the motion was timely and that Christen articulated a plausible claim for relief.

2. CHRISTEN PRESERVED THE ISSUE FOR REVIEW.

First, the State claims Christen somehow consented to jurisdiction. BR 16-17, citing *State v. Wenatchee Valley Holding Co.*, 169 Wash. 535, 539, 14 P.2d 51, 52 (1932). This disregards salient facts of *Wenatchee*.

Wenatchee is another civil case. There, the judge was held up in another courtroom, so counsel for both parties — fully aware that jurisdiction was lacking— nevertheless affirmatively consented on the record to have a commissioner preside over jury selection. *Wenatchee Valley*, 169 Wash. at 540. The holding on review was that this was invited error. *Id.* at 541. The court did not hold that no error occurred, and certainly not that a jurisdictional error neither party was aware of is cured by a silent record. Rather, the Court said the opposite: the verdict would have to be overturned if either counsel was ignorant of the irregularity. *Id.*

The State then appears to argue that ignorance and the absence of consent actually count as knowing consent in Christen's case because unequivocal nonconsent also is absent. BR 16. In other words, a criminal defendant's consent to a constitutional violation is presumed unless the record shows otherwise. This is simply false. A waiver of fundamental rights must affirmatively appear in the record. *State v. Quismundo*, 164 Wn.2d 499, 505, n.4, 192 P.3d 342 (2008). Subject matter jurisdiction cannot be created by consent of the parties. *Sullivan v. Purvis*, 90 Wn. App. 456, 460, 966 P.2d 912 (1998). Neither can it be waived. It is possible to waive personal jurisdiction, but not subject matter jurisdiction. *Purvis*, 90 Wn. App. at 460, citing *In re Puget Sound Pilots Ass'n*, 63 Wn.2d 142, 148, 385 P.2d 711 (1963). And violations of fundamental constitutional trial rights generally can be raised for the first time on appeal. RAP 2.5(a)(3).

The State implies that having a superior court judge with jurisdiction sentence Christen somehow conferred post hoc jurisdiction on the commissioner. BR 15-16. The State offers no authority for this proposition, which is backwards both in law and logic. Rather, if the underlying judgment is ultra vires, the subsequent sentencing is void. Only a person who has been lawfully convicted can be lawfully sentenced. *Deschenes v. King County*, 83 Wn.2d 714, 716, 521 P.2d 1181 (1974) (a

judgment entered by a court without subject-matter jurisdiction is absolutely void.).

The State next contends that Christen did not present the question of law to the trial court with sufficient specificity to preserve the issue for review. BR 17. This ignores the record.

An issue is preserved for appeal if the trial court had sufficient notice of the issue to know what legal precedent was pertinent. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 499 (1997), quoting *East Gig Harbor Improvement Ass'n v. Pierce County*, 106 Wn.2d 707, 709-10 n.1, 724 P.2d 1009 (1986), citing *Osborn v. Public Hosp. Dist. 1*, 80 Wn.2d 201, 492 P.2d 1025 (1972).

Christen unambiguously framed the issue for the trial court as whether a commissioner had jurisdiction to take his felony guilty plea. 10/9/09 RP 5. He narrowed the issue to the meaning of “at chambers,” at the time the constitution was adopted. He cited to the controlling case of *State v. Philip*⁴ and distinguished the State’s contrary authorities. He showed that, when the commissioner purported to take his plea, Pacific County had not adopted a Local Court Rule that would have created statutory authority for commissioners to take such pleas. The issue was vigorously argued. 10/9/09RP 5-14.

⁴ *State v. Philip*, 44 Wash. 615, 87 P. 955 (1906).

The same record also defeats the State's claim that Christen's arguments to this Court constitute new grounds on appeal. They do not. By analogy, a party may not argue on appeal that evidence was admissible under a different evidentiary rule than was argued at trial. *State v. Powell*, 166 Wn.2d 73, 82, 206 P.3d 321 (2009). But no authority prevents a party from advancing additional authorities in support of the arguments raised at trial. To the contrary, RAP 10.8 specifically invites additional authorities.

The State is simply wrong in claiming that Christen must establish abuse of trial court discretion based solely on a reading of the record below. BR 17. That is the standard of review for administrative agency rulings under the Administrative Procedure Act, which bases review solely on the agency record. *See, e.g., Conway v. DSHS*, 131 Wn. App. 406, 414, 120 P.3d 130 (2005), applying RCW 34.05.510. But that does not apply to appeals under the RAP.

The State seizes on the rule fragment that the Court bases its review solely on the facts developed in the trial record. *Belli v. Shaw*, 98 Wn.2d 569, 578, n.3, 657 P.2d 315 (1983). Also that argument must be relevant to the facts in the record. *State v. Lough*, 70 Wn. App. 302, 335, 853 P.2d 920 (1993), *aff'd*, 125 Wn.2d 847, 889 P.2d 487 (1995); *State v. Peerson*, 62 Wn. App. 755, 777-78, 816 P.2d 43 (1991); RAP 10.3(a)(5). And, of course, absent a manifest constitutional error, the issue must have

been articulated to the trial court with sufficient clarity to alert the court to the nature of the question presented. *State v. Padilla*, 69 Wn. App. 295, 300, 846 P.2d 564 (1993); *State v. Stenson*, 132 Wn.2d 668, 726-27, 940 P.2d 1239 (1997).

But this does not mean that additional authorities cannot be cited on appeal to support the grounds raised below. The whole point of appellate briefing is to bring to this Court's attention the full spectrum of relevant arguments and pertinent authorities. Adequate argument on the issues is mandatory. RAP 10.3(a)(6); *State v. Goodman*, 83 P.3d 410, 413-14 (2004); *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004).

The State urges the Court to ignore supporting arguments and authorities in the appellate briefs and decide this important constitutional issue based solely on legal arguments mustered by an incarcerated pro se defendant for whom it was a struggle to get himself transported to the courthouse, receive notice of hearings, and file a reply to the State's response. 10/9/09RP 2-4; BR 17. This is not in the public interest.

Christen contended below and repeats here, that his judgment and sentence are invalid on their face for lack of trial court subject matter

jurisdiction. He is not assigning error on grounds different from those raised at trial. He merely cites additional supporting authority. This does not constitute asserting different grounds.

3. THE PASSAGE OF TIME IS NOT CONTROLLING.

The State suggests that a collateral challenge to a 2000 conviction is per se untimely. The State does not support this notion with any authority, and it is wrong.

Just last week, the Supreme Court reviewed a decision by this Court on the merits of a collateral challenge to a 2000 conviction. *In re Cruze*, ___ Wn.2d ___, ___ P.3d ___ (2010) (docket no. 82567-0, filed Aug. 12). The number of years since the conviction was barely mentioned. The Court considered solely whether the conviction was invalid on its face, entered by a court lacking competent jurisdiction, or otherwise invalid under RCW 10.73.100. Had Cruze's challenge been correct, the Court would have overturned the invalid judgment. *Cruze*, Slip Op. at 4. As it happened, after addressing the merits of that case, the Court upheld the conviction. *Cruze*, Slip Op. at 13-14.

There is no reason why the Court should not address the merits of Christen's challenge to the facially invalid judgment in this case.

4. THE STANDARD OF REVIEW IS DE NOVO.

The State notes that Christen raised his constitutional subject matter jurisdiction challenge in the context of a motion to vacate his sentence. The State reasons, therefore that this Court will review the trial court's interpretation of Const. art 4, § 23 for abuse of discretion. BR 8-9. This is not the law. Whether a court has jurisdiction is a question of law that is reviewed de novo. *State v. Y.I.*, 94 Wn. App. 919, 922, 973 P.2d 503 (1999).

A claim of denial of a constitutional right is always reviewed de novo. *Id.* The right to meaningful review is “fundamental to, and implicit in, any meaningful modern concept of ordered liberty.” *State v. A.N.J.*, 168 Wn.2d 91, 96, 225 P.3d 956 (2010). This is a due process challenge to a criminal conviction. A court “necessarily abuses its discretion by denying a criminal defendant’s constitutional rights.” *State v. Iniguez*, 167 Wn.2d 273, 280-281, 217 P.3d 768 (2009), quoting *State v. Perez*, 137 Wn. App. 97, 105, 151 P.3d 249 (2007).

Christen has alleged a structural defect in his judgment and sentence. A structural defect requires automatic reversal, because it undermines the framework of the trial process itself and the question of harmlessness is irrelevant based on the nature of the right involved. *United States v. Gonzales-Lopez*, ___ U.S. ___, 126 S. Ct. 2557, 2543,

165 L. Ed. 2d 409 (2006). Denial of the right to a constitutionally competent adjudicator is such a defect. *Tumey v. Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927) (adjudicator bias.) Accordingly, the standard of review is de novo. Besides, the State concedes that the question presented is how to interpret the constitutional phrase “like duties as a judge at chambers.” BR 10. This is a question of law, and the Court will review it de novo.

5. THE LEGISLATURE DISTINGUISHES
BETWEEN CIVIL AND CRIMINAL MATTERS
WITH REGARD TO COMMISSIONERS’
JURISDICTION.

The State claims that no distinction exists between criminal and civil jurisprudence. BR 11. Specifically, the State claims that cases recognizing the power of a superior court commissioner to hear a non-jury matter in a civil case apply with equal force to the taking of a felony guilty plea in a criminal prosecution. This is simply wrong. Every case cited by the State that says a territorial judge at chambers could hear all matters “not requiring trial by jury” is a civil case. The State cites to no case in which a judge “at chambers” — i.e., during times when the superior court was not in session — exercised jurisdiction over a felony defendant, either to conduct a bench trial or to pass judgment and impose sentence on a plea of guilty. No such case exists.

The distinction between civil and criminal matters with respect to the powers of commissioners is reflected in the legislation establishing courts of limited jurisdiction. In a court of limited jurisdiction, a commissioner “does not have authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties.” RCW 3.42.020. That is, to adjudicate any criminal case, whether jury or non-jury, is beyond a commissioner’s power, but the commissioner may determine civil matters not involving jury trials. If there were no distinction, the statute would simply say commissioners cannot preside over jury trials, period.

This is entirely consistent with legislation enacted first in 1889 and again in 1971 whereby the legislature empowered superior court commissioners in adult criminal cases to preside over arraignments, preliminary appearances, initial extradition hearings, and certain noncompliance proceedings and to “**accept pleas if authorized by local court rules.**” They can also appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial. RCW 2.24.040(15). The existence of this statute is irrefutable evidence that the legislature knew the constitution did not endow commissioners with the power to take felony pleas.

Pacific County did not adopt a local court rule allowing commissioner's to accept pleas until after the commissioner accepted Christen's guilty plea.

6. OUR STATE CONSTITUTION DOES NOT EMPOWER COMMISSIONERS TO ACCEPT PLEAS IN CRIMINAL PROSECUTIONS.

Washington adopted its constitution in 1889. The constitution established original jurisdiction in all felony criminal cases in the superior courts. Const. art. 4, § 6 (amendment 28); *State v. Bowman*, 69 Wn.2d 700, 703, 419 P.2d 786 (1966).

The Constitution empowered the superior court to appoint commissioners with power to perform "like duties as a judge of the superior court at chambers." Const. art. 4, § 23

But the constitution eliminated any continuing distinction between the acts of judges sitting in court or at chambers by opening the courts for business virtually every day. Const. art 4, § 6. This made the concept of in-chambers functions obsolete. Therefore, we must define the "in-chambers" yardstick of Const. art. 4, § 23 with reference to the powers of territorial judges before the Constitution was adopted. That is, what art. 4, § 23 means by powers of a judge at chambers. *In re Olson*, 12 Wn. App. 682, 687, 531 P.2d 508 (1975).

In the years leading to the adoption of the Constitution, two potentially conflicting statutes articulated the powers of superior court judges “at chambers.”

In 1881, the Legislature had defined powers “at chambers” as including all matters not requiring a trial by jury. § 2138 of the Code of 1881, p. 368. Between terms, when the court was “in vacation,” the individual judges had powers “at chambers” to perform some, but not all, judicial acts. Such “chambers business” consists of:

[A]ll such judicial business as may properly be transacted by a judge at his chambers or elsewhere, as distinguished from such as must be done by the court in session.

Black’s Law Dictionary Sixth Ed. at 230 (emphasis added). This does not include judgments, decrees and orders, which are effective only when issued by the court in session. Const. art. 4, § 5.

Moreover, in 1890, the legislature echoed the constitutional mandate that superior courts remain in session essentially continuously. RCW 2.08.030, citing Laws, 1890 p 343 § 7; RRS § 18. Therefore, in 1891, the Legislature clarified the definition of judges’ powers by distinguishing those powers that were inherent in the body and institution of the court from powers individual judges could exercise out of court, which is to say, at chambers: “A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a

court and not otherwise.” Laws 1891, p. 91, c. 54.⁵ This precise language is still on the books. “A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court and not otherwise.” RCW 2.28.050.

RCW 2.08.190 sets forth the present-day powers of superior court judges, as distinct from the court. They have power: (1) to sign orders and papers in probate matters; (2) to issue restraining orders, and sign orders of continuance; (3) to decide and rule on all motions, demurrers, issues of fact or other matters. These rulings become effective only when filed with the court clerk.

As discussed in the opening brief, the distinction between the civil and criminal jurisdiction of commissioners can be ignored in the context of a civil matter, because civil jury trials are exclusively within the jurisdiction of the court, not the individual judges. Accordingly, over the years, several civil cases have cited the “not requiring a jury” language from 1881. *See, e.g., Peterson v. Dillon*, 27 Wash. 78, 83, 67 P. 397 (1901); *State ex. rel. Lockhart v. Claypool*, 132 Wash. 374, 375, 232 P. 351(1925); *Olson*, 12 Wn. App. at 686; *State v. Karas*, 108 Wn. App. 692, 701-702, 32 P.3d 1016 (2001). Because of the nature of the jurisdictional

⁵ Section 5 of the act of February 26, 1891 (Laws 1891, p. 92, c. 54).

challenges at issue in those cases, the less precise definition yielded a correct result.

The State relied heavily on these civil cases. CP 75-76; BR 13-14. But they have no application to criminal prosecutions. Relying on the old, less precise, definition does not work. Some criminal matters do not require a jury but nevertheless can be performed only by the court in session, not by an individual judge in his rooms between sessions. In such cases, the Court correctly has applied the later, more precise definition. *Rothwell*, 166 Wn.2d at 877; *State ex rel. Romano v. Yakey*, 43 Wash. 15, 85 P. 990(1906) (superior court had jurisdiction to issue a writ that Judge Yakey did not.) *Yakey*, 43 Wash. at 22-23.

Also instructive is the statutory language regarding courts of limited jurisdiction. RCW 3.42.020 distinguishes between criminal matters where a commissioner lacks authority to preside over any trial whatsoever, and civil cases where a commissioner can preside so long as it is not a jury trial.

7. *STATE V. PHILIP* IS THE DISPOSITIVE CRIMINAL CASE.

The State claims a superior court is a court of competent jurisdiction to convict people of crimes regardless of who is sitting on the bench. BR 22. This is wrong, as evidenced by the fact that the bailiff

announces the court is in session when the judge enters the room. The power to convict people of crimes resides in the court, not the judge. *State v. Philip*, 44 Wash. 615, 617-18, 87 P. 955 (1906). *Philip*, decided shortly after *Yakey*, is binding, dispositive authority in Christen's case.

A commissioner accepted Philip's guilty plea for attempted homicide, but this was reversed on appeal for lack of subject matter jurisdiction. The Court invoked the 'power of the court' language from the 1891 statute in holding the constitution did not and could not empower commissioners to accept felony pleas, because criminal defendants historically were required to appear and plead in open court.

[A] plea of guilty can only be put in by the defendant himself in open court. ... [T]he court must render judgment where the defendant is found guilty. In the face of these mandatory provisions of the statute judges at chambers and court commissioners are alike powerless.

The Court held the 1891 statute was controlling. *Philip*, 44 Wash. at 617-618 (emphasis added), citing Ballinger's Ann. Codes & St., § 6884.

Philip is still good law. Therefore, court commissioners are still constitutionally powerless to accept pleas.

The State's attempt to sidestep *Philip* fails. The State argues non-existent, spurious, distinguishing factors. BR 14-15. First, the State concedes that nothing in *Philip* suggests the defendant there was not represented by counsel, as was Christen. BR 15. (Neither does the State

suggest why that would be relevant either way on the issue of subject matter jurisdiction.) Next, the State notes that Christen had the right to object to being adjudicated by a commissioner. Again, the State does not actually claim that Philip was by some undefined mechanism denied the right to object. BR 15. In both cases, a defendant accepted the judicial system he found himself in, and nothing suggests Mr. Philip had any more idea that Const. art. 4, § 23 was being flouted than did Mr. Christen.

Today, CrR 4.2(d) governs echoes *Philip* in the taking of guilty pleas. It says: “The court shall not accept a plea without first determining... etc.” “The court shall not enter judgment upon a plea of guilty unless it satisfied... etc.” CrR 4.2(d).

No case holds that judges have now or ever did have the power to adjudicate criminal prosecutions, with or without a jury, except in open court that is officially in session. Rather, the only criminal case that touches on the subject of criminal jurisdiction holds that only a court in session can hear criminal matters, not a judge in chambers while the court is in vacation. *Philip*, 44 Wash. 615. This was true in 1881, 1889, and 1881. It was true in 2002, when a commissioner entered judgment against Christen, and it is true today.

Accordingly, the trial court erred in denying Christen’s Motion to Vacate for lack of constitutional commissioner jurisdiction to accept his

guilty plea. The remedy is to reverse and allow Christen to withdraw his guilty plea.

8. THE LEGISLATURE REMEDIED THE LACK OF CONSTITUTIONAL COMMISSIONER JURISDICTION BY RCW 2.24.040(15), WHICH WAS NOT IN EFFECT IN PACIFIC COUNTY.

The State argued below that LCrR 5 merely introduced a new limit excluding taking pleas in Class A felonies from pre-existing constitutional commissioner jurisdiction. 10/9RP at 14. This was wrong. Read in conjunction with RCW 2.24.040(15), LCrR 5 clearly created new jurisdiction to accept pleas where none existed previously. The State now concedes that RCW 2.24.040(15)'s legislative 'fix' for the lack of commissioner jurisdiction to take felony pleas does not apply here because when Christen pleaded guilty, Pacific County had yet to adopt a local rule. BR 18-19. In fact, LCrR 5 is doubly irrelevant in this case. First, its effective date of September 1, 2000, was ten days after Christen's plea. Second, Christen pleaded to a Class A felony.⁶

The State does not attempt to explain, however, why the legislature deemed it necessary to enact RCW 2.24.040(15) in the first place. Either

⁶ In the opening brief, Christen argues that RCW 2.24.040(15) exceeds the constitutional power of the legislature. BA at 8. The Court need not decide this, however, because, even if RCW 2.24.040(15) is constitutional, Pacific County had not adopted a local court rule at the time of Christen's plea.

the power to accept felony guilty pleas was included in the listed constitutional powers of commissioners, or it was not. The legislature obviously realized it was not and came up with RCW 2.24.040(15).

IV. CONCLUSION: The judgment and sentence entered pursuant to the guilty plea taken by Commissioner Goelz on August 21, 2000, is invalid on its face on both constitutional and non-constitutional grounds. The remedy is to reverse and remand with instructions to grant Mr. MacGregor-Reign, aka Christen, the relief requested and allow him to withdraw his plea.

Respectfully submitted this 16th day of August, 2010.

A handwritten signature in black ink, appearing to read "Jordan B. McCabe", written over a horizontal line.

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Counsel for Jason M. Christen, aka
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Clerk

CERTIFICATE OF SERVICE

Jordan McCabe certifies that she mailed this day,
first class postage prepaid, a copy of this Appellant's Brief to:

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