

FILED
Feb 27, 2012
Court of Appeals
Division III
State of Washington

No. 30003-0-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

BLAYNE COLEY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON, FOR GRANT COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. The trial court denied Mr. Coley the due process of law when it placed the burden of proving his incompetency on him.

In State v. Wicklund, the court concluded that once the provisions of RCW 10.77 are triggered “the burden of establishing [a defendant’s] competency [is] placed on the State.” 96 Wn.2d 798, 805, 638 P.2d 1241 (1982); see also, Born v. Thompson, 154 Wn.2d 749, 753-54, 117 P.3d 1098 (2005) (noting there was no dispute that State bore the burden of proof, rather the only dispute was what standard the State must satisfy); State v. Hurst, 158 Wn.App. 803, 811, 244 954 (2010) (same), affirmed on other grounds, __ P.3d __, 2012 WL 243675. Nonetheless, the State maintains “the law is unclear as to which party bears the burden.” Brief of Respondent at 9. Yet the State does not cite a single case which has placed the burden on the defendant. There is no ambiguity in the law.

Wicklund, Born and Hurst have recognized that RCW 10.77 places the burden on the State. Because the RCW 10.77 places the burden on the State, the trial court’s failure to comply with that procedure deprived Mr. Coley of due process. State v. Heddrick, 166 Wn.2d 898, 904, n3, 215 P.3d 201 (2009).

2. The trial court erred in refusing to address Mr. Coley's request to proceed pro se.

Article I, section 22 of the Washington Constitution explicitly guarantees a defendant the right to “appear and defend in person, or by counsel.” State v. Madsen, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). “Incompetency may be a legitimate basis to find a request for self-representation equivocal, involuntary, unknowing, or unintelligent. However, simply deferring ruling is incorrect as a matter of law.” Id. 168 Wn.2d at 509.

Apparently unaware of the plain and recent holding of Madsen, the State responds that Mr. Coley's “April 20, 2009, request was put in abeyance and then later abandoned.” Brief of Respondent at 13. First, the State makes no effort to provide a legally significant distinction between holding the motion in “abeyance” and “deferring” ruling on it. Mr. Coley maintains there is none, as by whatever term the court is not ruling on his motion as required. As Madsen makes clear the trial court's failure to address the motion “is incorrect as a matter of law.” 168 Wn.2d at 509.

Second, Mr. Coley did not abandon his motion. Instead, following a lengthy confinement at Eastern, Mr. Coley was again before the court in November 2009, at which time he continued to

voice his displeasure with his attorney. 11/9/09 RP 8. After several lengthy delays, a competency hearing was finally held in June 2010. At that hearing, Mr. Coley again stated he wished to represent himself. 6/11/10 RP 140-42. Although the court had still not ruled on Mr. Coley's April 2009 motion to represent himself, and did not rule on the request then in front of it, the Court told Mr. Coley he would need to renew the motion at a later date. 6/11/10 RP 143-44, 162.

Mr. Coley timely, repeatedly and unequivocally requested to represent himself. The trial court never ruled on his requests. This Court must reverse Mr. Coley's convictions.

B. CONCLUSION

For the reasons above this Court must reverse Mr. Coley's convictions.

Respectfully submitted this 24th day of February, 2011.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 30003-0-III
)	
BLAYNE COLEY,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF FEBRUARY, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] D. ANGUS LEE CAROLE HIGHLAND GRANT COUNTY PROSECUTOR'S OFFICE PO BOX 37 EPHRATA, WA 98823-0037	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] BLAYNE COLEY 345865 MONROE CORRECTIONAL COMPLEX PO BOX 777 MONROE, WA 98272	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF FEBRUARY, 2012.

X _____ 

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