

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Aug 15, 2014, 3:53 pm  
BY RONALD R. CARPENTER  
CLERK

E

hjh

NO. 89302-1

RECEIVED BY E-MAIL

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Appellant

v.

JOHN A. JONES, III

Respondent

~~SUPPLEMENTAL BRIEF OF APPELLANT~~ <sup>PETITIONER</sup>

MARK K. ROE  
Prosecuting Attorney

KATHLEEN WEBBER  
Deputy Prosecuting Attorney  
Attorney for Appellant

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

 ORIGINAL

**TABLE OF CONTENTS**

I. ISSUES ..... 1

II. STATEMENT OF THE CASE..... 1

III. ARGUMENT ..... 1

    A. THE LEGISLATURE HAS THE AUTHORITY TO MAKE A  
    POLICY DECISION CONCERNING HOW MUCH INFORMATION  
    A COURT CAN CONSIDER AT RE-SENTENCING..... 1

        1. The “No Second Chance” Rule Is A Policy Adopted By The Court  
        That Favors Judicial Economy. .... 4

        2. The “No Second Chance” Rule Is Not Based On A Constitutional  
        Construction Of the Sentencing Reform Act..... 10

IV. CONCLUSION ..... 17

## TABLE OF AUTHORITIES

### WASHINGTON CASES

<u>Brown v. Owen</u> , 165 Wn.2d 706, 206 P.3d 310 (2009) .....	3
<u>Carrick v. Locke</u> , 125 Wn.2d 129, 882 P.2d 173 (1994).....	12, 13
<u>City of Fircrest v. Jensen</u> , 158 Wn.2d 384, 143 P.3d 776 (2006) .	12, 13
<u>Danny v. Laidlaw Transit Services, Inc.</u> 165 Wn.2d 200, 193 P.3d 128 (2008).....	5
<u>In re Cadwallader</u> , 155 Wn.2d 867, 123 P.3d 456 (2005) .....	2, 10
<u>In re Rountree</u> , 35 Wn. App. 557, 668 P.2d 1292 (1983) .....	6
<u>State v. Ammons</u> , 105 Wn.2d 175, 713 P.2d 719 (1986) .....	14
<u>State v. Benn</u> , 120 Wn.2d 631, 845 P.2d 289 (1993).....	10, 13
<u>State v. Bergstrom</u> , 162 Wn.2d 87, 169 P.3d 816 (2007).....	2
<u>State v. Eggleston</u> , 164 Wn.2d 61, 187 P.3d 233 (2008) .....	11
<u>State v. Ford</u> , 137 Wn.2d 472, 973 P.2d 452 (1999)...	2, 3, 4, 5, 6, 8
<u>State v. Gresham</u> , 173 Wn.2d 405, 269 P.3d 207 (2012).....	13
<u>State v. Hughes</u> , 154 Wn.2d 118, 110 P.3d 192 (2005).....	15
<u>State v. Hunley</u> , 175 Wn.2d 901, 287 P.3d 584 (2012) .....	2, 3, 4
<u>State v. Jeffries</u> , 105 Wn.2d 398, 717 P.2d 722 (1986).....	14, 16
<u>State v. Jordan</u> , 180 Wn.2d 456, 325 P.3d 181 (2014) .....	11, 12
<u>State v. Kirkman</u> , 159 Wn.2d 918, 155 P.3d 125 (2007) .....	8
<u>State v. Lopez</u> , 147 Wn.2d 515, 55 P.3d 609 (2002).....	2, 5, 10
<u>State v. Lord</u> , 117 Wn.2d 829, 822 P.2d 177 (1991) .....	14
<u>State v. McCorkle</u> , 88 Wn. App. 485, 945 P.2d 736 (1997).....	5, 10
<u>State v. Moreno</u> , 147 Wn.2d 500, 58 P.3d 265 (2002) .....	13
<u>State v. Mutch</u> , 171 Wn.2d 646, 254 P.3d 803 (2011).....	11
<u>State v. Olsen</u> , 180 Wn.2d 468, 325 P.3d 187 (2014).....	12
<u>State v. Parker</u> , 132 Wn.2d 182, 937 P.2d 575 (1997).....	16
<u>State v. Pryor</u> , 115 Wn.2d 445, 799 P.2d 244 (1990).....	7, 16
<u>State v. Russell</u> , 171 Wn.2d 118, 249 P.3d 604 (2011).....	8
<u>State v. Stewart</u> , 72 Wn. App. 885, 866 P.2d 677 (1994), <u>affirmed</u> , 125 Wn.2d 893 (1995).....	7
<u>State v. Strauss</u> , 119 Wn.2d 401, 832 P.2d 78 (1992) .....	11
<u>State v. Strine</u> , 176 Wn.2d 742, 293 P.3d 1177 (2013).....	6

### FEDERAL CASES

<u>Blakely v. Washington</u> , 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).....	15
<u>Monge v. California</u> , 524 U.S. 721, 118 S.Ct. 2246, 141 L.Ed.2d 615 (1998).....	11

<u>North Carolina v. Pearce</u> , 395 U.S.711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969).....	11
--	----

**U.S. CONSTITUTIONAL PROVISIONS**

Fourth Amendment.....	7
-----------------------	---

**WASHINGTON STATUTES**

Laws of Washington 2008, Ch. 231, §1.....	2, 10
Laws of Washington 2008, Ch. 231, §1.....	10
Laws of Washington 2008, Ch. 231, §4.....	3
RCW 10.95.120.....	14
RCW 10.95.130(2)(b).....	14
RCW 9.94A.500.....	2, 10
RCW 9.94A.525.....	2, 10
RCW 9.94A.530.....	2, 3, 4, 10, 15
RCW 9.94A.530(2).....	1, 9, 16

**COURT RULES**

RAP 2.5.....	6, 8
--------------	------

## I. ISSUES

The court granted review on the question of whether the State should be permitted to introduce new evidence to establish the comparability of an out of state conviction pursuant to RCW 9.94A.530(2) after the case was remanded for resentencing.

## II. STATEMENT OF THE CASE

The facts of this case have been adequately set out in the State's opening brief in the Court of Appeals and the petition for review.

## III. ARGUMENT

### A. THE LEGISLATURE HAS THE AUTHORITY TO MAKE A POLICY DECISION CONCERNING HOW MUCH INFORMATION A COURT CAN CONSIDER AT RE-SENTENCING.

This Court has previously established standards governing what information a court may consider on remand, after a defendant successfully challenges the computation of his offender score. Those standards reflect policy choices, not constitutional requirements. As a result, they can and have been altered by the Legislature.

This Court articulated what information the trial court may consider upon remand when a defendant has successfully challenged the calculation of his offender score on appeal in State

v. Ford, 137 Wn.2d 472, 485-486, 973 P.2d 452 (1999). Where the disputed issues have been fully argued to the sentencing court then the State is held to the record made at the original sentencing hearing. Id. Where the defendant has not put the court and the State on notice that there were any defects in the offender score calculation then the court may hold an evidentiary hearing where the State is permitted to prove the classification of disputed convictions. Id. This approach has been applied since that time. State v. Lopez, 147 Wn.2d 515, 55 P.3d 609 (2002), In re Cadwallader, 155 Wn.2d 867, 123 P.3d 456 (2005), State v. Bergstrom, 162 Wn.2d 87, 169 P.3d 816 (2007), State v. Hunley, 175 Wn.2d 901, 287 P.3d 584 (2012).

In 2008 the Legislature amended RCW 9.94A.530 in several respects. The legislature amended that statute as well as RCW 9.94A.500 and RCW 9.94A.525 "in order to ensure that sentence imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. Laws of Washington 2008 Ch. 231, §1. In particular the legislature amended the statute to read "On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding

criminal history, including criminal history not previously presented.”  
Laws of Washington 2008, Ch. 231, §4.

The trial court followed this Court's line of authority beginning with Ford rather than the legislative amendment permitting the State to supplement the record when it sentenced the respondent after appeal. The Court of Appeals affirmed the trial court finding that it was bound by this Court's precedence set out in Ford. Slip Opinion at 11. The Court of Appeals held that if the State was to have the opportunity to provide new information at a resentencing hearing as provided by statute then the State was required to establish that the rule in Ford was not based on constitutional principles. Slip Opinion at 11-12.

“The legislature has plenary power to enact, amend, or repeal a statute, except as restrained by the state and federal constitutions.” Brown v. Owen, 165 Wn.2d 706, 722, 206 P.3d 310 (2009). Thus the legislature may amend a statute after the Court had construed the statute. Hunley, 175 Wn.2d at 914. However it may not amend the statute so as to modify or impair a judicial interpretation of the constitution. Id.

In Hunley this Court considered the 2008 amendments to RCW 9.94A.530 that made a criminal history summary prima facie

evidence of a defendant's criminal history which was proved if the defendant did not dispute that summary in Hunley. In Ford this Court found due process required the State to bear the burden of proof when establishing criminal history. Ford, 137 Wn.2d at 481-482. Because the amendments at issue in Hunely shifted the burden of proof to the defendant, thereby altering the constitutional construction of the SRA, they were invalid. Hunley, 175 Wn.2d at 915.

Unlike the amendments at issue in Hunely the "no second chance" rule articulated in Ford is a policy decision by the court. Because it is not based on constitutional principles the statutory amendments permitting the parties to supplement the record on remand after appeal or collateral attack are valid. The trial court erred when it did not give effect to that statutory amendment.

#### **1. The "No Second Chance" Rule Is A Policy Adopted By The Court That Favors Judicial Economy**

Here the portion of RCW 9.94A.530 at issue does not relate to who bears the burden of proof and how that burden is sustained at sentencing as the amendments in Hunley did. Rather it addresses what happens at resentencing after appeal, regardless of whether the defendant originally objected to the evidence

supporting his criminal history or not. The question then is whether that portion of the Court's decision in Ford, addressing the remedy upon remand after finding the trial court erred in calculating the defendant's offender score, is based on policy or constitutional considerations.

Unlike its discussion regarding the burden of proof at sentencing in Ford, this Court did not articulate the basis for its decision regarding the nature of the resentencing hearing. Ford, 137 Wn.2d at 485. It did rely on State v. McCorkle, 88 Wn. App. 485, 500, 945 P.2d 736 (1997). Id. Like Ford, the Court in McCorkle stated the rule without articulating the reason. Policy decisions may be made by both the judicial and legislative branches of government. See e.g. Danny v. Laidlaw Transit Services, Inc. 165 Wn.2d 200, 193 P.3d 128 (2008). Given how the issue was handled in Lopez, the "no second chance rule" articulated in Ford appears to be based on a policy that favors conserving judicial resources.

In order to hold the State to the original record, this Court requires the defendant to make a specific objection at sentencing so that the trial court would have the opportunity to correct the error. Lopez, 147 Wn.2d at 521. This rule is consistent with RAP

2.5 which limits the kinds of issues that may be considered on appeal. The contemporaneous objection requirement serves the goal of judicial economy by allowing courts to correct errors when they occur, and thereby avoid the expense of appellate review and further trials. State v. Strine, 176 Wn.2d 742, 749-750, 293 P.3d 1177 (2013).

It follows that the rule precluding the State from presenting additional evidence when the defendant has made a specific objection at sentencing likewise serves the goal of judicial economy. If the State was put on notice that there may be a defect in its evidence supporting the defendant's criminal history, it then may have the opportunity to correct those possible defects in the trial court. If the record is supplemented then potentially it may avoid an appeal challenging the defendant's offender score.

Decisions from this Court and the Court of Appeals support the conclusion that the no second chance rule articulated in Ford was based on a public policy favoring judicial economy rather than constitutional considerations. In some cases the Court has precluded a defendant from later litigating an issue when he had the opportunity to do so but waived it. In re Rountree, 35 Wn. App. 557, 668 P.2d 1292 (1983). There, a defendant whose appeal was

dismissed after he escaped was not permitted to raise a Fourth Amendment claim on collateral review because the defendant had already had a full and fair opportunity to litigate that issue which was all that he was constitutionally entitled to. Id. at 560.

In other cases, however, the Court has concluded that circumstances would favor reopening the proceedings to take additional evidence. In several cases where the court found the grounds for an exceptional sentence was not supported by the record the trial court was permitted to consider new evidence. State v. Stewart, 72 Wn. App. 885, 891, 866 P.2d 677 (1994), affirmed, 125 Wn.2d 8923 (1995), State v. Pryor, 115 Wn.2d 445, 456-457, 799 P.2d 244 (1990). In Pryor the court held that an exceptional sentence based on future dangerousness of the defendant had to be supported by non-amenability to treatment. Pryor, 115 Wn.2d at 454. Where the trial court misapplied the law by imposing an exceptional sentence on that basis without evidence regarding amenability to treatment, remand for further fact finding was appropriate. Id. at 456-457, Stewart, 72 Wn. App. at 891.

Similarly, while the contemporaneous objection rule is based on considerations of judicial economy, the Court has made

exceptions for questions involving the court's jurisdiction, insufficient evidence, and manifest error affecting a constitutional right. State v. Kirkman, 159 Wn.2d 918, 934-935, 155 P.3d 125 (2007), RAP 2.5. The rule is discretionary, affording the court the flexibility of reviewing an issue even though it does not fall within one of the exceptions outlined in the court rule. State v. Russell, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). Thus the Court has recognized that there are circumstances where other considerations are favored over judicial economy.

These authorities demonstrate that the no "second chance rule" articulated in Ford is based on a policy that favors judicial economy. It is a reasonable policy that encourages the parties to fully litigate a matter in the trial court where errors may be corrected at the time they are alleged to have been made. However it is a policy that can prevent the court from giving effect to the purpose of the SRA by imposing a sentence that does not reflect the offender's actual criminal history. This case demonstrates that situation.

The defendant had convictions from California that were originally thought to be legally comparable to Washington offenses. Only after the defendant appealed did the parties realize that murder as defined in California can under unusual circumstances

differ from murder as defined in this State. Additionally because criminal procedure in California is different from that in Washington, it was originally not clear that the documentation supporting the factual comparability of those offenses was inadequate. The trial court clearly believed that the defendant's criminal history was relevant to the length of the exceptional sentence. The original 120 month sentence was based on the nature of the assault the respondent had been convicted of and the defendant's criminal history. When the trial court concluded it could not include the murder and attempted murder convictions, in the defendant's criminal history it imposed only half that time.

The amendment to RCW 9.94A.530(2) embodies a policy that favors accuracy in sentencing. When it enacted the amendments to that statute the legislature stated

It is the legislature's intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act's goals of:

- (1) Ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Ensuring punishment that is just; and
- (3) Ensuring that sentences are commensurate with the punishment imposed on others for committing similar offenses.

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. ...

Laws of Washington 2008, Ch. 231, §1 (emphasis added)

The legislature recognized that there may be reasons why the record has not been adequately developed at an original sentencing hearing. The amendment is designed to serve the purposes of the SRA. "The power of the Legislature over sentencing is plenary" *State v. Benn*, 120 Wn.2d 631, 670, 845 P.2d 289 (1993). For that reason the Legislature has the authority to set a policy that gives effect to the purpose of its sentencing statutes.

## **2. The "No Second Chance" Rule Is Not Based On A Constitutional Construction Of the Sentencing Reform Act**

This Court has previously considered several constitutional challenges to sentencing procedures. None are implicated by the legislature's amendment allowing the parties to supplement the record at resentencing after appeal or collateral attack.

**a. Double Jeopardy**

Double jeopardy prohibits successive prosecutions after acquittal or conviction and multiple criminal punishments for the same offense. North Carolina v. Pearce, 395 U.S.711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). Double jeopardy principals do not apply to sentencing proceedings, except in capital cases. Monge v. California, 524 U.S. 721, 118 S.Ct. 2246, 141 L.Ed.2d 615 (1998). This Court has likewise held double jeopardy does not apply to sentencing proceedings. State v. Eggleston, 164 Wn.2d 61, 187 P.3d 233 (2008), State v Mutch, 171 Wn.2d 646, 665, 254 P.3d 803 (2011). It is therefore constitutionally permissible to allow the trial court to hold an evidentiary hearing when the reviewing court determines the record is insufficient to support the sentence imposed. State v. Strauss, 119 Wn.2d 401, 412, 832 P.2d 78 (1992). The amendment therefore does not implicate a defendant's protection against double jeopardy.

**b. Due Process**

Due process prohibits a defendant from being sentenced on information that is false, lacks minimum indicia of reliability, or is unsupported by the record. State v. Jordan, 180 Wn.2d 456, 462,

325 P.3d 181 (2014). Nonetheless a trial court may consider a broad scope of information at sentencing. Id.

In this case the State sought to supplement the record in order to establish the factual comparability of the respondent's California convictions for murder and attempted murder. Factual comparability determinations can implicate the defendant's right to due process as well as the right to trial by jury. Id. at 463. This Court recently held that these constitutional rights are not violated in Washington's sentencing scheme where the factual comparability of prior offenses is limited to those facts that are admitted, stipulated to, or proved beyond a reasonable doubt. State v. Olsen, 180 Wn.2d 468, 325 P.3d 187 (2014). Nothing in the amendment permitting the parties to supplement the record on remand contravenes these decisions.

**c. Separation of Powers**

Nor is the doctrine of separation of powers implicated by the legislative amendment. The doctrine is designed to prevent one branch of government from usurping the power of another branch. City of Fircrest v. Jensen, 158 Wn.2d 384, 393, 143 P.3d 776 (2006). The doctrine does allow for a measure of "flexibility and practicality." Carrick v. Locke, 125 Wn.2d 129, 135, 882 P.2d 173

(1994). Thus the doctrine is not implicated when different branches of government engage in overlapping activities. Fircrest, 158 Wn.2d at 393. When considering whether the doctrine had been violated the question is whether the activity of one branch “threatens the independence or integrity or invades the prerogatives of another” Id quoting State v. Moreno, 147 Wn.2d 500, 505-06, 58 P.3d 265 (2002).

While the functions of the Legislature and the Judiciary are not defined with specificity this Court has said that generally it is the province of the judiciary to prescribe procedural rules that govern the mechanical operations of the court. Id. at 394. The rules of evidence are procedural rules that are within the court’s power to adopt. State v. Gresham, 173 Wn.2d 405, 428, 269 P.3d 207 (2012). While the legislature may also enact statutes governing the admission of evidence, if the statute irreconcilably conflicts with a court rule then it is invalid. Id.

In contrast the legislature’s function is to enact substantive laws that prescribe norms for societal conduct and punishment for violation of those laws. Fircrest, 158 Wn.2d at 393. For that reason the legislature has plenary power over sentencing. Benn, 120 Wn.2d 670. It has the power to not only to fix punishment for

criminal offenses but to prescribe procedures for doing so. Id. This Court held the Sentencing Reform Act (SRA) did not violate the separation of powers doctrine in State v. Ammons, 105 Wn.2d 175, 179-181, 713 P.2d 719 (1986). The legislature had the power to enact the sentencing scheme, as well as structure the trial court's discretion and the appellate court's review of sentences. Id.

In the context of capital sentencing this Court has rejected the argument that procedures prescribed by the Legislature encroach on the judiciary. Id., State v. Jeffries, 105 Wn.2d 398, 424, 717 P.2d 722 (1986), State v. Lord, 117 Wn.2d 829, 915-916, 822 P.2d 177 (1991). In Jeffries the defendant argued that RCW 10.95.130(2)(b) violated the separation of powers doctrine because it limited this Court's proportionality review to other death penalty cases reported since 1965 and those cases where a report had been filed with the court as prescribed by RCW 10.95.120. This Court rejected the argument finding proportionality review is not constitutionally mandated. Jeffries, 105 Wn.2d at 424. It concluded that the procedure prescribed by the Legislature for death penalty review was part of its authority to set punishment for criminal offenses. Id.

This Court has refused to infer a sentencing process where one has not been provided by statute. Washington's sentencing scheme was altered as a result of Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). As a result exceptional sentences based on judicial fact finding were invalidated. State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005). Remand to convene a jury to consider whether there was a factual basis to support those sentences was not appropriate because the legislature had not enacted a procedure for doing so. Id. at 149. "[I]t is the function of the legislature and not the judiciary to alter the sentencing process." Id. (emphasis in the original)

The amendment to RCW 9.94A.530 permitting the parties to supplement the record at re-sentencing is consistent with other sentencing procedures enacted by the Legislature. The type of information that is considered by the trial court is an essential component of any sentence under the SRA. Without a complete record of the defendant's criminal history, the sentencing court is unable to accurately determine a defendant's offender score, and consequently the true standard range for a given offense. An accurate standard range is so important to the sentencing function that when it has been improperly calculated this Court has

remanded for resentencing even when the trial court had imposed an exceptional sentence. State v. Parker, 132 Wn.2d 182, 189-190, 937 P.2d 575 (1997). Although due process requires the sentence imposed be supported by the record, it does not dictate how information supporting a sentence comes before the court. Thus, like the capital sentencing review at issue in Jeffires, the amendment at issue here is properly within the province of the legislature in fixing punishment for criminal offenses.

Even if this Court concludes that the “no second chance” rule is a procedural rule relating to the mechanical operations of the court the amendment to RCW 9.94A.530(2) may be harmonized with the court’s rules relating to when the record after appeal may be supplemented. As noted where the court has made a legal error in sentencing this Court allowed the trial court to entertain new evidence on remand after reviewing a sentence. Pryor, 115 Wn.2d at 456-457. The amendment to RCW 9.94A.530(2) similarly allows the court to entertain new evidence when it has made a legal error by determining a defendant’s offender score based on insufficient evidence of his or her criminal history. It is therefore consistent with other circumstances in which the court has permitted the record to be supplemented after appeal.

The statutory amendment at issue does not alter the kind of evidence necessary in order to prove the defendant's prior criminal history. It only provides for an expanded opportunity to present evidence. And because it is within the Legislature's authority to set punishment and proscribe procedures for imposing sentences, the amendment does not violate the separation of powers doctrine. Thus the amendment does not alter or impair this Court's interpretation of the constitution.

#### **IV. CONCLUSION**

The "no second chance rule" articulated in Ford was based on a policy decision favoring judicial economy. It was not based on any constitutional considerations. Because the legislature has authority to set punishment and prescribe procedures for sentencing it had the authority to amend the statute to give effect to a different policy that favors accuracy in sentencing. For that reason the State asks the Court to reverse the Court of Appeals and remand to the trial court for further proceedings.

Respectfully submitted on August 15, 2014.

MARK K. ROE  
Snohomish County Prosecuting Attorney

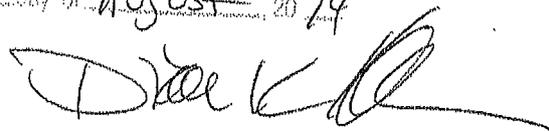
By: Kathleen Webber  
KATHLEEN WEBBER WSBA #16040  
Deputy Prosecuting Attorney  
Attorney for Respondent

*Sent via e-mail*

~~The copy I mailed in a properly stamped envelope~~  
was passed to the attorney for the defendant that  
contained a copy of this document.

I do hereby certify under penalty of perjury under the laws of the  
State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office  
on 15<sup>th</sup> day of August, 20 14



## OFFICE RECEPTIONIST, CLERK

---

**To:** Kremenich, Diane  
**Subject:** RE: State v. John A. Jones III

Rec'd 8/15/14

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:** Kremenich, Diane [mailto:Diane.Kremenich@co.snohomish.wa.us]  
**Sent:** Friday, August 15, 2014 3:53 PM  
**To:** OFFICE RECEPTIONIST, CLERK; tom@washapp.org  
**Subject:** State v. John A. Jones III

Good Afternoon....

RE: State v. John A. Jones III  
Supreme Court No. 89302-1

Please accept for filing the attached document: State's Supplemental Brief of Appellant

Please let me know if there is a problem opening the attachment.

Thanks.

Diane.

Diane K. Kremenich  
 Snohomish County Prosecuting Attorney - Criminal Division  
Legal Assistant/Appellate Unit  
Admin East, 7th Floor  
(425) 388-3501  
[Diane.Kremenich@snoco.org](mailto:Diane.Kremenich@snoco.org)

### CONFIDENTIALITY STATEMENT

This message may contain information that is protected by the attorney-client privilege and/or work product privilege. If this message was sent to you in error, any use, disclosure or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

 please consider the environment before printing this email

**From:** SPA\_APP Copier@snoco.org [mailto:SPA\_APP Copier@snoco.org]  
**Sent:** Friday, August 15, 2014 7:44 AM  
**To:** Kremenich, Diane  
**Subject:** Message from KMBT\_601