

FILED

JAN 29 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Appellant,

v.

MICHAEL F. CRONIN,

Respondent.

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY
THE HONORABLE JEROME J. LEVEQUE

REPLY BRIEF OF APPELLANT

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I. ARGUMENT IN REPLY

A. Respondent's procedural misstatement.

Respondent states that “[a]ppellant concedes that Mr. Cronin’s conviction should be reversed because there is insufficient record evidence to support it; appellant has never argued that the conviction should stand.” Brief of Respondent, Page 3-4. That is incorrect. On RALJ appeal, Petitioner herein argued that there was no evidence in the record *because* there was no trial. Alternatively, Petitioner argued to Superior Court that:

Either the trial court read the police report and thereafter found the (*sic*) Mr. Cronin guilty, or it failed to have the abbreviated trial. In the first instance, the conviction would be unassailable as the police report contains an *abundance of facts sufficient to support the convictions.*

RALJ Response, page 3, CP 56 (last paragraph, emphasis added).

B. Had there been a trial, as alleged by the Defendant/Respondent, the trial court would have stated separately the findings of fact and conclusions of law as mandated by CrRLJ 6.1.2(a).

CrRLJ 6.1.2(a) applies to nonjury trials conducted by the court:

(a) Trial Without Jury. In a case tried without a jury, the court shall state separately findings of fact and conclusions of law.

The trial court did not separately state any factual findings, indeed it made none. Additionally, the trial court failed to state separately any

conclusions of law. It made none. These failings further support the State's position that remand to the trial court is necessary.

CrRLJ 6.1.2(a) and its superior court counterpart, CrR 6.1(d), require entry of findings of fact and conclusions of law following a bench trial. *State v. Head*, 136 Wn.2d 619, 621–22, 964 P.2d 1187 (1998). In superior court, the findings are in writing. In district court, the findings are stated on the record. The very purpose for requiring findings and conclusions is to “enable an appellate court to review the questions raised on appeal.” *Id.* at 622. Each element must be addressed individually, setting out the factual basis for each conclusion of law. *Id.* at 623; *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003). Each finding must also specifically state that an element has been met. *Banks*, 149 Wn.2d at 43 (citing *State v. Alvarez*, 128 Wn.2d 1, 19, 904 P.2d 754 (1995)). The proper remedy from the failure to enter the findings and conclusions is remand to the trial court for entry of findings. *Head*, 136 Wn.2d at 624.

II. CONCLUSION

The trial court judge mistakenly proceeded to sentencing on the 2007 cases without conducting the abbreviated trial mandated by *Abad v. Cozza*, 128 Wn.2d 575, 587 P.2d 376 (1996). The Superior Court erred in finding a trial occurred absent any evidence of a trial in the inferior court

record. Absent a trial, this court must hold that jeopardy did not attach. If a trial occurred without the entry of any findings or announcement of a verdict, that failure would also require remand.

For the reasons set forth above, and in the opening brief, the finding of the Superior Court that jeopardy attached must be reversed. Further, the sentence given Mr. Cronin must be vacated and the case remanded to the lower court for further proceedings.

Respectfully submitted this 29th day of January, 2013.

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A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

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