NO. 48954-6-II

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

STATE OF WASHINGTON, Respondent

v.

ELIZABETH SUE WITT, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-01583-6

RESPONSE TO ANDERS MOTION

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

ANNE M. CRUSER, WSBA #27944
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

TABLE OF CONTENTS

IDENTITY OF RESPONDENT 1

ISSUES PRESENTED FOR REVIEW 1

I. Whether Witt knowingly, intelligently, and voluntarily entered her plea. 1

II. Whether the trial court erred in denying the motion to modify the judgment and sentence. 1

ARGUMENT WHY MOTION TO WITHDRAW SHOULD BE GRANTED AND CONVICTION AFFIRMED 1

I. Witt's plea was knowingly, intelligently, and voluntarily entered. 1

II. The trial court did not abuse its discretion in denying Witt's timely motion to modify her judgment and sentence. 2

CONCLUSION 4

TABLE OF AUTHORITIES

Rules

CrR 7.8 2

IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this matter.

ISSUES PRESENTED FOR REVIEW

I. Whether Witt knowingly, intelligently, and voluntarily entered her plea.

II. Whether the trial court erred in denying the motion to modify the judgment and sentence.

ARGUMENT WHY MOTION TO WITHDRAW SHOULD BE GRANTED AND CONVICTION AFFIRMED

I. Witt's plea was knowingly, intelligently, and voluntarily entered.

The trial court in this case extensively reviewed Witt's plea with her and conducted a colloquy covering all of the constitutional rights Witt was giving up by pleading guilty. RP 3-20. The court reviewed the maximum and standard range sentences for each crime and all of the consequences of pleading guilty. Id. Witt was advised that the judge did not have to follow anyone's recommendation as to the sentence. Id. The court established a factual basis for the pleas. Id. Witt confirmed that she reviewed the plea agreement and no one made any threats or promises to her to get her to plead guilty. Id. There is no evidence in the record suggesting that Witt's plea was not knowingly, intelligently, and

voluntarily made. This potential issue is frivolous and counsel should be permitted to withdraw.

II. The trial court did not abuse its discretion in denying Witt's timely motion to modify her judgment and sentence.

The trial court correctly denied Witt's CrR 7.8 motion to modify her judgment and sentence. The State agrees with the legal standards for review set forth in Witt's brief. In ordering Witt to have no-contact with her co-defendant, who is also the father of her child, the court noted that Witt had led a clean life until, apparently, coming together with her co-defendant. RP 28. The court said:

> And I, really, am having a hard time seeing anything good that the father of your child has brought to your life. I think he was there with a shovel digging the hole deeper and faster than you ever could have.

RP 28.

The court did not abuse its considerable discretion in denying the motion to modify. At sentencing, Witt noted that her descent into crime began when she became addicted to prescription painkillers. As a drug addict, it is critically important that Witt not be around people, such as the father of her child, that might encourage or reinforce such destructive behavior and thereby act as a barrier to her recovery. The court was clear that it would reconsider the no contact order " at a later date…after both of

you have gone through some treatment and shown some stability." RP 28. At the time of Witt's motion to modify, nothing had changed between her and the father of her child. CP 76-84. Her motion merely noted that she felt that co-parenting was important to her and that genetic testing had conclusively proved paternity of her child. Id. (It should be noted that nothing about the court's order of no contact prevented the father of the child from contacting or seeing the child, or prevented third parties or family members from facilitating the contact.) Because nothing had changed between the court's initial no contact order and the motion to modify, the trial court did not abuse its discretion. Nothing about the court's order interfered with either party's constitutional right to parent. This potential issue is frivolous and Witt's counsel should be permitted to withdraw. The trial court's decision should be affirmed.

//

//

//

//

//

//

//

CONCLUSION

Both of the potential issues identified are frivolous. Witt's counsel should be permitted to withdraw and her conviction affirmed, and the trial court's order denying Witt's motion to modify should be affirmed.

DATED this 1st day of December, 2016.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:
ANNE M. CRUSER, WSBA #27944
Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTOR

December 01, 2016 - 4:07 PM

Transmittal Letter

Document Uploaded: 7-489546-Answer.pdf

Case Name: State v. Elizabeth Witt
Court of Appeals Case Number: 48954-6

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

■ Answer/Reply to Motion: __Answer__

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

RESPONSE TO ANDERS MOTION

Sender Name: Jennifer M Casey - Email: jennifer.casey@clark.wa.gov

A copy of this document has been emailed to the following addresses:

steedj@nwattorney.net
sloanej@nwattorney.net