

FILED

DEC 24 2008

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON



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

828608-7

In re Personal Restraint)	NO. 272770
Petition of:)	
)	
VINCENT ADOLPH,)	SUPPLEMENTAL REPLY
)	BRIEF
)	
Petitioner.)	

I. ISSUE.

A. WAS THERE SUFFICIENT ADMISSIBLE EVIDENCE TO PROVE THE ALLEGED LINCOLN COUNTY DUI?

To prove the Lincoln County DUI the State introduced a non-court certified Driving Abstract and a non-court certified "DCH" (Defendant's Criminal History) sheet. See September 19, 2005 Sentencing Transcripts at 23-28; 31-32; 54-55; 59-61. These documents are insufficient to prove the existence of the alleged Lincoln County DUI because: (1) They are non-court certified; (2) They are not the best evidence to prove a prior conviction and were objected to at sentencing. See State v. Rivers, 130 Wn. App. 689, 698-707 (citing State v. Ford 137 Wn.2d at 479-80; State v. McCorkle, 137 Wn.2d at 495; State v. Lopez, 147 Wn.2d at 518-19).

1 After Mr. Adolph was sentenced and after Mr. Adolph
2 and his attorney signed the judgment & sentence, the State
3 introduced a court certified Lincoln County Docket sheet
4 showing the Lincoln County conviction and a court certified
5 "judgment" of that conviction. See September 19, 2005 Sentenc-
6 ing Transcripts at 87-89. These documents cannot be used in
7 proving the existence of the Lincoln County DUI because
8 The Court did not rely on them when he found the Lincoln
9 County DUI (Id.) and, more importantly, the State does not
10 get a second chance to prove a prior conviction if the defen-
11 objected to the evidence used to prove the prior offense.
12 Rivers, 130 Wn. App. at 706-707; McCorkle, 137 Wn.2d at 497
13 (When the state fails to carry its burden of proof after a
14 specific objection, it is not provided a further opportunity
15 to do so). In this case, Mr. Adolph clearly objected to
16 the use of the "DCH" and the driving abstract to prove the
17 Lincoln County DUI. See RP 31-32. The court recognized this
18 objection and stated: "[Mr. Adolph] fully challenges the
19 State's level of proof for the Lincoln County conviction from
20 1992." RP 60. The court then found that the State had proved
21 the prior conviction. Thus, after that point, any inclusion
22 of any more evidence into the record to prove the Lincoln
23 County DUI would be giving the State an impermissible "second
24 bite of the apple" in violation of McCorkle. Moreover, it
25 is interesting to note that the State chose to introduce more
26 evidence into the record in an obvious impermissible de facto
27 evidentiary hearing instead of asking the court for a recess
28

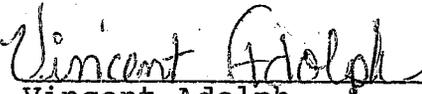
1 so he could obtain the best evidence to prove the Lincoln
2 County DUI which is a copy of the "judgment." Lopez.

3 II. CONCLUSION.

4 There was insufficient admissible evidence to establish
5 the Lincoln County conviction under Rivers and the cases con-
6 tained therein (Ford, Lopez, & McCorkle), therefore this court
7 should remand this matter back with orders to the trial court
8 to exclude the 24 month enhancement Mr. Adolph received for
9 the Lincoln County conviction.

10
11 Dated this 22nd day of December, 2008.

12
13
14 Respectfully,

15
16
17 
18 Vincent Adolph

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By _____

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Vincent Adolph,)
Petitioner.)

DECLARATION OF SERVICE
BY MAILING

I, Vincent Adolph, pro se, in the above entitled cause, do hereby declare that I have served the following documents;

Supplemental Reply Brief

Upon: Court of Appeals
Division III
500 North Ceder st.
Spokane, WA 99201

Carl Sloan
Okanogan County Prosecuting Attorney
PO Box 1130
237 Fourth Ave. North
Okanogan, WA 98840

I deposited with the C-4 Unit Officer Station, by processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2048, Airway Heights, WA 99001-2048.

On this 22nd day of December, 2008.

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

Respectfully Submitted,
Vincent Adolph
Petitioner