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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: [Signature]

82855-5
NO. 261247-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

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| STATE OF WASHINGTON, Appellant, |) | STATEMENT |
| v. |) | OF ADDITIONAL |
| JOSE JUAN MONTANO, Respondent. |) | AUTHORITY |

Pursuant to RAP 10.8, the State respectfully cites the following as additional authority:

In State v. Taylor, 150 Wn. 2d 599, 602-03, 80 P.3d 605 (2003), the Washington Supreme Court explained that the State has different rights of appeal from a criminal defendant. Although a defendant may not appeal from a dismissal under RAP 2.2(a)(1), the State may appeal as a matter of right from any dismissal, with or without prejudice, under RAP 2.2(b)(1).

The Rock court erred when it concluded that "[n]o reason appears why, if the State's appeal is proper, a defendant's appeal would be improper." Rock, 65 Wn. App. at 657-58. The Rock opinion fails to recognize that per RAP 2.2(b)(1), the State or local government may appeal a decision that dismisses an indictment or information. Thus, it was proper for us to accept review of the Knapstad case. The RAPs provide no similar rule for the individual whose criminal charges have been dismissed without prejudice. The Rock court's assumption, therefore, was unfounded.

State v. Taylor, 150 Wn. 2d at 602-03.

State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986) was an appeal by the State from a dismissal without prejudice. State v. Taylor, 150 Wn. 2d at 602.

State v. Knapstad created the procedure for not just the motion, but also for the dismissal and appeal after a defendant's Knapstad motion. The Knapstad court explained that the dismissal should be without prejudice and that after dismissal the court has the discretion to order bail:

for a reasonable, specified time pending the filing of a new indictment or information.

....

A defendant has no right to appeal a denial of a motion to dismiss. RAP 2.2(a). The State has a right to appeal. RAP 2.2(b). A dismissal and discharge under this procedure is not a bar to a subsequent prosecution for the same offense based on additional evidence.

State v. Knapstad, 107 Wn.2d at 357

DATED: July 3, 2007

Respectfully submitted:

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