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COURT OF APPEALS
DIVISION ONE

JUL - 6 2011

NO. 86078-5

SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANDREW HECHT,

Appellant.

RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF RESPONDING PARTY

The responding party is the State of Washington, the plaintiff/respondent below. The motion for discretionary review seeks interlocutory review of a decision of the Court of Appeals denying interlocutory review. The petitioner is a criminal offender who challenges the trial court's determination that he is not entitled to counsel on appeal at public expense. This is the petitioner's third motion for discretionary review on the same issue.

II. RELIEF REQUESTED

The State respectfully requests that the court DENY the motion for discretionary review because the motion does not satisfy any of the criteria set forth in RAP 13.5(b).

III. STATEMENT OF THE CASE

On October 26, 2009, a Pierce County jury found petitioner Michael Andrew Hecht ("defendant") guilty of the crimes of felony harassment and patronizing a prostitute. Appendix A (Verdict Forms). Judgment and sentence were entered on November 19, 2009. Appendix B (Judgment and Sentence). The defendant timely filed a notice of appeal. Appendix C. Except for a few brief periods of time, the defendant's appeal (COA# 40057-0-II) has been stayed since December 2009 while

his three motions for discretionary review on the issue of indigency have been litigated.

On December 9, 2009, the defendant filed an *ex parte* motion in the superior court requesting an order of indigency. Appendix D (Motion for Order of Indigency). The defendant appended financial declarations to his motion. *Id.* The defendant acknowledged that he had net income of \$88,000¹ in 2009; his wife had net income of \$800/month; he owned personal property, including a vehicle, with equity valued at \$8,100; and he owned between \$90,000-\$120,000 equity in his home. *Id.* The State had no notice of the motion and did not respond to or participate in the motion. The trial court denied the motion for order of indigency and entered a written order reflecting its ruling. Appendix E (Order Denying Indigency).

The defendant moved the Court of Appeals for discretionary review while his direct appeal was pending. Defendant alleged that the trial court committed “obvious” or “probable” error. The Commissioner of Division Two of the Court of Appeals reviewed the matter and on January 4, 2010, entered a “Ruling Denying Review.” Appendix F.

The defendant moved to modify the Commissioner’s ruling. On

¹ The defendant testified at his criminal trial that his annual gross salary as a superior court judge was \$148,000. Defendant earned this salary until he resigned from the bench in November 2009.

February 4, 2010, the court entered an order granting the motion to modify. Appendix G. The court remanded the case to the trial court with directions to hold a hearing and enter written findings of fact and conclusions of law on the issue of indigency. Appendix G.

On March 12, 2010, the trial court convened a hearing and allowed the defendant to present additional evidence that he was indigent. The defendant filed an affidavit in support of his renewed motion for order of indigency. Appendix H. The defendant's affidavit claimed that his credit cards were spent to their limit; he was in poor health; he had not sold collectibles or antiques for several months; and he spent all of his earned income to pay for his trial expenses. *Id.* The defendant testified at the hearing that his mortgage was \$1,150/month and his utilities "a couple hundred dollars a month," but he did not explain how he was paying his mortgage and utilities.² The defendant's counsel testified by affidavit that the estimated cost of the trial transcript was \$7,500.00. The estimated cost of appellate counsel was \$10,000-\$20,000. The total anticipated cost of appeal was between \$17,500-\$27,500. Appendix I.

The trial court considered the evidence and the arguments of the parties. The trial court again denied the request for an order of indigency. The trial court entered written findings of fact and conclusions of law as

² See "Exhibit D" appended to Motion for Discretionary Review.

required by RAP 15.2(2)(b). Appendix J (Findings of Fact & Conclusions of Law).

The defendant filed a second motion for discretionary review in the Court of Appeals, alleging again that the trial court committed “obvious” or “probable” error. On June 3, 2010, after additional briefing and oral argument, the Commissioner found that the record did not support a finding of “probable” or “obvious” error and denied the motion. Appendix K (Second “Ruling Denying Review”). The defendant’s motion to modify the Commissioner’s ruling was denied on July 7, 2010. Appendix L.

Defendant petitioned this court for review. The Commissioner of this court also entered a “Ruling Denying Review.” Appendix M. The Commissioner of this court ruled that “Mr. Hecht demonstrates no error or departure from accepted practice meriting this court’s review.” *Id.*

Defendant moved to modify the Commissioner’s ruling and further moved to supplement the record with evidence that he recently received a partial grant of food stamps. A panel of this Court granted the motion to supplement the record. Appendix N. The Court further granted the motion to modify and remanded the case to the trial court to reconsider indigency in light of new evidence that the defendant was receiving food stamps. Appendix N.

On December 23, 2010, the trial court convened a hearing and revisited the claim of indigency for a third time. The trial court considered the defendant's grant of food stamps in addition to all of the evidence previously considered. The trial court heard more oral argument. The trial court determined that the standard set forth in RAP 15.2(b), whether the defendant has "adequate means" to pay for his appeal, was the appropriate standard to use to determine the defendant's claim of indigency. Appendix O (Order Denying Indigency, 12/23/10). The trial court acknowledged that the defendant was receiving food stamps, but concluded that the record established that the defendant still had "adequate means" to fund the entire anticipated cost of appeal. Appendix O. The trial court ruled that the defendant failed to carry his burden to establish that he was indigent. Appendix O. The trial court denied the request for an order of indigency. Appendix O.

On January 11, 2011, the defendant filed a third motion for discretionary review in the Court of Appeals. Appendix P. The Commissioner entered a third ruling denying review. Appendix Q. The Commissioner could not find "obvious" or "probable" error. The Commissioner noted facts that supported the trial court's conclusion that the defendant failed to establish that he was without adequate means to pay for his appeal. *Id.* The Commissioner noted that the defendant never

even attempted to prove that he could not sell his home in order to pay for his appeal. *Id.* The Commissioner acknowledged that the RCW defines a person who receives food stamps as “indigent,” but ruled that the statutory definition of “indigent” did not mean that a person could not fund the anticipated cost of appeal as set forth in RAP 15.2. *Id.*

On May 13, 2011, the Court of Appeals denied a motion to modify the commissioner’s ruling. Appendix R. This motion for discretionary review follows.

IV. LAW AND ARGUMENT

Judicial policy generally disfavors interlocutory appeals. *Hartley v. State*, 103 Wn.2d 768, 773, 698 P.2d 77 (1985). Considerations governing Supreme Court review of an interlocutory decision of the Court of Appeals are limited to the following:

- (1) if the Court of Appeals has committed an obvious error which would render further proceedings useless; or
- (2) if the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or
- (3) if the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5(b).

On page 9 of his motion, the defendant requests discretionary review pursuant to RAP 13.5(b)(2) and (3), but cites language from RAP 13.4(b). RAP 13.4(b) addresses acceptance of review of a court of appeals decision terminating review. The present motion seeks review of an interlocutory decision of the court of appeals, not a decision terminating review.³ Accordingly, the State will address the criteria set forth in RAP 13.5(b).

A. The Court of Appeals Did Not Commit Obvious or Probable Error Because The Record Supported The Trial Court's Conclusion That The Defendant Has Adequate Means To Fund His Appeal. (RAP 15.2)

The Court of Appeals below was asked to review whether the trial court committed “obvious” or “probable” error when it denied the defendant’s motion for order of indigency. The record supported the Court of Appeals’ decision that no “obvious” or “probable” error was presented.

1. The defendant is not indigent under a harmonized analysis of RAP 15.2(b) and RCW 10.101.010(1)(a).

The defendant provided proof that he was receiving food stamps towards the end of his second motion for discretionary review on the issue of indigency. Since that time, the defendant has insisted that the trial court

³ Defendant’s appeal (COA #40057-0-II) is still pending and has been stayed for quite some time. Defendant may assign error to the trial court’s order denying indigency as part of his direct appeal.

was required to find him indigent because RCW 10.101.010(1)(a) provides that a person who receives food stamps is indigent. The trial court instead found that RCW 10.101.010(1)(a) conflicted with the provisions of RAP 15.2(b). Appendix O (Order Denying Indigency at 2). The trial court determined that the provisions of RAP 15.2(b) prevailed. *Id.* The trial court concluded that defendant had “adequate means” to fund his appeal despite the fact that the defendant was eligible for food stamps. *Id.* A preliminary issue presented to the Court of Appeals was whether RAP 15.2(b) and RCW 10.101.010(1)(a) are in conflict or can be harmonized.

The Commissioner of Division Two harmonized the two provisions in her “Ruling Denying Review” and concluded that a finding of indigency under RCW 10.101.010 did not preclude a finding under RAP 15.2(b) that the defendant had “adequate means”:

Whenever possible, rules and statutes on the same subject should be harmonized. *See In re Detention of C.M.*, 148 Wn. App. 111, 116-17, 197 P.3d 1233, *review denied*, 166 Wn.2d 1012 (2009). It appears that RAP 15.2(b)(2) and RCW 10.101.010(1) can be harmonized. RCW 10.101.010(1) defines “indigent,” but subsection (2) contemplates that an indigent person may have funds to pay the cost of the court proceeding. Thus, satisfaction of the definition in RCW 10.101.010(1) does not guarantee public funds for an appeal and does not clearly preclude a finding under RAP 15.2(b)(2) that a person meets the definition of indigent can pay the costs of an appeal.

Appendix Q at 3. The Commissioner's analysis was correct, and at the very least, was not "obvious" or "probable" error.

Rules and statutes on the same subject should be harmonized whenever possible. *In re Detention of C.M., supra.* The legislative intent of RCW 10.101.010 is clearly to provide public counsel to offenders who cannot afford counsel. However, the statute is also clear that the court should consider equity in motor vehicles and real estate as part of the offender's "available funds." RCW 10.101.010(4)(a). Subsection (2) provides that a person is "indigent and able to contribute" if his available funds are less than the anticipated cost of appeal, but he can pay some of the cost with this available funds.

A person can meet the statutory definition of "indigent" under RCW 10.101.010(1)(a) yet still have "available funds" in excess, even far in excess, of the anticipated cost of appeal. RAP 15.2(b) simply requires the trial court to determine whether the defendant has "adequate means" to fund the anticipated cost of appeal. A harmonization of the two provisions, without undermining the intent of the provisions, allows for a person to receive public assistance yet still have "adequate means" to pay legal expenses that case law holds are "necessaries."

Under the facts presented to the trial court, the defendant was receiving food stamps yet had ample liquid assets available to pay the

entire anticipated cost of appeal. The trial court's reasoned conclusion was not obvious or probable error. The Court of Appeals accordingly did not commit "obvious" or "probable" error by denying review.

2. The trial court had a reasonable basis to conclude that the procedure set forth in RAP 15.2(b) prevails if the provisions of RAP 15.2(b) and RCW 10.101.010(1)(a) are in conflict.

The Washington Constitution guarantees offenders convicted of crimes a right to appeal the conviction. Wash. Const., art. 1, sec. 22. There is no right to appeal a criminal conviction in the United States Constitution. *Ross v. Moffitt*, 417 U.S. 600, 606, 94 S.Ct. 2437, 2441-42, 41 L.Ed.2d 341 (1974). However, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires that states provide counsel at public expense to offenders appealing a criminal conviction in cases where the offender has a right to appeal under state law. *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963). Indigent offenders with a right to appeal a criminal conviction are also entitled to an adequate record on appeal at public expense, to include payment of the cost of compiling the trial record. *Draper v. Washington*, 372 U.S. 487, 496, 83 S.Ct. 774, 779, 9 L.Ed.2d 899 (1963); *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956).

The Washington Supreme Court has inherent constitutional authority to promulgate rules governing court procedures. *See Allyn v. Asher*, 132 Wn. App. 371, 377, 131 P.3d 339 (2006) (citing *City of Seattle v. Hesler*, 98 Wn.2d 73, 80-81, 653 P.2d 631 (1982)). The Washington Supreme Court adopted the Rules of Appellate Procedure (RAP) pursuant to its inherent rulemaking authority. *Id.*

Recognizing the right of indigent offenders to prosecute an appeal at public expense, the Washington Supreme Court adopted RAP 15.2. RAP 15.2 sets forth the procedure to determine whether an offender is indigent for purposes of appeal. *In re Grove*, 127 Wn.2d 221, 226, 897 P.2d 1252 (1995).

RAP 15.2(b)(2) provides that the court “shall deny” a motion for order of indigency if the offender has “adequate means” to pay the anticipated costs of appeal. RCW 10.101.010(1)(a),⁴ on the other hand, provides that a person who receives public assistance, such as food stamps, is indigent. Defendant insisted below that he was indigent because he presented un rebutted evidence that he was receiving food

⁴ “‘Indigent’ means a person who, at any stage of a court proceeding, is:

- (a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans’ benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income;

...

(emphasis added).

stamps.

The Court of Appeals concluded that RAP 15.2(b) and RCW 10.101.010(1)(a) do not conflict and can be harmonized. Appendix Q at 2-3. The court reasoned that under RCW 10.101.010, a person who meets the statutory definition of indigency under subsection (1) can still be “indigent and able to contribute” under subsection (2) and could in fact be able to contribute the entire anticipated cost of appeal *Id.* In a prior “Ruling Denying Review,” the Commissioner had harmonized the provisions but noted that if the two provisions were in conflict, the court rule would prevail. Appendix K at 5 n.3. The Commissioner’s reasoning was correct.

When a court rule and statute are inconsistent, the court rule prevails in procedural matters. *State v. Blilie*, 132 Wn.2d 484, 491, 939 P.2d 69 (1997). Thus, the Rules of Appellate Procedure supersede conflicting statutes unless explicitly noted within the rules themselves. RAP 1.1(g);⁵ *Allyn v. Asher*, 132 Wn. App. 371, 377, 131 P.3d 339 (2006) (citing *City of Seattle v. Hesler*, 98 Wn.2d 73, 80-81, 653 P.2d 631 (1982)).

RAP 15.2 is a procedural rule:

⁵ “These rules supersede all statutes and rules covering procedure in the Supreme Court and the Court of Appeals, unless one of these rules specifically indicates to the contrary.

RAP 15.2 specifies the procedures for seeking appellate review at public expense, and the proceedings required in the trial and appellate court for that purpose. The rule applies to appellate review in both the Court of Appeals and Supreme Court. In broad outline, the procedure works as follows. A party seeking appellate review at public expense files a Motion for an Order of Indigency on a standard form- Form 13 following the Rules of Appellate Procedure. The purpose of the motion is [sic] demonstrate the party's indigency, and to demonstrate the case is the kind of case in which an indigent party has the right to appellate review at public expense. The motion is filed in, and heard by, the trial court. If the court determines that the party is not indigent, the motion is denied.

Karl B. Tegland, 3 Washington Practice: Rules Practice, RAP 10.1 to 18.24, p.248 (6th Ed. 2004) (emphasis added); *See also In re Grove*, 127 Wn.2d 221, 226, 897 P.2d 1252 (1995) (RAP 15.2 is "the procedural court rule governing funding of appeals"). RAP 15.2 does not reference any conflicting statute and therefore supersedes conflicting procedural statute. RAP 1.1(g).

RCW 10.101.010(1)(a) is a procedural statute. The substantive right to counsel on appeal at public expense is codified in Chapter 10.73

RCW:

Counsel shall be provided at state expense to an adult offender convicted of a crime and to a juvenile offender convicted of an offense when the offender is indigent or indigent and able to contribute as those terms are defined in RCW 10.101.010 and the offender:

(1) Files an appeal as a matter of right;

RCW 10.73.150(1). This statute codifies *Douglas v. California* and *Draper v. Washington, supra*, and grants indigent offenders the right to prosecute an appeal at public expense. See *State v. Mills*, 85 Wn. App. 286, 290, 932 P.2d 192 (1987) (noting that RCW 10.73.150 “creates” a right to counsel). The statute specifically references RCW 10.101.010 within its text, raising the question of whether the procedure in RCW 10.101.010 is somehow incorporated as part of the substantive right set forth in RCW 10.73.150.

The citation to RCW 10.101.010 within RCW 10.73.150 simply refers the reader to the procedural statute for determining whether an offender is indigent and therefore entitled to the right granted by 10.73.150. The reference to the procedural statute within the substantive statute does not transform RCW 10.101.010 into a “substantive” statute. The text of RCW 10.101.010 clearly sets forth the procedure for the courts to effectuate the substantive right set forth in RCW 10.73.150(1) and Wash. Const., art. 1, sec. 22.

RAP 15.2(b) and RCW 10.101.010(1)(a) both address the procedure used to determine whether a person is entitled to counsel at public expense. If there is conflict between the two provisions, RAP 15.2 must be applied because a procedural court rule prevails over a conflicting procedural statute. *State v. Blilie*, 132 Wn.2d at 491. The trial court had a

reasonable basis to conclude that RAP 15.2 should be applied. Accordingly, the Court of Appeals did not commit obvious or probable error by applying RAP 15.2.

3. The record presented to the Court of Appeals supported the trial court's conclusion that the defendant had "adequate means" to pay the anticipated cost of appeal.

A party requesting an order of indigency bears the burden of establishing indigency. RAP 15.2(a); *State v. Clark*, 88 Wn.2d 533, 563 P.2d 1253 (1977). The trial court "shall deny the motion for an order of indigency if a party has adequate means to pay all of the expenses of the appeal." RAP 15.2(b)(2) (emphasis added). If the trial court denies the motion for an order of indigency, the rule requires the court to designate which funds are available to the party to pay all of the expenses of the appeal. RAP 15.2(b)(2).

In the present case, the defendant asserted that the anticipated cost of his appeal was approximately \$17,500. Defendant admitted that he owned personal property and equity in real estate totaling \$121,700, as well as his wife's monthly income of \$800/month. The trial court compared the \$17,500 cost of appeal to the \$121,700 in assets available to the defendant and determined that the available assets exceeded the cost of appeal. The trial court determined that the defendant had "adequate means" to fund his appeal. Appendix J (Findings of Fact & Conclusions

of Law. The trial court designated \$121,700 equity in property and the defendant's wife's \$800/month net income as the available funds. *Id.*

Thereafter, the defendant provided additional evidence that he was receiving food stamps. The trial court considered the grant of public assistance, in conjunction with the information previously presented, and found that the defendant still had "adequate means" to pay the entire anticipated cost of appeal. Appendix O (Order Denying Indigency, 12/23/10).

Legal expenses in a criminal case are "necessaries" akin to the expenses of going to the doctor or caring for children. *See State v. Clark*, 88 Wn.2d 533, 537-40, 563 P.2d 1253 (1977). If a convicted offender is truly interested in pursuing an appeal, he must pay for it with his available assets. Indigent defense funds are for those who have insufficient assets to cover the cost of appeal; they are not intended to subsidize those who do not wish to sell their assets because they value their assets more than their appeal.

The law is clear that "one must demonstrate that he has done all that he reasonably can to shoulder his costs of legal representation." *State v. McGee*, 12 Wn. App. 24, 27, 527 P.2d 1129 (1974). Otherwise, he is not indigent. *Id.* Throughout the trial proceedings and the five motions for discretionary review that followed (three to the court of

appeals, two to this court), the defendant has never acknowledged that, according to his own financial declarations, the equity in his motor vehicle and real estate would fund the \$17,500 anticipated cost of his appeal. While the defendant provided proof from one bank that his request for a home equity loan was rejected, the letter was vague and related that the defendant could contact the bank for further explanation of why the application was rejected. Appendix D (Letter from JP Morgan Chase Bank). It is unknown if the defendant could have remedied the application, or if he himself withdrew the application. The defendant did not provide any proof that he applied for a loan with other banks, a fact noted by the Commissioner of Division Two in her "Ruling Denying Review." Appendix Q. The defendant did not provide proof that he had made any effort whatsoever to obtain employment after he resigned from the bench. The undisputed amount of equity in the defendant's motor vehicle and real estate exceeds the anticipated cost of appeal. The defendant's qualification for a partial food stamp allotment did not change the fact that he has "adequate means" to fund an appeal costing \$17,500.

Common sense and the record in this case make clear that the defendant does not fall into the category of persons *Douglas v. California* sought to protect. The defendant was a superior court judge who testified at his criminal trial that he earned a gross salary of \$148,000/year prior to

his resignation from the bench. The defendant owns equity in real estate and a motor vehicle that exceeds the anticipated cost of appeal. The defendant was not and is not indigent. Washington taxpayers should not have to pay for the defendant's appeal simply because he is not inclined to liquidate the equity in his property.

The Court of Appeals did not commit obvious or probable error by denying the motion for discretionary review below. The record supported the trial court's orders denying the request for an order of indigency.

B. Review Should Be Denied Because The Court of Appeals Did Not Depart From The Accepted And Usual Course Of Judicial Proceedings.

The Court of Appeals did not depart from the accepted and usual course of judicial proceedings in considering the defendant's motion for discretionary review. The Court of Appeals routinely rules on motions for discretionary review based upon the record presented. Here, the Court of Appeals reviewed the trial court's ruling. The Court of Appeals did not find "obvious" or "probable" error and accordingly denied the motion. The Court of Appeals followed the accepted and usual course of judicial proceedings during the course of its consideration of the motion for discretionary review.

Nor did the Court of Appeals sanction a departure from the accepted and usual course of judicial proceedings by the trial court.

Superior court judges routinely rule on motions for orders of indigency. Here, the trial court held numerous hearings; considered all of the evidence presented by the defendant; made rulings based upon the guidance provided by RAP 15.2; and accordingly entered written orders. The trial court did not depart from the accepted and usual course of judicial proceedings. The court of appeals did not sanction a departure from the accepted and usual course of judicial proceedings.

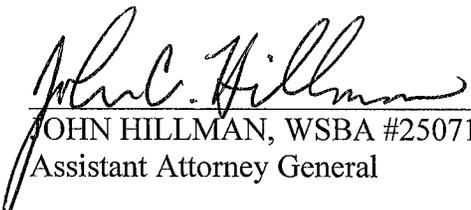
V. CONCLUSION

The trial court did not commit “probable error” or “obvious error.” Neither the trial court nor the Court of Appeals departed from the accepted and usual course of judicial proceedings. The motion for discretionary review does not satisfy the criteria set forth in RAP 13.5(b). The motion for discretionary review should be denied.

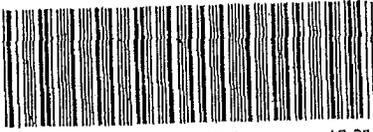
RESPECTFULLY SUBMITTED this 6TH day of July, 2011.

ROBERT M. MCKENNA
Attorney General

By:

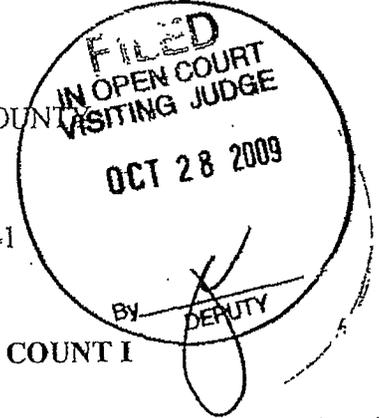

JOHN HILLMAN, WSBA #25071
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APPENDIX A



09-1-01051-1 33101922 VRD 10-28-09

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY



STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 09-1-01051-1

vs.

MICHAEL ANDREW HECHT,
Defendant.

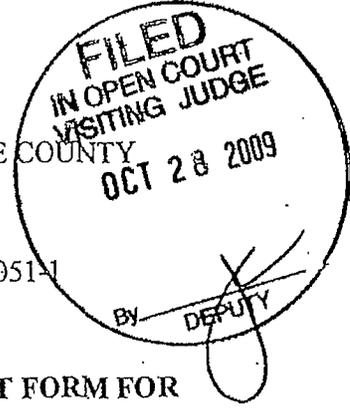
VERDICT FORM FOR COUNT I

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the
crime of HARASSMENT as charged in Count I.

Mar Gilson
PRESIDING JUROR



09-1-01051-1 33101928 SVRD 10-29-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.

CAUSE NO. 09-1-01051-1

MICHAEL ANDREW HECHT,
Defendant.

SPECIAL VERDICT FORM FOR
COUNT I

We, the jury, return a special verdict by answering as follows:

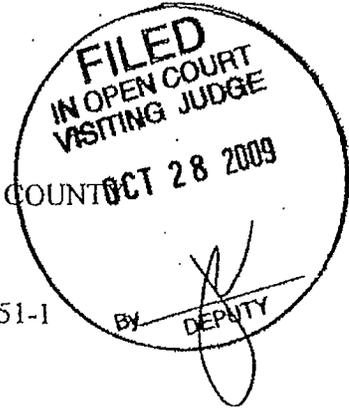
QUESTION: Did the defendant's threat to cause bodily harm consist of a threat to kill Joseph Hesketh IV and did Joseph Hesketh IV reasonably fear that the threat to kill would be carried out?

ANSWER: Yes
(YES or NO)

Ma. D. [Signature]
PRESIDING JUROR



09-1-01051-1 33101931 VRD 10-29-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,

CAUSE NO. 09-1-01051-1

vs.

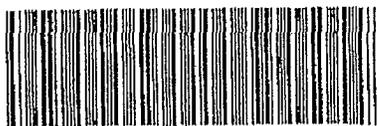
MICHAEL ANDREW HECHT,
Defendant.

VERDICT FORM FOR COUNT II

We, the jury, find the defendant Guilty (Not Guilty or Guilty) of the
crime of PATRONIZING A PROSTITUTE as charged in Count II.

Mar Gilson
PRESIDING JUROR

APPENDIX B



09-1-01051-1 33241038 JS 11-23-09



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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL ANDREW HECHT,

Defendant.

SID: 25380542
FBI: 208041FD5
DOB: 4-23-1950

NO. 09-1-01051-1

JUDGMENT AND SENTENCE (FJS)
COUNT I
 Prison
 Jail One Year or Less
 First-Time Offender
 Clerk's Action Required, para 4.5
(SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6
and 5.8

NOV 23 2009

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on OCTOBER 28, 2009, by plea jury-verdict bench trial of:

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO. |
|-------|-------------------|---------------------|-------------------|---------------|----------------------------|
| I | FELONY HARASSMENT | 9A.46.020(2)(b)(ii) | N/A | 8/30/2009 | 083300302 Tacoma Police |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

09-9-14846-10

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as charged in the Amended Information

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

2.3 SENTENCING DATA:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-------------------|---|-------------------|---|--------------|
| I | 0 | III | 1-3 MONTHS | N/A | 1-3 MONTHS | 5 years |

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:
 within below the standard range for Count(s) _____.
 above the standard range for Count(s) _____.
 The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.
 Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: N/A

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 **Confinement.** The court sentences the defendant as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the county jail:

Actual number of months of total confinement ordered is: _____

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s)

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

Partial Confinement. The defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

- work crew RCW 9.94A.725
- home detention RCW 9.94A.731, .190
- work release RCW 9.94A.731

Conversion of Jail Confinement (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

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4.1 **FIRST-TIME OFFENDER WAIVER OF STANDARD SENTENCE.** RCW 9.94A.030, RCW 9.94A. The defendant is a first-time offender. The court waives imposition of a sentence within the standard sentence range and imposes the following sentence:

(a) **CONFINEMENT.** Defendant is sentenced to the following term of total confinement in the custody of the county jail:

30 days on Count I days on Count _____
_____ days on Count _____ days on Count _____

Confinement shall commence immediately unless otherwise set forth here: _____

PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

work crew RCW 9.94A.725

home detention RCW 9.94A.731, .190.

work release RCW 9.94A.731

ALTERNATIVE CONVERSION. RCW 9.94A.680. 30 days of total confinement ordered above are hereby converted to 240 hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed: within 10 months of date of this order.

on a schedule established by the defendant's community corrections officer.

as follows: _____

CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

Alternatives to total confinement were not used because of: _____

criminal history failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced.

(b) **COMMUNITY SERVICE.** RCW 9.94A.505. In addition to the ordered total confinement, defendant shall perform _____ hours of community service as approved by defendant's community corrections officer to be completed:

on a schedule established by the defendant's community corrections officer.

as follows: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.2 **COMMUNITY** **SUPERVISION** **CUSTODY** RCW 9.94A. Defendant shall serve 12 months in community supervision community custody (up to 12 months unless treatment is ordered, in which case the period of community supervision or community custody may include up to the period of treatment but shall not exceed two years). Defendant shall report to the DOC (address of office) not later than 72 hours after release from custody; and the defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody shall obey all laws, perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC, and shall comply with any other

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conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody:

- pay all court-ordered legal financial obligations
- notify the community corrections officer in advance of any change in defendant's address or employment
- report as directed to a community corrections officer
- devote time to specific employment or occupation
- undergo available outpatient treatment for a period not to exceed two years, or inpatient treatment not to exceed the standard range for that offense
- remain within prescribed geographical boundaries SOAP order
- pursue a prescribed course of secular study

no contact with known ^{make} prostitutes

no violations of the criminal laws of any jurisdiction

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here:

1 4.3 Legal Financial Obligations. Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

2 JASS CODE

3 RTN/RJN \$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

4 PCV \$ 500.00 Crime Victim assessment

5 DNA \$ 100.00 DNA Database Fee

6 PUB \$ _____ Court-Appointed Attorney Fees and Defense Costs

7 FRC \$ 200.00 Criminal Filing Fee

8 FCM \$ 1,000.00 Fine

9 OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

10 \$ _____ Other Costs

11 for: _____

12 \$ _____ Other Costs

13 for: _____

14 \$ 1,800^{or} TOTAL

15 The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

16 shall be set by the prosecutor.

17 is scheduled for _____

18 RESTITUTION. Order Attached

19 The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

20 All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

21 The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

22 COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate: RCW 10.01.160.

23 COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

24 INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

25 COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

26 4.3b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

1 4.4 **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA
2 identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the
3 county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from
4 confinement. RCW 43.43.754.

5 **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as
6 soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

7 4.5 **NO CONTACT**

8 The defendant shall not have contact with JOSEPH HESKETH IV (d.o.b. 3/16/84) (name, DOB)
9 including, but not limited to, personal, verbal, telephonic, written or contact through a third party for
10 FIVE (5) years (not to exceed the maximum statutory sentence).

11 Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault
12 Protection Order is filed with this Judgment and Sentence.

13 4.6 **OTHER:**

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14 4.4a **BOND IS HEREBY EXONERATED**

15 **V. NOTICES AND SIGNATURES**

16 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this
17 Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus
18 petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to
19 arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for
20 in RCW 10.73.100. RCW 10.73.090.

21 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall
22 remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up
23 to 10 years from the date of sentence or release from confinement, whichever is longer, to assure
24 payment of all legal financial obligations unless the court extends the criminal judgment an additional 10
25 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the
26 offender, for the purpose of the offender's compliance with payment of the legal financial obligations,
until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW
9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial
obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her
legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate
notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the
clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30
days past due in monthly payments in an amount equal to or greater than the amount payable for one
month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without
further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): _____

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§.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

§.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

§.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
N/A

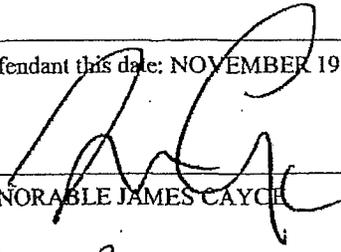
§.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

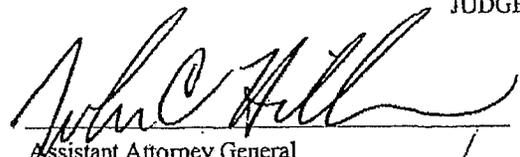
§.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

§.10 **OTHER:** _____

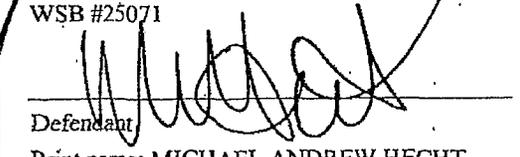
DONE in Open Court and in the presence of the defendant this date: NOVEMBER 19, 2009.

JUDGE


HONORABLE JAMES CAYCE


Assistant Attorney General
Print name: JOHN HILLMAN
WSB #25071


Attorney for Defendant
Print name: WAYNE C. FRICKE
WSB #16550


Defendant
Print name: MICHAEL ANDREW HECHT



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VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 09-1-01051-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

 Timothy Regis
Court Reporter

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IDENTIFICATION OF DEFENDANT

SID No. WA25380542
(If no SID take fingerprint card for State Patrol)

Date of Birth 04-23-1950

FBI No. 208041FD5

Local ID No.

PCN No.

Other

Alias name, SSN, DOB: 04-23-1950

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| <input type="checkbox"/> Asian/Pacific Islander | <input type="checkbox"/> Black/African-American | <input checked="" type="checkbox"/> Caucasian | <input type="checkbox"/> Hispanic | <input checked="" type="checkbox"/> Male | |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Other : | <input checked="" type="checkbox"/> Non-Hispanic | <input type="checkbox"/> Female | | |

FINGERPRINTS

Left four fingers taken simultaneously

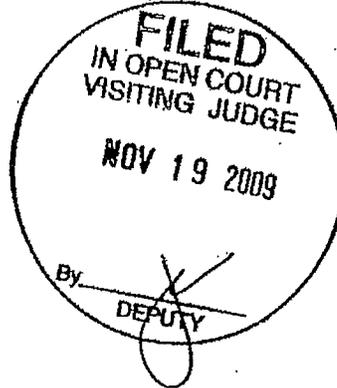
Left Thumb



Right/Thumb

Right four fingers taken simultaneously





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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL ANDREW HECHT,

Defendant.

DOB: 04/23/50; RACE: W; SEX: M;
AGENCY: TACOMA POLICE;
INCIDENT #: 08-330-0302

NOV 23 2009
NO. 09-1-01051-1
JUDGMENT AND SENTENCE
FOR COUNT II
(Misdemeanor)
 PLEA OF GUILTY
 FOUND GUILTY BY JURY
 FOUND GUILTY BY COURT
 SUSPENDED SENTENCE

This matter coming on regularly for hearing in open court on the 19th day of November, 2009, the defendant MICHAEL ANDREW HECHT and his attorney WAYNE C. FRICKE appearing, and the State of Washington appearing by assistant attorney general John Hillman, following a jury verdict of guilty entered by the court on the 28th day of October, 2009.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Defendant is guilty of the crime of PATRONIZING A PROSTITUTE, Charge Code: (J38C), as charged in the Amended Information herein, and that he shall be punished by confinement in the Pierce County Jail for a term of not more than 90 days.

HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

Said jail sentence shall be suspended on the attached conditions of suspended sentence and the the Defendant pay the prescribed crime victim compensation penalty assessment as per RCW 7.68.035 in the amount of \$ ~~500.00~~

The said Defendant is now hereby committed to the custody of the sheriff of aforesaid county to be detained.

1 ~~(X)~~ Jail time imposed shall be ~~(X)~~ consecutive to ~~(X)~~ concurrent with Count I.

2 Any period of supervision shall be tolled during any period of time the offender is in confinement for
3 any reason.

4 Bail is hereby exonerated.

5 Signed this 19 day of November, 2009, in the presence of said Defendant.

[Handwritten Signature]

JUDGE James Cayce

7 CERTIFICATE

8 Entered Jour. No. _____ Page No. _____ Department No. _____, this _____ day of November,
9 2009.

10 I, _____, County Clerk and Clerk of the Superior Court of
11 the State of Washington, in and for the County of Pierce, do hereby certify that the foregoing is a fully,
12 true and correct copy of the judgment, sentence, and commitment in this cause as the name appears of
13 record in my office.

14 WITNESS my hand and seal of said Superior Court this _____ day of November, 2009.

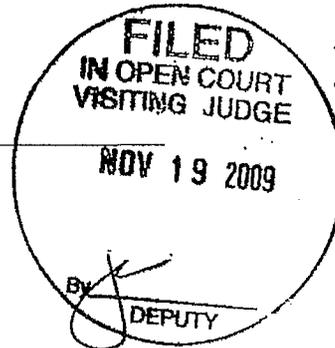
15 _____
County Clerk and Clerk of Superior Court.

16 By _____
Deputy Clerk

17 Presented by:

[Handwritten Signature]

JOHN HILLMAN
Assistant Attorney General
WSB # 25071

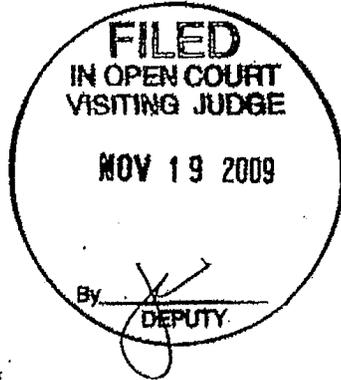


20 Approved as to Form:

[Handwritten Signature]

WAYNE C. FRICKE
Attorney for Defendant
WSB# 16550

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL ANDREW HECHT,

Defendant.

NOV 23 2009

NO. 09-1-01051-1

CONDITIONS OF SUSPENDED
SENTENCE (COUNT II)

This matter coming on regularly for sentencing before the Honorable James Cayce, Visiting Judge, on the 19th day of November, 2009, and the Court having sentenced the defendant MICHAEL ANDREW HECHT to the term of 90 days jail for the crime of PATRONIZING A PROSTITUTE, and the Court having suspended that term, the Court herewith orders the following conditions and provisions:

- 1. Termination date is to be 2 year(s) after date of sentence.
- 2. The Defendant shall be under the charge of a probation officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by the Department of Corrections for the conduct of the Defendant during the time of his/her probation herein.
- 3. That the Defendant be under the supervision of the Court (~~bench probation~~). JSC
- 3. Defendant will pay the following amounts to the Clerk of the Superior Court, Pierce County, Washington.

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\$ _____ Attorney fees as reimbursement for a portion of the expense of his/her court appointed counsel provided by the Pierce County Department of Assigned Counsel. The court finds that the defendant is able to pay said fee without undue financial hardship.

\$ ~~500.00~~ Crime Victim Compensation penalty assessment per RCW 7.68.035;

\$ _____ Court Costs;

\$ 500.00 Fine;

\$ _____ Other: _____

\$ _____ Restitution to be forwarded to: _____

\$ 500.00 TOTAL payable at the rate of \$ _____ per month commencing _____

Revocation of this probation for nonpayment shall occur only if defendant wilfully fails to make the payments having the financial ability to do so or wilfully fails to make a good faith effort to acquire means to make the payment.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

THE FINANCIAL OBLIGATIONS IMPOSED IN THIS JUDGMENT SHALL BEAR INTEREST FROM THE DATE OF THE JUDGMENT UNTIL PAYMENT IN FULL, AT THE RATE APPLICABLE TO CIVIL JUDGMENTS. RCW 10.82.090. AN AWARD OF COSTS ON APPEAL AGAINST THE DEFENDANT MAY BE ADDED TO THE TOTAL LEGAL FINANCIAL OBLIGATIONS. RCW 10.73.

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

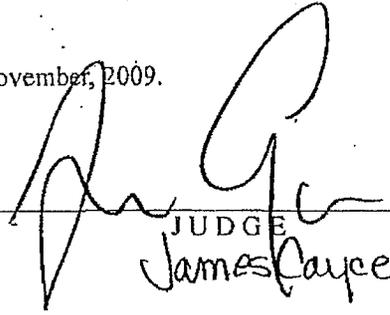
- Further Conditions as follows:
- No violation of the criminal laws of any jurisdiction
 - Attend John School through Metropolitan Development Council, Defendant to pay cost
 - Pay all legal financial obligations

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IT IS FURTHER ORDERED that, upon completion of any incarceration imposed the defendant shall be released from the custody of the Sheriff of Pierce County and report to the authorized Probation Officer of this district, to receive his instructions: Bail is hereby exonerated.

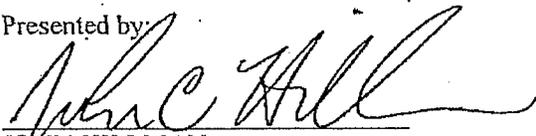
[] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND RE-INCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

DONE IN OPEN COURT this 19 day of November, 2009.



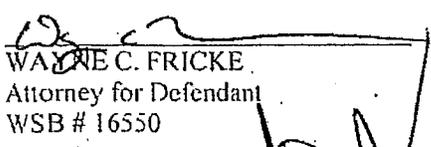
JUDGE
James Cayce

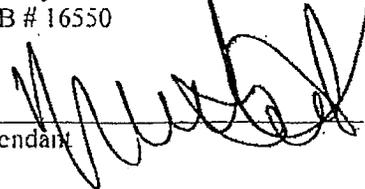
Presented by:



JOHN HILLMAN
Assistant Attorney General
WSB # 25071

Approved as to Form:

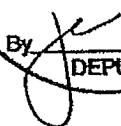


WAYNE C. FRICKE
Attorney for Defendant
WSB # 16550


Defendant

FILED
IN OPEN COURT
VISITING JUDGE

NOV 19 2009

By 

DEPUTY

APPENDIX C

December 08 2009 1:53 PM

KEVIN STOCK
COUNTY CLERK
NO: 09-1-01051-1

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IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

| | | |
|-----------------------|---|---------------------|
| STATE OF WASHINGTON, |) | No. 09-1-01051-1 |
| |) | |
| Plaintiff, |) | NOTICE OF APPEAL |
| |) | TO COURT OF APPEALS |
| vs. |) | |
| |) | |
| MICHAEL ANDREW HECHT, |) | |
| |) | |
| Defendant. |) | |

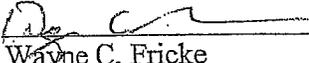
TO: THE STATE OF WASHINGTON and MARK LINDQUIST,
Prosecuting Attorney for Pierce County.

YOU, AND EACH OF YOU, will please take notice that the defendant,
Michael A. Hecht, seeks review by the Court of Appeals, Division II, of the judgment of
conviction and/or sentence rendered against him on the 19th day of November, 2009.

A copy of the judgment and sentence is attached hereto.

DATED this 7th day of December, 2009.

HESTER LAW GROUP, INC. P.S.
Attorneys for defendant

By: 
Wayne C. Fricke
WSB #16550

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Attorney for Plaintiff:

Kathleen Proctor, WSB #14811
Deputy Prosecuting Attorney
946 County-City Building
Tacoma, WA 98402
(253) 798-6590

Attorney for Defendant:

Wayne C. Fricke, WSB #16550
Hester Law Group, Inc., P.S.
1008 South Yakima, Suite 302
Tacoma, WA 98405
(253) 272-2157

Defendant:

Michael Hecht
4988 NE 32nd St
Tacoma, WA 98422

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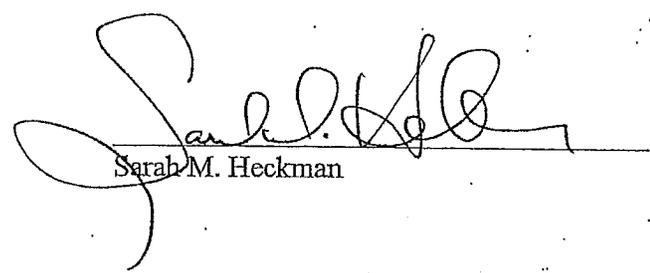
CERTIFICATE OF SERVICE

Sarah M. Heckman, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of notice of appeal to which this certificate is attached, by United States Mail or by ABC-Legal Messengers, Inc., to the following:

Kathleen Proctor, WSB #14811
Deputy Prosecuting Attorney
946 County-City Building
Tacoma, WA 98402

Michael Hecht
4988 NE 32nd St
Tacoma, WA 98422

Signed at Tacoma, Washington this 8th day of December, 2009.


Sarah M. Heckman

APPENDIX D

December 08 2009 1:56 PM

KEVIN STOCK
COUNTY CLERK
NO: 09-1-01051-1

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IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 09-1-01051-1

Plaintiff,

MOTION FOR ORDER OF
INDIGENCY- Criminal Case

vs..

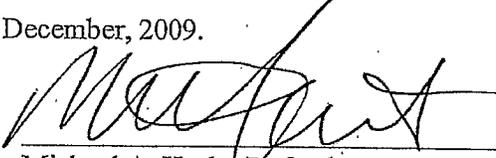
MICHAEL ANDREW HECHT,

Defendant.

Michael A. Hecht, defendant, files a notice of appeal in the above-referenced criminal case, and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense.

The following certificate is made in support of this motion.

DATED this 8 day of December, 2009.



Michael A. Hecht, Defendant



Wayne C. Fricke, WSB #16550
Attorney for Defendant

CERTIFICATE

I, Michael A. Hecht, certify as follows:

1. That I am the defendant and I wish to appeal the judgment that was entered in the above-entitled cause.

2. That I own:

() a. No real property

(X) b. Real property valued at \$ 239,000. That I owe: \$147,000. That I attempted to obtain a home equity line of credit, but was denied per the attached letter.

() a. No personal property other than my personal effects.

(X) b. Personal property (automobile, money, motors, tools, Etc.) valued at approximately \$8,100.00.

3. That I have the following income:

(X) a. No income from any source. My wife's income is \$800.00 per month.

() b. Income from employment, disability payments, SSI, insurance, annuities, stocks, bonds, interests, etc., in the amount of \$ _____ on an average monthly basis. I received approximately \$88,000.00 after taxes over the past year. I am no longer employed.

4. That I have:

(X) a. Undischarged debts in the amount of \$204,900.00.

() b. No debts.

5. That I am without other means to prosecute said appeal and desire that public Funds be expended for that purpose.

JPMORGAN CHASE BANK, N.A. (WA LO)
P O BOX 2071
WI1-4041
MILWAUKEE, WI 53201

October 16, 2009
2810000428

MICHAEL A. HECHT
4988 32ND ST NE
TACOMA, WA 98422-2911

DEAR MICHAEL HECHT:

Thank you for your recent application for a Home Equity account. We regret that we are unable to grant your request for credit at this time either because you have withdrawn your application or due to other factors.

If you would like a statement of specific reasons as to why your application was denied, please contact us within 60 days of the date of this letter, and we will provide you with the statement of reasons within 30 days after receiving your request. Please contact us at:

JPMORGAN CHASE BANK, N.A. (WA LO)
P O BOX 2071
WI1-4041
MILWAUKEE, WI 53201 TELEPHONE NUMBER (888) 356-1681

In reviewing your application, we may have obtained information from the consumer reporting agency shown below. If so, they played no part in our decision and cannot provide specific reasons about our decision. Under the Fair Credit Reporting Act you have the right to obtain a free copy of your Credit Report, if requested within 60 days of this letter. If any information in the report is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Equifax
PO Box 740241
Atlanta, GA 30374 TELEPHONE NUMBER (800) 685-1111

As you know, it is a challenging time in the home lending industry but we hope you will continue to consider Chase for your financial needs.

JPMORGAN CHASE BANK, N.A. (WA LO)

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney St, Suite 3450 Houston, TX 77010-9050



Pierce County

Office of Assessor/Treasurer
2401 South 34th Street, Room 427
Tacoma, WA 98409-7498

**REAL PROPERTY
VALUE CHANGE NOTICE**

THIS IS NOT A TAX STATEMENT

MAIL DATE: July 17, 2009

PARCEL: 5716000140 VALUE FOR TAXES DUE IN 2010

ASSESSED VALUE OLD NEW CURRENT USE VALUE OLD NEW

| | OLD | NEW | LAND | BLDG/ETC | TOTAL | NEW |
|----------|-----------|-----------|------|----------|-------|-----|
| LAND | \$119,600 | \$109,200 | | | | |
| BLDG/ETC | \$164,100 | \$199,500 | | | | |
| TOTAL | \$283,700 | \$268,700 | | | | |

SENIOR FROZEN VALUE: 4988 32ND ST NE

PROPERTY ADDRESS: 4988 32ND ST NE

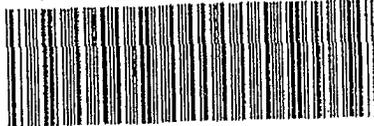
The Assessed Value represents the true and fair value of existing property as of January 1, 2009. Parcels with new construction will receive a supplemental notice later in this year with values as of July 31, 2009 as per RCW 84.40.040.

HECHT MICHAEL & MARIE
4988 32ND ST NE
TACOMA WA 98422-2911

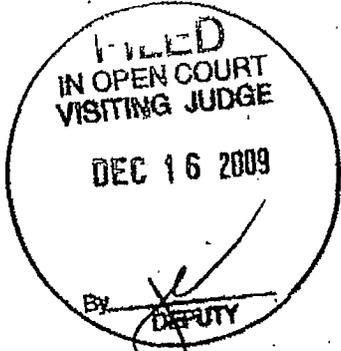


PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID
SEATTLE, WA
PERMIT NO. 418

APPENDIX E



09-1-01051-1 33382596 ORDY 12-17-09



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IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
)
Plaintiff,)
)
)
vs.)
)
)
MICHAEL ANDREW HECHT,)
)
)
Defendant.)

No. 09-1-01051-1

Denial of
ORDER OF INDIGENCY

JDC

THIS MATTER having come on regularly upon the motion of the
above-named defendant, Michael A. Hecht, by and through his attorney, Wayne C.
Fricke of the Hester Law Group, Inc., P.S., and the court having heard argument of
counsel and deeming itself fully advised, the court finds that the defendant ~~lacks~~ *has*
sufficient funds to prosecute on an appeal and ~~applicable law grants defendant a right~~
~~to review at public expense to the extent defined in this order.~~ The court orders as
follows:

JDC
JDC

1. The filing fee is ~~waived~~ *NOT* *JDC*
2. Michael A. Hecht is ~~entitled~~ *NOT* to counsel for review wholly at public *JDC*

expense. ~~When review is discretionary, counsel will be provided and the expenses~~
~~detailed below will be paid if review is accepted or as applicable law permits.~~ *JDC*

Order of Indigency - 1

HESTER LAW GROUP, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

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3. The appellate court shall appoint counsel for review pursuant to
RAP 15.2

4. Michael A. Hecht is entitled to the following at public expense:

(a) Those portions of the verbatim report of proceedings reasonably
Necessary for review as follows: Pre-trial hearings, Date(s): 06/18/2009 and 07/01/2009, and
Trial, Date(s): 09/08/2009 and 09/09/2009, and 10/12/2009 through 11/19/2009.

(b) A copy of the following clerk's papers: Information, Affidavit
/ Determination for Probable Cause, Motion for Change of Venue, Motion for
Severance of Counts, Motion for Continuance, Motion for Preservation Deposition,
Motions in Limine, Judgment and Sentence and all Trial Rulings.

(c) Preparation of original documents to be reproduced by the clerk as
provided in rule 14.3(b).

(d) Reproduction of briefs and other papers on review that are
reproduced by the clerk of the appellate court.

(e) The cost of transmitting the following cumbersome exhibits: All
trial exhibits.

(f) Other items: (Designate items.)

DONE IN OPEN COURT this 11 day of December, 2009.

Judge of the Superior Court

[Signature]
CAYCE

Presented by:

HESTER LAW GROUP, INC., P.S.
Attorneys for Defendant

By: *[Signature]*
Wayne C. Fricke
WSB #16550

IN OPEN COURT
VISITING JUDGE

DEC 16 2009

Order of Indigency - 2

By: *[Signature]*
HESTER LAW GROUP, INC., P.S.
DEPUTY 1003 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

7DC

APPENDIX F

appeal. The court denied the request, finding that he had sufficient funds to prosecute an appeal. He contends that the court erred because he presented information "which demonstrates conclusively that he does not have the financial resources to pursue an appeal."²

A person is indigent if he (a) is receiving certain kinds of public assistance, (b) is involuntarily committed to a public mental health facility, (c) has an annual income, after taxes, of 125 percent, or less of the federal poverty level, or (d) has insufficient funds available to pay for an attorney. RCW 10.101.010(1). Hecht has the burden of proving indigency. *See State v. Clark*, 88 Wn.2d 533, 534, 563 P.2d 1253 (1977).

Hecht makes no claim under criteria (a) and (b). As to criterion (c), he asserts that he has not been employed since he was convicted, and his wife makes only \$800 a month. However, he acknowledged that in 2009, his net income was \$88,000. He asserted that he spent all of his available income on his defense at trial, but he provided no specific information. He also testified at trial that in addition to his position as a superior court judge, he had some income from the buying and selling of antiques. He did not address this source of income in his affidavit.

For the purposes of criterion (d), "available funds" includes equity in real estate. RCW 10.101.010(4). Hecht agrees that he owns real property. He asserted that it was valued at \$238,000, but it was burdened with a debt of

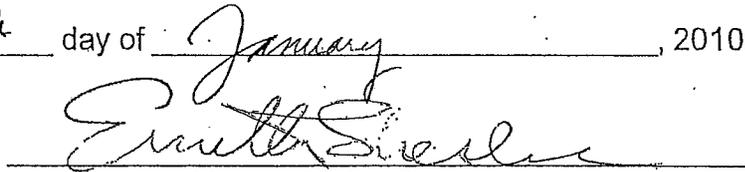
² Mot. for Disc. Rev. at 4.

\$147,000. He also provided evidence that one attempt at refinancing had been rejected. In addition, he asserted that he had \$204,900 in debt.

Hecht provided no details about the debt. Possibly it includes the \$147,000 owing on the real property. The only evidence of the real property value that Hecht produced, a property tax notice, indicates a value of \$268,700, rather than \$239,000. That would leave equity of \$121,700. In any case, assuming the \$239,000 figure is correct, Hecht has available funds, as contemplated by the statute, of at least \$92,000.³ He has not demonstrated (1) that he cannot get a loan based on the equity in the property, or (2) that he cannot sell the property and obtain sufficient funds for appeal. He simply has not met his burden as to any of four criteria.⁴ Accordingly, it is hereby

ORDERED that review is denied.

DATED this 4th day of January, 2010.



Emetta G. Skerlec
Court Commissioner

cc: Wayne C. Fricke
John C. Hillman
Hon. James Cayce

³ He also agrees that he has personal property worth \$8,100.

⁴ As Hecht notes, the superior court did not make findings as to each of the four criteria in RCW 10,101.010(1). In some cases, that could be reversible error. However, in this case, because Hecht did not provide sufficient evidence to satisfy any of the criteria, further review is not necessary.

APPENDIX G

February 04 2010 11:35 AM

KEVIN STOCK
COUNTY CLERK
NO: 09-1-01051-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL A. HECHT,

Appellant.

No. 40107-0-1

ORDER GRANTING PETITIONER'S
MOTION TO MODIFY

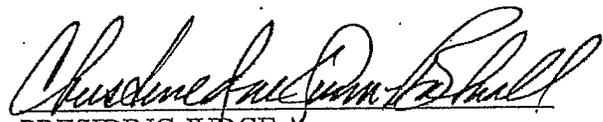
FILED
COURT OF APPEALS
DIVISION II
10 FEB -4 AM 10:14
STATE OF WASHINGTON
BY [Signature] CLERK

On January 15, 2010, Petitioner, Michael A. Hecht, filed a Motion to Modify the Commissioner's December 18, 2010 Ruling Denying Review. The Respondent, State of Washington, filed a response to the motion on February 1, 2010.

After review of the records and files herein, we grant Petitioner's motion and remand to the trial court for hearing and entry of Findings of Fact and Conclusions of Law to determine if Petitioner is indigent but able in accordance with RCW 10.101.010(2) and RAP 15.2.

IT IS SO ORDERED.

DATED this 4th day of February 2010.


PRESIDING JUDGE

APPENDIX H

1 I need to come up with another \$600 to pay for the "John School" that this court
2 entered as part of the sentencing conditions in this case, and I will owe between
3 approximately \$750 to \$3,000 to the Washington State Bar Association, depending on
4 whether I agree to be disbarred.

5 My health continues to deteriorate and I have been advised to get surgery on my
6 shoulder which will prevent me from working. I have not had the surgery because I was
7 finishing the community service hours that this court ordered as part of my sentence, which
8 in fact I just recently completed.

9 I have not sold any antiques or any other collectibles in the last several months, and
10 do not have any disposable income. The bulk of the income that I earned in 2009 went to the
11 defense of this matter, and I did not save any money. My wife's income remains the same as
12 initially presented.

13 Additionally, Mr. Fricke, while he has represented me pro bono, as it relates to being
14 declared indigent. He will not be representing me on the appeal pro bono. He forgave in
15 excess of \$15,000 in attorney's fees that I owed him in defending this matter because of my
16 inability to pay. I am neither in a position to pay for the transcripts in this matter; nor hire an
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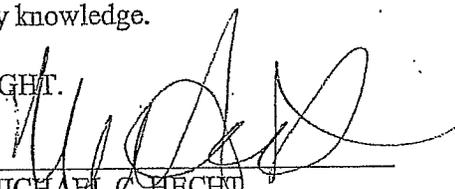
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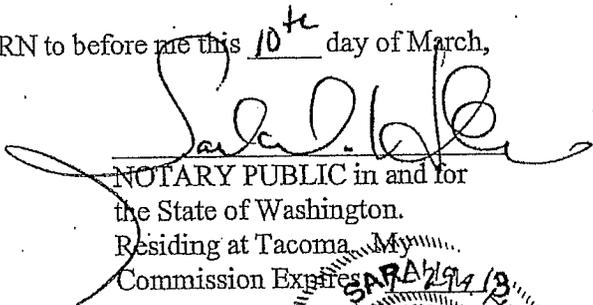
1 attorney, which it is my understanding would ultimately cost well over \$10,000 in attorney's
2 fees.

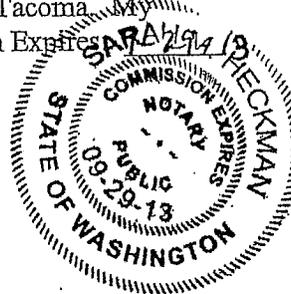
3 The above is true and accurate to the best of my knowledge.

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5
6 
MICHAEL C. HECHT

7 SUBSCRIBED AND SWORN to before me this 10th day of March,
8 2010.

9 
10 NOTARY PUBLIC in and for
11 the State of Washington.
12 Residing at Tacoma, My
13 Commission Expires 09-29-13





WorldPoints

www.bankofamerica.com/worldpoints

LL 0217 V 301 376

18381 #001 AT 0.357

MICHAEL A HECHT
4988 32ND ST NE
TACOMA WA 98422



February 12, 2010

Account number ending in:

Dear Michael A Hecht:

We are writing to advise you of a recent change we have made to the above-referenced account.

We periodically review accounts to ensure they feature the most appropriate credit line. As a result of our review, we have reduced the credit line to \$500. Our review included an assessment of your account history, economic trends and a copy of your credit report. If you would like to obtain a free copy of your credit report, please contact Trans Union, Consumer Relations - East, P.O. Box 1000, 2 Baldwin Place, Chester, PA 19022. Their telephone number is 1.800.888.4213.

The principle reasons that contributed to this decision are as follows:

Derogatory public record or collection filed

Proportion of balances to credit limits on bank/national revolving or other revolving accounts is too high

Please note that your account remains open and your current Account Agreement remains in effect. If there are any pending cash advance checks, balance transfers or direct deposit requests on this account, they may no longer be approved or processed due to this adjustment in your credit line.

Cardmember Service
P.O. Box 15298
Wilmington, DE 19850-5298
(800) 436-7937
Visit us online at www.chase.com/creditcards



March 03, 2010



31636 RCS 001 003 06210 - NNNNNNNNNNNN

Michael A Hecht
4988 32nd St Ne
Tacoma WA 98422-2911

Below is important
information regarding the
credit line on your account.



RE: Your account ending in

Dear Michael A Hecht:

We are writing to provide you with important information about your account. In an effort to ensure the credit we extend is appropriate for each customer, we regularly review customer credit lines. Based on our review of the account referenced above, we have changed the credit line to \$2000.00.

The review of your account considered several factors including our assessment of information obtained from the consumer credit agency listed below. The primary reason(s) that led to our decision to change the credit line are:

- Balance owed on revolving accts too high
- Balance too high compared to crdt limit

If you believe the reported information is inaccurate, you will need to contact the reporting agency referenced below. Other than providing information, this agency played no part in our decision.

Experian: (888) 397-3742, P.O. Box 2002, Allen, TX 75013

We understand that you may be disappointed with this decision, but we hope that you continue to find value in the benefits, protections, and payment flexibility your account provides. If you have any questions related to this notice, please contact us at 1-800-219-0015. For your convenience, we are available Monday through Friday, between 8:00 a.m. to 8:00 p.m., Eastern Time.

Sincerely,

Portfolio Lending

APPENDIX I

March 09 2010 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 09-1-01051-1

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IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

| | | |
|-----------------------|---|------------------|
| STATE OF WASHINGTON, |) | No. 09-1-01051-1 |
| |) | |
| Plaintiff, |) | AFFIDAVIT OF |
| |) | WAYNE C. FRICKE |
| vs. |) | |
| |) | |
| MICHAEL ANDREW HECHT, |) | |
| |) | |
| Defendant. |) | |

STATE OF WASHINGTON)
County of Pierce) : ss.

WAYNE C. FRICKE, being first duly sworn under oath deposes and says that I am
the attorney for Michael Hecht in the above-entitled matter.

That attached is an estimate of the cost for production of transcripts of the hearings in
this matter.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Wayne C. Fricke
WAYNE C. FRICKE

SUBSCRIBED AND SWORN to before me this 8th day of March,
2010.

James D. Hester
NOTARY PUBLIC in and for
the State of Washington
Residing at Tacoma, WA
Commission Expires 9-29-13

Wayne Fricke

From: Randy York [ryork@co.pierce.wa.us]
Sent: Friday, January 15, 2010 12:15 PM
To: Wayne Fricke
Subject: Hecht transcript \$\$\$

Wayne,

I looked up the Hecht trial. Here's the numbers I came up with.

With everything from pretrial, including jury voir dire and opening statements (minus reading the instructions) there would be approximately 1493 pages, which includes an estimate of 20 pages of title, index and exhibit pages. At \$5 a page (probably the lowest in the building) the cost would be \$7465.

Jury voir dire was approximately 300 pages, opening statements approximately 36 pages. If you do not want jury voir dire, lower the cost by \$1500; if you do not want opening statements, lower the cost by \$195.

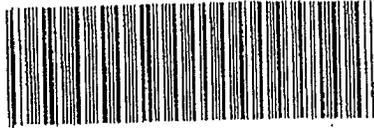
This includes two pretrial hearings, the motion to preserve testimony of dark-haired Joey and a second short hearing involving dark-haired Joey's ability to bail out of jail pending trial.

I did not report the pretrial motions held in King County, any pretrial motions heard when the case was assigned to Judge Worswick's staff or the preservation deposition or the sentencing, so those transcripts would cost more, depending on your need for those hearings.

If you have any questions, you can call me at 798-7482 or reply to this e-mail.

Randy York

APPENDIX J



09-1-01051-1 33935489 ORDY 03-15-10

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FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 12 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL ANDREW HECHT,

Defendant.

NO. 09-1-01051-1

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
REQUEST FOR ORDER OF
INDIGENCY

THIS matter having come before the court on Defendant's motion for an order of indigency, and the court having considered the testimony at trial, the memoranda of the parties, the arguments of counsel, and the financial disclosures and anticipated cost of appeal provided by Defendant, the court DENIES the motion for order of indigency and enters the following findings of fact and conclusions of law.

FINDINGS OF FACTS

1. On October 28, 2009, a jury returned verdicts finding Defendant guilty of Felony Harassment and Patronizing a Prostitute.
2. Judgment and Sentence were entered on November 19, 2009.
3. Defendant had retained counsel throughout the trial proceedings in this case.
4. From January 2009-November 2009, Defendant was employed as a superior court judge for Pierce County and earned income of approximately \$88,000.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
REQUEST FOR ORDER OF
INDIGENCY

1 5. From January 2009-December 2009, Defendant's spouse was employed and
2 earned income of approximately \$800/month.

3 6. Defendant owns a home in Tacoma. Tax records assess the value of the home
4 at \$268,700. In December 2009, Defendant owed \$147,000 on his mortgage for the home.
5 The value of Defendant's estimated home equity is \$121,700.

6 7. Defendant owns a 2008 Nissan Versa and other liquid assets totaling
7 approximately \$8,000.

8 8. Defendant sells antiques and collectibles for cash to supplement his income(s).

9 9. Defendant does not receive public assistance.

10 10. Defendant is not involuntarily committed to a public health facility.

11 11. Defendant has available funds of \$92,000-\$130,000 depending on the current
12 market value of his home.

13 12. The annual income of the marital community of Defendant and his wife is not
14 \$125% or less of the current federally established poverty level.

15 13. The anticipated cost of appellate expenses in this case is less than \$92,000.

16 14. Defendant has available funds sufficient to pay all of the expenses of his
17 appeal.

gac 18 *//// has the ability to earn sufficient*
//// income to process his appeal.

19 *////*

20 *////*

21 *////*

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CONCLUSIONS OF LAW

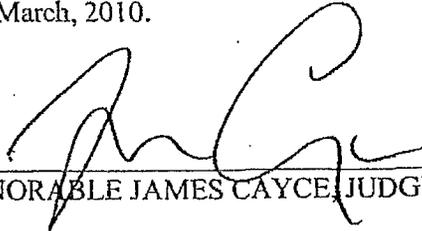
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1. Defendant is not indigent because the record presented does not satisfy any of the criteria for indigency set forth in RCW 10.101.010(1).

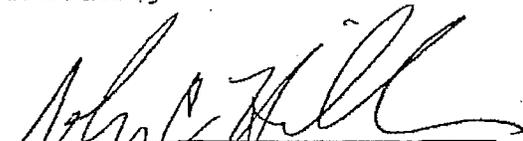
2. Defendant is not "indigent and able to contribute" as set forth in RCW 10.101.020 because the record presented establishes that Defendant has adequate means to pay for all of the expenses of his appeal.

3. Defendant's motion for an order of indigency is denied.

DATED this 12 day of March, 2010.

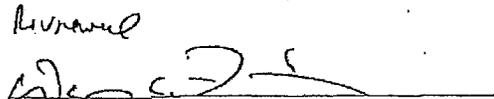

HONORABLE JAMES CAYCE, JUDGE

Presented by:


JOHN HILLMAN, WSBA #25071
Assistant Attorney General

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 12 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

~~Approved as to form only.~~


WAYNE C. FRICKE, WSBA #16550
Attorney for Defendant

APPENDIX K

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RECEIVED

JUN 03 2010

CRIMINAL JUSTICE DIVISION
ATTORNEY GENERAL'S OFFICE

STATE OF WASHINGTON,

No. 40517-2-II

Respondent,

v.

RULING DENYING REVIEW

MICHAEL ANDREW HECHT,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
10 JUN -2 AM 9:14
STATE OF WASHINGTON
BY W
DEPUTY

Michael Hecht seeks review of a Pierce County Superior Court decision denying his petition for indigency. This court may accept review if (1) the superior court has committed an obvious error which would render further proceedings useless; or (2) the superior court has committed a probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act RAP 2.3(b)(1) and (2).¹ Hecht does not discuss these criteria,² and he has satisfied neither of them.

FACTS

In November 2009, a jury convicted Hecht of patronizing a prostitute and felony harassment. His appeal of those convictions is pending. In December

¹ RAP 2.3(b)(3) and (4) do not apply here.

² Instead, he addresses the criteria in RAP 2.3(d), which do not apply to interlocutory decisions of the superior court.

2009, he filed a motion for indigency, certifying that (1) he owned real property valued at \$239,000, (2) he owned personal property valued at \$8,100, (3) he had no income from any source, (4) his wife's income was \$800 per month, (4) he had debts in the amount of \$204,900, and (5) he could not contribute any amount to the cost of review.

The trial court denied his motion, finding that he had sufficient funds to prosecute an appeal, and he sought discretionary review. Ultimately, this court directed the trial court to determine if Hecht is indigent but able to contribute to the costs of appeal, in accordance with RCW 10.101.010(2) and RAP 15.2, and enter findings of fact and conclusions of law.

On March 12, 2010, the trial court entered its order, finding, inter alia, that:

(4) Hecht was employed as a superior court judge for Pierce County from January 2009-November 2009 and had earned an income of approximately \$88,000;

(5) his spouse had earned an income of approximately \$800/month during 2009;

(6) he owns a home with a tax-assessed value of \$268,700, and he owed \$147,000 on his mortgage in December 2009;

(7) he owns a 2008 Nissan Versa and other liquid assets totaling approximately \$8,000;

(8) he sells antiques and collectibles for cash to supplement his income;

(9) he receives no public assistance;

(11) he has available funds of \$92,000-\$130,000 depending on the current market value of his home;

(12) the annual income of his marital community is not 125 percent or less of the current federally established poverty level;

(13) the anticipated cost of appellate expenses in this case is less than \$92,000; and

(14) Hecht has funds sufficient to pay all of the expenses of his appeal and the ability to earn sufficient income to process his appeal. See Mot. for Disc. Rev., Exhibit A at 1-2.

Based on its findings, the court concluded that (1) Hecht is not indigent because the record presented does not satisfy any of the criteria for indigency set forth in RCW 10.101.010(1), and (2) Hecht is not "indigent and able to contribute" as set forth in RCW 10.101.020, because the record presented establishes that he has adequate means to pay for all of the expense of his appeal. Mot. for Disc. Rev., Exhibit A at 3.

ANALYSIS

RCW 10.101.010(1) defines "indigent" as one who is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility;
or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

Hecht contends that whatever the amount of his assets, he satisfies subsection (1)(c) of the statute and must, therefore, be considered indigent. The party seeking indigent status bears the burden of proving indigency. *State v. Clark*, 88 Wn.2d 533, 563 P.2d 1253 (1977). Hecht has provided too little information to satisfy that burden. He asserted that he has earned no income for the year 2010, and his wife is making only \$800 a month. However, he does not explain how he is meeting expenses such as his mortgage. He testified at trial that in addition to his position as a superior court judge, he had some income from the buying and selling of antiques. He said he is not now doing that, but he did not explain why. He did not indicate that he had made any attempts to find employment. He made a passing reference to medical problems, but did not indicate how they affect his ability to work and produced no medical documentation. "[O]ne must demonstrate that he has done all that he reasonably can to shoulder his costs of legal representation." *State v. McGee*, 12 Wn. App. 24, 27, 527 P.2d 1129 (1974).

Moreover, even assuming that Hecht meets the criterion for indigency under RCW 10.101.010(1)(c), that does not preclude the possibility that he could pay the entirety of his appeal costs from his available funds. RAP 15.2(b)(2) requires the trial court to deny a motion for indigency if the party has adequate

means to pay all of the expenses of review.³ Hecht presented evidence to the superior court that the cost of the appeal would be approximately \$20,000. He asserted that his residence was valued at \$238,000. The only evidence of value that he produced, a property tax notice, indicated the property was worth \$268,700. Nevertheless, assuming the lower figure is correct, Hecht has available funds, as contemplated by the statute, of at least \$92,000. He provided evidence that one attempt at refinancing had been rejected, but no evidence that he had made other attempts. He has not demonstrated (1) that he cannot get a loan based on the equity in the property, or (2) that he cannot sell the property and obtain sufficient funds for appeal.

Hecht has not demonstrated that the denial of his petition for indigency was either obvious or probable error. Accordingly, it is hereby

ORDERED that review is denied.

DATED this 2nd day of June, 2010.



Ernetta G. Skerlec
Court Commissioner

cc: Wayne Clark Fricke
John Christopher Hillman
Hon. James Cayce

³ RAP 15.2(b)(2) does not conflict with RCW 10:101.010(1), because the definition of indigency does not preclude a determination that an individual can pay his court costs. However, if there were a conflict, the rule would control. See *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 679, 146 P.3d 893 (2006) (when a court rule involves "a matter related to the court's inherent power," the rule will prevail (quotations omitted)); *State v. G.R.H.*, 107 Wn. App. 591, 596-97, 27 P.3d 660 (2001) (court rule supersedes a procedural statute).

APPENDIX L

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL A. HECHT,
Petitioner.

No. 40517-2-II

ORDER DENYING MOTION TO MODIFY

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CRIMINAL JUSTICE DIVISION
ATTORNEY GENERAL'S OFFICE

PETITIONER has filed a motion to modify a Commissioner's ruling dated June 2, 2010, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 7th day of July, 2010.

PANEL: Jj, Armstrong, Hunt, Quinn-Brintnall

FOR THE COURT:

[Signature]
PRESIDING JUDGE

STATE OF WASHINGTON
BY DEPUTY
10 JUL -7 PM 2:00
COURT OF APPEALS
DIVISION II

Wayne Clark Fricke
Attorney at Law
1008 Yakima Ave Ste 302
Tacoma, WA, 98405-4850

John Christopher Hillman
Atty General's Office, Criminal Justice
800 5th Ave Ste 2000
Seattle, WA, 98104-3188

Michael A. Hecht
4988 N.E. 32nd Street
Tacoma, WA 98422

THE FOLLOWING DOCUMENTS ARE DUE:

Designation of clerk's papers and
Statement of Arrangements due
in direct appeal # 40057-0-II 7/22/10
Sanctions continued to 7/22/10

APPENDIX M

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Respondent,
v.
MICHAEL ANDREW HECHT,
Petitioner.

FILED
SUPREME COURT
STATE OF WASHINGTON
2010 SEP 21 P 2:18
BY RONALD R. CARPENTER
CLERK

NO. 84820-3

RULING DENYING REVIEW

The Court of Appeals denied Michael Hecht's motion for discretionary review of an order denying his motion for an order of indigency. Mr. Hecht now seeks this court's review.

A Pierce County jury found Mr. Hecht guilty of patronizing a prostitute and felony harassment. The court entered judgment and sentence on November 19, 2009. Mr. Hecht's appeal of his convictions is pending in Division Two of the Court of Appeals. In December 2009 Mr. Hecht moved for an order of indigence so he could pursue his appeal at public expense. The superior court denied the motion. The court found, among other things, that from January to November 2009 Mr. Hecht earned about \$88,000 as a superior court judge; his wife earned about \$800 per month; their home had an assessed value of \$268,700 and a mortgage of \$147,000, leaving equity of \$121,700; Mr. Hecht owns liquid assets valued at about \$8,000; Mr. Hecht has available funds of \$92,000 to \$130,000, depending on the current market value of his

home; the marital community's annual income is not 125 percent or less of the current federally established poverty level; and Mr. Hecht has available funds sufficient to pay all the expenses of his appeal, and has the ability to earn sufficient income to process his appeal. Based on these findings, the court concluded that Mr. Hecht does not satisfy any of the criteria for indigence set forth in RCW 10.101.010(1), and that Mr. Hecht is not indigent and able to contribute within the meaning of RCW 10.101.020 because he has adequate means to pay for all of the expenses of his appeal. Mr. Hecht then sought discretionary review from the Court of Appeals.¹ But Commissioner Skerlec denied review, and the judges of the Court of Appeals denied Mr. Hecht's motion to modify the commissioner's ruling. Mr. Hecht now seeks this court's review.

Under RCW 10.101.010(1), a person is indigent if he is receiving certain kinds of public assistance, is involuntarily committed to a public mental health facility, has an annual income, after taxes, of 125 percent or less of the federal poverty level, or has insufficient funds available to pay for an attorney. Available funds include equity in real estate. RCW 10.101.010(4). And RAP 15.2(b)(2) requires the court to deny the motion for an order of indigency if a party has adequate means to pay all of the expenses of review. Mr. Hecht had the burden of proving his indigency. *See State v. Clark*, 88 Wn.2d 533, 534, 563 P.2d 1253 (1977).

Mr. Hecht did not receive public assistance, nor was he committed to a public mental health facility. He asserted that his income was less than the poverty level. But his net income in 2009 (when he moved for an order of indigency) was \$88,000 (exclusive of his wife's income, which was available to him for purposes of determining indigency²), so his annual income was not close to the federal poverty

¹ Contrary to the State's seeming argument, Mr. Hecht properly sought review of the order denying an order of indigence by filing a motion for discretionary review. RAP 15.2(h).

² *See Clark*, 88 Wn.2d at 536-40.

level. And he had considerable equity in his home. Mr. Hecht asserted that he had \$204,000 in debt, but he did not say whether that included the \$147,000 owing on the real property. Mr. Hecht's one attempt at refinancing was rejected, but he fails to demonstrate that he cannot get a loan based on his equity in the property or that he cannot sell the property. Mr. Hecht urges that it is absurd to suggest that he could sell his home in weeks or days to finance his appeal, but he does not say that he has made any attempt to do so since the inception of his legal difficulties in early 2009. Mr. Hecht made some money in the past from buying and selling antiques, but he failed to explain why he stopped doing that, or whether he had sought employment. He made passing reference to medical problems, but did not explain whether they affected his ability to work and produced no medical documentation.

Court of Appeals Commissioner Skerlec understandably concluded that Mr. Hecht has provided too little information to prove his indigency. Mr. Hecht demonstrates no error or departure from accepted practice meriting this court's review. RAP 13.5(b) (criteria for acceptance of review).

The motion for discretionary review is denied.


COMMISSIONER

September 21, 2010

APPENDIX N

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,
 Respondent,
 v.
 MICHAEL ANDREW HECHT,
 Petitioner

ORDER

No. 84820-3

C/A No. 40517-2-II

CLERK

BY RONALD K. LANSKIER

2010 DEC - 1 A 9:47

FILED
SUPREME COURT
STATE OF WASHINGTON

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered this matter at its November 30, 2010, Motion Calendar and unanimously agreed that the following order be entered

IT IS ORDERED:

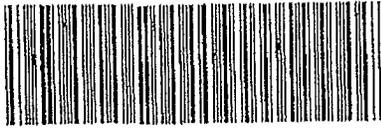
That the Petitioner's Motion to Modify the Commissioner's Ruling is granted and the Petitioner's motion to supplement the record is granted. It is further ordered that this case shall be remanded to the trial court to make a ruling on indigency in light of the additional evidence regarding Petitioner's approval for food assistance by the Department of Social and Health Services.

DATED at Olympia, Washington, this 1st day of December, 2010.

For the Court

Madsen, C.J.
 CHIEF JUSTICE

APPENDIX O



09-1-01051-1 35598951 ORDY 12-27-10

FILED
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A.M. DEC 23 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL A. HECHT,

Defendant.

NO. 09-1-01051-1

ORDER DENYING INDIGENCY

THIS MATTER having come before the court on the defendant's motion for an order of indigency, and the court having considered the records and files herein, and the arguments of counsel, IT IS HEREBY,

ORDERED, that the defendant's motion for an order of indigency that would allow his appeal to be paid at public expense is DENIED.

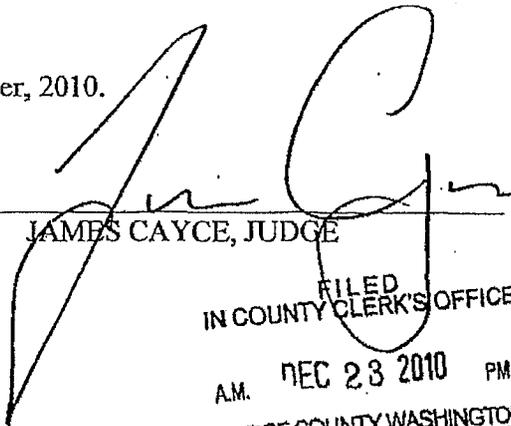
Defendant's motion is DENIED for the following reasons:

1. Legal expenses are necessities akin to paying for medical treatment or childcare. *State v Clark*, 88 Wn.2d 533, 537-540, 563 P.2d 1253 (1977). A party seeking an order of indigency must demonstrate that he has done all that he reasonably can to shoulder his costs of legal representation. *State v McGee*, 12 Wn. App. 24, 27, 527 P.2d 1129 (1974).
2. Defendant has failed to satisfy his burden to establish indigency.
3. RAP 15.2(b) provides that the court "shall deny the motion for an order of indigency if a party has adequate means to pay all the expenses of the appeal."

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- 4. RCW 10.101.010 provides that "indigent" includes a person who is receiving food stamps.
- 5. The defendant is currently receiving partial food stamps.
- 6. Defendant has "adequate means to pay all of the expenses of his appeal" due to the equity in his home and personal property, as set forth in the court's original Findings/Conclusion from March 12, 2010, which are adopted and incorporated herein.
- 7. RAP 15.2(b) and RCW 10.101.010 are in conflict. RCW 10.101.010 provides that a person receiving food stamps is "indigent." RAP 15.2(b) provides that a person is not indigent if that person has "adequate means to pay all the expenses of the appeal."
- 8. When there is a conflict between a court rule and a statute relating to a procedural matter, the court rule trumps. RAP 15.2 was adopted under the Supreme Court's inherent rulemaking authority to provide the procedure for determining indigency. *In re Gove*, 127 Wn.2d 221, 226, 897 P.2d 1252 (1995).
- 9. Pursuant to RAP 15.2(b), the court finds that the defendant has failed to establish that he cannot pay all of the expenses of his appeal. The motion for order of indigency is denied.

DATED this 23rd day of December, 2010.



 JAMES CAYCE, JUDGE

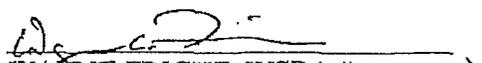
Presented By:



 JOHN HILLMAN, WSBA #25071
 Assistant Attorney General

FILED
 IN COUNTY CLERK'S OFFICE
 A.M. DEC 23 2010 P.M.
 PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY _____ DEPUTY

Approved as to form only:



 WAGNE FRICKE, WSBA # 16550
 Attorney for Defendant

NO. 41657-3

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANDREW HECHT,

Petitioner.

DECLARATION OF
SERVICE

VICTORIA L. ROBBEN declares as follows:

On Tuesday, March 1, 2011, I deposited into the United States

Mail, first-class postage prepaid and addressed as follows:

WAYNE C. FRICKE
1008 S YAKIMA AVENUE, SUITE 302
TACOMA, WA 98405

Copies of the following documents:

- 1) State's Response to Motion for Discretionary Review
- 2) Declaration Of Service

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

RESPECTFULLY SUBMITTED this 20th day of February, 2011.


VICTORIA L. ROBBEN

APPENDIX P

No. 09-1-01051-1

DIVISION II OF THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL ANDREW HECHT

Petitioner.

MOTION FOR DISCRETIONARY REVIEW
AS TO TRIAL COURT'S DENIAL OF INDIGENCY

WAYNE C. FRICKE
WSBA #16550

HESTER LAW GROUP, INC., P.S.
Attorneys for Appellant
1008 South Yakima Avenue
Suite 302
Tacoma, Washington 98405
(253) 272-2157

I. Identity of Moving Party.

Michael Hecht asks this court to accept review of the decision or parts of the decision designated in part II of this motion.

II. Decision.

Attached hereto as Appendix "A" and incorporated herein by this reference is a true and correct copy of the order denying indigency entered on December 23, 2010.

III. Issues Presented for Review.

Whether the trial court abused its discretion when it denied the defendant appointed counsel at public expense and refused to waive all fees and costs associated with the appeal of this matter?

IV. Statement of the Case.

On February 27, 2009, Michael Hecht was charged with Patronizing a Prostitute and Felony Harassment and after trial, the jury returned a guilty verdict to the above-referenced counts.

On November 19, 2009, Mr. Hecht was sentenced. On December 8, 2009, Mr. Hecht filed a notice of appeal along with a motion for indigency. See Appendix "B". In the declaration in support of his request, he set forth his financial situation. Id. On December 11, 2009, Judge Cayce denied Mr. Hecht's motion for indigency without a

hearing and without explanation. This court then remanded for a hearing and entry of Findings and Conclusions. The trial court complied. See Appendix "C". The court concluded:

1. Defendant is not indigent because the record presented does not satisfy any of the criteria for indigency set forth in RCW 10.101.010(1).
2. Defendant is not "indigent and able to contribute" as set forth in RCW 10.101.020 because the record presented establishes that Defendant has adequate means to pay for all of the expenses of his appeal.
3. Defendant's motion for an order of indigency is denied.

See Appendix "C".

Pursuant to Mr. Hecht's certification in the motion for indigency, he owns real property valued at \$239,000.00 with \$147,000.00 left owing. He attempted to obtain a home equity line of credit, but said request was denied. His personal effects are valued at approximately \$8,100.00. See Appendix "B".

At this time, Mr. Hecht has no income from any source, other than his wife's income, which is

\$800.00 per month. He received approximately \$88,000.00 after taxes in 2009. The money was, in part, used to pay attorneys fees for his trial. He resigned at the time of his conviction and has zero income presently, being unemployed since that time. He currently has undischarged debts in the amount of \$204,900.00. His two credit card companies lowered his limits because of high balances on other revolving cards, the balance being too high compared to the credit limit and due to a derogatory public record or collection being filed. His monthly expenses are \$1,380.00 per month, not including food and transportation costs. The family income is approximately \$800.00/month . See Appendix "D".

Moreover, anticipated costs of the appeal are: (1) attorney's fees of approximately \$10,000.00 to \$20,000.00; and (2) transcripts of approximately \$7,465.00. See Appendix "E" (Affidavit of Wayne C. Fricke). They do not include clerk's papers and other court hearings occurring before other court reporters.

Mr. Hecht is without other means to prosecute said appeal and desires that public funds be expended for that purpose. He is unable to contribute toward the expense of review.

Mr. Hecht requested that the court provide all filing fees, attorney fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers.

He authorized the court to obtain verification information regarding his financial status from banks, employers, or other individuals or institutions, if appropriate.

Mr. Hecht certified that he would immediately report any change in his financial status to the court and that review is being sought in good faith. He further offered to allow a lien to be placed on his real estate.

The court denied the request on March 12, 2010, but this time entered Findings and Conclusions re: Indigency. See Appendix "C". It found that he was "currently" earning 125% of the poverty level.

After filing a motion for discretionary review, the Supreme Court granted Mr. Hecht's motion to modify and specifically ordered the trial court to consider the Department of Social and Health Service's decision finding him eligible for food stamps. See Appendix "F". Additionally, Mr. Hecht supplemented the record to include the

department's increase in his food stamp allocation, the market value for his home, and his wife's income, which is the only household income. See Appendix "G".

In spite of this, the court still found him ineligible for appointment of counsel or any public assistance. It found that he had adequate means and that RAP 15.2 and RCW 10.101.010 are in conflict and the court was not bound by RCW 10.101.010.

Mr. Hecht requests that the court accept review and reverse the trial court.

V. Argument Why Review Should be Accepted.

RAP 2.3(b) allows discretionary review of a decision of the superior court of any act not appealable as a matter of right. Here, the following sections of 2.3(b) are applicable:

- (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (3) If the decision involves an issue of public interest which should be determined by an appellate court; or
- (4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited

jurisdiction, as to call for review by the appellate court.

Pursuant to subsections (2)-(4), this court should accept review. Moreover, since defendant is entitled to an attorney on appeal as a constitutional matter of right, the court should treat this as an appeal as a matter of right.

A. THE TRIAL COURT IGNORED THE FACTS IN FINDING THAT MR. HECHT IS NOT INDIGENT; AS SUCH THIS COURT SHOULD REVERSE.

Equal protection requires the state to provide appointed counsel for appeal and a right of appeal at public expense in those classes of cases in which indigents are entitled to appointed counsel at the trial level and a right of appeal is provided. Draper v. Washington, 372 U.S. 487, 9 L.Ed.2d 899, 83 S.Ct. 774 (1963); Douglas v. California, 372 U.S. 353, 9 L.Ed.2d 811, 83 S.Ct. 814 (1963).

Our court rules pertaining to indigent appeals reflect the basic nature of the right to counsel and appeal at public expense in these cases, requiring issuance of an order of indigency by the superior court upon proper showing of indigency and an allegation that appeal is sought in good faith. See RAP 15.2(a); 15.2(b)(2). Where issues of a less fundamental nature are involved,

the right to pursue remedies at public expense is considerably more limited. Housing Authority v. Saylor, 87 Wn.2d 732, 557 P.2d 321 (1976).

Here, Mr. Hecht has set forth information which demonstrates conclusively that he does not have the financial resources to pursue an appeal in this matter, including the fact that he is receiving food stamps, which allotment has recently been increased. In spite of this, the court, based on reasons unsupported by the record, denied the request. In so doing, it stated that RAP 15.2 and RCW 10.101.010, are in conflict and the court did not have to follow the statute because it was procedural and in conflict. Appendix "A", Court's Order at 2: 7-14.

These findings and conclusions simply ignore the facts submitted into evidence. In fact, Mr. Hecht and his wife currently earn less than the poverty level. As the prosecutor noted in its brief, 125% of the federal poverty level is \$18,213.00. Given that the only income is his wife's income, which is approximately \$800.00 per month, this falls well below that level and he earns nothing. He has no available funds to pay any expenses, let alone all of the expenses.

Indeed, he qualifies for food stamps, which automatically qualifies him for public assistance.

The suggestion that the definition of indigency is a procedural question, as opposed to a substantive question is meritless. Moreover, the two are not in conflict, as the rule simply does not define indigency. The definition contained within RCW 10.101.010 is clearly substantive. The court ignored the statute.

As such, the court abused its discretion in denying the request and this court should accept review as a matter of right. Moreover, pursuant to RAP 2.3(b)(2)(3)(a), the court should accept review as the issue presented is a significant question under the United States and Washington constitutions, it involves an issue of public interest, and the court has so far departed from the accepted and usual course of judicial proceedings that review is appropriate. This court should accept review of this petition, hear it immediately and reverse the trial court's order denying indigency.

VI. Conclusion.

Based on the files and records herein, petitioner requests that the court hear this

CERTIFICATE OF SERVICE

Kathy Herbstler hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of motion for discretionary review to which this certificate is attached, by United States Mail or by ABC-Legal Messengers, Inc., to the following:

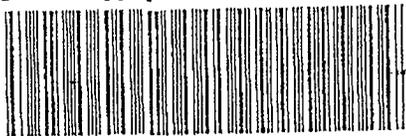
John Hillman
Assistant Attorney General
800 5th Ave Ste 2000
Seattle, WA 98104-3188

Michael Hecht
4988 NE 32nd St
Tacoma, WA 98422

Signed at Tacoma, Washington this 7th day
of January, 2011.



Kathy Herbstler



09-1-01051-1 35598951 ORDY 12-27-10

FILED
IN COUNTY CLERK'S OFFICE
A.M. DEC 23 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL A. HECHT,

Defendant.

NO. 09-1-01051-1
ORDER DENYING INDIGENCY

THIS MATTER having come before the court on the defendant's motion for an order of indigency, and the court having considered the records and files herein, and the arguments of counsel, IT IS HEREBY,

ORDERED, that the defendant's motion for an order of indigency that would allow his appeal to be paid at public expense is DENIED.

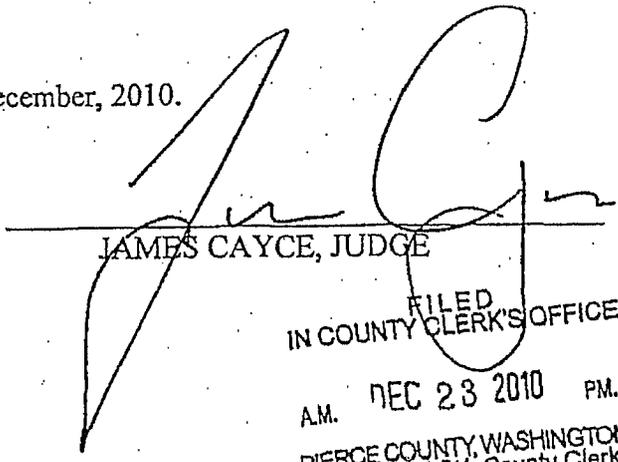
Defendant's motion is DENIED for the following reasons:

1. Legal expenses are necessities akin to paying for medical treatment or childcare. *State v Clark*, 88 Wn.2d 533, 537-540, 563 P.2d 1253 (1977). A party seeking an order of indigency must demonstrate that he has done all that he reasonably can to shoulder his costs of legal representation. *State v. McGee*, 12 Wn. App. 24, 27, 527 P.2d 1129 (1974).
2. Defendant has failed to satisfy his burden to establish indigency.
3. RAP 15.2(b) provides that the court "shall deny the motion for an order of indigency if a party has adequate means to pay all the expenses of the appeal."



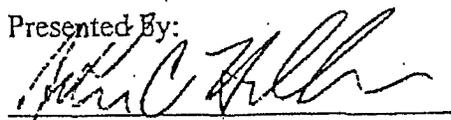
- 1 4. RCW 10.101.010 provides that "indigent" includes a person who is receiving food
- 2 stamps.
- 3 5. The defendant is currently receiving partial food stamps.
- 4 6. Defendant has "adequate means to pay all of the expenses of his appeal" due to the
- 5 equity in his home and personal property, as set forth in the court's original
- 6 Findings/Conclusion from March 12, 2010, which are adopted and incorporated
- 7 herein.
- 8 7. RAP 15.2(b) and RCW 10.101.010 are in conflict. RCW 10.101.010 provides that
- 9 a person receiving food stamps is "indigent." RAP 15.2(b) provides that a person
- 10 is not indigent if that person has "adequate means to pay all the expenses of the
- 11 appeal."
- 12 8. When there is a conflict between a court rule and a statute relating to a procedural
- 13 matter, the court rule trumps. RAP 15.2 was adopted under the Supreme Court's
- 14 inherent rulemaking authority to provide the procedure for determining indigency.
- 15 *In re Gove*, 127 Wn.2d 221, 226, 897 P.2d 1252 (1995).
- 16 9. Pursuant to RAP 15.2(b), the court finds that the defendant has failed to establish
- 17 that he cannot pay all of the expenses of his appeal. The motion for order of
- 18 indigency is denied.

19 DATED this 23rd day of December, 2010.

20 

21 JAMES CAYCE, JUDGE

22 Presented By:

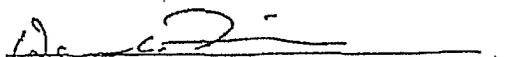
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24 JOHN HILLMAN, WSBA #25071

25 Assistant Attorney General

26 FILED
IN COUNTY CLERK'S OFFICE
AM. DEC 23 2010 PM.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

27 Approved as to form only:

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29 WAYNE FRICKE, WSBA #16520

30 Attorney for Defendant

December 08 2009 1:56 PM

KEVIN STOCK
COUNTY CLERK
NO: 09-1-01051-1

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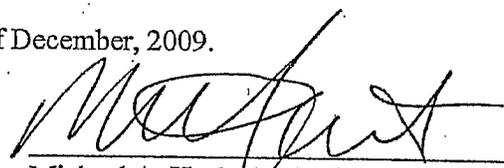
IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

| | | |
|-----------------------|---|--------------------------|
| STATE OF WASHINGTON, |) | No. 09-1-01051-1 |
| |) | |
| Plaintiff, |) | MOTION FOR ORDER OF |
| |) | INDIGENCY- Criminal Case |
| vs.. |) | |
| |) | |
| MICHAEL ANDREW HECHT, |) | |
| |) | |
| Defendant. |) | |

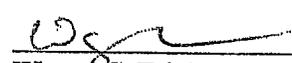
Michael A. Hecht, defendant, files a notice of appeal in the above-referenced criminal case, and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense.

The following certificate is made in support of this motion.

DATED this 8 day of December, 2009.



Michael A. Hecht, Defendant



Wayne C. Fricke, WSB #16550
Attorney for Defendant



CERTIFICATE

I, Michael A. Hecht, certify as follows:

1. That I am the defendant and I wish to appeal the judgment that was entered in the above-entitled cause.

2. That I own:

() a. No real property

(X) b. Real property valued at \$ 239,000. That I owe: \$147,000. That I attempted to obtain a home equity line of credit, but was denied per the attached letter.

() a. No personal property other than my personal effects.

(X) b. Personal property (automobile, money, motors, tools, Etc.) valued at approximately \$8,100.00.

3. That I have the following income:

(X) a. No income from any source. My wife's income is \$800.00 per month.

() b. Income from employment, disability payments, SSI, insurance, annuities, stocks, bonds, interests, etc., in the amount of \$ _____ on an average monthly basis. I received approximately \$88,000.00 after taxes over the past year. I am no longer employed.

4. That I have:

(X) a. Undischarged debts in the amount of \$204,900.00.

() b. No debts.

5. That I am without other means to prosecute said appeal and desire that public Funds be expended for that purpose.

JPMORGAN CHASE BANK, N.A. (WA LO)
P O BOX 2071
WI1-4041
MILWAUKEE, WI 53201

October 16, 2009
2810000428

MICHAEL A. HECHT
4988 32ND ST NE
TACOMA, WA 98422-2911

DEAR MICHAEL HECHT:

Thank you for your recent application for a Home Equity account. We regret that we are unable to grant your request for credit at this time either because you have withdrawn your application or due to other factors.

If you would like a statement of specific reasons as to why your application was denied, please contact us within 60 days of the date of this letter, and we will provide you with the statement of reasons within 30 days after receiving your request. Please contact us at:

JPMORGAN CHASE BANK, N.A. (WA LO)
P O BOX 2071
WI1-4041
MILWAUKEE, WI 53201 TELEPHONE NUMBER (888) 356-1681

In reviewing your application, we may have obtained information from the consumer reporting agency shown below. If so, they played no part in our decision and cannot provide specific reasons about our decision. Under the Fair Credit Reporting Act you have the right to obtain a free copy of your Credit Report, if requested within 60 days of this letter. If any information in the report is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Equifax
PO Box 740241
Atlanta, GA 30374 TELEPHONE NUMBER (800) 685-1111

As you know, it is a challenging time in the home lending industry but we hope you will continue to consider Chase for your financial needs.

JPMORGAN CHASE BANK, N.A. (WA LO)

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney St, Suite 3450 Houston, TX 77010-9050



Pierce County

Office of Assessor/Treasurer
2401 South 38th Street, Room 192
Tacoma, WA 98409-7498

REAL PROPERTY
VALUE CHANGE NOTICE
THIS IS NO IN-TAX STATEMENT
VALID DATE: JULY 1, 2009
SEATTLE, WA PERMIL NO. 416

PARCEL: 5715000140 VALUE FOR TAXES DUE IN 2010

| | ASSESSED VALUE | | CURRENT USE VALUE | |
|----------|----------------|-----------|-------------------|-----|
| | OLD | NEW | OLD | NEW |
| LAND | \$119,500 | \$109,200 | LAND | |
| BLDG/EIG | \$167,190 | \$159,500 | BLDG/EIG | |
| TOTAL | \$286,690 | \$268,700 | TOTAL | |

SENIOR FROZEN VALUE 4988 32ND ST NE

PROPERTY ADDRESS 4988 32ND ST NE

The Assessed Value represents the true and fair value of existing property as of January 1, 2009. Parcels with new construction will receive a supplemental notice later this year with values as of July 31, 2009 as per RCW 84.40.040

MICHAEL & MARIE
HECHT MICHAEL & MARIE
1988 32ND ST NE
TACOMA WA 98402-2911



1 5. From January 2009-December 2009, Defendant's spouse was employed and
2 earned income of approximately \$800/month.

3 6. Defendant owns a home in Tacoma. Tax records assess the value of the home
4 at \$268,700. In December 2009, Defendant owed \$147,000 on his mortgage for the home.
5 The value of Defendant's estimated home equity is \$121,700.

6 7. Defendant owns a 2008 Nissan Versa and other liquid assets totaling
7 approximately \$8,000.

8 8. Defendant sells antiques and collectibles for cash to supplement his income(s).

9 9. Defendant does not receive public assistance.

10 10. Defendant is not involuntarily committed to a public health facility.

11 11. Defendant has available funds of \$92,000-\$130,000 depending on the current
12 market value of his home.

13 12. The annual income of the marital community of Defendant and his wife is not
14 \$125% or less of the current federally established poverty level.

15 13. The anticipated cost of appellate expenses in this case is less than \$92,000.

16 14. Defendant has available funds sufficient to pay all of the expenses of his

17 appeal.

90C
18 *//// INCOME TO PROCESS HIS APPEAL.*

19 *////*

20 *////*

21 *////*

22 *////*

23 *////*

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CONCLUSIONS OF LAW

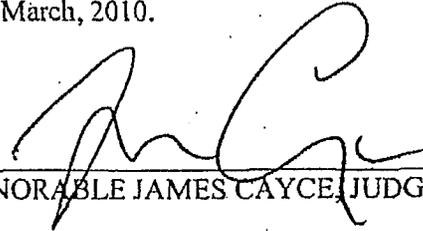
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1. Defendant is not indigent because the record presented does not satisfy any of the criteria for indigency set forth in RCW 10.101.010(1).

2. Defendant is not "indigent and able to contribute" as set forth in RCW 10.101.020 because the record presented establishes that Defendant has adequate means to pay for all of the expenses of his appeal.

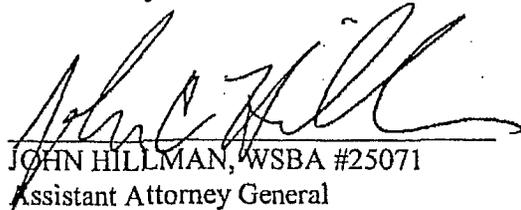
3. Defendant's motion for an order of indigency is denied.

DATED this 12 day of March, 2010.



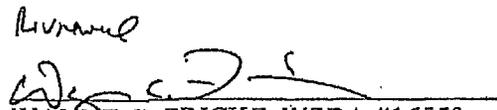
HONORABLE JAMES CAYCE, JUDGE

Presented by:


JOHN HILLMAN, WSBA #25071
Assistant Attorney General

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAR 12 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

~~Approved as to form only.~~


WAYNE C. FRICKE, WSBA #16550
Attorney for Defendant

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SUPERIOR COURT OF PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL HECHT,

Defendant.

) Case No.09-1-01051-1

) COA: 40057-0-II

) March 12, 2010

VERBATIM REPORT OF PROCEEDINGS, taken before
the HONORABLE JAMES CAYCE, at the Maleng Regional
Justice Center.

APPEARANCES

FOR THE PLAINTIFF:

Mr. John Hillman
Assistant Attorney General

FOR THE DEFENDANT:

Mr. Wayne Fricke
Attorney at Law

JOSEPH T. RICHLING
OFFICIAL COURT REPORTER
MALENG REGIONAL JUSTICE CENTER
KENT, WASHINGTON



1 (On March 12, 2010, with counsel for the
2 parties present, the following proceedings were had:)

3
4 THE COURT: This is on this morning for
5 presentation of additional findings. It seemed rather
6 obvious to me why the Court would deny the indigency
7 request. And it was obvious to the Commissioner.

8 I've always been happy to sign findings
9 presented by counsel, had you presented them. The
10 findings that were presented were those of indigency,
11 which obviously he's not.

12 MR. FRICKE: Well, I guess to the extent the
13 Court is looking at me that I should have presented
14 findings --

15 THE COURT: If you wanted additional findings,
16 I would have been happy to --

17 MR. FRICKE: If I may, Your Honor, if the
18 Court was asking that I present findings that I disagree
19 with, I don't think that's really appropriate.

20 THE COURT: You can always go to the Court of
21 Appeals. If he has sufficient money to take the matter
22 up to the Court of Appeals, he would've saved a lot of
23 money by just presenting --

24 MR. HILLMAN: The Court shouldn't assume, I
25 would hope it wouldn't assume, that I'm charging him, as

1 he put in his affidavit yesterday. And I will represent
2 as an officer of the court --

3 THE COURT: What affidavit yesterday?

4 MR. FRICKE: Your assistant said he received
5 it yesterday.

6 THE COURT: I received an affidavit that there
7 were costs associated with the record from the Pierce
8 County Court.

9 MR. FRICKE: He also did a supplemental
10 affidavit.

11 THE COURT: I don't have that.

12 MR. FRICKE: If I may approach?

13 THE COURT: Yes.

14 MR. FRICKE: What I was going to say and will
15 represent, that I have been representing him pro bono
16 throughout this part. I'm not going to be doing the
17 direct appeal, but had agreed to do this.

18 I guess what I would ask -- the Court of
19 Appeals ordered a hearing and findings. I ask to put
20 Michael Hecht on the stand to ask a couple questions to
21 add to the record.

22 THE COURT: Any objection?

23 MR. HILLMAN: No, Your Honor.

24 THE COURT: We have until 9 clock, though.

25 MR. FRICKE: I was here at 8:30.

1 MR. HILLMAN: I was late. My apologies. I
2 thought it was 8:45.

3 THE COURT: I still have until 9:00. I have a
4 sentencing.

5 You can stand. You can testify from right
6 there.

7

8

MICHAEL HECHT,

9

BEING CALLED AS A WITNESS BY THE DEFENSE,

10

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

11

12

EXAMINATION

13

BY MR. FRICKE:

14

Q. State your name for the record.

15

A. For the record, my name is Michael Hecht.

16

Q. I just want to ask a couple questions. What is
17 your monthly mortgage payment, approximately?

18

A. \$1,150 a month.

19

Q. Does that include taxes.

20

A. That includes the house taxes.

21

Q. Just to reiterate, what are your household
22 monthly expenses?

23

A. The utilities are a couple hundred dollars a

24

month. The phone is about \$50 a month. And the

25

insurance, the house insurance, is about 110 or 120 a

1 month.

2 Q. Is the house and all of the property, is that
3 separate property or community property?

4 A. Community.

5 MR. FRICKE: That's all I have, Your Honor.

6 THE COURT: Any cross?

7 MR. HILLMAN: No, Your Honor.

8 THE COURT: Any additional witnesses?

9 MR. FRICKE: That's all I have, Your Honor.

10 THE COURT: State?

11 MR. HILLMAN: Your Honor, I don't really have
12 a whole lot to add other than what's in my brief. I
13 certainly don't have any evidence to present, if that's
14 what you are asking.

15 THE COURT: No. And I don't need argument,
16 unless you want to.

17 MR. HILLMAN: No.

18 THE COURT: Any argument?

19 MR. FRICKE: Your Honor, the State's brief
20 indicates in the proposed findings that Michael Hecht is
21 receiving an annual income after taxes of 125 percent of
22 the current federally established poverty level.

23 I would suggest he's receiving zero. It's the
24 present tense. Not past tense. And therefore, I think
25 that's inaccurate.

1 His income currently is zero. In addition to
2 that, the costs are what they are on a monthly basis. I
3 will represent, as Michael Hecht has represented, I
4 believe, in his affidavit, based in my experience, my
5 knowledge of appellate law, appellate attorneys, having
6 done appeals, I believe that's a fair assessment of
7 costs. And I would expect attorney's fees to be in this
8 type of appeal, but obviously give or take, a ballpark.

9 The other representation I made in there as
10 far as transcript costs, we tried at least to get --
11 made an inquiry, I don't know if my secretary has heard
12 from your staff yet, the costs that we represented as
13 far as transcript costs, are solely from Judge Orlando's
14 court reporter, who is the court reporter that was on
15 this case. I don't have the costs for the preliminary
16 hearings which would be in addition to that, nor do I
17 have the costs for clerk's papers.

18 So I would represent to the Court, he has no
19 separate property that would allow for the costs on
20 appeal. It's also my understanding, based on
21 experience, over 24 years now approximately of doing
22 this type of work, that most court reporters, if not all
23 court reporters, require half of the anticipated and
24 estimated transcript costs upfront. And then usually
25 the other half upon the completion of the transcripts.

1 And he didn't have that money to provide.

2 And, of course, the statement of arrangements
3 is required to be done on the front end of the appeal.
4 And without the ability to pay that on the front end, he
5 can't get the transcripts. And that's in addition to
6 the clerk's papers.

7 One of the things, Your Honor, when this Court
8 originally denied the request, he did, for the record,
9 once that was denied, to make sure the appeal was
10 perfected, borrowed I think it was \$250 or whatever to
11 make sure the filing cost was paid.

12 I don't know what was going through the
13 Court's mind. But at any rate, to the extent that the
14 Court feels that there is ability through assets to make
15 payments or make partial payments in the future, what
16 the Court could do is subject to a lien from the State.
17 Because, obviously, the record is, there is no money
18 right now to perfect the appeal.

19 Even if you could compel his wife to sell
20 property, which I don't think the Court can, but even if
21 you did, it still takes time to get that money. And you
22 can't perfect the appeal if you don't have the money up
23 front.

24 I think if the Court thinks that's warranted,
25 they should do a lien process through the State agencies

1 that appoint the appellate attorneys and so on and so
2 forth.

3 That's all I have, Your Honor.

4 THE COURT: I don't think it's warranted. I
5 think he has the ability.

6 I didn't see a fair market analysis of the
7 house. Did you ever file that?

8 MR. FRICKE: We have the assessed value. Fair
9 market is fluctuating.

10 THE COURT: So we don't know what the fair
11 market value is?

12 MR. FRICKE: Fair market might be less,
13 potentially.

14 THE COURT: It might be less, it might be
15 more. You didn't provide it.

16 MR. FRICKE: That's absolutely right.

17 THE COURT: I'm going to sign the findings as
18 presented.

19 MR. FRICKE: Are you signing that he's
20 currently earning the money that is represented by the
21 State, which is how it's worded?

22 THE COURT: That he could. He has the
23 ability.

24 MR. HILLMAN: For the record, Your Honor, I
25 don't know if you got it, but a couple days ago the

1 Court of Appeals did issue a Certificate of Finality,
2 which I think gives the Court authority to hold this
3 hearing.

4 THE COURT: I did get it. Thank you.
5 I signed it. And you'll file it, or do you
6 want us to?

7 MR. FRICKE: I'm going down there. I'll file
8 it.

9 THE COURT: okay, we'll be in recess.

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PROCEEDINGS ADJOURNED

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CERTIFICATION

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I, Joseph T. Richling, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Joseph T. Richling

Date

March 09 2010 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 09-1-01051-1

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IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

| | | |
|-----------------------|---|------------------|
| STATE OF WASHINGTON, |) | No. 09-1-01051-1 |
| |) | |
| |) | |
| Plaintiff, |) | AFFIDAVIT OF |
| |) | WAYNE C. FRICKE |
| vs. |) | |
| |) | |
| MICHAEL ANDREW HECHT, |) | |
| |) | |
| Defendant. |) | |

STATE OF WASHINGTON)
: ss.
County of Pierce)

WAYNE C. FRICKE, being first duly sworn under oath deposes and says that I am
the attorney for Michael Hecht in the above-entitled matter.

That attached is an estimate of the cost for production of transcripts of the hearings in
this matter.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Wayne C. Fricke
WAYNE C. FRICKE

SUBSCRIBED AND SWORN to before me this 8th day of March,
2010.

Jack L. Hester
NOTARY PUBLIC in and for
the State of Washington
Residing at Tacoma, WA
Commission Expires 9/29/09

AFFIDAVIT OF WAYNE C. FRICKE IN
SUPPORT OF MOTION FOR ORDER OF
INDIGENCY - 1

HESTER LAW GROUP, INC., S.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157



Wayne Fricke

From: Randy York [ryork@co.pierce.wa.us]
Sent: Friday, January 15, 2010 12:15 PM
To: Wayne Fricke
Subject: Hecht transcript \$\$\$

Wayne,

I looked up the Hecht trial. Here's the numbers I came up with.

With everything from pretrial, including jury voir dire and opening statements (minus reading the instructions) there would be approximately 1493 pages, which includes an estimate of 20 pages of title, index and exhibit pages. At \$5 a page (probably the lowest in the building) the cost would be \$7465.

Jury voir dire was approximately 300 pages, opening statements approximately 36 pages. If you do not want jury voir dire, lower the cost by \$1500; if you do not want opening statements, lower the cost by \$195.

This includes two pretrial hearings, the motion to preserve testimony of dark-haired Joey and a second short hearing involving dark-haired Joey's ability to bail out of jail pending trial.

I did not report the pretrial motions held in King County, any pretrial motions heard when the case was assigned to Judge Worswick's staff or the preservation deposition or the sentencing, so those transcripts would cost more, depending on your need for those hearings.

If you have any questions, you can call me at 798-7482 or reply to this e-mail.

Randy York

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANDREW HECHT,

Petitioner.

ORDER

No. 84820-3

C/A No. 40517-2-II

CLERK

BY RONALD R. GANESSENTER

2010 DEC -1 A 9:47

FILED
SUPREME COURT
STATE OF WASHINGTON

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered this matter at its November 30, 2010, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is granted and the Petitioner's motion to supplement the record is granted. It is further ordered that this case shall be remanded to the trial court to make a ruling on indigency in light of the additional evidence regarding Petitioner's approval for food assistance by the Department of Social and Health Services.

DATED at Olympia, Washington, this 1st day of December, 2010.

For the Court

Madsen, C.J.
CHIEF JUSTICE



599/153

COPY TO CLIENT
FOR YOUR INFORMATION
DATE 12-3-10

COPY

RECEIVED
JUL 26 2010

ATTORNEY GENERAL OFFICE
SEATTLE

RECEIVED
JUL 27 2010
CLERK OF COURT OF APPEALS DIV. II
STATE OF WASHINGTON

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IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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|-----------------------|---|----------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | No. |
| |) | |
| vs. |) | |
| |) | MOTION TO SUPPLEMENT |
| MICHAEL ANDREW HECHT, |) | RECORD |
| |) | |
| Appellant. |) | COA No. 40517-2-II |
| |) | |

I. Identity of Moving Party.

The appellant, Michael Andrew Hecht, requests the relief designated in part II.

II. Statement of Relief Sought.

Mr. Hecht respectfully requests that this court allow him to supplement the record in this matter with additional information as to his financial status. Mr. Hecht requests that he be allowed to submit the attached notice from the Department of Social and Health Services regarding the granting of food stamps to Mr. Hecht.

**



1 III. Statement of Facts Relevant to Motion.

2 Mr. Hecht filed a motion for order of indigency on
3 December 8, 2009. The Pierce County Superior Court denied the
4 motion on December 16, 2009. Mr. Hecht filed a notice for
5 discretionary review to the Court of Appeals on December 18,
6 2009. The court granted that motion and the matter was
7 remanded for hearing and entry of findings of fact and
8 conclusions of law. The hearing was held on March 12, 2010 and
9 the court again denied the entry of an order of indigency. Mr.
10 Hecht filed a second motion for discretionary review on March
11 31, 2010. An order denying the motion for discretionary review
12 was filed on June 2, 2010. Mr. Hecht filed a motion to modify
13 commissioner's ruling on June 8, 2010, which motion was denied
14 on July 7, 2020. Mr. Hecht filed a petition for review to the
15 Washington State Supreme Court on or about July 20, 2010. He
16 just recently received word that he qualifies for food stamps.

17 At this time Mr. Hecht respectfully requests that this
18 court allow him to supplement the record with the attached DSHS
19 notice. (See Exhibit "A")

20 IV. Grounds for Relief and Argument.

21 A. THIS COURT SHOULD GRANT MR. HECHT'S MOTION
22 TO SUPPLEMENT RECORD.

23 RAP 18.8 allows for the waiver of the Rules of Appellate
24 Procedures. RAP 18.8 provides in pertinent part:
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(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to restrictions in sections (b) and (c).

In this context, RCW 10.101.010 defines "indigent" as a person, who in part, received food stamps at any stage of the proceeding. As such, in order to prevent a gross miscarriage of justice, this court should grant Mr. Hecht's motion allowing him to supplement the record with the attached notice from DSHS and consider this as part of its decision as to whether to accept review.

V. Conclusion.

Based on the arguments, records and files contained herein, Mr. Hecht respectfully requests that this court grant Mr. Hecht's motion allowing him to supplement the record with the attached notice from DSHS.

RESPECTFULLY SUBMITTED this 22 day of July, 2010.

HESTER LAW GROUP, INC., P.S.
Attorneys for Appellant

By: Wayne C. Fricke
Wayne C. Fricke
WSB #16550

CERTIFICATE OF SERVICE

Kathy Herbstler, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day below set forth, I delivered true and correct copies of motion to supplement record to which this certificate is attached, by United States Mail or by ABC-Legal Messengers, Inc., to the following:

John Hillman
Assistant Attorney General
800 5th Ave Ste 2000
Seattle, WA 98104-3188

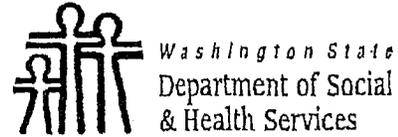
Michael Hecht
4988 NE 32nd Street
Tacoma, WA 98422

Signed at Tacoma, Washington this 22nd day of July, 2010.



Kathy Herbstler

PIERCE SOUTH CSO
PO BOX 1597
TACOMA WA 98401-1597



Phone # 253-671-7900
TTY/TDD # 253-471-4525
Toll Free # 877-501-2233

07/02/10

Client ID # 51624882

MICHAEL A HECHT
4988 32ND ST NE
TACOMA WA 98422-2911

Dear MICHAEL A HECHT

You will receive the following benefits:

| | Begin Date | End Date | |
|-----------------|----------------|-----------------|------------------|
| Food Assistance | 07/02/10 | 06/30/11 | |
| | First Issuance | Second Issuance | Future Issuances |
| Food Assistance | \$105.00 | \$109.00 | \$109.00 |

Your benefits may include a Low Income Home Energy Assistance Program (LIHEAP) cash payment.

- * This is an annual payment of \$1.00 put into your EBT account.
- * This payment allows us to use the highest utility deduction for food benefits.
- * If you want to know more, call (877-501-2233).

Your food benefit will be available on day 8 of each month.

We will add your benefits to an Electronic Benefits Transfer (EBT) account.

We will send you a letter if there are any changes to the benefits listed above.

If you disagree with any of our decisions, you may ask to have the case reviewed. You can also ask for an administrative hearing. Administrative hearing rights are included in this letter.

Pierce South - AGUI
877-501-2233

Attachment(s): 03-387 Notice Of Privacy Practices For Client Confidential Information

APPENDIX Q

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II

11 APR -8 PM 12: 01

STATE OF WASHINGTON

BY _____

Hecht

No. 41657-3-II

RULING DENYING REVIEW

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANDREW HECHT,

Appellant.

Michael Hecht seeks review of a Pierce County Superior Court decision denying his petition for indigency. This is the third time the trial court has denied Hecht's petition. The first decision was made without a hearing, and this court remanded for that purpose. After a hearing, the trial court again denied indigency, and this court denied review. Hecht sought review of that decision in the Supreme Court. That court permitted him to supplement the record with evidence that he was receiving food stamps. It then granted review and remanded to the trial court for consideration of that new evidence. The trial court again denied indigency, finding, as it had before, that Hecht has adequate means to pay all the expenses of appeal.¹ It held that his receipt of food stamps was not

¹ The court adopted and incorporated its original findings regarding Hecht's assets and income.

determinative because RAP 15.2(b) supersedes RCW 10.101.010(1). Hecht contends that the court obviously or probably erred, justifying review under RAP 2.3(b)(1) and (2).

FACTS

In November 2009, a jury convicted Hecht of patronizing a prostitute and felony harassment. His appeal of those convictions is pending. In December 2009, he filed his first petition for indigency, certifying that (1) he owned real property valued at \$239,000, (2) he owned personal property valued at \$8,100, (3) he had no income from any source, (4) his wife's income was \$800 per month, (4) he had debts in the amount of \$204,900, and (5) he could not contribute any amount to the cost of review. He has not changed these allegations.

ANALYSIS

RCW 10.101.010(1) defines "indigent" as one who is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

Hecht contends that whatever the amount of his assets, he satisfies subsection (1)(a) of the statute and must, therefore, be considered indigent.

However, RAP 15.2(b)(2) requires the trial court to deny a motion for indigency if the party has adequate means to pay all of the expenses of review. Hecht argues that the rule and the statute are in conflict. He asserts that the statute is substantive because it defines a primary right, and it thus supersedes the rule.²

Wherever possible, rules and statutes on the same subject should be harmonized. See *In re Detention of C.M.*, 148 Wn. App. 111, 116-17, 197 P.3d 1233, *review denied*, 166 Wn.2d 1012 (2009). It appears that RAP 15.2(a)(2) and RCW 10.101.010(1) can be harmonized. RCW 10.101.010(1) defines "indigent", but subsection (2) contemplates that an indigent person may have funds to pay part of the cost of the court proceeding. Thus, satisfaction of the definition in RCW 10.101.010(1) does not guarantee public funds for an appeal and does not clearly preclude a finding under RAP 15.2(a)(2) that a person who meets the definition of indigent can pay the costs of an appeal.

Moreover, even assuming that the statute must be read to preclude such a finding, Hecht has not demonstrated that the trial court obviously or probably erred in denying his petition. The statute requires a determination regarding whether the defendant has any funds to contribute, and Hecht has steadfastly refused to provide adequate information to enable the court to make that determination.

² See *Waples v. Yi*, 169 Wn.2d 152, 161, 234 P.3d 187 (2010) (substantive law creates, defines, and regulates primary rights, while procedures involve the operations of the courts by which substantive law is effectuated).

He presented evidence to the superior court that the cost of the appeal would be approximately \$20,000. He asserted that his residence was valued at \$238,000.³ He said that he owes \$147,000 on the mortgage, but that leaves \$92,000 at his disposal if he sold the house. He provided evidence that one attempt at refinancing had been rejected, but no evidence that he had made other attempts. He has not demonstrated (1) that he cannot get a loan based on the equity in the property, or (2) that he cannot sell the property and obtain sufficient funds for appeal.

In addition, Hecht asserts that he earned no income for the year 2010, and his wife is making only \$800 a month. However, he does not explain how he is meeting expenses such as his mortgage. He testified at trial that he had some income from the buying and selling of antiques. He has said that he is not now doing that, but he has not explained why. He has produced no evidence of any attempts to find employment. At an earlier hearing, he made a passing reference to medical problems, but he has not explained how they affect his ability to work, and he has produced no medical documentation.

These deficiencies in the evidence have been pointed out before, but Hecht has made no effort to remedy them. The party seeking indigent status bears the burden of proving indigency. *State v. Clark*, 88 Wn.2d 533, 563 P.2d 1253 (1977). He "must demonstrate that he has done all that he reasonably can to shoulder his costs of legal representation." *State v. McGee*, 12 Wn. App. 24,

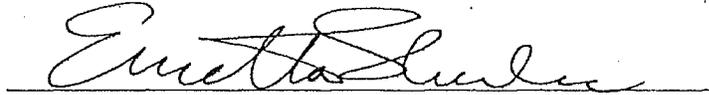
³ The only evidence of value that he produced, a property tax notice, indicated the property was worth \$268,700.

41657-3-II

27, 527 P.2d 1129 (1974). Hecht has not satisfied this burden, and until he does, he cannot show that the denial of his petition for indigency was either obvious or probable error. Accordingly, it is hereby

ORDERED that review is denied.

DATED this 8TH day of April, 2011.



Ernetta G. Skerlec
Court Commissioner

cc: Wayne Clark Fricke
John Christopher Hillman
Hon. James Cayce

APPENDIX R

CMJ
513-71
KB
(check
rule)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II RECEIVED

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL A. HECHT,
Petitioner.

MAY 13 2011

CRIMINAL JUSTICE DIVISION
ATTORNEY GENERAL'S OFFICE

No. 41657-3-II

ORDER DENYING MOTION TO MODIFY

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature]

PETITIONER filed a motion to modify a Commissioner's ruling dated April 8, 2011, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 12th day of May, 2011.

PANEL: Jj. Hunt, Penoyar, Johanson

FOR THE COURT:

[Signature]
CHIEF JUDGE

Wayne Clark Fricke
Attorney at Law
1008 Yakima Ave Ste 302
Tacoma, WA, 98405-4850

John Christopher Hillman
Atty General's Office, Criminal Justice
800 5th Ave Ste 2000
Seattle, WA, 98104-3188

RECEIVED
COURT OF APPEALS
DIVISION ONE

JUL - 6 2011

NO. 86078-5

**SUPREME COURT
OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ANDREW HECHT,

Petitioner.

DECLARATION OF
SERVICE

ORIGINAL

VICTORIA L. ROBBEN declares as follows:

On Wednesday, July 6, 2011, I deposited into the United States

Mail, first-class postage prepaid and addressed as follows:

WAYNE C. FRICKE
1008 S YAKIMA AVENUE, SUITE 302
TACOMA, WA 98405

Copies of the following documents:

- 1) Response to Motion for Discretionary Review
- 2) Declaration of Service

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

RESPECTFULLY SUBMITTED this 6th day of July, 2011.

Victoria L. Robben
VICTORIA L. ROBBEN

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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