FILED
November 13, 2015
Court of Appeals
Division III
State of Washington
No. 32955-1-III

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

STATE OF WASHINGTON,
Respondent,

v.

DAVID WAYNE HAMLLIK,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-00056-5

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The trial court failed to enter written Findings of Facts and Conclusions of Law.

B. STATEMENT OF THE CASE

The state accepts and adopts the procedural and substantive facts recited in the Brief of the Appellant.

C. ARGUMENT

1. The fact that the Trial Court failed to enter written Findings of Facts and Conclusions of Law is now moot.

The remedy that the defendant requested in his opening brief was that the case be remanded for entry of written Findings of Fact and Conclusions of Law.

On June 30, 2015, the State filed a motion requesting that the relief be granted and the case be remanded for entry of written Findings of Facts and Conclusions of Law.

On August 6, 2015, the Court of Appeals issued a ruling remanding for entry of Findings of Facts and Conclusions of Law.

On August 18, 2015, written Findings of Facts and Conclusions of Law were filed.

On October 13, 2015, the Court of Appeals received the Findings of Facts and Conclusions of Law.

2. Defendant's Statement of Additional Grounds

a) *404(b) Evidence*

The defendant states that the evidence of his lifestyle was used in violation of ER 404(b). ER 404(b) states:

> "Evidence of other crimes,wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge,identity, or absence of mistake or accident."

The defendant wrongfully quotes what 404(b) evidence is in his statement of additional grounds. There is no indication in the verbatim report of proceedings in which 404(b) evidence was used.

b) *Bench Trial*

The defendant argues that he was informed by the court that a jury of 12 of his peers could not be found, and that was the reason for the bench trial.

There is no evidence of this in the record. In fact, the Clerks Paper show that there was a waiver of jury trial signed by the defendant. The waiver of jury trial states that the Defendant had discussed the matter fully with his attorney and chose to waive his right to a jury trial.

Given the facts of the case, it is likely that it was a strategic decision to have a bench trial rather than a jury trial.

D. CONCLUSION

Because the relief request in the Apellant's Opening Brief has been granted, the issues on appeal is moot and the appeal should be dismissed.

Because there is no evidence in the record that 404(b) evidence was introduced at trial and because the Defendant signed a waiver of his right to a jury trial, the appeal should be dismissed.

Respectfully submitted this 13th day of November, 2015.

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