

FILED
OCTOBER 20, 2014
Court of Appeals
Division III
State of Washington

NO. 317544-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

LONNIE L. BLACK, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 13-1-00290-0

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. RESPONSE TO ASSIGNMENTS OF ERROR 1

1. Because the defendant was not advised of the potential maximum penalty he faced if convicted, the State concedes that his waiver of counsel was not knowingly and intelligently made...... 1

2. Given the State’s concession, the State is not responding to the remaining issues. 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 1

1. The defendant’s waiver of counsel was not made knowingly and intelligently...... 1

IV. CONCLUSION2

TABLE OF AUTHORITIES

WASHINGTON CASES

City of Bellevue v. Acrey, 103 Wn.2d 203, 691 P.2d 957 (1984)..... 1, 2

I. RESPONSE TO ASSIGNMENTS OF ERROR

1. **Because the defendant was not advised of the potential maximum penalty he faced if convicted, the State concedes that his waiver of counsel was not knowingly and intelligently made.**
2. **Given the State's concession, the State is not responding to the remaining issues.**

II. STATEMENT OF FACTS

For purposes of responding to the issue of the defendant's waiver of counsel, the State will rely on the Statement of the Case provided in Appellant's Brief at pages 1 through 4.

III. ARGUMENT

1. **The defendant's waiver of counsel was not made knowingly and intelligently.**

A valid waiver of a defendant's right to counsel requires, at a minimum, that the defendant be advised of: (1) the risks associated with self-representation, (2) the nature and seriousness of the charge, and (3) the maximum possible penalty he faces in the event he is convicted. *City of Bellevue v. Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984). Optimally, at the time a defendant requests to represent himself, the trial court would conduct a colloquy apprising the defendant of this information; however, in the absence of such a colloquy, a waiver of counsel may still be valid if the record otherwise reflects that the

defendant was aware of this information when his waiver of counsel was accepted. *Acrey*, 103 Wn.2d at 211.

After a thorough review of all proceedings in this matter, the State cannot find evidence that the defendant was advised of the maximum penalty he faced upon conviction. Consequently, the defendant's waiver of counsel was not made knowingly or intelligently.

Given the State's concession to the appellant's first issue, the State is not responding to the remaining issues raised in Appellant's Brief.

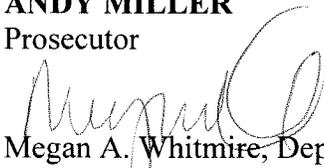
IV. CONCLUSION

Based upon the arguments above, the defendant's conviction should be reversed and the matter remanded for further proceedings.

RESPECTFULLY SUBMITTED this 20th day of October, 2014.

ANDY MILLER

Prosecutor



Megan A. Whitmire, Deputy

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Bar No. 29933

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

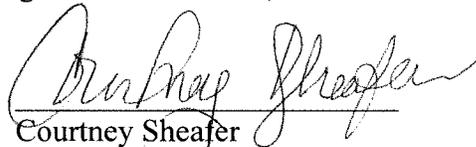
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Signed at Kennewick, Washington on October 20, 2014.



Courtney Sheaffer
Legal Assistant