

No. 80865-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

GLEN SEBASTIAN BURNS,

Petitioner.

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STATE OF WASHINGTON  
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ON DISCRETIONARY REVIEW  
FROM THE COURT OF APPEALS, DIVISION ONE

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PETITIONER'S SUPPLEMENTAL BRIEF

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**TABLE OF CONTENTS**

A. ISSUES PRESENTED..... 1

B. STATEMENT OF THE CASE..... 1

C. ARGUMENT ..... 3

    1. THE WASHINGTON CONSTITUTION GRANTS MR. BURNS  
    THE RIGHT TO REPRESENT HIMSELF IN THE APPELLATE  
    COURTS..... 3

        a. The Sixth Amendment of the United States Constitution provides  
        no right to appeal or right to self-representation on appeal ..... 3

        b. Washington’s constitution grants the right to self-representation  
        and the right to appeal..... 5

        c. The clear language of article 1, section 22 shows the provision  
        protects the right of a criminal appellant to represent himself on  
        direct appeal ..... 6

        d. The *Gunwall* factors demonstrate the Washington Constitution  
        must be interpreted independently from the Sixth Amendment ..... 8

            i. *The textual language of the Washington Constitution*..... 8

            ii. *Significant differences in the texts of article 1, § 22 and the  
            Sixth Amendment*..... 9

            iii. *Washington constitutional and common law history*..... 9

            iv. *Preexisting state law* ..... 11

            v. *Differences in structure between the federal and state  
            constitutions* ..... 13

            vi. *Matters of particular state interest or local concern*..... 13

e. The structure of the Washington Constitution and the statutory and common law from 1889 demonstrate Mr. Burns has the state constitutional right to self-representation on appeal .....	14
2. MR. BURNS' REQUEST TO REPRESENT HIMSELF AND WAIVER OF RIGHT TO COUNSEL IS MADE IN GOOD FAITH..	15
a. Mr. Burns waived his constitutional right to counsel ..	15
b. Mr. Burns' motion is timely and is not designed to obstruct justice .....	16
c. The opportunity to file a Statement of Additional Grounds is not a substitute for self-representation .....	18
d. Mr. Burns' request to represent himself should be granted .....	20
E. CONCLUSION .....	20

**TABLE OF AUTHORITIES**

**Washington Supreme Court Decisions**

Bellevue v. Acrey, 103 Wn.2d 203, 691 P.2d 957 (1984)..... 16

City of Seattle v. Klein, 161 Wn.2d 554, 166 P.3d 1149 (2007)..... 6

Dependency of Grove, 127 Wn.2d 221, 897 P.2d 1252 (1995)..... 8

Hendrix v. Rhay, 56 Wn.2d 420, 353 P.2d 878 (1960) ..... 11

Larson v. Seattle Popular Monorail Authority, 156 Wn.2d 752,  
131 P.3d 892 (2006)..... 7

Madison v. State, 161 Wn.2d 85, 163 P.3d 757 (2007)..... 8

Richmond v. Thompson, 130 Wn.2d 368, 922 P.2d 1343 (1996)..... 13

State ex. rel. Coella v. Fennimore, 2 Wash. 370, 26 Pac. 807 (1891) ..... 12

State v. Bird, 31 Wn.2d 777, 198 P.2d 978 (1948)..... 11

State v. Cowan, 25 Wn.2d 341, 170 P.2d 653 (1946)..... 14

State v. Foster, 135 Wn.2d 441, 957 P.2d 712 (1998)..... 3

State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)..... 8, 13

State v. Kolocotonis, 73 Wn.2d 92, 436 P.2d 774 (1968) ..... 8, 11

State v. Long, 104 Wn.2d 285, 705 P.2d 245 (1985) ..... 6

State v. McDonald, 143 Wn.2d 506, 22 P.3d 791 (2001)..... 19

State v. Mode, 55 Wn.2d 706, 349 P.2d 727 (1960)..... 11

State v. Pinkerton, 72 Wn.2d 420, 433 P.2d 215 (1967) ..... 11, 14

State v. Sweet, 90 Wn.2d 282, 581 P.2d 579 (1978)..... 6

<u>Stowe v. State</u> , 2 Wash. 124, 25 Pac. 1085 (1891).....	12
<u>Washington Water Jet Workers Assn. v. Yarbrough</u> , 151 Wn.2d 470, 90 P.3d 42 (2004).....	7
<u>Woods v. Rhay</u> , 54 Wn.2d 36, 338 P.2d 332 (1959).....	12

**Washington Court of Appeals Decisions**

<u>State v. Breedlove</u> , 79 Wn.App. 101, 900 P.2d 586 (1995).....	16, 17
<u>State v. Fritz</u> , 21 Wn.App. 354, 585 P.2d 173 (1978), <u>rev. denied</u> , 92 Wn.2d 1002 (1979). ....	6, 15, 16, 17
<u>State v. Silva</u> , 107 Wn.App. 605, 27 P.3d 663 (2004).....	8, 10, 13
<u>State v. Woodall</u> , 5 Wn.App. 901, 491 P.2d 680 (1971), <u>rev. denied</u> , 80 Wn.2d 1005 (1972). ....	11

**United States Supreme Court Decisions**

<u>Douglas v. California</u> , 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d (1963) .....	5
<u>Faretta v. California</u> , 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).....	4, 7, 15, 18
<u>Gideon v. Wainwright</u> , 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).....	4
<u>Griffin v. Illinois</u> , 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed.2d 891 (1956) .....	5
<u>Illinois v. Allen</u> , 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970).....	4
<u>Jones v. Barnes</u> , 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)..	18
<u>Martinez v. Court of Appeal of California, Fourth Appellate District</u> , 528 U.S. 152, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000).....	4-5, 18

<u>United States v. Gonzalez-Lopez</u> , 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006).....	18
---	----

**Other States**

<u>Commonwealth v. Grazier</u> , 552 Pa. 9, 713 A.2d 81 (1998). ....	16
<u>Owen v. State</u> , 269 Ind. 513, 381 N.Ed.2d 1235 (1978).....	15
<u>People v. Windham</u> , 19 Cal.3d 121, 560 P.2d 1187, <u>cert. denied</u> , 434 U.S. 848 (1977).....	17
<u>State v. Mendez</u> , 923 So.2d 189 (La.App. 2006).....	16

**United States Constitution**

Fourteenth Amendment .....	4
Sixth Amendment .....	3, 4, 5, 7, 8, 9, 10, 18

**Washington Constitution**

Article 1, section 22 .....	3, 5, 6, 7, 8, 13, 14
-----------------------------	-----------------------

**Former Washington Statutes**

former RCW 10.01.110.....	11
Laws of 1891 ch. 28 § 90.....	11
Laws of 1909 ch. 249 .....	11
Proposed 1878 Constitution, Art. IV, § 13 .....	10
Rem. Rev. Stat. § 2095 .....	11

**Court Rules**

CrR 3.1 ..... 11  
former Rule 34, General Rules of the Superior Courts..... 12  
RAP 10.10..... 19

**Other State Constitutions and Statutes**

22 Okl. St. Chap. 18, Appx., Rule 1.16 ..... 16  
Ind. Const. art. 1, § 13..... 10  
Ore. Const. art. 1, § 12..... 10

**Other Authorities**

R. Amandes & G.N. Stevens, “The Defense of Indigent Persons Accused  
of Crime in Washington – a Survey,” 40 Wash. L.Rev. (1965). .... 11, 12  
American Bar Association, ABA Standards for Criminal Justice:  
Prosecution and Defense Function (3<sup>rd</sup> ed. 1993)..... 18  
J. Lobsenz, “A Constitutional Right to An Appeal: Guarding Against  
Unacceptable Risks of Erroneous Conviction,” 8 U. Puget Sound L.  
Rev. 375 (1985). ..... 9-10  
B. Rosenow, ed., The Journal of the Washington State Constitutional  
Convention 1889 (N.Y. 1999). ..... 10  
R. Utter and H. Spitzer, The Washington State Constitution, A Reference  
Guide (Greenwood Press 2002)..... 10  
R. Utter, “Freedom and Diversity in a Federal System: Perspectives on  
State Constitutions and the Washington Declaration of Rights,” 7 U.  
Puget Sound L.Rev. 491 (1984)..... 13

A. ISSUES PRESENTED

1. Does article 1, section 22 of the Washington Constitution guarantee a criminal appellant the right to represent himself on appeal?

2. Should this Court reverse the Court of Appeals denial of Mr. Burns' motion to waive his right to counsel and represent himself in this case?

B. STATEMENT OF THE CASE

Glen Sebastian Burns is appealing his convictions for three counts of aggravated first degree murder. 17CP 3364-72. He is represented by counsel appointed by the Court of Appeals.<sup>1</sup> His case is consolidated with that of co-defendant Atif Rafay.<sup>2</sup>

Mr. Burns' attorneys filed the appellant's opening brief on July 13 and an amended opening brief on July 30, 2007. The State has not yet filed a response brief, and the case has not been set for argument.

Prior to the filing of the appellant's amended opening brief, Mr. Burns informed his attorneys he wanted to represent himself on appeal. After discussing the matter with counsel, Mr. Burns signed a declaration stating he wanted to waive his right to counsel and represent himself. Mr. Burns added that he understood he would be required to follow the Rules

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<sup>1</sup> Court of Appeals letter dated November 15, 2004.

<sup>2</sup> Notation Ruling dated January 14, 2005.

of Appellate Procedure and might not be permitted to present oral argument. Appellate counsel prepared a motion arguing Mr. Burns had a state constitutional right to represent himself on appeal, and filed the motion on August 20, 2007.

A commissioner of the Court of Appeals granted Mr. Burns' motion with the proviso that the appeal would proceed based upon the amended brief filed by Mr. Burns' attorneys unless Mr. Burns filed a second opening brief within a month.<sup>3</sup> When the State filed a response to Mr. Burns' motion, the commissioner withdrew the ruling and referred the motion to a panel of judges pursuant to RAP 17.4.<sup>4</sup>

The Court of Appeals denied Mr. Burns' motion without comment.<sup>5</sup> This Court granted discretionary review.<sup>6</sup>

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<sup>3</sup> Commissioner's Notation Ruling date August 28, 2007.

<sup>4</sup> Commissioner's Notation Ruling dated September 10, 2007.

<sup>5</sup> Order Denying Motion to Proceed Pro Se, dated October 8, 2007.

<sup>6</sup> Order dated February 6, 2008.

C. ARGUMENT

1. THE WASHINGTON CONSTITUTION GRANTS MR. BURNS THE RIGHT TO REPRESENT HIMSELF IN THE APPELLATE COURTS

Article 1, section 22 of the Washington Constitution provides several constitutional rights to those accused of a crime, including the right to appear and defend in person or through counsel and the right to appeal. The plain language of the constitutional provision shows that the right to appeal is personal to the defendant and the defendant retains the right to forgo counsel and represent himself on appeal. This conclusion is bolstered by state constitutional history and law. This Court should hold that a criminal defendant has the right to waive counsel and represent himself on appeal.

a. The Sixth Amendment of the United States Constitution provides no right to appeal or right to self-representation on appeal.

Although Mr. Burns asserts a state and not a federal constitutional right to self-representation in the appellate courts, an understanding of relevant federal constitutional provisions and analysis provides an illuminating introduction to the issue. State v. Foster, 135 Wn.2d 441, 455, 957 P.2d 712 (1998).

The Sixth Amendment to the United States Constitution provides the accused “shall enjoy the right . . . to have the Assistance of Counsel for

his defence.” The right to counsel is fundamental and essential to a fair trial, and it therefore applies to prosecutions in state courts through the Fourteenth Amendment. Gideon v. Wainwright, 372 U.S. 335, 344-45, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Importantly, the right to assistance of counsel carries the correlative right to waive counsel and represent oneself, also applicable to state court prosecutions. Faretta v. California, 422 U.S. 806, 819-20, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). The Faretta Court found the constitutional right to self-representation in the language of the Sixth Amendment and the Amendment’s historical roots.

The right to defend is personal. The defendant, not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of ‘the respect for the individual which is the lifeblood of the law.’

Faretta, 422 U.S. at 834, quoting Illinois v. Allen, 397 U.S. 337, 350-51, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970) (Brennan, J., concurring). The right to defend oneself, however, must be accompanied by a knowing and intelligent waiver of the right to counsel. Id. at 835.

The Sixth Amendment does not guarantee a right to appeal, and appeals in federal court are authorized only by statute. U.S. Const. amend. 6; Martinez v. Court of Appeal of California, Fourth Appellate District,

528 U.S. 152, 160, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000); Griffin v. Illinois, 351 U.S. 12, 18, 76 S.Ct. 585, 100 L.Ed.2d 891 (1956). The due process and equal protection guarantees of the federal constitution, however, require that if a state court system affords an appeal as of right, that right must also be accessible to indigent appellants through court-appointed counsel and access to transcripts at public expense. Douglas v. California, 372 U.S. 353, 357, 83 S.Ct. 814, 9 L.Ed.2d (1963); Griffin, 351 U.S. at 18-19.

Given the lack of a federal constitutional right to appeal, the United States Supreme Court concluded neither the Sixth Amendment nor the Due Process Clause create a constitutional right to self-representation on appeal. Martinez, 528 U.S. at 160-61. The Court clearly recognized its narrow holding “does not preclude the States from recognizing such a right under their own constitution,” thus inviting the question presented to this Court. Id. at 163.

b. Washington’s constitution grants the right to self-representation and the right to appeal. Washington’s Declaration of Rights provides various constitutional protections to criminal defendants, including the express right to defend oneself at trial and to appeal. Wash. Const. art. 1, § 22. As adopted by the Washington State Constitution Convention in 1889, the section read:

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify on his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Wash. Const. art. 1, § 22.<sup>7</sup> (Emphasis added).

This Court independently reviews the state constitutional right to appeal. See City of Seattle v. Klein, 161 Wn.2d 554, 166 P.3d 1149 (2007); State v. Sweet, 90 Wn.2d 282, 286, 581 P.2d 579 (1978). This Court has interpreted the state constitutional rights to court-appointed counsel as coextensive with that right under the federal constitution. State v. Long, 104 Wn.2d 285, 288, 705 P.2d 245 (1985). The United States Supreme Court's holdings concerning the right to self-representation in the trial court are also binding on this state. State v. Fritz, 21 Wn.App. 354, 356-57, 585 P.2d 173 (1978), rev. denied, 92 Wn.2d 1002 (1979).

c. The clear language of article 1, section 22 shows the provision protects the right of a criminal appellant to represent himself on direct appeal. When interpreting a constitutional provision, this Court looks first

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<sup>7</sup> In 1921, Amendment 10 added language concerning jurisdiction over transportation routes, not relevant to the questions presented here. Laws of 1921, ch. 13 § 1, p. 79.

to the plain language of the text. Larson v. Seattle Popular Monorail Authority, 156 Wn.2d 752, 757-58, 131 P.3d 892 (2006); Washington Water Jet Workers Assn. v. Yarbrough, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). If the language is clear, the provision requires no interpretation. Larson, 156 Wn.2d at 757. The words of the text are given their common and ordinary meaning, as of the time of their drafting. Washington Water Jet, 151 Wn.2d at 477. This Court may also examine the historical context of the constitutional provision for guidance. Id.

The clear language of article 1, section 22 demonstrates a constitutional right to self-representation on appeal. First, it is clear that the accused in Washington has the choice to defend in person “or” by counsel. Wash. Const. art. 1 § 22. Moreover, all of the rights guaranteed by this constitutional provision are guaranteed to the accused, not to his lawyer, including the specific “right to appeal.” Id. In Faretta, the United States Supreme Court found the Sixth Amendment guaranteed the right to self-representation even though it is not mentioned because the language of the provision granted all of the rights mentioned directly to the accused. The Court reasoned the amendment contemplated counsel as an assistant to the defendant, “not an organ of the State interposed between an unwilling defendant and his right to defend himself personally.” Faretta, 422 U.S. at 820. Washington’s constitutional language clearly grants the

right to defend and the right to appeal directly to the accused. Wash. Const. art. 1, § 22. This language shows a defendant is free to exercise his right to appeal without the assistance of unwanted counsel.

d. The *Gunwall* factors demonstrate the Washington Constitution must be interpreted independently from the Sixth Amendment. This Court utilizes the Gunwall factors in determining if a provision of the Washington Constitution should be interpreted independently from a corresponding federal constitutional provision. Madison v. State, 161 Wn.2d 85, 93-94, 163 P.3d 757 (2007); State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). While this case presents a state constitutional issue that cannot be resolved by reliance upon federal precedent, Mr. Burns here presents a Gunwall analysis to aid this Court in interpreting our constitution.

i. The textual language of the Washington Constitution.

Article 1, section 22, set forth above, explicitly provides a right to appeal in criminal cases. Dependency of Grove, 127 Wn.2d 221, 239, 897 P.2d 1252 (1995). In addition, the language “the right to appear and defend in person, or by counsel” has been interpreted to unequivocally provide a state constitutional right to represent oneself at trial. State v. Kolocotonis, 73 Wn.2d 92, 97, 436 P.2d 774 (1968); State v. Silva, 107 Wn.App. 605, 617-18, 27 P.3d 663 (2004).

ii. Significant differences in the texts of article 1, § 22 and

the Sixth Amendment. The Sixth Amendment reads:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Unlike article 1, section 22, the text of the Sixth Amendment provides no right to appeal and no right to represent oneself at trial.

Thus, article 1, section 22's specific provisions of both the right to appeal and the right to self-representation are significantly different than the Sixth Amendment, illustrating more specific protections.

iii. Washington constitutional and common law history.

Washington's declaration of rights was adopted by the Constitutional Convention with little debate. It is clear from the wording of the article, however, that the drafters specifically considered the inclusion of both a right to appeal and the right to represent oneself at trial.

Washington was the first State to provide a right to appeal in its constitution. J. Lobsenz, "A Constitutional Right to An Appeal: Guarding Against Unacceptable Risks of Erroneous Conviction," 8 U. Puget Sound L. Rev. 375, 376 (1985). The committee that drafted the constitution's

preamble and bill of rights studied the Oregon Constitution of 1857, Indiana Constitution of 1851, and the Hill Proposed Washington Constitution, none of which included the right to appeal.<sup>8</sup> Lobsenz, 8 U. Puget Sound L.Rev. at 379; R. Utter and H. Spitzer, The Washington State Constitution, A Reference Guide, p. 35 (Greenwood Press 2002). In addition, the proposed 1878 Washington Constitution did not include a right to appeal. Proposed 1878 Constitution, Art. IV, § 13.

Article 1 section 22's language concerning the right to appear with or without counsel is also unusual. The 1878 proposed constitution and the constitutions of Oregon and Indiana use language providing the right to defend in person "and" through counsel. Proposed 1878 Const. art. V, § 13; Ore. Const. art. 1, § 12; Ind. Const. art. 1, § 13. The original draft of article 1, section 22 stated "the accused shall have the right to appear and defend in person, and by counsel." After the subcommittee eliminated the language "and by counsel," the committee as a whole added the language "or by counsel," and that language was ultimately approved. B. Rosenow, ed., The Journal of the Washington State Constitutional Convention 1889 at 511-12 (N.Y. 1999).

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<sup>8</sup> The decision to model our constitution on the constitutions of other states rather than the Sixth Amendment demonstrates the framers did not consider the federal constitution's language adequate to state the rights of Washington citizens. Silva, 107 Wn.App. at 619.

iv. Preexisting state law. Washington has long protected the right to counsel on the trial court level by statute and later court rule. CrR 3.1; former RCW 10.01.110; Rem. Rev. Stat. § 2095; Laws of 1909 ch. 249 §§ 53, 55; Laws of 1891 ch. 28 § 90. Before Gideon, Washington counties had systems in place for court appointed counsel for indigent people charged with felonies, and one county even a public defender system. R. Amandes & G.N. Stevens, “The Defense of Indigent Persons Accused of Crime in Washington – a Survey,” 40 Wash. L.Rev. 78 (1965). The right to represent oneself was recognized as a constitutional right. Kolocotronis, 73 Wn.2d at 97; State v. Woodall, 5 Wn.App. 901, 903, 491 P.2d 680 (1971), rev. denied, 80 Wn.2d 1005 (1972).

There was no recognized constitutional right to court-appointed counsel on appeal in Washington, however, until this Court’s opinion in Hendrix v. Rhay, 56 Wn.2d 420, 423, 353 P.2d 878 (1960). See State v. Mode, 55 Wn.2d 706, 349 P.2d 727 (1960) (counsel appointed because appellant’s pro se brief was nonsensical); State v. Bird, 31 Wn.2d 777, 198 P.2d 978 (1948) (appellant appealed pro se from first degree murder conviction). This Court quickly recognized that the constitutional right to counsel on appeal could be waived. State v. Pinkerton, 72 Wn.2d 420, 433 P.2d 215 (1967).

Thus, early Washington cases do not recognize a constitutional right to court-appointed appellate counsel for indigent criminal defendants. These cases instead addressed only the opportunity of an indigent criminal defendant to obtain the appellate record at public expense. Woods v. Rhay, 54 Wn.2d 36, 338 P.2d 332 (1959) (granting habeas corpus petition and remanding so superior court may exercise discretion in determining record to be provided at public expense); State ex. rel. Coella v. Fennimore, 2 Wash. 370, 26 Pac. 807 (1891) (upholding provision of transcript for indigent appellant in death penalty appeal); Stowe v. State, 2 Wash. 124, 25 Pac. 1085 (1891) (no right to transcript at public expense. Eventually, this Court established a procedure wherein the court-appointed trial attorney was required to assist his indigent client in demonstrating to the trial court what portions of the record were necessary for an appeal; the matter was then decided by the trial court. Woods, 54 Wn.2d at 44-45; former Rule 34, General Rules of the Superior Courts. By 1965, superior court judges commonly appointed trial counsel to represent indigent defendants on appeal from felony convictions, but there was no statutory provision to pay those attorneys for their work. Amandes & Stevens, 40 Wash. L.Rev. at 86, 99. Clearly, Washington common law does not support the proposition that indigent criminal appellants are precluded from representing themselves on appeal.

v. Differences in structure between the federal and state constitutions. The Washington Constitution is a limitation on the plenary power of the state, and its Declaration of Rights was intended to protect the rights of Washington citizens. In contrast, the federal constitution is a grant of limited power to the federal government, and the Bill of Rights was a secondary layer of protection against what was then a weak central government. Gunwall, 106 Wn.2d at 66-67; R. Utter, “Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights,” 7 U. Puget Sound L.Rev. 491, 494-95 (1984). This difference inherently supports an independent interpretation of broader provisions of the Washington Constitution. Silva, 107 Wn.App. at 673, citing Richmond v. Thompson, 130 Wn.2d 368, 382, 922 P.2d 1343 (1996). Additionally, Washington’s constitution is much more recent and easier to amend than the federal constitution, thus making it more reflective of modern values. Utter, 7 U. Puget Sound L.Rev. at 494-95.

vi. Matters of particular state interest or local concern. When Washington entered the Union in 1889, the framers created a unique constitutional right to appeal from criminal convictions. The framers also thoughtfully worded the right to defend either in person or through counsel. Wash. Const. art. 1 § 22. The framers were concerned for the

citizens of our state, not national uniformity. The manner in which an accused's state constitutional right of self-representation at trial is exercised is a matter of state interest. Silva, 107 Wn.2d at 674. Similarly, with no federal right to appeal, whether a criminal appellant has the right to self-representation under the Washington Constitution is plainly a matter of state and not national interest.

e. The structure of the Washington Constitution and the statutory and common law from 1889 demonstrate Mr. Burns has the state constitutional right to self-representation on appeal. Article 1, section 22 clearly provide the accused with the state constitutional right to self-representation at trial and to appeal upon conviction. The framers of the Washington Constitution were concerned with individual liberty, and specifically granted the accused the right to defend himself or obtain counsel. Early common law shows Washington did not recognized a constitutional right to appointed counsel on appeal, and Washington has also long recognized that constitutional rights may be waived. Pinkerton, 72 Wn.2d at 421; State v. Cowan, 25 Wn.2d 341, 170 P.2d 653 (1946).

The framers of the Washington Constitution did not envision a system where counsel would be forced upon a defendant because he exercised his constitutional right to appeal. This Court should find article 1, section 22 guarantees the right to self-representation on appeal.

2. MR. BURNS' REQUEST TO REPRESENT HIMSELF  
AND WAIVER OF RIGHT TO COUNSEL IS MADE IN  
GOOD FAITH

This Court should grant Mr. Burns' motion to represent himself in this case because he has validly waived his right to counsel and because his motion is not untimely or designed to delay the court process. His constitutional right to self-representation is not satisfied by the opportunity to file a Statement of Additional Grounds for Review.

a. Mr. Burns waived his constitutional right to counsel on appeal.

A defendant exercises his right to represent himself at any level of the court process by waiving his right to counsel. Faretta, 422 U.S. at 835; Owen v. State, 269 Ind. 513, 517, 381 N.Ed.2d 1235 (1978). The defendant's waiver must demonstrate he understands his constitutional right to counsel and is voluntarily relinquishing that right; he need not demonstrate any particular legal competency. Fritz, 21 Wn.App. at 359-60.

Because there is no established procedure in Washington for the waiver of counsel on appeal, Mr. Burns provided the appellate court with a written waiver. In his written waiver, Mr. Burns stated he understood he had the right to counsel but wanted to waive that right. He further stated he understood he would be required to comply with the Rules of Appellate Procedure and may not be permitted to present oral argument. At the time

Mr. Burns executed the waiver, appellate counsel had perfected the record and filed an appellant's brief; Mr. Burns was thus knowledgeable of the assistance an attorney could provide.

Waiver of an important constitutional right such as the right to counsel is often done in open court. Bellevue v. Acrey, 103 Wn.2d 203, 209, 691 P.2d 957 (1984); see 22 Okl. St. Chap. 18, Appx., Rule 1.16, Forms 13.6, 13.7 (2007); State v. Mendez, 923 So.2d 189, 194 (La.App. 2006). Should this Court conclude that Mr. Burns' waiver of his constitutional right to counsel is not adequate, this Court should remand the matter to the superior court where Mr. Burns may establish a valid waiver at a hearing with an appropriate colloquy. See State v. Breedlove, 79 Wn.App. 101, 111, 900 P.2d 586 (1995); Commonwealth v. Grazier, 552 Pa. 9, 13, 713 A.2d 81 (1998).

b. Mr. Burns' motion is timely and is not designed to obstruct justice. A waiver of the right to counsel must be timely, but even a mid-trial motion is timely if it is not designed to delay or disrupt the orderly administration of justice. Fritz, 21 Wn.App. 361-63. Here, Mr. Burns filed his motion to proceed pro se before the State filed its response brief and long before the case will be considered by the appellate court. Moreover, by requesting to represent himself after appellate counsel had perfected the record and framed arguments in the appellant's opening

brief, Mr. Burns has avoided pitfalls often encountered by pro se appellants and possibly increased the speed at which his appeal will proceed.

Mr. Burns' motion to represent himself was not accompanied by a motion to continue the case. Even if it had been, however, the request would be timely in the absence of any indication the motion was designed to delay or harass. Breedlove, 79 Wn.App. at 108-10. Courts may not use a timeliness requirement to limit a defendant's constitutional right to self-representation. Fritz, 21 Wn.App. at 362, quoting People v. Windham, 19 Cal.3d 121, 560 P.2d 1187, 1191 n.5, cert. denied, 434 U.S. 848 (1977).

Although RAP 18.3(a)(1) provides that the appellate court will not normally permit counsel for the defendant in a criminal case to withdraw after the filing of the opening brief, by its language this rule addresses motions to withdraw by counsel. It does not address the defendant's motion to represent himself and waive his constitutional right to counsel on appeal.

There is no indication Mr. Burns' motion is designed to delay the proceedings, nor does Mr. Burns have a motive to do so as Mr. Burns has already been convicted and is waiting in prison while he seeks to reverse his convictions. The State's concern for delay and possible disruption of the appellate process can be easily addressed by appellate court order or

the appointment of standby counsel. See Commissioner's Notation Ruling dated August 28, 2007 (setting deadline for filing substitute opening brief).

c. The opportunity to file a Statement of Additional Grounds is not a substitute for self-representation. The constitutional right to self-representation is based in part upon this country's long-standing respect for individual autonomy. Martinez, 528 U.S. at 160, citing Faretta, 422 U.S. at 834. Forcing Mr. Burns to continue with appellate counsel he does not want undermines his individual autonomy, just as forcing a pro se litigant to accept a trial attorney offends the state and federal constitutions' respect for individual rights. See Faretta, 422 U.S. at 832-33; United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006) (denial of Sixth Amendment guarantee of counsel of choice not subject to harmless error analysis).

Appellate counsel has the ultimate authority to decide which arguments to make on appeal and is not required to raise even non-frivolous issues requested by the defendant. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983); American Bar Association, ABA Standards for Criminal Justice: Prosecution and Defense Function, Standard 4-8.3(d) (3<sup>rd</sup> ed. 1993). Appellate counsel also crafts the

arguments and, with only minor exceptions, decides how to perfect the record and what motions to bring.

The State may argue that the opportunity to file a Statement of Additional Grounds for Review is an adequate substitute for self-representation, citing State v. McDonald, 143 Wn.2d 506, 511 n.3, 22 P.3d 791 (2001). The McDonald Court upheld the Court of Appeals decision to reverse the defendant's conviction and sentence because his trial court standby counsel had a conflict of interest. McDonald, 143 Wn.2d at 508. In a footnote, this Court explained it had reviewed the pro se supplemental briefs McDonald filed in both this Court and the Court of Appeals, but did not reach the issues presented because the conviction was reversed on other grounds. Id. at 511. While the footnote does suggest this review meant McDonald's right to proceed pro se on appeal was not violated, the ruling is dicta and does not control the result here.

A careful examination demonstrates the Statement of Additional Grounds only provides the appellant with the opportunity to supplement arguments raised by counsel. RAP 10.10, for example, permits the appellate court to request briefing from counsel if the court believes the Statement of Additional Grounds raises a meritorious issue. RAP 10.10(f).

d. Mr. Burns' request to represent himself should be granted. Mr. Burns has exercised a valid waiver of his right to counsel because he wants to represent himself. There is no indication his motion is based upon a desire to disrupt or delay the process of his appeal, and the appellate court may fashion orders to appoint standby counsel to insure the process is not delayed. His motion for self-representation should be granted.

E. CONCLUSION

Glen Sebastian Burns respectfully requests this Court reverse the Court of Appeals and grant his motion to represent himself in this case.

DATED this 7<sup>th</sup> day of March 2008.

Respectfully submitted,



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Jason B. Saunders – WSB 24963  
Washington Appellate Project (91052)  
Attorneys for Petitioner

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STATE COURT  
**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

08 MAR 11 AM 8:02  
STATE OF WASHINGTON,  
YRONALD H. CARPENTER,  
Respondent,  
v. \_\_\_\_\_  
CLERK  
GLEN SEBASTIAN BURNS,  
Appellant.

NO. 80865-1

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STATE OF WASHINGTON  
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**CERTIFICATE OF SERVICE**

I, MARIA ARRANZA RILEY, CERTIFY THAT ON THE 7<sup>TH</sup> DAY OF MARCH, 2008, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DEBORAH DWYER BRIAN MCDONALD KING COUNTY PROSECUTING ATTORNEYS APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( ) _____	U.S. MAIL HAND DELIVERY
[X] DAVID KOCH ATTORNEY AT LAW NIELSEN, BROMAN & KOCH, PLLC 1908 E MADISON ST. SEATTLE, WA 98122	(X) ( ) ( ) _____	U.S. MAIL HAND DELIVERY
[X] GLEN SEBASTIAN BURNS 876360 WASHINGTON STATE PENITENTIARY 1313 N 13 <sup>TH</sup> AVENUE WALLA WALLA, WA 99362	(X) ( ) ( ) _____	U.S. MAIL HAND DELIVERY

**SIGNED** IN SEATTLE, WASHINGTON THIS 7<sup>TH</sup> DAY OF MARCH, 2008.

X \_\_\_\_\_  
*grc*