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STATE OF WASHINGTON
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No. 86078-5
COA No. 41657-3

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, *25071*

Respondent,

vs.

MICHAEL A. HECHT,

Petitioner.

MOTION FOR DISCRETIONARY REVIEW

Wayne C. Fricke
WSBA #16550

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

ORIGINAL

I. Identity of Moving Party.

Michael A. 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 motion to modify entered on May 12, 2011 and as Appendix "B", the ruling denying review entered on April 8, 2011.

III. Issues Presented for Review.

Whether the Court of Appeals erred in affirming the trial court 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 "C". 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. See Appendix "D". This

court then remanded for a hearing and entry of Findings and Conclusions. The trial court complied. See Appendix "E". 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 "E".

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 "C".

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 "F".

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 "G" (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 "E". 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 "H". 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 "I".

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.

Mr. Hecht respectfully requests that this court accept review of this case as it involves a decision of the Court of Appeals that conflicts with an earlier decision from this court, as well as the

statutes which define "indigency" for purposes of appointing counsel at public expense.

RAP 2.3(a) allows a party to seek discretionary review of any decision of the trial court in the Court of Appeals not appealable as a matter of right. The relevant statute requires decisions related to indigency appealed using this procedure. The court may accept review if, in relevant part:

(b) *Considerations Governing Acceptance of Review*. Except as provided in section (d), discretionary review may be accepted only in the following circumstances:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; . . .

RAP 2.3(b)(1), (2) and (3).

While interlocutory review is disfavored, it is available in those instances where the error is reasonably certain and its impact on the trial manifest. Minehart v. Morning Star Boys Ranch, 156 Wn.App. 457, 232 P.3d 591 (2010). As stated in Minehart, under the above criteria,

. . . there is an inverse relationship between the certainty of error and its impact on the trial. Where

there is a weaker argument for error, there must be a stronger showing of harm.

156 Wn.App. at 462-63. Utilizing these principles, it is apparent that discretionary review is appropriate due both to the certainty of error and the potential for harm. The Court of Appeals denied these principles when it refused to accept this matter for appeal at this juncture. Moreover, the normal rules for discretionary review should not apply because in the usual situation, the defendant can seek review after the case ends in the lower courts. See RAP 2.3(c). Because this review process terminates at this juncture, the defendant has no other avenues of appeal. Thus, pursuant to RAP 13.3(2) and 13.5(b)(1) and (2), this court should accept review because the court of appeals committed probable error.

Finally, 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 AND APPELLATE COURT IGNORED THE FACTS IN FINDING THAT MR. HECHT IS NOT INDIGENT; AS SUCH THIS COURT SHOULD ACCEPT REVIEW.

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 "D", 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 commissioner ignored the statutes and the Court of Appeals simply denied the motion to modify without any comment.

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. As has been consistent in this case, both the trial court and commissioner continue to ignore the statute, first as it relates to the requirement of a hearing and now as it relates to the definition of indigency as defined in the statute. See Ruling Denying Review at 3.

It cannot be more clear that the decision ignores the cases differentiating between procedural and substantive law as defined in

Waples v. Yi, 169 Wn.2d 152, 161, 234 P.3d 187 (2010). Mr. Hecht has not “steadfastly refused” to provide information as the commissioner suggests—he has provided more than most defendants. That is the purpose of cross-examination. State v. Foster, 140 Wn.App. 266, 166 P.3d 726 (2007). The state and trial court have chosen not to engage in this process. The commissioner and trial court, have steadfastly refused to apply substantive law as it relates to his situation and ignored the order entered by the Supreme Court. In essence, they are placing an impossible burden on Mr. Hecht.

As such, the court abused its discretion in denying the request and this court should accept review as a matter of right and because Mr. Hecht has demonstrated probable error. Moreover, pursuant to RAP 13.5(b)(2) and (3), the court should accept review as the issue presented presents 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, including the total disregard of the order entered by this Court on December 1, 2010.

VI. Conclusion.

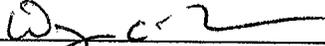
Based on the files and records herein, petitioner requests that the court hear this matter, reverse the trial court and enter an order granting his request.

VII. Appendix.

- Exhibit A Order denying motion to modify dated 5/12/11
- Exhibit B Ruling denying review dated 4/8/11
- Exhibit C Motion for order of indigency dated 12/8/09
- Exhibit D Order denying indigency entered 12/23/10
- Exhibit E Findings of fact and conclusions of law
re: request for order of indigency dated
3/12/10
- Exhibit F Transcript of 3/12/10 hearing
- Exhibit G Affidavit of Wayne C. Fricke dated 3/9/10
- Exhibit H Order of Supreme Court dated 12/1/10
- Exhibit I Motion to supplement record dated
7/27/10

RESPECTFULLY SUBMITTED this 3 day of June, 2011.

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

By: 
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 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 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Michael Hecht
4988 NE 32nd St
Tacoma, WA 98422

Signed at Tacoma, Washington this 3rd day of June, 2011.



Kathy Herbstler

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL A. HECHT,
Petitioner.

No. 41657-3-II

ORDER DENYING MOTION TO MODIFY

FILED
COURT OF APPEALS
DIVISION II
11 MAY 12 PM 3:58
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 13th 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



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL ANDREW HECHT,
Appellant.

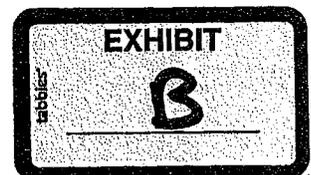
No. 41657-3-II

RULING DENYING REVIEW

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DIVISION II
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STATE OF WASHINGTON
BY

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.

December 08 2009 1:56 PM

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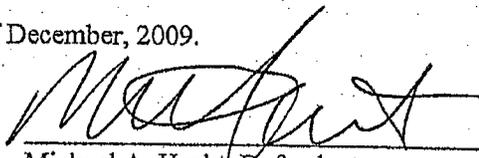
IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

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

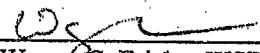
Michael A. Hecht, defendant, files a notice of appeal in the above-referenced criminal case, and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense.

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.

Motion for Order of Indigency - 2

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

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

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**REAL PROPERTY
VALUE CHANGE NOTICE**

Pierce County
Office of Assessors & Treasurers
2401 South Hill Street, Room 17
Tacoma, WA 98408-2798
MAIL DATE: JUN 20 2009
THIS IS NOT A TAX STATEMENT

PARCEL: 5715000140 VALUE FOR TAXES DUE IN 2010

	ASSESSED VALUE		CURRENT USE VALUE	
	OLD	NEW	OLD	NEW
LAND	\$119,600	\$109,200	LAND	
BLDG ETC	\$164,100	\$159,500	BLDG ETC	
TOTAL	\$283,700	\$268,700	TOTAL	
SENIOR FROZEN VALUE		OLD	NEW	
PROPERTY ADDRESS		1988 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 supplemental notices later this year with values as of July 31, 2009 as per RCW 84.40.040.

HECHT MICHAEL & MARTIE
1988 32ND ST NE
TACOMA, WA 98422-2911





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

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BY KEVIN STOCK, County Clerk
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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

MICHAEL A. HECHT,

Defendant.

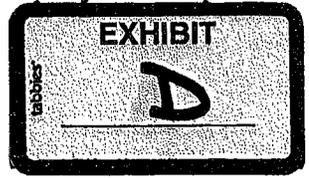
NO. 09-1-01051-1
ORDER DENYING INDIGENCY

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.

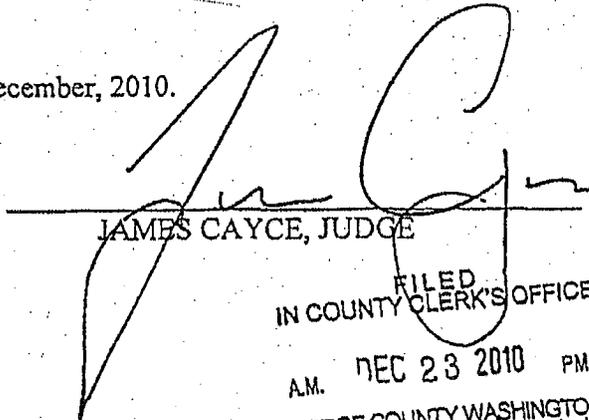
Defendant's motion is DENIED for the following reasons:

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."



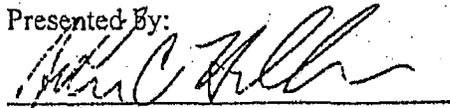
- 1 4. RCW 10.101.010 provides that "indigent" includes a person who is receiving food
- 2 stamps.
- 3 5. The defendant is currently receiving partial food stamps.
- 4 6. Defendant has "adequate means to pay all of the expenses of his appeal" due to the
- 5 equity in his home and personal property, as 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:

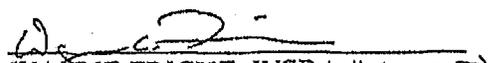
23 

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

Approved as to form only:

27 

28 WAYNE FRICKE, WSBA #16522

29 Attorney for Defendant

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.

pac *has the ability to earn sufficient*
income to process his appeal.

18 ////
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CONCLUSIONS OF LAW

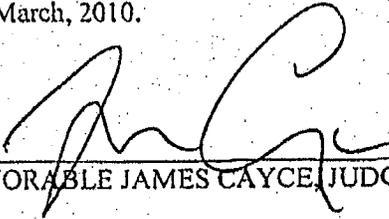
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1. Defendant is not indigent because the record presented does not satisfy any of the criteria for indigency set forth in RCW 10.101.010(1).

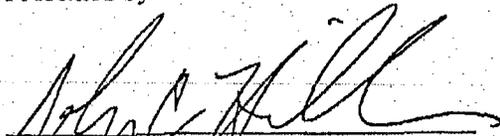
2. Defendant is not "indigent and able to contribute" as set forth in RCW 10.101.020 because the record presented establishes that Defendant has adequate means to pay for all of the expenses of his appeal.

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

DATED this 12 day of March, 2010.

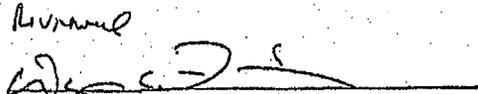

HONORABLE JAMES CAYCE, JUDGE

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

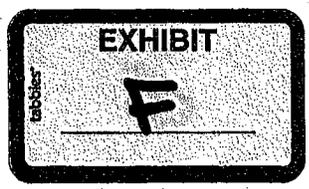
FOR THE PLAINTIFF:

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 o'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.

10

11

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

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

1/15/2010

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 N. CANNENIER

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

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IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

RECEIVED
JUL 27 2010

CLERK OF COURT OF APPEALS DIV. II
STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 vs.)
)
 MICHAEL ANDREW HECHT,)
)
 Appellant.)

No.

MOTION TO SUPPLEMENT
RECORD

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:

25

1 (a) Generally. The appellate court may, on its own
2 initiative or on motion of a party, waive or alter
3 the provisions of any of these rules and enlarge or
4 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).

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

12 V. Conclusion.

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

17 RESPECTFULLY SUBMITTED this 22 day of July, 2010.

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

20 By: Wayne C. Fricke
21 Wayne C. Fricke
22 WSB #16550
23
24
25

CERTIFICATE OF SERVICE

1
2
3 Kathy Herbstler, hereby certifies under penalty of perjury
4 under the laws of the State of Washington, that on the day
5 below set forth, I delivered true and correct copies of motion
6 to supplement record to which this certificate is attached, by
7 United States Mail or by ABC-Legal Messengers, Inc., to the
8 following:

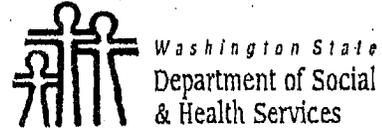
9 John Hillman
10 Assistant Attorney General
11 800 5th Ave Ste 2000
12 Seattle, WA 98104-3188

11 Michael Hecht
12 4988 NE 32nd Street
13 Tacoma, WA 98422

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

15 
16 _____
17 Kathy Herbstler
18
19
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21
22
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24
25

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

OFFICE RECEPTIONIST, CLERK

To: Kathy Herbstler
Subject: RE: COA# 41657-3 State v. Hecht Motion for Discretionary Review

Rec'd 6/3/11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kathy Herbstler [<mailto:Kathy@hesterlawgroup.com>]
Sent: Friday, June 03, 2011 3:30 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: COA# 41657-3 State v. Hecht Motion for Discretionary Review

Motion for discretionary review attached for filing.

Kathy Herbstler
Paralegal

Hester Law Group, Inc., P.S.
1008 S. Yakima Ave., Suite 302
Tacoma, WA 98405
office (253) 272-2157
fax (253) 572-1441
email kathy@hesterlawgroup.com
web www.hesterlawgroup.com

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