

FILED

DEC 16 2008

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 272770

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

82868-7

STATE OF WASHINGTON,

RESPONDENT,

V.

VINCENT R. ADOLPH

RESPONDENT.

STATE'S SUPPLEMENTAL RESPONSE TO COURT'S QUESTION

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1. SUPPLEMENTAL RESPONSE TO COURT'S QUESTION

The Court of Appeals requested that the State respond specifically to the question of whether or not the prior District Court DUI conviction from Lincoln County was adequately proved pursuant to *State v. Rivers*, 130 Wn.App. 689, 128 P. 3d 608 (2005).

The State had referenced *State v. Rivers* in its response and also to the cases that *Rivers* relied upon in its opinion. The reference to *Rivers* was at page 14 of the Answer; and the discussion of the State's burden was on pages 12-14 of the Answer. The page numbering listed in the Table of Authorities of the State's Answer was incorrect due to formatting changes. *See attached corrected Table of Contents and Table of Authorities.*

In addressing the sufficiency of evidence needed to establish a prior conviction by a preponderance of the evidence, *Rivers* restated the language from prior cases, including *State v. Lopez*, 147 Wash.2d 515, 519, 55 P.3d 609 (2002) and *State v. Ford*, 137 Wash.2d 472, 480, 973 P.2d 452 (1999). *Rivers* did not create a new rule, nor did it prohibit proof by other comparable documents. *See Rivers* at 701 (discussing of other acceptable records and providing examples in footnotes 40-41).

Prior to the sentencing hearing, the State provided certified copies of the defendant's driving abstract, Okanogan County dockets, and criminal history. These were discussed during the sentencing hearing. *RP 9/19/2005 pg. 23-29.*

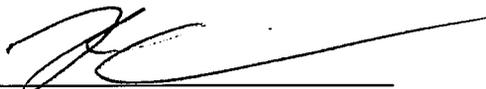
The State was not aware of any objection to the defendant's criminal history at that time. *RP 9/19/2005 pg. 28*. Moreover, *unlike* the defendant in *Rivers*, the Petitioner did not object to the *use* of the certified abstract or other documents. At best, the statement made by the Petitioner's attorney that he felt the record "is insufficient" regarding the Lincoln County conviction, could be taken as a challenge to sufficiency. *RP 9/19/2005 pg. 32*. See *Rivers* at 701-702 (defendant challenged the actual *use* of questioned document.). At the Petitioner's sentencing, the Court found the underlying Lincoln County conviction was proven by a preponderance of the evidence.

Additionally, prior to the sentencing hearing, the State had requested additional certified documentation from Lincoln County District Court on the conviction. But unlike Superior Court felony convictions, there was not a formal standardized judgment and sentence in use or available from the District Court. However, near the end of the sentencing hearing the State was handed a copy of certified Lincoln County docket and the Lincoln County "judgment." *RP 9/19/2005, pg. 87*. The State showed the documents to the defense and then asked to make them part of the record. The defendant's attorney acknowledged the documents were valid and agreed to their being made part of the record. *RP 9/19/2005, pg. 88*.

Despite the un-timeliness of the Petitioner's challenge to the conviction, the State did prove the defendant's underlying Lincoln County DUI conviction by a preponderance. The Personal Restraint Petition should be denied.

Dated this 15 day of December, 2009

Respectfully Submitted by:



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