

80202-5

NO. 52447-0-I

(SUPREME COURT NO. 77893-1)

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ROBINSON,

Appellant.

FILED
COURT OF APPEALS DIV. #1
JAN 15 2015

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

SUPPLEMENTAL BRIEF OF RESPONDENT ON REMAND

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A. ISSUE PRESENTED ON REMAND

The United States Supreme Court held in Blakely v. Washington that a sentencing court generally may not exceed the standard range unless the facts aggravating the sentence have been found by a jury beyond a reasonable doubt. Subsequent cases further hold that Blakely error is not structural error, and that an exceptional sentence that violates Blakely may nonetheless be affirmed if the aggravating factors are supported by overwhelming, uncontroverted evidence.

In this case, the aggravating factors supporting the exceptional sentence were found by the sentencing court rather than a jury. However, at least three valid aggravating factors relied upon by the trial court are supported by overwhelming, uncontroverted evidence to which the defendant stipulated for purposes of sentencing. Is any Blakely error harmless?

B. STATEMENT OF THE CASE

The defendant, William Robinson, pled guilty to three counts of vehicular assault for the August 21, 2002 crash that injured Kristina Moss and two of her children, Zachary (12) and Olivia (8), as they stood on a sidewalk in Des Moines, Washington. CP 7-30. As part of the plea agreement, Robinson stipulated to the facts

contained in the certification for determination of probable cause, in the prosecutor's summary, and in Appendix C "for purposes of this sentencing." The State gave notice that it was seeking an exceptional on Counts I and II, and a high-end sentence on Count III. CP 10. At sentencing on May 2, 2003, the court imposed an exceptional sentence of 96 months on Count I, and 60 months apiece on Counts II and III, to be served concurrently. CP 63. The sentencing court relied upon the facts Robinson had stipulated to as part of the plea agreement in imposing the exceptional sentence. 5/2/03 RP 5, 46-54; CP 68-70.

The ensuing appellate proceedings in this case have been protracted and complex. Although the following summary of the appellate procedural history of this case is fairly exhaustive, copies of the appellate dockets are attached for the court's convenience.

Robinson appealed, and sought accelerated review of his exceptional sentence. The parties' initial briefs on accelerated review were filed in September and October 2003. Just prior to oral argument on the motion for accelerated review, Robinson filed a supplemental brief arguing, *inter alia*, that the exceptional sentence procedure was infirm because the aggravating factors were found by a judge rather than a jury. The State filed a response to this

supplemental brief. Commissioner Ellis then affirmed Robinson's sentence in a decision rendered in February 2004, and this court's mandate issued in March 2004.

The United States Supreme Court issued its decision in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), on June 24, 2004. Robinson then filed a motion to withdraw this court's mandate, and that motion was granted over the State's objection in November 2004. Robinson then filed a motion to modify the commissioner's ruling, and the State filed a response brief in opposition. This court then granted Robinson's motion to modify the Commissioner's ruling in February 2005, and ordered further supplemental briefing from both parties regarding the impact of Blakely.

Both parties filed their supplemental briefs in March 2005. Robinson argued that his sentence was illegal under Blakely, that Blakely error cannot be subject to harmless error analysis, and that the only possible remedy was to remand to the trial court for resentencing within the standard range. The State argued in response that Blakely had no effect on Robinson's sentence because Robinson stipulated to all of the facts upon which his

sentence was based, and that it was thus unnecessary to reach the merits of Robinson's remaining arguments.

When these supplemental briefs were filed, Robinson's case was directly controlled by this court's decision in State v. Hagar, 126 Wn. App. 320, 105 P.3d 65 (2005), in which this court held that a defendant who has stipulated to the facts supporting an exceptional sentence as part of a plea agreement could not challenge that stipulation without challenging the validity of the entire plea agreement. Moreover, two divisions of this court had held that Blakely errors were not subject to a harmless error analysis. State v. Jones, 126 Wn. App. 136, 107 P.3d 755 (2005); State v. Fero, 125 Wn. App. 84, 104 P.3d 49 (2005). Then, just a month after the parties' supplemental briefs were filed, the Washington Supreme Court also ruled that Blakely error could not be subjected to a harmless error analysis on appeal. State v. Hughes, 154 Wn.2d 118, 142-48, 110 P.3d 192 (2005); State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005).

In September 2005, this court affirmed Robinson's sentence on grounds that he had stipulated to the facts supporting his exceptional sentence, and based on the reasoning in Hagar. State v. Robinson, 129 Wn. App. 1019 (No. 52447-0-1, filed 9/12/2005),

slip op. Robinson then filed a timely petition for review. On June 26, 2006, while Robinson's petition was pending, the United States Supreme Court issued its decision in Washington v. Recuenco, ___ U.S. ___, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006), holding that Blakely errors are not structural, and are thus properly subject to a harmless error analysis. In July 2006, the Washington Supreme Court stayed Robinson's petition pending the court's decision in State v. Suleiman, No. 76807-2.

Suleiman was decided October 5, 2006. The court held in Suleiman that where a defendant has stipulated to facts underlying an exceptional sentence, but has not stipulated to the specific aggravating factors upon which an exceptional sentence is based, Blakely error has occurred where the aggravating factor has been found by a judge rather than a jury. State v. Suleiman, 158 Wn.2d 280, 293-94, 143 P.3d 795 (2006). Accordingly, the court remanded Suleiman's case to this court for consideration of whether the Blakely error was harmless. Id. at 294-95. A week later, the court also issued its decision in State v. Hagar, 158 Wn.2d 369, 144 P.3d 298 (2006). With virtually no analysis, the court reversed and remanded Hagar's case to the trial court for resentencing within the standard range. Id.

Finally, on January 3, 2007, the Washington Supreme Court granted Robinson's petition for review, and remanded to this court for reconsideration in light of Suleiman and Hagar. Additional relevant facts will be discussed further below as necessary for argument.

C. ARGUMENT

- 1. OVERWHELMING, UNCONTROVERTED EVIDENCE SUPPORTS SEVERAL VALID AGGRAVATING FACTORS, AND THUS ANY BLAKELY ERROR IN THIS CASE IS HARMLESS BEYOND A REASONABLE DOUBT.**

As the law currently stands, the State must concede that Blakely error occurred in this case because the sentencing judge, rather than a jury, found the existence of aggravating factors as justification for Robinson's exceptional sentence. However, given that several valid aggravating factors are supported by uncontroverted facts to which Robinson stipulated, any Blakely error in this case is harmless beyond a reasonable doubt. Accordingly, this court should affirm Robinson's sentence.

In any case where constitutional error has occurred, the State bears the burden of showing that the error was harmless beyond a reasonable doubt. See State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002). A "to convict" instruction that omits an

essential element of the crime charged is subject to constitutional harmless error analysis on appeal. Neder v. United States, 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). This is the case because "an instruction that omits an element of the offense does not necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." Neder, 527 U.S. at 9. Accordingly, an error is harmless in these circumstances when "the omitted element was uncontested and supported by overwhelming evidence such that the jury verdict would have been the same absent the error." Id. at 17.

For purposes of the Sixth Amendment right to a jury trial, sentencing factors are treated like the functional equivalent of elements of the crime insofar as they must be proved to a jury beyond a reasonable doubt. Recuenco, 126 S. Ct. at 2552. Therefore, the test for harmless error where a Blakely violation has occurred is the same as the test for harmless error where an element of the crime has been omitted from the "to convict" instruction. See Id. at 2251-53 (citing Neder, *supra*). Thus, in a case where Blakely error has occurred, the question is whether the aggravating factor is supported by uncontroverted evidence such that the verdict would have been the same had the error not

occurred. In other words, "[f]rom the record, it must appear beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Brown, 147 Wn.2d at 344.

In this case, Robinson's sentence is based almost entirely upon stipulated facts. Although Robinson did not stipulate to the aggravating factors themselves, he stipulated to all of the facts underlying those aggravating factors. CP 20-27. In addition, in imposing the exceptional sentence in this case, the sentencing court ruled that each aggravating factor, standing alone, is sufficient justification for the sentence, and that if "an appellate court affirms at least one of the substantial and compelling reasons, the length of the sentence should remain the same . . . so there is no need for a remand." CP 70. Therefore, the question before this court is whether any valid aggravating factor in this case is supported by overwhelming, uncontroverted evidence such that a jury would have found that factor beyond a reasonable doubt had the Blakely error not occurred. This standard is met for several aggravating factors, and therefore this court should affirm.

The sentencing court in this case considered the stipulated facts and found five aggravating factors supporting an exceptional sentence: 1) the facts are more egregious than typical for vehicular

assault; 2) the victims were particularly vulnerable; 3) the defendant's lack of liability insurance resulted in greater financial consequences for the victims; 4) Zachary Moss's injuries were more serious than necessary to satisfy the elements of the crime; and 5) the crimes resulted in significant, foreseeable mental suffering because each family member witnessed the others being injured. CP 69-70. Even if this court were to assume that the first and third factors are no longer valid in the wake of Blakely,¹ the other three factors are supported by uncontroverted evidence and any error is clearly harmless beyond a reasonable doubt.

a: Particularly vulnerable victims

An exceptional sentence may be imposed if the defendant "knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance." Laws of 2005, ch. 68, § 3(3)(b). This aggravating factor applies in cases where the victim's particular vulnerability is known to the defendant and is "a substantial factor in the commission of the crime."

¹ In response to Blakely, the legislature amended the SRA in 2005 to create a procedure whereby aggravating factors could be submitted to juries. Laws of 2005, ch. 68, § 3. The legislature specified that the aggravating factors enumerated in the amendments were intended to be "an exclusive list of factors that can support a sentence above the standard range." Id. Therefore, this brief addresses only those factors included in the 2005 legislation.

Suleiman, 158 Wn.2d at 291-92. The Washington Supreme Court has previously recognized "that a vehicular assault victim can be particularly vulnerable where the victim was relatively defenseless." Suleiman, 158 Wn.2d at 291 (citing State v. Nordby, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986)). Specifically, in Nordby, the court found that a pedestrian who was pushing her bicycle beside the road was a particularly vulnerable victim of vehicular assault:

Unlike a potential victim in a second automobile, she had no opportunity to evade Horne's car once Nordby swerved it toward her. Nor was she afforded the additional protection against injury that a second automobile might provide for a driver or passenger of that automobile. The trial court noted that the victim here was, in fact, completely defenseless and vulnerable. This reason justifies an exceptional sentence.

Nordby, 106 Wn.2d at 518.

In this case, Robinson stipulated that the victims were pedestrians who were standing next to their bicycles on the sidewalk. Two of the victims were children. CP 25. Robinson further stipulated that he hit the victims after his car jumped the curb, hit a mailbox, and continued onto the sidewalk where they standing. CP 21. Robinson also stipulated that he knew he had hit pedestrians, as he told the police following his arrest that he had

"drifted off the road" and "hit the people." CP 22. These stipulated facts were, by definition, uncontested and uncontroverted.

The facts to which Robinson stipulated overwhelmingly support the sentencing court's conclusion that the victims were particularly vulnerable. The victims were pedestrians who were standing on the sidewalk, and they were thus particularly vulnerable to vehicular assault. Robinson acknowledged that he had left the roadway and struck pedestrians. Given the overwhelming evidence that these victims were particularly vulnerable, and given Robinson's own admission to the police that he left the roadway and struck pedestrians, the Blakely error as to this aggravating factor is harmless beyond a reasonable doubt.

b. Particularly severe injuries

An exceptional sentence may be imposed if [t]he victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense." Laws of 2005, ch. 68, § 3(3)(y). This factor is appropriate in cases where the injury is "greater than that contemplated by the Legislature in setting the standard range." State v. Cardenas, 129 Wn.2d 1, 6, 914 P.2d 57 (1996). Due to a charging error in this case, the level of injury considered by the sentencing court as an element of vehicular

assault as to victim Zachary Moss was "serious bodily injury" rather than "substantial bodily harm." CP 18. "Serious bodily injury" was defined in the former version of RCW 46.61.522 as "bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body." Even considering this higher standard of injury, as the sentencing court did, the facts to which Robinson stipulated overwhelmingly support the court's conclusion that Zachary Moss's injuries exceed what was contemplated by the legislature.

Robinson stipulated that Zachary Moss, due to the injuries he received at the age of 12 as the result of the crash, is "dependent for all of his care including feeding, bathing, dressing, personal hygiene, and turning in bed and transferring," and that he "is unable to move himself about in space and unable to communicate his thoughts." CP 25. Moreover, Robinson stipulated that Zachary Moss's injuries are such that it is likely he will never be able "to walk, communicate, or become able to perform basic activities of daily living such as dressing, self-feeding, or independent toileting." CP 26. These injuries did not merely result in a "protracted" loss of function; rather, these injuries have resulted

in a *permanent* loss of function such that Zachary's ability to perform even the most basic tasks is almost nonexistent. Moreover, Zachary's young age at the time of the crash only serves to prolong his suffering, and that of his family.

The sentencing court's conclusion that Zachary Moss's injuries are more severe than contemplated by the legislature in setting the standard range is supported by overwhelming, uncontested evidence. Accordingly, the Blakely error as to this aggravating factor is harmless beyond a reasonable doubt.

c. Particularly severe impact on others

An exceptional sentence may be imposed if "[t]he offense involved a destructive and foreseeable impact on persons other than the victim." Laws of 2005, ch. 68, § 3(3)(r). As this court has explained, this aggravating factor applies "where the defendant's actions have an impact on others of such a distinctive nature that it is not normally associated with the commission of the offense in question *and* where the impact is foreseeable to the defendant." State v. Crutchfield, 53 Wn. App. 916, 928, 771 P.2d 746 (1989).

In this case, the sentencing court found that each of Robinson's crimes resulted in severe mental suffering and anguish for each member of the Moss family, as each victim directly

witnessed the others being hurt. CP 70. This finding was based on Robinson's stipulation that Kristina Moss and her children were standing together on the sidewalk when Robinson hit them. CP 25. Robinson further stipulated that Zachary Moss "flew 6 to 8 feet into the air" before "falling onto the sidewalk below," that Olivia Moss "was thrown off to the side of the car," and that Kristina Moss was found "in a dazed condition sitting on top of the wall near her children" after the crash. CP 21. Robinson also stipulated that all three victims were transported to the same hospital, and that Zachary was in critical condition upon arrival. CP 20.

The sentencing court's conclusion that each of these crimes had a devastating and foreseeable impact on persons other than the victim is supported by overwhelming evidence. Indeed, it is difficult to envision a more traumatic experience for a mother or a child than witnessing other family members being injured in this way. In fact, Robinson has never contested the applicability of this aggravating factor on the merits. See Motion for Accelerated Review (September 2003); State v. Robinson, Commissioner's Ruling Affirming Sentence (No. 52447-0-I, filed 2/12/2004), at 9. This aggravating factor is amply supported by uncontroverted facts,

and thus the Blakely error as to this factor is harmless beyond a reasonable doubt.

D. CONCLUSION

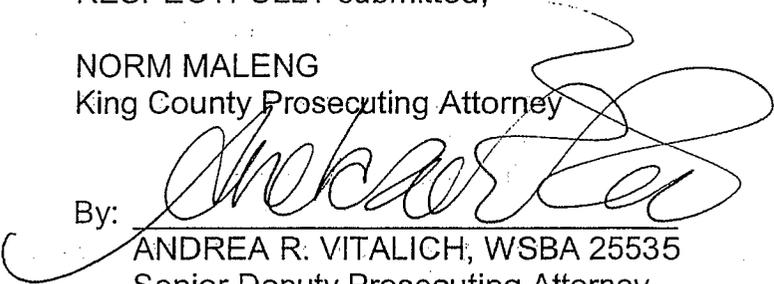
The defendant stipulated to the facts that form the basis of the exceptional sentence he received. In addition, at least three valid aggravating factors as found by the sentencing court are supported by overwhelming, uncontested evidence. Therefore, any Blakely error in this case is harmless beyond a reasonable doubt and the defendant's sentence should be affirmed.

DATED this 31st day of January, 2007.

RESPECTFULLY submitted,

NORM MALENG
King County Prosecuting Attorney

By:


ANDREA R. VITALICH, WSBA 25535
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent
WSBA Office #91002

CASE EVENTS # 524470

| Date | Item | Action | Participant |
|------------|--|-------------------|-----------------------|
| 01/08/2007 | Court of Appeals case file (pouch) <i>Comment: 1 coa 1 tcp from sc to cm 1/8/07</i> | Received by Court | |
| 01/04/2007 | Letter <i>Comment: Copy of order from Supreme Crt granting prv and remanding to the COA.</i> | Received by Court | |
| 11/13/2006 | Letter <i>Comment: Frm Supreme Crt; the prv in this matter is scheduled for consideration on 1/3/07.</i> | Filed | |
| 07/10/2006 | Letter <i>Comment: Copy of 7/6/06 order deferring review pending #76807-2.</i> | Received by Court | |
| 11/14/2005 | Letter <i>Comment: Frm Supreme Crt ack. receipt of prv. #77893-1</i> | Received by Court | |
| 10/17/2005 | Court of Appeals case file (pouch) <i>Comment: To Supreme Court 1 COA</i> | Sent by Court | |
| 10/05/2005 | Petition for Review Service Date: 2005-10-05 | Filed | DAVIS, OLIVER ROSS |
| 09/12/2005 | Decision Filed | Status Changed | |
| 09/12/2005 | Opinion Pages: 7 Publishing Status: Unpublished Publishing Decision: Affirmed Opinion Type: Majority Opinion Number: 2005-02135 JUDGE: Baker William ROLE: Authoring JUDGE: Agid Susan ROLE: Concurring JUDGE: Coleman H Joseph ROLE: Concurring | Filed | BAKER, WILLIAM |
| 07/18/2005 | Heard and awaiting decision | Status Changed | |
| 07/18/2005 | Oral Argument Hearing <i>Comment: 9:30 AM Baker William Coleman H Joseph</i> | Scheduled | |

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| | Agid Susan | | |
| 06/06/2005 | Set on a calendar | Status Changed | |
| 06/06/2005 | Oral Argument Setting Letter | Sent by Court | |
| 05/18/2005 | Screened | Status Changed | |
| 04/19/2005 | Pro SE Supplemental brief Pages: 7 <i>Comment: Pro Se Supplemental brief in support of motion to modify - (Pro Se Supplemental Brief)</i> | Filed | Robinson Doc #855390, William |
| 04/18/2005 | Notice of Int to file Pro SE suppl Brief | Filed | Robinson Doc #855390, William |
| 04/08/2005 | Motion - Other Service Date: 2005-04-08 Motion Status: Received, Pending Action <i>Comment: Motion & addendum to supplemental brief clarifying remedy requested.</i> | Filed | DAVIS, OLIVER ROSS |
| 04/05/2005 | Letter Service Date: 2005-04-07 <i>Comment: Requesting a notice of intent to file pro se supplemental brief. Copy of ltr to app. counsel 4/6/05. Service filed 4/7/05</i> | Filed | Robinson Doc #855390, William |
| 03/28/2005 | Ready | Status Changed | |
| 03/28/2005 | Respondents Supplemental brief Service Date: 2005-03-28 Pages: 9 | Filed | VITALICH, ANDREA RUTH |
| 03/25/2005 | Letter Service Date: 2005-03-31 <i>Comment: Requesting copy of the 2/9/05 decision on the motion to modify. Copy to counsel. - Service filed 3/31/05 Spoke to Oliver Davis 3/30, advising the court appellant was sent a copy of the ruling:jh</i> | Filed | Robinson Doc #855390, William |
| 03/22/2005 | Ruling on Motions | Filed | VERELLEN, JAMES |
| 03/22/2005 | Ruling on Motions | Filed | VERELLEN, JAMES |
| 03/17/2005 | Appellants Supplemental brief Service Date: 2005-03-17 Pages: 47 <i>Comment: Per 2/9/05 order</i> | Filed | DAVIS, OLIVER ROSS |
| 03/08/2005 | Motion to Extend Time to File Service Date: 2005-03-08 Motion Status: Decision filed <i>Comment: to 3/18/05.</i> | Filed | DAVIS, OLIVER ROSS |
| 03/03/2005 | Motion - Other | Filed | DAVIS, OLIVER |

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| | Service Date: 2005-03-03 Motion Status: Decision filed <i>Comment: Motion to allow provision of copies of designated clerk's papers</i> | | ROSS |
| 02/15/2005 | Designation of Clerks Papers <i>Comment: Per 2/9/05 order Original desg. filed 7/2/03.</i> | Received by Court | DAVIS, OLIVER ROSS |
| 02/15/2005 | Clerk's Papers <i>Comment: Pgs 1-71 (not numbered) - Copies provided by app. counsel, accepted per 3/22/05 not. ruling..</i> | Filed | |
| 02/09/2005 | Order on Motions <i>Comment: "ORDERED that the motion to modify is granted. It is further ORDERED that appellant shall file a new designation of clerk's papers by February 11, 2005. It is further ORDERED that appellant shall file a supplemental brief addressing his arguments under Blakely v. Washington, __ U.S. __, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) by March 11, 2005. It is further ORDERED that the State's supplemental response is due April 8, 2005."</i> | Filed | COX, RONALD |
| 01/26/2005 | Respondent Additional Authorities Service Date: 2005-01-26 | Filed | VITALICH, ANDREA RUTH |
| 12/28/2004 | Letter <i>Comment: Requesting a copy of the order/opinion granting the motion to recall the mandate. Copy to app. counsel 1/5/05.</i> | Filed | Robinson Doc #855390, William |
| 12/09/2004 | Reply to Response Service Date: 2004-12-09 <i>Comment: Appellant's reply to response to motion to modify</i> | Filed | DAVIS, OLIVER ROSS |
| 12/06/2004 | Response to motion Service Date: 2004-12-06 <i>Comment: Resp's Response to App's Motion to Modify Comm's Ruling. *placed w/ file 12/8/04.LM</i> | Filed | VITALICH, ANDREA RUTH |
| 11/30/2004 | Letter <i>Comment: Response to motion</i> | Sent by Court | |
| 11/23/2004 | Motion to Modify Ruling Service Date: 2004-11-23 Hearing Location: None Motion Status: Decision filed | Filed | DAVIS, OLIVER ROSS |
| 11/01/2004 | Decision on Motions <i>Comment: "ORDERED that the motion to recall</i> | Filed | GROSSE, C. KENNETH |

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| | <i>the mandate is granted; and, it is further ORDERED that Robinson shall have 30 days from the date of this order in which to file a motion to modify the Commissioner's February 12, 2004 ruling; it is further ORDERED that unless Robinson files a motion to modify within 30 days of the date of this order, the mandate will be reissued."</i> | | |
| 09/15/2004 | Reply to Response Service Date: 2004-09-15 <i>Comment: Appellant's response to respondent's answer to motion to recall mandate.</i> | Filed | Robinson Doc #855390, William |
| 09/07/2004 | Response to motion Service Date: 2004-09-07 <i>Comment: Response to appellants motion to withdraw mandate under RAP 12.9.</i> | Filed | VITALICH, ANDREA RUTH |
| 08/16/2004 | Letter <i>Comment: Frm Supreme Crt ack. receipt of appellant's motion for d/r. "The pleadings have been rejected for filing and placed in our unfiled papers section."</i> | Received by Court | |
| 08/13/2004 | Motion for Recall of Mandate Motion Status: Decision filed | Filed | Robinson Doc #855390, William |
| 08/04/2004 | Notice of Discret Review to Supreme Crt <i>Comment: Forwarded to Supreme Court 8/10/04</i> | Filed | Robinson Doc #855390, William |
| 04/06/2004 | Stored in CT <i>Comment: 2-2379</i> | Filed | |
| 03/19/2004 | Mandate | Filed | |
| 02/12/2004 | Decision Filed | Status Changed | |
| 02/12/2004 | Decision terminating Review <i>Comment: "ORDERED that the sentence imposed by the trial court is affirmed."</i> | Filed | ELLIS, WILLIAM |
| 11/12/2003 | Respondents Supplemental brief Service Date: 2003-11-12 Pages: 5 <i>Comment: No more than 10 pages per 11/4/03 not. ruling. Once filed send file up to Comm. Ellis</i> | Filed | VITALICH, ANDREA RUTH |
| 11/04/2003 | Decision on Motions <i>Comment: William Robinson has filed a motion to stay consideration of this case pending a decision by the United States Supreme Court in Blakely v. Washington. Robinson has also requested permission to file a supplemental</i> | Filed | ELLIS, WILLIAM |

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| | <p><i>brief. A similar request was recently filed in State v. Koehler, 51476-8, which is scheduled for argument on November 5, 2003. Consistent with the approach taken by the panel in that case, the motion for a stay shall be denied. The motion to file the supplemental brief is granted. The State shall have 30 days to file a response of no more than 10 pages to the supplemental brief. Consideration of Robinson's motion for accelerated review, heard on October 31, 2003, shall be deferred pending receipt of the State's reply.</i></p> <p><i>Now, therefore, it is hereby ORDERED that Robinson's motion for a stay is denied; it is further ORDERED that Robinson's motion to file a supplemental brief is granted; and, it is further ORDERED that the State shall have until December 4, 2003, to file a reply to the supplemental brief of 10 pages or less.</i></p> | | |
| 11/04/2003 | <p>Decision on Motions</p> <p><i>Comment: William Robinson has filed a motion to stay consideration of this case pending a decision by the United States Supreme Court in Blakely v. Washington. Robinson has also requested permission to file a supplemental brief. A similar request was recently filed in State v. Koehler, 51476-8, which is scheduled for argument on November 5, 2003. Consistent with the approach taken by the panel in that case, the motion for a stay shall be denied. The motion to file the supplemental brief is granted. The State shall have 30 days to file a response of no more than 10 pages to the supplemental brief. Consideration of Robinson's motion for accelerated review, heard on October 31, 2003, shall be deferred pending receipt of the State's reply.</i></p> <p><i>Now, therefore, it is hereby ORDERED that Robinson's motion for a stay is denied; it is further ORDERED that Robinson's motion to file a supplemental brief is granted; and, it is further ORDERED that the State shall have until December 4, 2003, to file a reply to the supplemental brief of 10 pages or less.</i></p> | Filed | ELLIS, WILLIAM |
| 10/30/2003 | <p>Statement of Additional Grounds for Review</p> <p>Pages: 2</p> | Filed | Robinson Doc #855390, William |
| 10/29/2003 | <p>Appellants Supplemental brief</p> <p>Service Date: 2003-10-29</p> <p>Pages: 8</p> | Filed | DAVIS, OLIVER ROSS |
| 10/29/2003 | <p>Motion for Supplemental brief</p> <p>Service Date: 2003-10-29</p> <p>Motion Status: Decision filed</p> | Filed | DAVIS, OLIVER ROSS |

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|------------|---|----------------|--------------------------|
| | <i>Comment: Motion to file supplemental assignments of error and brief in support thereof</i> | | |
| 10/29/2003 | Motion for Stay Service Date: 2003-10-29 Motion Status: Decision filed <i>Comment: Motion to stay appeal pending United State Supreme Court decision and to strike October 31 hearing.</i> | Filed | DAVIS, OLIVER ROSS |
| 10/23/2003 | Affidavit of Service <i>Comment: A copy of the vrp's was sent to appellant.</i> | Filed | |
| 10/14/2003 | Decision on Motions <i>Comment: The motion is granted. This matter is continued to 10/31/03 at 10:30a.m.</i> | Filed | JOHNSON, RICHARD D |
| 10/10/2003 | Other filing Service Date: 2003-10-10 <i>Comment: Addendum to motion to reschedule argument on motion for acc. review</i> | Filed | VITALICH, ANDREA RUTH |
| 10/10/2003 | Response to Motion for Accelerated Review Service Date: 2003-10-10 | Filed | VITALICH, ANDREA RUTH |
| 10/08/2003 | Motion to Continue Service Date: 2003-10-08 Motion Status: Decision filed <i>Comment: Motion to reschedule argument on motion for acc. review 10/17/03 or 10/31/03</i> | Filed | VITALICH, ANDREA RUTH |
| 10/06/2003 | Notice of motion Service Date: 2003-10-06 <i>Comment: Appellant's notice of motion for acc. review. 10/24/03 @ 10:30</i> | Filed | DAVIS, OLIVER ROSS |
| 10/02/2003 | Notice of Appearance Service Date: 2003-10-02 | Filed | VITALICH, ANDREA RUTH |
| 09/29/2003 | Motion for Accelerated Review (adult) Calendar Type: Commissioner's Oral Argument Motion Calendar Hearing Official: Ellis, William Service Date: 2003-09-29 Hearing Date: 10/31/2003 Hearing Time: 10:30 AM Hearing Location: Court Room Motion Status: Decision filed <i>Comment: Defendant's RAP 18.15 Motion for Acc. Review of Exceptional Sentence Was set 10/24/03</i> | Filed | DAVIS, OLIVER ROSS |
| 09/25/2003 | Record Ready | Status Changed | |
| 09/22/2003 | Report of Proceedings <i>Comment: 5/2/03 - Hon. Shaffer</i> | Filed | |

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| | <i>cr: O'Donnell - transmitted 9/22/03 - rec: 9/25/03</i> | | |
| 09/10/2003 | Filing of VRP by Crt Reporter <i>Comment: Cr: Velma Haynes - Vrp's were not computer generated.</i> | Filed | |
| 09/03/2003 | Court's Mot for Sanct for Fail to file Calendar Type: Commissioner's Oral Argument Motion Calendar Hearing Official: Verellen, James Hearing Date: 09/26/2003 Hearing Time: 10:30 AM Hearing Location: Court Room Motion Status: Stricken / Vacated <i>Comment: fff ASCII disk cr: Velma Haynes</i> | Filed | |
| 08/18/2003 | Report of Proceedings Volumes: 2 <i>Comment: 3/19/03, 5/27/03 - Hon. Gain cr: Haynes rec: 8/22/03</i> | Filed | |
| 07/31/2003 | Clerk's Papers Pages: 71 Volumes: 1 <i>Comment: pgs 1-71</i> | Filed | |
| 07/08/2003 | Statement of Arrangements Service Date: 2003-07-08 | Filed | APPELLATE PROJECT, WASHINGTON |
| 07/02/2003 | Designation of Clerks Papers Service Date: 2003-07-02 | Filed | APPELLATE PROJECT, WASHINGTON |
| 06/13/2003 | Perfection Letter | Sent by Court | JOHNSON, RICHARD D |
| 06/05/2003 | Case Received and Pending | Status Changed | |
| 06/02/2003 | Order of Indigency in Superior Court | Filed | APPELLATE PROJECT, WASHINGTON |
| 06/02/2003 | Notice of Appeal | Filed | |

CASE EVENTS # 778931

| Date | Item | Action | Participant |
|------------|---|----------------|---------------------|
| 01/04/2007 | Court of Appeals case file (pouch) <i>Comment: 1 SUPREME COURT POUCH AND 2 COURT OF APPEALS POUCHES SENT TO DIVISION I IZ 742 462 03 4565 1160</i> | Sent by Court | |
| 01/03/2007 | Disposed | Status Changed | |
| 01/03/2007 | Decision Filed | Status Changed | |
| 01/03/2007 | Set for Motion Calendar | Status Changed | |
| 01/03/2007 | Order terminating Review <i>Comment: PETITION FOR REVIEW GRANTED AND REMANDED TO THE COURT OF APPEALS DIVISION ONE FOR RECONSIDERATION IN LIGHT OF STATE V SULEIMAN 158 WN.2D 280 AND STATE V. HAGAR 158 WN 2D 369 505/93</i> | Filed | ALEXANDER, GERRY L |
| 12/05/2006 | Letter <i>Comment: petr requested information regarding the status of his case.</i> | Filed | Robinson, William |
| 12/05/2006 | Letter <i>Comment: The Clerk advised the petr that the prv is set for consideration on the court's 1/3/2007 calendar.</i> | Sent by Court | MERRITT, C. JERRY |
| 11/08/2006 | Letter <i>Comment: A determination of the above referenced prv was deferred pending final determination in State v. Suleiman, Supreme Court cause number 76807-2. The decision in that case is now final. Accordingly, the prv in this matter is scheduled for consideration on the Court's January 3, 2007, prv calendar.</i> | Sent by Court | CARPENTER, RONALD R |
| 11/03/2006 | Stay Lifted | Status Changed | |
| 10/18/2006 | Letter <i>Comment: Petr is inquiring as to the status of his case. The Deputy Clerk responded as follows: St. v. Suleiman #76807-2 will not be considered complete until any reconsideration is considered and the mandate is filed; so the stay will remain in effect for the time being.</i> | Filed | Robinson, William |
| 07/12/2006 | Letter <i>Comment: advised the petr that his case is stayed pending State v. Suleiman, No. 76807-2</i> | Sent by Court | MERRITT, C. JERRY |

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| 07/12/2006 | Letter <i>Comment: Letter requesting the status of his case.</i> | Filed | Robinson, William |
| 07/06/2006 | Stayed, Pending Case | Status Changed | |
| 07/06/2006 | Other Order <i>Comment: CONSIDERATION OF THE PETITION FOR REVIEW DEFERRED PENDING SUPREME COURT NO 76807-2 495/40</i> | Filed | ALEXANDER, GERRY L |
| 07/06/2006 | Set for Motion Calendar | Status Changed | |
| 07/03/2006 | Letter <i>Comment: Requesting information on the status of the case. (Because the matter will be considered on 7/6, not action was taken on this letter)</i> | Filed | Robinson, William |
| 11/04/2005 | Case Received and Pending | Status Changed | |
| 11/04/2005 | Consideration on Petition for Review Calendar Type: Department 1 Service Date: 2005-11-04 Hearing Date: 01/03/2007 Hearing Location: None Motion Status: Decision filed | Filed | Robinson, William |
| 11/04/2005 | Court of Appeals case file (pouch) Volumes: 2 <i>Comment: 2 files #52447-0-I; supp app bri 0; supp res bri 0 (Note, a mandate was issued. The mandate was recalled and add'l supp briefs were filed. I am only distributing the second set of supp briefs)</i> | Received by Court | |
| 11/04/2005 | Petition for Review | Filed | |

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief of Respondent on Remand, in STATE V. WILLIAM ROBINSON, Cause No. 52447-0-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame
Name
Done in Seattle, Washington

1/31/07
Date

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2007 JAN 31 PM 4:15