

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Nov 16, 2015, 1:40 pm
BY RONALD R. CARPENTER
CLERK

E

91531-8

IN THE SUPREME COURT FOR THE
STATE OF WASHINGTON

RECEIVED BY E-MAIL
bji

STATE OF WASHINGTON, RESPONDENT

v.

CURTIS GUY STUMP, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

Gretchen E. Verhoef
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662



ORIGINAL

INDEX

I. ISSUES PRESENTED1

II. STATEMENT OF THE CASE1

III. ARGUMENT4

 A. THE STATE IS THE PREVAILING PARTY WHERE DEFENDANT’S ATTORNEY FILED A MERITORIOUS MOTION TO WITHDRAW AS COUNSEL PURSUANT TO *ANDERS* v. *CALIFORNIA* AND THE APPELLATE COURT AFFIRMED THE CRIMINAL JUDGMENT.4

 1. The defendant was not the substantially prevailing party on appeal where his attorney moved to withdraw based on *Anders* and the Court of Appeals affirmed his conviction.4

 2. The State was the prevailing party where the court affirmed a defendant’s conviction, even where defendant’s attorney prevailed on a motion to withdraw pursuant to *Anders*.10

 3. The imposition of appellate costs is appropriate because the court determined the merits of the case and the rules provide a mechanism for defendants to abandon frivolous appeals without cost.11

 B. THE “CONFLICT” BETWEEN DIVISION ONE AND THREE CASES CITED BY DEFENDANT IS EXPLAINED BY THE FACT THAT THE IMPOSITION OF COSTS IS AT THE DISCRETION OF THE COURT.16

 C. *BLAZINA* HAS NO EFFECT ON IMPOSITION OF APPELLATE COSTS UNDER RCW 10.73.160; A DEFENDANT’S ABILITY TO PAY MAY BE ADDRESSED IN THE SENTENCING COURT IF THE DEFENDANT IS NOT IN DEFAULT.18

IV. CONCLUSION 20

TABLE OF AUTHORITIES

WASHINGTON CASES

American Nursery Prods., Inc. v. Indian Wells Orchard, 115 Wn.2d 217, 797 P.2d 477 (1990).....6

Marine Enter., Inc. v. Security Pac. Trading Corp., 50 Wn. App. 696, 915 P.2d 1146 (1996).....6

Osborne v. Grant County, 130 Wn.2d 615, 926 P.2d 911 (1996)7

Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn. App. 762, 677 P.2d 773 (1984).....6

State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997).....19

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015).....19

State v. Devlin, 164 Wn. App. 516, 267 P.3d 369 (2011).....20

State v. Keeney, 112 Wn.2d 140, 769 P.2d 295 (1989)4, 5, 11

State v. Nolan, 141 Wn.2d 620, 8 P.3d 300 (2000)4, 6, 17

State v. Sims, 152 Wn. App. 526, 216 P.3d 470 (2009).....13

State v. Theobald, 78 Wn.2d 184, 470 P.2d 188 (1970).....9

State v. W.C.F., 97 Wn. App. 401, 985 P.2d 946 (1999).....17

Suquamish Indian Tribe v. Kitsap County, 92 Wn. App. 816, 965 P.2d 636 (1998).....11, 12

FEDERAL COURT CASES

Anders, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 12

STATUTES

RCW 10.73.160 5

RULES

RAP 14.2..... 6, 13
RPC 1.4..... 14
RPC 3.1..... 9

OTHER

American Bar Association, Fourth Edition of the Criminal Justice
Standards for the Defense Function, 4.9-2..... 15
American Bar Association, Standards for Criminal Justice, 21-2.3 14

I. ISSUES PRESENTED

1. Whether the state is the substantially prevailing party and appellate costs may be imposed where the Court of Appeals determines there are no non-frivolous issues presented by the defendant on appeal and affirms his conviction?

2. Whether there is a conflict in the Court of Appeals regarding the discretionary imposition of costs on meritless appeals where counsel withdraws pursuant to *Anders v. California*?

3. Whether *State v. Blazina* controls the discretionary imposition of appellate costs pursuant to RCW 10.73.160?

II. STATEMENT OF THE CASE

Defendant was convicted after a bench trial in Spokane superior court of one count of possession of a controlled substance – heroin. Attach. A. He was sentenced to a residential drug offender sentencing alternative, which included community custody and inpatient treatment. Attach. B.

Indigent defense counsel was assigned to represent Mr. Stump on appeal. On May 22, 2014, defendant's attorney filed a motion to withdraw and a brief in support thereof. Attach. C. Pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and *State v. Hairston*, 133 Wn.2d 534, 946 P.2d 396 (1997), defendant's attorney

stated she had diligently reviewed the record and clerk's papers, researched the law, and conferred with other attorneys concerning possible legal and factual bases for appellate review. Attach. C at 1. Counsel requested to withdraw from the appeal because she "concluded there is no basis in law or fact upon which a claim for relief could be granted." *Id.* at 2. Counsel requested the court to "independently review the record in order to determine whether there is any further basis for appellate review." *Id.* In the event that the court concurred with counsel's evaluation of the merits of the case, counsel sought to withdraw as appointed counsel for Mr. Stump "without prejudice to Mr. Stump's right to proceed *pro se.*" *Id.* Counsel briefed the possible issues for review as required by RAP 18.3, including the sufficiency of the charging document, sufficiency of the evidence, and the legality of defendant's sentence. *Id.* at 5-9.

The State responded to the *Anders* motion and brief, concluding that the charging document was sufficient, the evidence presented was sufficient to sustain the conviction, and there were no sentencing errors. Attach. D. The State also requested that defendant's counsel be permitted to withdraw and requested the court of appeals affirm the conviction. *Id.*

Pursuant to *Anders*, Court of Appeals Commissioner McCown reviewed the record, and finding no error, affirmed defendant's

conviction. Attach. E at 3-4. The Commissioner conditioned appellate counsel's withdrawal upon her compliance with RAP 18.3(a)(3). *Id.* at 4.

The State submitted a cost bill totaling \$3,024.50 - \$6.00 was requested for respondent's brief and the balance of the bill was requested for the costs incurred by the Office of Public Defense for the preparation of the Clerk's Papers, appointment of counsel, and for the Report of Proceedings. Attach. F.¹

Defendant, through counsel, objected to the imposition of costs, claiming the state had not "substantially prevailed" on appeal. Attach. H. The Commissioner found that Mr. Stump's logic was "faulty" and ruled that the "State of Washington did prevail in that the trial court's decision was affirmed." *Id.* at 2. Defendant moved to modify this ruling on December 10, 2014 raising the same arguments that are now before this Court. Attach. I. A panel of three judges from Division Three denied defendant's motion. Attach. J. Defendant sought discretionary review which was granted by this Court.

¹ Thereafter, Defendant's counsel complied with the requirements of RAP 18.3(a)(3) and filed a declaration with the court indicating she had advised her client at his last known address of the actions of the commissioner and of his right to move the court to modify that decision. Attach. G.

III. ARGUMENT

A. THE STATE IS THE PREVAILING PARTY WHERE DEFENDANT'S ATTORNEY FILED A MERITORIOUS MOTION TO WITHDRAW AS COUNSEL PURSUANT TO *ANDERS V. CALIFORNIA* AND THE APPELLATE COURT AFFIRMED THE CRIMINAL JUDGMENT.

Defendant argues in his motion for discretionary review three reasons that this court should review of the Court of Appeals' imposition of appellate costs in his case. First, defendant argues he was the substantially prevailing party where his counsel moved to withdraw as court appointed counsel on appeal based on *Anders, supra*, and *State v. Theobald*, 78 Wn.2d 184, 470 P.2d 188 (1970), and the motion was granted by the court. In the alternative, he argues there was no prevailing party on appeal because "each party received the relief requested." Mot. For Discretionary Rev. at 6. Lastly, Mr. Stump argues that costs are not properly assessed where no brief addressing the merits of Mr. Stump's case was filed. Defendant's arguments fail.

1. The defendant was not the substantially prevailing party on appeal where his attorney moved to withdraw based on *Anders* and the Court of Appeals affirmed his conviction.

Costs have been awarded to the successful party in Washington criminal cases since early statehood. *State v. Keeney*, 112 Wn.2d 140, 142, 769 P.2d 295 (1989). The issue of what costs are recoverable in criminal cases has repeatedly been reviewed by this court. *See, e.g., State*

v. Nolan, 141 Wn.2d 620, 8 P.3d 300 (2000) (court has discretion under RCW 10.73.160(1) to impose costs on appeal, regardless of whether a claim is frivolous or meritorious); *Keeney*, 112 Wn.2d 140, 769 P.2d 295 (holding statutory attorney's fees are not recoverable on appeal).

The imposition of costs on criminal appeals is addressed by RCW 10.73.160 and RAP 14.1 – RAP 14.6. RCW 10.73.160 provides:

(1) The court of appeals, supreme court, and superior courts may require an adult offender² convicted of an offense to pay appellate costs.

(2) Appellate costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or collateral attack from a criminal conviction. Appellate costs shall not include expenditures to maintain and operate government agencies that must be made irrespective of specific violations of the law. Expenses incurred for producing a verbatim report of proceedings and clerk's papers may be included in costs the court may require a convicted defendant to pay.

RCW 10.73.160 (1) and (2).³

The Rules of Appellate Procedure provide:

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review. If there is no substantially

² Former RCW 10.73.160 provided that such costs may also be imposed on juvenile offenders, but this language was stricken by the legislature by the passage of S.S.S.B. No. 5564 in 2015.

³ The constitutionality of RCW 10.73.160 has been considered by this court and upheld. *State v. Blank*, 131 Wn.2d 230, 930 P.2d 1213 (1997).

prevailing party, the commissioner or clerk will not award costs to any party.

RAP 14.2.

The first step in determining whether costs may be awarded in a criminal appeal is to determine whether the state is the “substantially prevailing party.” *Nolan*, 141 Wn.2d at 625. That concept has been described as follows:

“A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review ...” The comment to the rule states: “In other words, the award of costs is based on **who wins the review proceeding**—not on who ultimately prevails on the merits.”

...

In order to determine which party substantially prevailed on review, the clerk or commissioner must have discretion to look beyond the bottom line of reversal or affirmance.

Nolan, 141 Wn.2d at 626 (citing *Family Med. Bldg., Inc. v. DSHS*, 38 Wn. App. 738, 739, 689 P.2d 413 (1984))(emphasis added).

The determination of the substantially prevailing party turns on the *substance* of the relief which is accorded the parties. *Marine Enter., Inc. v. Security Pac. Trading Corp.*, 50 Wn. App. 696, 702, 915 P.2d 1146 (1996). The prevailing party need not prevail on his or her entire claim, but he or she must substantially prevail. *Silverdale Hotel Assocs. v. Lomas & Nettleton Co.*, 36 Wn. App. 762, 774, 677 P.2d 773 (1984). In contrast, where both parties prevail on major issues, there may be no substantially prevailing party. *American Nursery Prods., Inc. v. Indian Wells Orchard*,

115 Wn.2d. 217, 234-235, 797 P.2d 477 (1990). However, “when there is one primary issue, the party prevailing on that issue is entitled to costs ... as the ‘prevailing party’ even though the party lost on another issue.” *Osborne v. Grant County*, 130 Wn.2d 615, 630, 926 P.2d 911 (1996).

Even when the court “looks beyond the bottom line of reversal or affirmance” it is clear that Mr. Stump was not the “prevailing party” on appeal. First, according to appellate counsel, Mr. Stump’s appeal had no meritorious “bases in law or fact upon which relief could be granted.”⁴ Attach. C at 2. The state’s response brief characterized defendant’s appeal as “without merit” and requested it be dismissed. Attach. D at 2-3. The Court of Appeals commissioner who reviewed Mr. Stump’s appeal came to the same conclusion and affirmed defendant’s conviction. Attach. E at 4. Under any other circumstance (and at the court’s discretion),⁵ an affirmance of a criminal conviction would result in the award of costs to the state.

The defendant and his attorney are two different entities. Defendant’s argument confuses and conflates the success of *his attorney* in withdrawing from the appeal with *his own* success on the merits of the

⁴ Appellate counsel reviewed the verbatim report of proceedings and clerk’s papers, researched all pertinent potential legal issues, and conferred with other attorneys at the Washington Appellate Project for possible legal and factual bases for appellate review. Attach. C at 1.

⁵ *See, Nolan*, 141 Wn.2d 620, 8 P.3d 300 (holding court has discretion under RCW 10.73.160(1) to impose costs on appeal).

appeal. “Here, counsel for Mr. Stump filed a motion to seeking [sic] a specific form of relief; to be allowed to withdraw as counsel for Mr. Stump.” Mot. for Discretionary Rev. at 5. “The Court of Appeals granted defense counsel’s motion and granted the relief requested by the petitioner (Mr. Stump), by permitting counsel to withdraw. Thus if anyone prevailed, *Mr. Stump* was the prevailing party, because he received the relief *he* sought.” *Id.* at 6 (emphasis added). However, this argument fails because Mr. Stump’s attorney is not a party to his appeal.⁶

Mr. Stump did not request that counsel be allowed to withdraw as is now argued. *His attorney* made this request based on her ethical obligations to both represent her client to the best of her ability⁷ and to not “bring or defend a proceeding or controvert an issue therein, unless there

⁶ A party seeking review in an appellate court must be an “aggrieved party.” RAP 3.1. The party seeking review is called an “appellant” or “petitioner” and an adverse party of review is called a “respondent.” RAP 3.4. “Appellate counsel” is one who represents a party on appeal. Black’s Law Dictionary 284 (Abridged 7th Ed. 2000). Thus, appellate counsel only represents a party on appeal, and is not an *actual* party to the appeal.

⁷ [An attorney’s] role as advocate requires that he support his client’s appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel’s brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel’s request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.

Anders, 386 U.S. 738, 744, 87 S.Ct. 1396, 18 L.Ed.2d 493.

is a basis in law or in fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.” RPC 3.1.

As noted above, counsel is not a “party” to a criminal action. Appellate counsel represents the interests of the criminal defendant (in this case, Mr. Stump) on appeal. It is defense counsel who moves to withdraw from a case pursuant to *Anders* and RAP 18.3, not the defendant. In fact, pursuant to *Anders* and RAP 18.3, even where defense counsel cannot find any non-frivolous argument to present on appeal, a defendant still may proceed *pro se*. See *State v. Theobald*, 78 Wn.2d 184, 189, 470 P.2d 188 (1970). Defense counsel acknowledges that defendants retain the ability to proceed *pro se* where counsel is permitted to withdraw.⁸ Attach. C at 2.

Even when the court looks “beyond the bottom line of reversal or affirmance,” it is clear that *defense counsel*, not defendant, prevailed on the *Anders* motion, and the *defendant* lost his appeal. Because defense counsel is not a party to the appeal, counsel’s “win” has no bearing on whether Mr. Stump is the “prevailing party” for purposes of the award of

⁸ “In the event that the court concurs, the undersigned seeks to withdraw as appointed counsel on appeal without prejudice to Mr. Stump’s right to proceed *pro se*.” Attach. C at 2.

costs.⁹ Mr. Stump was not the prevailing party below because he lacked any colorable issue on appeal and his conviction was affirmed.

2. The State was the prevailing party where the court affirmed the defendant's conviction, even where defendant's attorney prevailed on a motion to withdraw pursuant to *Anders*.

Secondarily, the defendant argues that *neither* party is a “substantially prevailing party” because both parties received the relief requested. Mot. for Discretionary Rev. at 6. As discussed above, defendant’s attorney, not the defendant, requested permission to withdraw from pursuing a frivolous appeal, and was granted that relief. Defendant, however, made no request for relief other than filing his appeal which requested his conviction be reviewed and reversed.

Thus, the only actual *party* to the appeal that prevailed on any issue relating to the merits of the case was the State. The State requested the court to affirm the defendant’s conviction. Attach. D at 3. The court did so. The State, therefore, is the only party to prevail upon *the* primary issue on appeal – whether the conviction should be affirmed.

In *Keeney*,¹⁰ *supra*, this Court reviewed the imposition of attorney’s fees and appellate costs in a case where defense counsel moved

⁹ Furthermore, the motion to withdraw was inextricably tied to the issue of whether the defendant’s appeal had any merit. The court determined defendant’s appeal to be wholly frivolous, and affirmed his conviction; it was this determination that permitted counsel’s withdrawal from representing the defendant on appeal. Therefore, appellate counsel’s “win” on the *Anders* motion reinforces the State’s argument that defendant “lost” on appeal, leaving the State as the “substantially prevailing party.”

to withdraw pursuant to *Anders* from an indigent defendant's appeal. *Keeney*, 112 Wn.2d at 140-142. In holding that the State was not entitled to statutory attorney's fees because they are not "costs" authorized by statute, the Court nonetheless stated, "the state is entitled to recover statutory costs." *Id.* at 142. Although this Court did not expressly decide the issues presented here, the practical effect of *Keeney* is that the court of appeals may exercise its discretion and impose costs in such cases.¹¹

3. The imposition of appellate costs is appropriate because the court determined the merits of the case and the rules provide a mechanism for defendants to abandon frivolous appeals without cost.

Defendant's third argument urges that neither party was the "substantially prevailing party" where Mr. Stump did not file a brief addressing the merits of the appeal.¹² Mot. for Discretionary Rev. at 7. The only case defendant cites for this proposition in his motion for discretionary review is *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 965 P.2d 636 (1998). *Suquamish Indian Tribe's* discussion of

¹⁰ *Keeney* was convicted in the Superior Court of Snohomish County, and thus, the cost bill at issue was imposed by Division One of the Court of Appeals.

¹¹ *Keeney* challenged not only the imposition of the attorney's fees but the entire cost bill, claiming that imposing costs on every unsuccessful criminal appellant is excessive and may chill defendants from exercising a basic constitutional right. This Court rejected his argument, and stated that while the state was not entitled to attorney's fees, it was entitled to costs. *Keeney*, 112 Wn.2d at 141-142 (citing *State ex rel. Lemon and Coffin*, 52 Wn.2d 894, 327 P.2d 741 (1958); *King Cy. v. Seattle*, 195 Wash. 293, 297, 80 P.2d 838 (1938)).

¹² "The motion filed by Mr. Stump did not address the merits of any issue on appeal, merely concluding there were no non-frivolous issues on appeal." Mot. for Discretionary Rev. at 8.

“substantially prevailing party” principles does not indicate whether a “brief on the merits” is required as is suggested by defendant. Mot. for Discretionary Rev. at 8; *Suquamish Indian Tribe*, 92 Wn. App. at 832.

In any event, the parties and the court *did* address the merits (or lack thereof) of defendant’s appeal.¹³ The possible issues were concisely identified and briefed by both parties. Defendant’s counsel briefed the possible grounds for appeal in her motion to withdraw as required by *Anders*, *Theobald*, and RAP 18.3(a)(2), *supra*. The State addressed the reasons why these grounds were not meritorious in its responsive brief and asked the court to affirm defendant’s conviction. The court reached the merits of defendant’s appeal in its independent review of the record, as required by *Anders*; “the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Anders*, 386 U.S. 738, 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. The court determined defendant’s case lacked any obvious appeal issues.

Additionally, it is fair to impose appellate costs on a defendant who files and pursues what is determined to be a wholly frivolous appeal by his attorney (and later the court). The defendant was not required to pursue his appeal after his attorney concluded there was no issue upon

¹³ It is the State’s position that the *Anders* brief filed by defendant’s attorney and the response brief by the state addressed the *lack* of merits of defendant’s appeal, as there were no meritorious arguments to address.

which to allege error; defendant had the ability to withdraw his appeal pursuant to RAP 18.2.¹⁴ Criminal defendants may voluntarily withdraw their criminal appeals pursuant to RAP 18.2. *See, e.g., State v. Sims*, 152 Wn. App. 526, 535, 216 P.3d 470 (2009). RAP 18.2 is also a mechanism by which a criminal defendant may avoid the imposition of appellate costs when his or her attorney legitimately believes the appeal to be frivolous. The court rule is clear that costs in voluntary withdrawal cases may *only* be imposed if the court so directs at the time the motion is granted. This language should be contrasted with the language of RAP 14.2 providing that the clerk or commissioner “*will* award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its order terminating review.” (Emphasis added).

RAP 18.2 provides an incentive for both criminal and civil appellants, and both indigent and non-indigent criminal defendants to abandon frivolous appeals before oral argument (and certainly before the court makes any determination on the merits of the appeal.) This

¹⁴ The appellate court on motion may, in its discretion, dismiss review of a case on stipulation of all parties and, in criminal cases, the written consent of the defendant, if the motion is made before oral argument on the merits. The appellate court may, in its discretion dismiss review of a case on the motion of a party who has filed a notice of appeal, a notice for discretionary review, or a motion for discretionary review by the Supreme Court. Costs will be awarded in a case dismissed on a motion for voluntary withdrawal of review **only** if the appellate court so directs at the time the motion is granted.

RAP 18.2 (emphasis added).

incentive is consistent with American Bar Association Standards for Criminal Appeals which indicate it is acceptable for there to be some financial risk associated with the pursuit of meritless appeals:

(a) Administration of a system of elective appeals presupposes that the parties with the right to appeal will choose to do so only when they, with advice of counsel, have **identified grounds on which substantial argument can be made for favorable action by the appellate court. The system should not contain factors that induce or deter appeals for other reasons.**

(b) **Examples of unacceptable inducements for defendants to appeal are:**

(i) **Absence of any risk that a financial obligation may be imposed on an appellant who pursues a frivolous appeal...**

American Bar Association, Standards for Criminal Justice, 21-2.3 (emphasis added).¹⁵

If the court were to adopt a rule that indigent defendants need not pay costs associated with the filing of meritless appeals, the court would, in effect, confer a financial advantage on indigent defendants over nonindigent defendants. Presumably, both appointed and retained counsel discuss the merits (or lack thereof) of criminal appeals with their clients. *See* RPC 1.4. The American Bar Association urges appellate attorneys to

¹⁵ ABA Standards for Criminal Appeals are available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_crimappeals_toc.html.

discuss the merits of a defendant's criminal appeal with their clients and encourage abandonment where an appeal is frivolous:

After examining the record and the relevant law, **counsel should provide counsel's best professional evaluation of the issues that might be presented on appeal. Counsel should advise the client about the probable and possible outcomes and consequences of a challenge to the conviction or sentence.**

...

Appellate defense counsel should not file a brief that counsel reasonably believes is devoid of merit. However, counsel should not conclude that a defense appeal lacks merit until counsel has fully examined the trial court record and the relevant legal authorities. If appellate counsel does so conclude, counsel should fully discuss that conclusion with the client, and explain the "no merit" briefing process applicable in the jurisdiction if available. Counsel should endeavor to persuade the client to abandon a frivolous appeal, and to eliminate appellate contentions lacking in substance. If the client ultimately demands that a no-merit brief not be filed, defense counsel should seek to withdraw.

American Bar Association, Fourth Edition of the Criminal Justice Standards for the Defense Function, 4.9-2 (emphasis added).¹⁶

A nonindigent defendant, having had this conversation with counsel, then has the choice¹⁷ whether to pursue a meritless appeal (or even an appeal taken against legal advice), and must bear the financial

¹⁶ ABA Standards for the Defense Function are available at: http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html.

¹⁷ This court has already determined that the potential imposition of costs at the conclusion of an unsuccessful appeal does not unconstitutionally chill a defendant's right to appeal because a defendant's ability to pay must be assessed before enforcement or sanctions are imposed for non-payment. *Blank*, 131 Wn.2d at 246-247.

cost of that decision, including his attorney's fees and court costs. An indigent defendant should be faced with this same choice, to either elect to abandon the appeal if, after a discussion of the merits of the appeal, the attorney so advises, or elect to bear the expense associated with its pursuit. To hold that indigent defendants are not required to pay such expenses incentivizes the pursuit of frivolous appeals for *only* indigent defendants. Such a policy amounts to an unacceptable inducement to appeal expressly disapproved by American Bar Association standards. This Court should decline to allow indigent defendants this advantage over nonindigent defendants.

B. THE "CONFLICT" BETWEEN DIVISION ONE AND THREE CASES CITED BY DEFENDANT IS EXPLAINED BY THE FACT THAT THE IMPOSITION OF COSTS IS AT THE DISCRETION OF THE COURT.

In his motion for discretionary review, defendant raises concerns that the Court of Appeals has been inconsistent in its imposition of costs in *Anders* cases, citing Division One's decision in *State v. C.A.G.*,^{18 19} where costs were not granted by the court after counsel moved to withdraw pursuant to *Anders*. This Court should note, however, that the imposition of costs in *Keeney, supra*, (also a Division One case) *is* consistent with the

¹⁸ See Mot. for Discretionary Rev., App. C.

¹⁹ C.A.G. and Mr. Stump were represented by the same attorney on appeal. See, Mot. For Discretionary Rev., App. C.

imposition of costs in Mr. Stump's case. Thus, it appears that the real "conflict"²⁰ is in Division One's own decisions. The internal conflict in Division One is likely attributable to the court's exercise of its discretion in imposing costs on appeal. *Nolan*, 141 Wn.2d 620.

The most plausible reason for the court's different exercise of discretion of imposing costs for appeals decided after the filing of an *Anders* brief is that C.A.G. appears to be a juvenile defendant, and Mr. Stump is an adult. This disparity in the defendants' ages may explain Division One's decision to deny costs in the juvenile's case, and Division Three's decision to impose costs upon Mr. Stump, an adult offender. Former RCW 10.73.160, which was in effect at the time *Keeney*²¹ was decided, allowed for the imposition of costs on both juvenile and adult offenders who lost their appeals. *See also, State v. W.C.F.*, 97 Wn. App. 401, 985 P.2d 946 (1999) (under former RCW 10.73.160 juvenile defendant may be required to pay costs associated with an unsuccessful appeal). As noted above, the legislature recently revised this statute; these changes were effective July 2015,²² and have now precluded the

²⁰ Respondent is unsure how a true "conflict" in the law can exist when the court may exercise its discretion in imposing costs associated with frivolous criminal appeals.

²¹ *Keeney* was also juvenile offender. 112 Wn.2d 140.

²² It is also probable that Division One knew of the impending changes to the Juvenile Justice Act in January 2015, and exercised its discretion accordingly in deciding to not impose costs in *C.A.G.* against a juvenile defendant.

imposition of appellate costs against juveniles. While the denial of costs in *C.A.G.* was decided before the revision of RCW 10.73.160, it is likely the court declined to impose costs for the very reason the legislature amended the statute – it was aware of the hardship such costs could impose on juveniles and their families.

If this Court wishes to treat *Anders* cases differently than other criminal appeals, it certainly has the power to do so.²³ However, different treatment of *Anders* cases may result in an increase of appeals lacking any colorable issues, and a disparity in the court’s treatment of indigent and nonindigent appellants, as discussed above.

C. *BLAZINA* HAS NO EFFECT ON IMPOSITION OF APPELLATE COSTS UNDER RCW 10.73.160; A DEFENDANT’S ABILITY TO PAY MAY BE ADDRESSED IN THE SENTENCING COURT IF THE DEFENDANT IS NOT IN DEFAULT.

Defendant argues in his motion for discretionary review that in light of this Court’s decision in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), it should “reach the equitable issues raised when courts impose costs on indigent defendants who file *Anders* briefs.” Mot. for Discretionary Rev. at 8, n. 2. *Blazina* reiterated what has been a long standing legal principle – Washington’s trial courts should not impose

²³ The Court could adopt another court rule guiding the exercise of discretion for the imposition of costs, directing the court’s to consider the age and criminal history of the defendant, the amount of costs requested, and the time and other resources invested by both parties and the court in resolving frivolous appeals.

discretionary legal financial obligations under RCW 10.01.160(3) on a defendant without first inquiring into the individual defendant's current and future ability to pay. *Blazina*, 182 Wn.2d at 839. This court reached a similar issue in *Blank, supra*, regarding the constitutionality of imposing appellate costs under RCW 10.73.160.²⁴ In concluding imposition of costs was constitutional, this court relied on the portion of RCW 10.73.160 allowing a defendant (who is not in contumacious default) to seek remission of all or part of the payment of costs associated with the appeal if "it appears to the satisfaction of the sentencing court that the payment of the amount due will impose manifest hardship on the defendant." *Blank*, 131 Wn.2d at 242. The statute provides the constitutionally required inquiry into a defendant's ability to pay.²⁵ *Id.* Thus, a defendant has a mechanism by which a court may review his ability to pay any appellate costs imposed as a result of a frivolous appeal (that the defendant could have otherwise abandoned under RAP 18.2, as discussed above).

Blank stands for the same principles discussed in *Blazina* – courts should be cautious about the imposition of legal financial obligations on

²⁴ RCW 10.01.160(3) contains the imperative words "shall not" and "shall" and therefore mandates trial courts to consider a defendant's ability to pay before imposing discretionary legal financial obligations. This language is not included in RCW 10.73.160; thus, there is no statutory mandate that the appellate court make this inquiry.

²⁵ While the court of appeals could certainly make this inquiry, the trial court is likely in the best position to fully inquire into a defendant's present and future ability to pay.

those who cannot pay, and the enforcement of those obligations is subject to inquiry into the defendant's financial ability to comply with repayment obligations. *Id.*

IV. CONCLUSION

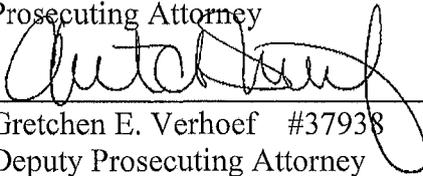
Defense counsel's success on an *Anders* motion to withdraw has no bearing on the award of appellate costs, as defense counsel is not a "party" to an appeal. Where the court finds no colorable issue in a criminal appeal pursuant to *Anders*, the State is the substantially prevailing party.

"Funding for public defense is not limitless." *State v. Devlin*, 164 Wn. App. 516, 525, 267 P.3d 369 (2011). Where a criminal defendant persists in pursuing a meritless appeal against his attorney's advice, he should be responsible for the cost of its pursuit, and may petition the trial court for remission if he is unable to pay.

For these reasons, the State respectfully requests this Court to uphold Division Three's imposition of costs for Mr. Stump's meritless appeal.

Dated this 16th day of November, 2015.

LAWRENCE H. HASKELL
Prosecuting Attorney



Gretchen E. Verhoef #37938
Deputy Prosecuting Attorney
Attorneys for Respondent

ATTACHMENT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED

SEP 19 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

STATE OF WASHINGTON)	
)	
Plaintiff,	)	No. 13-1-02221-5
)	
v.	)	PA# 13-9-49511-0
	)	RPT# 002-13-0201846
CURTIS GUY STUMP	)	RCW 69.50.4013(1)-F (#56640)
also known as DANNY G. LEMAY and	)	FINDINGS OF FACT AND
ROGER G. MELTON	)	CONCLUSIONS OF LAW BENCH TRIAL
WM 02/16/65)	
)	
Defendant(s).)	

THIS MATTER came on for trial on September 16, 2016. The defendant, CURTIS GUY STUMP, was present as well as counsel for defendant, KYLE C. ZELLER, and counsel for the State of Washington, EDWARD D. HAY, Deputy Prosecuting Attorney. Mr. Stump presented a waiver of jury trial, which, after full inquiry, the Court accepted. The Court then heard testimony from Officers Benjamin Yinger and Aaron Ames and from the Defendant and argument from counsel. The Court now makes the following:

FINDINGS OF FACT

I.

In Spokane, Washington, on June 21, 2013, Officer Benjamin Yinger and Officer Aaron Ames contacted the driver of a van, Mr. Curtis Stump, regarding a traffic infraction. Mr. Stump owned the van. Based on information from Mr. Stump and from police radio, Officer Yinger

asked Mr. Stump to step out of the van. Both Officers saw Mr. Stump throw or drop a baggie containing a dark substance to the ground. Officer Ames picked the baggie. To him the substance looked like heroin.

Officer Yinger, with Officer Ames nearby, advised Mr. Stump of his Miranda rights. Mr. Stump understood and waived his rights. Mr. Stump stated that the dark substance was his heroin. He reiterated the heroin was his and no one else's.

Proper chain of custody was maintained on the substance. Forensic Scientist Devon Hause examined the substance and found it to be heroin, a controlled substance.

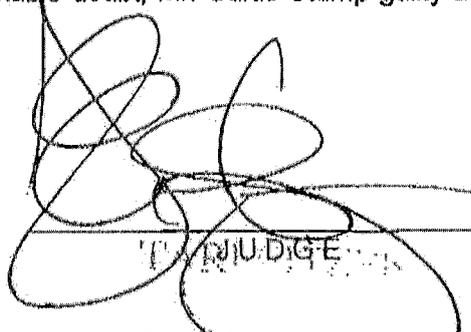
Mr. Stump testified that he had not dropped the baggie. He further stated he had falsely claimed ownership of the heroin because Officer Yinger had threatened to arrest Mr. Stump's passenger.

The Court finds beyond a reasonable doubt, that the evidence shows on June 21, 2013 in Spokane Washington, Mr. Curtis Stump unlawfully possessed a controlled substance, heroin.

From the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

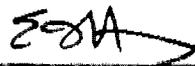
The Court finds, beyond a reasonable doubt, Mr. Curtis Stump guilty as charged of Possession of a Controlled Substance.



THE JUDGE

Presented by:

Approved as to form:



EDWARD D. HAY
Deputy Prosecuting Attorney
WSBA # 11846



Kyle C. Zeller
Counsel for Mr. Stump
WSBA# 38160

ATTACHMENT B

COURT COSTS	<u>200-</u>
VICTIM ASSESS	<u>500-</u>
RESTITUTION	_____
FINE	_____
ATTY FEES	_____
SHERIFF COSTS	_____
METTI	_____
DNA FEE	<u>100-</u>
CRIME LAB	<u>100-</u>
OTHER COST	_____
	<u>\$900-</u>

FILED

OCT 15 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE
STATE OF WASHINGTON**

Plaintiff,)
)
)
 v.)
)
 CURTIS GUY STUMP)
 WM 02/16/65)
)
 Defendant.)
)
)
 SID: 012424445)

No. 13-1-02221-5
PA# 13-9-49511-0
RPT# 002-13-0201846
RCW 69.50.4013(1)-F (#56640)
FELONY JUDGMENT AND SENTENCE (FJS)
Drug Offender Sentencing Alternative

 Clerk's Action Required, para 2.1, 3.2, 4.1, 4.3, 4.7, 5.2, 5.3, 5.5 and 5.7
 Defendant used Motor Vehicle
 Juvenile Decline Mandatory Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
~~Not guilty plea (date) _____~~ jury verdict (date) _____ bench trial (date) 9/16/13:

Count No.: 1 **POSSESSION OF A CONTROLLED SUBSTANCE - HEROIN**
RCW 69.50.4013(1)-F (#56640)
Date of Crime June 21, 2013
Incident No. 002-13-0201846

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)
to the Information

Additional current offenses are attached in Appendix 2.1a.

13908347 *Handwritten initials and marks*

JUDGMENT AND SENTENCE (JS)
(Drug Offender Sentencing Alternative)
(RCW 9.94A.500, 9.94A.505)(WPF CR 84.0400 (7/2013))

\$25 4-15-14 DOC PAGE 1

Attach. B-1

The defendant is a drug offender who is eligible for the drug offender sentencing alternative and the court determines that the sentencing alternative is appropriate. RCW 9.94A.660

The jury returned a special verdict or the court made a special finding with regard to the following:

- GV For the crime(s) charged in Count _____ **domestic violence** was pled and proved. RCW 10.99.020.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435 took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- In Count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A._____.
- The defendant committed a crime involving the manufacture of methamphetamine including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count(s)_____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589)
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>
1.			
2.			

*DV: Domestic Violence was pled and proved.

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History: (RCW 9.94A.525):

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
MONEY LAUNDER (F)	050412	NV	A	SPOKANE CO, WA	061312
PCS CONSP	100104	DRUG	A	SPOKANE CO, WA	051105
DCS	061998	DRUG	A	SPOKANE CO, WA	120998
DCS	061998	DRUG	A	SPOKANE CO, WA	120998
RES. BURGLARY	050691	NV	A	SPOKANE CO, WA	AFFIRMED 070693
DCS	082091	DRUG	A	SPOKANE CO, WA	021492
THEFT 2	041681	NV	J	SPOKANE CO, WA	072981
DV ASSAULT 4	080207	MISD.	A	SPOKANE CO, WA	011408
DV VIOL RSTRN ORD	041305	MISD.	A	SPOKANE CO, WA	050205
RECK. DRIVING		MISD.	A	SPOKANE CO, WA	062587

*DV: Domestic Violence was pled and proved.

- Additional criminal history is attached in Appendix 2.2
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____ above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525).
- The prior convictions listed as number(s) _____ above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

CT NO	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	6	Drug 1	12+ - 24		12+ - 24	5y

*(V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

- Additional current offense sentencing data in Appendix 2.3.

- 2.4** **Exceptional Sentence:** The Court finds substantial and compelling reasons that justify an exceptional sentence:
- 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.

within the standard range for Count(s) _____, but served consecutively to Count(s) _____.

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 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's 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 makes the following specific findings:

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

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 Felony Firearm Offender Registration. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

The court considered the following factors:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: _____

The court decided the defendant should should not register as a felony firearm offender.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in paragraph 2.1 and Appendix 2.1

3.2 The defendant is found **NOT GUILTY** of Count(s) _____ in the charging document.

The Court **DISMISSES** Counts _____ in the charging document.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 **Confinement.** The court waives imposition of a sentence within the standard range and imposes the following sentence:

(a) **Prison-Based Alternative** (effective for sentences imposed on or after October 1, 2005):

(1) **Confinement.** A term of total confinement in the custody of the Department of Corrections (DOC) (half of the midpoint of the standard range, or 12 months, whichever is greater):

_____ months of total confinement in the custody of DOC on Count _____
_____ months of total confinement in the custody of DOC on Count _____
_____ months of total confinement in the custody of DOC on Count _____

Confinement shall commence immediately unless otherwise set forth here:

Work release is authorized, if eligible and approved. If the midpoint of the standard range is 24 months or less, no more than three months may be served in work release status. RCW 9.94A.731

Credit for Time Served. 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 Spokane County Detention Services shall compute time served

(2) **Community Custody.** The defendant shall serve:

_____ months in community custody on Count _____
_____ months in community custody on Count _____
_____ months in community custody on Count _____

(One half the midpoint of the standard range.) The defendant shall comply with the community custody conditions in paragraph 4.2.

(3) **Additional Term of Community Custody.** If the defendant fails to complete, or is administratively terminated from, the drug offender sentencing alternative program, the court imposes a term of 12 months community custody under RCW 9.94A.701 unless community custody is not authorized for the crime.

(b)

Residential Chemical Dependency Treatment-Based Alternative (effective for sentences imposed on or after October 1, 2005).

(1) The defendant shall serve

24 months in community custody on Count I
_____ months in community custody on Count _____
_____ months in community custody on Count _____

(A term equal to one-half of the midpoint of the standard range or two years, whichever is greater) under the supervision of the Department of Corrections (DOC), on the condition that the defendant enters and remains in residential chemical dependency treatment certified under chapter 70.96A RCW for 3-6 months.

(2) The defendant shall comply with the community custody conditions in paragraph 4.2. DOC shall make chemical dependency assessment and treatment services available to the defendant during the term of community custody, within available funding.

(3) The defendant shall appear in person or by telephone at a progress hearing and a termination hearing to be set by the court at a later date.

(c) **Confinement For Other Non-Dosa Charges** (for 0-12 month range)

CT ___ days/months ___ months community custody

CT ___ days/months ___ months community custody

CT ___ days/months ___ months community custody

The time served shall be computed by the Spokane County Detention Services unless the credit for time served prior to sentencing is specifically set forth by the court: ___ days credit.

Defendant shall also receive credit for time served at treatment center pursuant to Residential DOSA sentencing alternative.

4.2 Community Custody Conditions. RCW 9.94A.660 Defendant shall report to DOC, located at West 1717 Broadway - Second Floor, Spokane, Washington 99201, 568-3123, no later than 72 hours after sentencing or release from custody. The defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community custody. The defendant shall perform affirmative acts as required by DOC to confirm compliance with the orders of the court. The defendant shall not use illegal controlled substances. The defendant shall comply with any other conditions of community custody stated in this Judgment and Sentence or imposed by DOC under RCW 9.94A.704 and .706 during community custody. While under supervision the defendant shall not own, use or possess firearms or ammunition. The court orders that during supervision the defendant shall:

(a) Undergo and successfully complete a substance abuse treatment program approved by the Division of Alcohol and Substance Abuse of the Department of Social and Health Services.

(b) Undergo urinalysis or other testing to monitor drug-free status.
 The defendant shall pay the statutory rate to DOC, while on community custody, to offset the cost of urinalysis.

(c) Additional conditions (choose at least three):

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> pay all court ordered legal financial obligations | <input checked="" type="checkbox"/> report as directed to a Community Corrections Officer |
| <input checked="" type="checkbox"/> notify the Court or Community Corrections Officer in advance of any change in defendant's address or employment | <input checked="" type="checkbox"/> remain within or outside of prescribed geographical boundaries |
| <input type="checkbox"/> Perform community restitution (service) work | <input checked="" type="checkbox"/> devote time to specific employment, or training |
| | <input type="checkbox"/> stay out of areas designated by the judge. |

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

Other conditions: No use and/or possession of alcohol, non-prescription controlled substances, legend drugs and/or drug paraphernalia. No contact with DOC ID'd drug offenders except in treatment setting. Obtain DOC pre-approval on all living arrangements and residence location. No use or possession of Marijuana and or products containing Tetrahydrocannabionol (THC)

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV \$500.00 Victim Assessment RCW 7.68.035

PDV \$ _____ Domestic Violence Assessment RCW 10.99.080

CRC \$200.00 Court costs, including: RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal Filing fee \$ _____ FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ _____ SFR/SFS/SFWSRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

WRF \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FGM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

MTH \$ _____ Meth/Amphetamine Cleanup Fine, \$3000. RCW 69.50.440, 69.50.401(a)(1)(ii)

CDF/LDI/ \$ _____ Drug enforcement fund of _____ RCW 9.94A.760

FCD/NTF/SAD/SDI

GLF \$ 100 Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100 DNA collection fee RCW 43.43.7541

FPV \$ _____ Specialized forest products RCW 76.48.140

\$ _____ Other fines or costs for: _____

RTN/RJN \$ _____ Restitution to: _____

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

\$ 900 ~~800~~ TOTAL RCW 9.94A.760

(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor
[] is scheduled for _____

[] The defendant waives any right to be present at any restitution hearing (sign initials): _____

[] **Restitution.** Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:
NAME of other defendant Cause Number (Victim Name) (Amount\$)

RJN

[] 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)



All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 25 per month commencing 4/15/13 RCW 9.94A.760.

The defendant SHALL report to the Spokane County Superior Court Clerk's Office immediately after sentencing if out of custody or within 48 hours after release from confinement if in custody. The defendant is required to keep an accurate address on file with the Clerk's Office and to provide financial information when requested by the Clerk's Office. The defendant is also required to make payments on the legal-financial obligations set by the court. **Failure to do any of the above will result in a warrant for your arrest.** RCW 9.94A.760(7)(b).

[] The Court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

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 10.73.160

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754 **FAILURE TO REPORT FOR TESTING MAY BE CONSIDERED CONTEMPT OF COURT.**

[] **HIV Testing.** The defendant shall submit to HIV testing as directed by court order. RCW 70.24.340 **FAILURE TO PROVIDE DOCUMENTATION FOR TESTING MAY BE CONSIDERED CONTEMPT OF COURT.**

[] The victim, based upon their request, shall be notified of the results of the HIV test whether negative or positive. (Applies only to victims of sexual offenses under RCW 9A.44.) RCW 70.24.105(7)

4.5 No Contact:

The Defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence.)

The defendant is excluded or prohibited from coming within _____ (distance) of: _____ (name of protected person(s))'s home/residence work place school (other location(s))

_____, or other location _____ until _____ (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order or, Anti-Harassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 Other:

4.7 Exoneration: The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

4.8 (a) ADDITIONAL CONFINEMENT UPON VIOLATION OF SENTENCE CONDITIONS. If the defendant violates any of the sentence conditions in Section 4.6 above, or, for offenses committed on or after June 8, 2000, is found by the United States attorney general to be subject to a deportation order, DOC shall hold a violation hearing, unless waived by the defendant. If DOC finds that the conditions have been willfully violated, the defendant may be reclassified to serve the remaining balance of the original sentence. For offenses committed on or after June 8, 2000, if DOC finds that the defendant is subject to a valid deportation order, the DOC may administratively terminate the defendant from the program and reclassify the defendant to serve the remaining balance of the original sentence. DOC shall reclassify a defendant who fails to complete the special drug offender sentencing alternative program or who is administratively terminated from the program to serve the unexpired term of the sentence as ordered by the sentencing judge subject to all rules relating to community custody and earned release time. DOC may sanction a defendant who violates any conditions of supervision as defined by DOC. Sanctions may include, but are not limited to, reclassifying the defendant to serve the unexpired term of sentence as ordered by the sentencing judge. If DOC reclassifies the defendant to serve the unexpired term of the sentence, the defendant shall be subject to all rules relating to earned release time. RCW 9.94A.660

(b) CONFINEMENT ORDERED AT THE TREATMENT TERMINATION HEARING (effective for sentences imposed on or after October 1, 2005). At the treatment termination hearing, the court may impose a term of total confinement equal to one-half of the midpoint of the standard sentence range or a sentence within the standard range. Confinement imposed at the hearing shall be followed by the term of community custody in paragraph 4.8. Within available funding, DOC shall make chemical dependency assessment and

treatment services available to the defendant during the terms of total confinement and community custody.

4.9 ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM ALTERNATIVE PROGRAM.

(a) For offenses committed on or after June 8, 2000, the following term of community custody is ordered and shall be imposed upon the defendant's failure to complete or defendant's administrative termination from the special drug offender sentencing alternative program.

(b) (effective for sentences imposed on or after October 1, 2005). For a defendant sentenced under the residential chemical dependency treatment-based alternative, the court orders the following term of community custody. This community custody shall be imposed upon the defendant after the term of total confinement imposed at the treatment termination hearing.

A range from

_____ to 12 months in community custody on Count I
_____ to _____ months in community custody on Count _____
_____ to _____ months in community custody on Count _____

While on community custody, the defendant shall comply with conditions set by DOC, including but not limited to:

- (1) report to and be available for contact with the assigned community corrections officer as directed;
- (2) work at DOC approved education, employment and/or community restitution (service);
- (3) not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) not unlawfully possess controlled substances while in community custody;
- (5) pay supervision fees as determined by DOC;
- (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC;
- (7) obtain prior approval of DOC for residential location and living arrangements.

The court orders the following conditions of community custody:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: DOC ID'd drug offenders.
- Defendant shall remain [] within [] outside of a specified geographical boundary, to-wit: per CCO
- The defendant shall participate in the following crime-related treatment or counseling services: UA/BA monitoring.
- The defendant shall undergo an evaluation for treatment for [] domestic violence [X] substance abuse [] mental health [] anger management and fully comply with all recommended treatment.

[X] The defendant shall comply with the following crime-related prohibitions: No use or possession of non-prescribed controlled substances, legend drugs, and/or drug paraphernalia

Other conditions: _____

V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purposes of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for the purposes of your 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 (DOC) 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.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 Community Custody Violation.**
- (a) Prison-based alternative: If DOC finds that you willfully violated the conditions of the drug offender sentencing alternative program, DOC may reclassify you to serve the remaining balance of the original sentence.
- (b) Residential chemical dependence treatment-based alternative: If the court finds that you willfully violated the conditions of the drug offender sentencing alternative, the court may order you to serve a term of total confinement equal to one-half the midpoint of the standard range or a term of total confinement up to the top of the standard range. The court may also impose a term of community custody.

(c) In any case, if you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(d) In any case, if you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5a **Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition unless your right to do so is restored by the court in which you are convicted or the superior court of Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court 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.

5.5b **Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved.

5.7 **Department of Licensing Notice:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** -- The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the defendant's driver's license. RCW 46.20.285.

5.8 **Other:** Any pre-trial surety bond not previously forfeited shall be exonerated.

Done in Open Court in the presence of the defendant this 15 day of

OCT, 2013.

JUDGE Print name: HAROLD D. CLARKE III

201A
EDWARD D. HAY
Deputy Prosecuting Attorney
WSBA# 11846

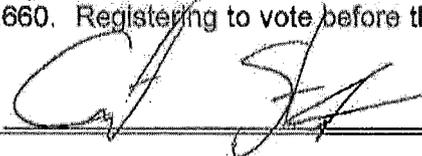
[Signature]
KYLE C ZELLER
Attorney for Defendant
WSBA# 38160

[Signature]
CURTIS GUY STUMP
Defendant

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: 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. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: 

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at _____, on _____
(city) (state) (date)

Interpreter Print Name

VI. IDENTIFICATION OF DEFENDANT

SID No. 012424445

Date of Birth 02/16/1965

(If no SID take fingerprint card for State Patrol)

FBI No. 199937DA4

Local ID No. 0083100

PCN No.

Other

DOB 02/16/1965

Alias name

Race:

Ethnicity:

Sex:

Asian/Pacific Islander

Black/African-American

Caucasian

Hispanic

Male

Native American

Other: _____

Non-hispanic

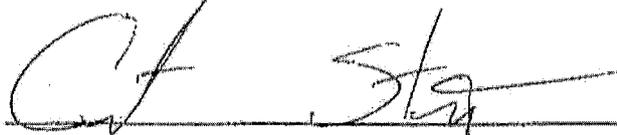
Female

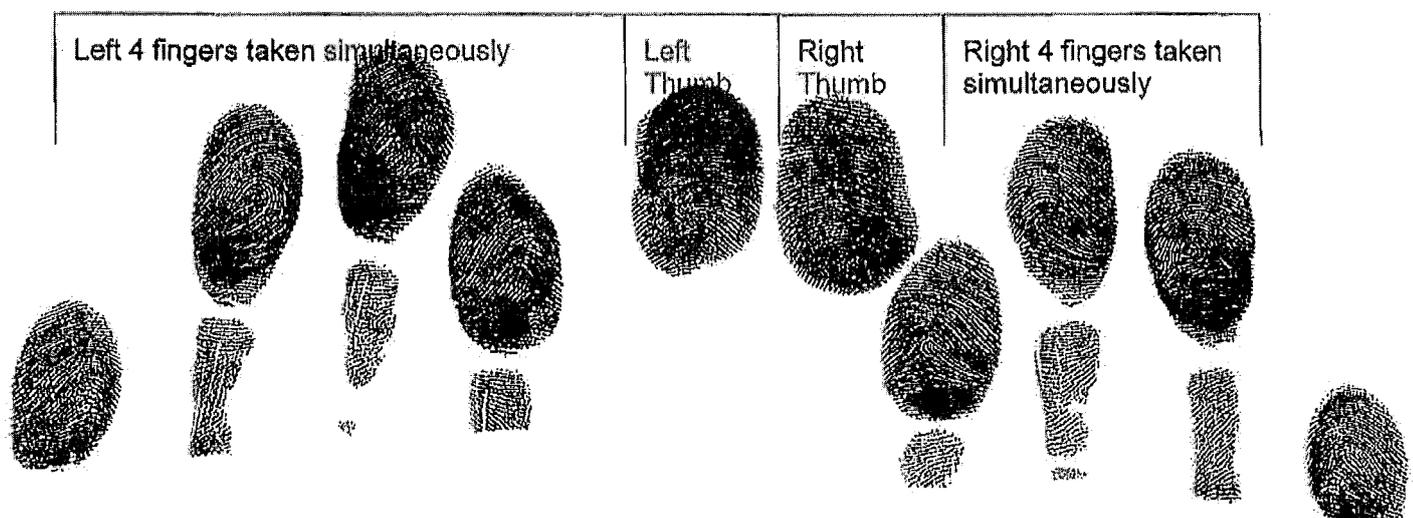
FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

THOMAS R. FALLQUIST, Clerk of the Court

 Deputy Clerk.

Dated: 01/15/13

DEFENDANT'S SIGNATURE: 



ATTACHMENT C

Due 16/23/2014

RECEIVED

MAY 22 2014

COUNTY PROSECUTING ATTORNEY
APPEALS UNIT - SPOKANE, WA

No. 32015-4-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

CURTIS STUMP,

Appellant.

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

MOTION TO WITHDRAW AND BRIEF IN SUPPORT THEREOF

JAN TRASEN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

Attach. C-1

TABLE OF CONTENTS

A. IDENTITY OF MOVING PARTY 1

B. STATEMENT OF RELIEF SOUGHT 1

C. FACTS RELEVANT TO MOTION 1

D. GROUNDS FOR RELIEF 2

E. STATEMENT OF THE CASE 3

F. POTENTIAL ISSUES ON APPEAL 5

 1. Did the information charge all the essential elements of possession
 of a controlled substance? 6

 2. Whether the evidence was sufficient to prove that Curtis Stump
 knowingly possessed a controlled substance. 6

 3. Whether the record showed that Mr. Stump was coerced into a
 false confession to ownership of the drugs due to threats from
 police officers 7

 4. Whether Mr. Stump was sentenced pursuant to the correct
 calculation of his standard sentencing range. 8

G. CONCLUSION 9

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT

State v. Callahan, 77 Wn.2d 27, 459 P.2d 400 (1969)..... 7

State v. Emmett, 77 Wn.2d 520, 463 P.2d 609 (1970) 8

State v. Hairston, 133 Wn.2d 534, 946 P.2d 397 (1997) 1, 2

State v. Heritage, 152 Wn.2d 210, 95 P.3d 345 (2004) 7

State v. McCarty, 140 Wn.2d 420, 998 P.2d 296 (2000)..... 6

State v. Theobald, 78 Wn.2d 184, 470 P.2d 188 (1970)..... 6

State v. Vangerpen, 125 Wn.2d 782, 888 P.2d 1177 (1995) 6

WASHINGTON COURT OF APPEALS

State v. Haack, 88 Wn. App. 423, 958 P.2d 1001 (1997)..... 8

State v. Pollard, 66 Wn. App. 779, 825 P.2d 336, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992) 6

State v. Riley, 17 Wn. App. 732, 565 P.2d 107 (1977) 7

UNITED STATES SUPREME COURT

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)
..... 1, 6

Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435
(2000)..... 7

Brown v. Mississippi, 297 U.S. 278, 56 S. Ct. 461, 80 L.Ed.682 (1936)... 7

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)..... 7

<u>McCoy v. Court of Appeals</u> , Dist. 1, 486 U.S. 429, 108 S.Ct. 1895, 100 L.Ed.2d 440 (1988)	2
<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)	7

WASHINGTON CONSTITUTION

Wash. Const. art. I, sec. 3	7
Wash. Const. art. I, sec. 22	6

UNITED STATES CONSTITUTION

U.S. Const. amend. VI	6
U.S. Const. amend. XIV	7

STATUTES

RCW 9.94A.525	8
RCW 9.94A.530	8
RCW 9A.76.020(1)	6

RULES

RAP 18.3	1, 5
----------------	------

A. IDENTITY OF MOVING PARTY.

The Washington Appellate Project and Jan Trasen, appointed counsel for appellant, Curtis Stump, requests the relief requested in part B of this motion.

B. STATEMENT OF RELIEF SOUGHT.

Appointed counsel on appeal requests permission to withdraw as attorney of record in accordance with RAP 18.3(a)(2), Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and State v. Hairston, 133 Wn.2d 534, 946 P.2d 397 (1997).

C. FACTS RELEVANT TO MOTION.

The Washington Appellate Project was appointed to represent Mr. Stump in this appeal. In reviewing appellant's case for issues to raise on appeal, counsel has done the following:

1. Reviewed the verbatim report of proceedings from Mr. Stump's CrR 3.5 hearing, trial, and sentencing;
2. Reviewed the clerk's papers;
3. Researched all pertinent potential legal issues; and
4. Conferred with other attorneys at the Washington Appellate Project concerning possible legal and factual bases for appellate review.

Counsel has “master[ed] the trial record, thoroughly research[ed] the law, and exercise[d] judgment in identifying the arguments that may be advanced on appeal.” McCoy v. Court of Appeals, Dist. 1, 486 U.S. 429, 438, 108 S.Ct. 1895, 100 L.Ed.2d 440 (1988).

D. GROUND FOR RELIEF.

Based on the foregoing evaluation of the record, counsel has concluded there is no basis in law or fact upon which a claim for relief could be granted. Id. Counsel requests this Court independently review the record in order to determine whether there is any further basis for appellate review. Hairston, 133 Wn.2d at 538. In the event that the Court concurs, the undersigned seeks to withdraw as appointed counsel on appeal without prejudice to Mr. Stump’s right to proceed pro se.¹

¹ Upon request, counsel will provide Mr. Stump with all documents at counsel’s disposal which he could use in preparing his pro se brief.

E. STATEMENT OF THE CASE.

On June 21, 2013, Curtis Stump was driving his recently-purchased van on Lidgerwood Street in Spokane. RP 18, 50.² When Mr. Stump failed to signal before making a left turn, he was stopped by Spokane police officers. RP 18.

Officer Benjamin Yinger asked Mr. Stump for his driver's license, but Mr. Stump handed him a Washington State identification card instead, saying he did not have a license. Id. When the officer asked if the license was suspended, Mr. Stump told the officer that he had unpaid traffic tickets. Id. at 19. Officer Yinger transmitted Mr. Stump's name through the police department dispatcher, who did a Department of Licensing search, determining that Mr. Stump's driver's license was suspended. Id.

Officer Yinger ordered Mr. Stump to step out of his van and to place his hands behind his back. RP 19-20. The officer claimed to then see Mr. Stump drop a small object to the ground near his feet. RP 20. After Officer Yinger placed Mr. Stump in handcuffs, he noticed

²The verbatim report of proceedings consists of one primary volume containing the trial conducted on September 16, 2013; this is referred to as "RP." Other volumes are referred to by specific date.

that the object appeared to be a clear plastic zip-lock bag filled with a dark substance of some sort. Id.

Officer Aaron Ames, Officer Yinger's partner, testified that he, too, saw Mr. Stump throw the object on the ground. RP 33-34. After Mr. Stump was handcuffed, Officer Ames picked up the object from the ground and saw that it was a zip-lock bag. RP 34. Officer Ames also recovered a glass pipe from Mr. Stump's pants pocket. RP 23, 36.

After he had been arrested, Officer Yinger read Mr. Stump his constitutional rights from a pre-printed card and asked if Mr. Stump understood his rights. RP 23-24. Mr. Stump did not appear to be under the influence of any intoxicants, and he agreed to answer questions by stating, "Yeah, sure." Id. Mr. Stump informed the officers that the small bag belonged to him, and that it contained heroin. Id. at 25.

Mr. Stump was charged with possession of a controlled substance for the bag recovered from the ground. CP 1.³

Mr. Stump waived his right to a trial by jury and instead consented to a bench trial before the Honorable Tari S. Eitzen. RP 6-12; CP 4. Mr. Stump testified that he had only told Officer Yinger that

³ Mr. Stump was also charged with various traffic infractions, most of which were later dismissed; he was not cited for possession of the glass pipe recovered from his pocket. RP 30, 61.

the bag of heroin belonged to him after the officer threatened to arrest his girlfriend, who was sitting in the passenger seat of his vehicle. RP 53-55. Mr. Stump also argued that the zip-lock bag could have fallen out of the van when he stepped out, since he had only recently purchased the vehicle and was not fully aware of its contents. RP 54-55.

The trial court found Mr. Stump guilty as charged. RP 66; CP 7-8. The court's oral findings were incorporated into its findings of fact and conclusions of law on the CrR 3.5 hearing. RP 65-66; 9/19/13 RP 2-3; CP 5-6.

Mr. Stump asked to be evaluated for the Drug Offender Sentencing Alternative (DOSAs) and was accepted for treatment. 10/15/13 RP 3-5. He received a standard range sentence, should he not complete the program. *Id.*; CP 13-26.

Mr. Stump filed a notice of appeal from the trial court's findings. CP 27-28.

F. POTENTIAL ISSUES ON APPEAL.

RAP 18.3(a)(2) provides for the withdrawal of counsel on appeal where the appointed attorney can find no basis for a good faith argument on review. In accordance with the due process requirements

of Anders, supra; State v. Theobald, 78 Wn.2d 184, 185, 470 P.2d 188 (1970); and State v. Pollard, 66 Wn.App. 779, 787-90, 825 P.2d 336, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992); counsel submits the following brief in satisfaction of these requirements.

1. Did the information charge all the essential elements of possession of a controlled substance?

A person is guilty of possession of a controlled substance if he or she possesses a narcotic drug or other controlled substance. RCW 69.50.401. A charging document is constitutionally adequate only if all essential elements of the crime are included in the document so as to apprise of the accused of the charges and to allow him or her to prepare a defense. U.S. Const. amend. VI; Wash. Const. art. I, sec. 22; State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000); State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995).

Mr. Stump could argue that the information failed to charge all essential elements of the crime charged, and thus did not provide proper notice.

2. Whether the evidence was sufficient to prove that Curtis Stump knowingly possessed a controlled substance.

It is a fundamental principle of due process that the State must present evidence to establish every element of a charged offense

beyond a reasonable doubt. U.S. Const. amend. XIV; Wash. Const. art. I, sec. 3; Apprendi v. New Jersey, 530 U.S. 466, 477, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

Here, the trial court entered findings of fact and conclusions of law which must be supported by substantial evidence in the record. See State v. Maxfield, 125 Wn.2d 378, 385, 886 P.2d 123 (1994).

Mr. Stump could argue there was insufficient evidence to support his conviction.

3. Whether the record showed that Mr. Stump was coerced into a false confession to ownership of the drugs due to threats from police officers.

“Miranda warnings must be given when a suspect endures (1) custodial (2) interrogation (3) by an agent of the State.” State v. Heritage, 152 Wn.2d 210, 214, 95 P.3d 345 (2004) (citing Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). A custodial statement may not be admitted at a subsequent trial unless it was made freely and voluntarily. Brown v. Mississippi, 297 U.S. 278, 285-87, 56 S. Ct. 461, 80 L.Ed.682 (1936). A statement induced by any sort of threat, “however slight,” is necessarily involuntary. State v. Riley, 17 Wn. App. 732, 735, 565 P.2d 107 (1977). “[A]ny evidence

that the accused was threatened, tricked, cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege." Miranda, 384 U. S. at 476.

It is the State's burden to prove the lack of coercion by a preponderance of the evidence. State v. Emmett, 77 Wn.2d 520, 522, 463 P.2d 609 (1970); State v. Haack, 88 Wn. App. 423, 435-36, 958 P.2d 1001 (1997).

Mr. Stump could argue he was coerced and thus his statement to police officers should have been suppressed.

4. Whether Mr. Stump was sentenced pursuant to the correct calculation of his standard sentencing range.

The standard range is based upon the combination of the offender score and the seriousness level of the offense. RCW 9.94A.525; RCW 9.94A.530. When an accused has not been convicted for more than five years following his release from custody, a prior conviction may be deemed to have "washed out," and thus may not be included in his offender score. RCW 9.94A.525(2)(c).

Although Mr. Stump was sentenced to a Drug Offender Sentencing Alternative (DOSA), he may wish to appeal the calculation of his standard range offender score. RCW 9.94A.525; RCW 9.94A.530; CP 9-10, 13-26.

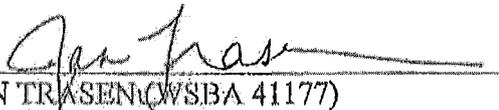
Mr. Stump could argue that his offender score and sentencing range were miscalculated.

G. CONCLUSION

Based on the foregoing, counsel for Curtis Stump requests this Court independently review the record and, in the event the Court determines there are no meritorious issues, grant this motion to withdraw as appointed counsel on appeal without prejudice to Mr. Stump's right to proceed pro se.

DATED this 22nd day of May, 2014.

Respectfully submitted,



JAN TRASEK (WSBA 41177)
Washington Appellate Project – 91052
Attorneys for Appellant

ATTACHMENT D

E-FILED

MAY 29 2014

✓ COURT OF APPEALS
DIVISION III
~~WASHINGTON SUPREME COURT~~

32015-4-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CURTIS G. STUMP, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE HAROLD D. CLARKE

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

Attach. D-1

INDEX

APPELLANT'S ASSIGNMENTS OF ERROR.....1

ISSUE PRESENTED.....1

STATEMENT OF THE CASE.....1

ARGUMENT2

 A. THE APPEAL IS WITHOUT MERIT
 AND SHOULD BE DISMISSED.....2

CONCLUSION.....3

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. LUNA, 71 Wn. App. 755,
862 P.2d 620 (1993)..... 3

SUPREME COURT CASES

ANDERS V. CALIFORNIA, 386 U.S. 738,
87 S. Ct. 1396, 18 L. Ed. 2d 498 (1967)..... 2

I.

APPELLANT'S ASSIGNMENTS OF ERROR

The defendant has not listed any assignments of error. The defendant lists the following issues as "potential" issues.

1. Was the information adequate to charge all the essential elements of possession of a controlled substance?
2. Was the evidence sufficient to prove the defendant knowingly possessed a controlled substance?
3. Does the record show that the defendant was coerced into a false confession to ownership of the drugs by way of threats from the police officers?
4. Was the defendant properly sentenced?

II.

ISSUES PRESENTED

The State is unable to ascertain any actual issues.

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

A. THE APPEAL IS WITHOUT MERIT AND SHOULD BE DISMISSED.

The defendant has filed an *Anders* brief asserting that he is unable to find any issues upon which to base an appeal. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 498 (1967).

The State has reviewed this case and cannot find any viable issues. It is true that if the trier of fact had believed the defendant's version of the events, he would not have been convicted. However, while the defendant claimed that the police officers "threatened him" by telling him that if he did not admit to ownership of the controlled substance, the police would charge the drugs to the front seat passenger, the defendant's girlfriend. Interestingly, the defendant did not present any testimony or evidence to support his claims, other than the defendant's bald statements. Two police officers testified otherwise. The trier of fact did not accept the defendant's fanciful statements regarding his admission to possessing the heroin. CP 5-6.

The relevant inquiry on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt. *State v. Luna*, 71 Wn. App. 755, 862 P.2d 620 (1993). In this case, the officers testified that the defendant got out of the car with the heroin in his hand and then dropped the heroin or threw it. The defendant denied acting as the police testified, but it was up to the trier of fact to decide the truth. The evidence was clearly sufficient. Likewise, the information was sufficient. CP 1.

As for any sentencing issues, the defendant does not note any specifics and the State cannot see any obvious errors. CP 13-26. The defendant was sentenced under DOSA provisions. Attacking his sentencing would expose the defendant to potential increases in incarceration time.

V.

CONCLUSION

For the reasons stated, the conviction of the defendant should be affirmed and the defense counsel's request to withdraw should be granted.

Dated this 29th day of May, 2014.

STEVEN J. TUCKER
Prosecuting Attorney


Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent

ATTACHMENT E

The Court of Appeals
of the
State of Washington
Division III

SEP 15 2014

STATE OF WASHINGTON,

Respondent,

v.

CURTIS G. STUMP,

Appellant.

COMMISSIONER'S RULING
NO. 32015-4-III

Mr. Curtis Stump appeals his Spokane County Superior Court conviction of possession of a controlled substance-heroin. In accordance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), his counsel on appeal has filed a brief and motion to withdraw, stating she has determined that her client's appeal is wholly frivolous, but suggests the following potential issues: (1) did the information charge all the essential elements of possession of a controlled substance; (2) was there sufficient evidence to prove Mr. Stump knowingly possessed a controlled substance; (3) was Mr. Stump coerced by threats by police officers into a false confession to ownership of drugs; and (4) was Mr. Stump's standard sentencing range correctly

Attach. E-1

calculated. This Court having reviewed the record independently can find no errors; therefore, the State of Washington's request to dismiss is granted.

After failing to signal before making a left turn, the Spokane police stopped Mr. Stump. When asked for his driver's license, Mr. Stump handed the officer a Washington State identification card. Mr. Stump told the officer he had unpaid traffic tickets. The officer ran Mr. Stump's name through the dispatcher, who did a Department of Licensing search, which showed Mr. Stump's driver's license was suspended. The officer ordered Mr. Stump to step out of his vehicle and place his hands behind his back. Two officers saw Mr. Stump drop a small object on the ground. The object was a clear plastic zip-lock bag filled with a dark substance. During pat-down, a glass pipe was found in the pocket of his pants.

The officer placed Mr. Stump under arrest and read him his constitutional rights. Mr. Stump did not appear to be intoxicated and he agreed to answer questions. He told the officers that the small plastic bag belonged to him and that it contained heroin. He was charged with possession of a controlled substance. At trial, he testified that he made the statement that the bag of heroin belonged to him after the officer threatened to arrest his girlfriend. He also testified that since he just recently purchased the van he was not fully aware of its contents and the baggie could have fallen out of the van when he stepped out.

Mr. Stump was found guilty as charged. He was accepted for treatment in a Drug Offender Sentencing Alternative (DOSA) program. He now appeals.

The first potential issue is whether the information charged all the essential elements of the crime.

If a charging document is challenged for the first time on appeal, it will be construed liberally and found sufficient if the necessary elements appear in any form, or by fair construction may be found, on the face of the document. *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000); *State v. Kjorsvik*, 117 Wash.2d 93, 105, 812 P.2d 86 (1991). RCW 69.50.4013(1) provides that a person is guilty of possession of a controlled substance if he or she possesses a narcotic drug or other controlled substance without a prescription. To prove unlawful possession of a controlled substance, the State must prove only "the nature of the substance and the fact of possession." *State v. Hathaway*, 161 Wn. App. 634, 645-46, 251 P.3d 253 (2011) quoting *State v. Bradshaw*, 152 Wash.2d 528, 538, 98 P.3d 1190 (2004).

Here, the information stated: "POSSESSION OF A CONTROLLED SUBSTANCE, committed as follows: That the defendant, CURTIS GUY STUMP, in the State of Washington, on or about June 21, 2013, did unlawfully possess a controlled substance, to-wit: HEROIN." It is clear that the information set forth all of the essential elements of the crime. Thus there was no error.

The second potential issue is whether there was sufficient evidence to support the conviction. The law is set forth in the State's brief: "The relevant inquiry on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the

No. 32015-4-III

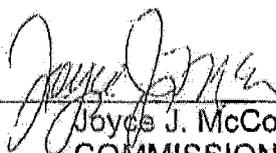
essential elements of the crime beyond a reasonable doubt. *State v. Luna*, 71 Wn. App. 755, 862 P.2d 620 (1993)." Here, the officers testified that Mr. Stump exited his vehicle with the heroin in his hand and then dropped the heroin or threw it. Mr. Stump denied that he dropped or threw the baggie with the heroin in it. The trial judge, as the trier of fact, decided to believe the police officers' version of the incident. The evidence was clearly sufficient.

The third potential issue is whether Mr. Stump was coerced into making a false confession of ownership of the drugs due to threats from the police officers. Mr. Stump claimed that the officers "threatened him" by telling him if he did not admit ownership of the baggie of heroin they would charge his girlfriend, who was a passenger in the vehicle, with possession of drugs. He introduced no other evidence to support this claim. The officers, however, testified that they did not threaten any such thing. Again, the trier of fact chose to believe the officers' testimony. There was no error.

The final potential issue suggested is that Mr. Stump's sentence was incorrectly calculated. Having reviewed Mr. Stump's prior criminal history and his offender score, this Court finds no obvious errors. Furthermore, Mr. Stump received a DOSA sentence.

In light of the above, the decision of the trial court is affirmed. Counsel's motion to withdraw is conditioned upon her compliance with RAP 18.3(a)(3).

September 15, 2014.



Joyce J. McCown
COMMISSIONER

ATTACHMENT F

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

STATE OF WASHINGTON,)
Respondent,) No. 32015-4-III
v.)
CURTIS G. STUMP,) COST BILL
Appellant.)

Steven J. Tucker, Prosecuting Attorney for Spokane County, Washington, by his deputy, Andrew J. Metts, respondent, asks that the following costs be awarded:

1.	Preparation of Brief of Respondent (3 pages @ \$2.00 each)	\$ 6.00
2.	Preparation of Clerk's Papers	46.50
3.	Cost of Court Appointed Counsel	2,692.00
4.	Cost of Report of Proceedings	<u>280.00</u>

TOTAL COSTS **\$ 3,024.50**

The above items are expenses allowed as costs by RAP 14.3 and RCW 10.73.160, reasonable expenses actually incurred, and reasonably necessary for review. Appellant should pay item one to the Spokane County Prosecuting Attorney's Office and the remaining items to the Office of Public Defense (Indigent Defense Fund).

STEVEN J. TUCKER
Prosecuting Attorney



Andrew J. Metts, WSB #110578
Deputy Prosecuting Attorney

I certify under penalty of perjury under the laws of the State of Washington that on September 18, 2014, I e-mailed a copy of this Cost Bill to David L. Donnan, attorney for the defendant at david@washapp.org pursuant to the parties' agreement.

Dated this 18th day of September, 2014

Spokane, WA

(Place)

Kim Cornelius

(Signature)

ATTACHMENT G

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,)	
)	
Respondent,	)	No. 32015-4-III
)	
v.	)	DECLARATION
	)	PURSUANT TO
CURTIS STUMP,	)	RAP 18.3(a)
)	
Appellant,)	

I, JAN TRASEN, do declare and if called as a witness would so testify that:

1. I am acting as attorney for appellant on behalf of the Washington Appellate Project;
2. The appellant was served with a copy of the Commissioner's ruling of September 15, 2014, pursuant to RAP 18.3 (a), at his last known address on September 17, 2014;
3. In my letter to appellant, I notified him of the decision of the Commissioner and advised him of his right to file a motion to modify with the Court of Appeals;
4. Appellant has not responded to this letter, nor to any of my previous efforts at communication throughout the history of my

DECLARATION

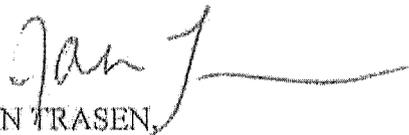
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

representation, nor did he file a Statement of Additional Grounds for Review when notified of his right to do so on May 28, 2014;

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

DATED this 27th day of October, 2014.

Respectfully submitted,



JAN TRASEN,
Attorney for Appellant
WSBA #41177

ATTACHMENT H

The Court of Appeals
of the
State of Washington
Division III

110

NOV 13 2014

CLERK OF COURT
COURT OF APPEALS
DIVISION III
300 N. 4TH ST.
SPokane, WA 99201

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 CURTIS G. STUMP,)
)
 Appellant.)

COMMISSIONER'S RULING
NO. 32015-4-III

On September 15, 2014, this Court filed its decision in this matter, affirming the trial court decision. The State of Washington timely filed a cost bill in the amount of \$3,024.50. Mr. Stump objects claiming the State did not substantially prevail on appeal.

RAP 14.2 provides that costs may be awarded "to the party that substantially prevails on review."

Mr. Stump's logic is faulty. He filed a notice of appeal seeking review of his Spokane County Superior Court conviction. After reviewing the trial court record, his attorney filed an *Anders* brief conceding there was no basis in law or fact upon which a claim for relief could be granted. The State of Washington filed a responsive brief. This

No. 32015-4-III

Court also reviewed the record and also did not find any non-frivolous issues. This Court therefore affirmed the trial court's decision. Thus, the State of Washington did prevail in that the trial court's decision was affirmed. Now, therefore,

IT IS ORDERED, costs in the amount of \$6.00 are awarded to the Spokane County Prosecutor's Office and \$3,018.50 to the Office of Public Defense (Indigent Defense Fund) to be paid by Mr. Curtis G. Stump.

November 13 , 2014.



Joyce J. McCown
COMMISSIONER

ATTACHMENT I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON	)	No. 32015-4-III
Respondent,)	
	)	MOTION TO MODIFY
v.	)	COMMISSIONER'S
	)	RULING
CURTIS STUMP,)	
Appellant.)	

I. IDENTITY OF MOVING PARTY

COMES NOW the appellant, by and through the undersigned attorney of record, and upon all the files, records and proceedings herein, moves this Court for the relief designated below.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 17.7, appellant moves this Court to modify the ruling of the Commissioner imposing costs on appeal where the State did not substantially prevail.

III. STATEMENT OF RELEVANT FACTS

After counsel for Mr. Stump reviewed the record, pursuant to RAP 18.3 and *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel filed a motion to withdraw, noting that there was no basis in law or fact upon which a claim for relief could be

granted. In response, the State agreed with counsel's assessment of the record and urged this Court to grant counsel's motion to withdraw.

This Court agreed with counsel for Mr. Stump and granted the motion to withdraw.

The State then filed a cost bill, seeking costs as the party who substantially prevailed on appeal. Mr. Stump timely filed an objection, arguing in light of the *Anders* brief, the State did not substantially prevail. The Commissioner of this Court rejected Mr. Stump's argument, finding the State substantially prevailed, noting: "[t]his Court therefore affirmed the trial court's decision. Thus, the State of Washington did prevail in that the trial court's decision was affirmed." Ruling at 2.

IV. ARGUMENT AND GROUNDS FOR RELIEF SOUGHT

THE STATE FAILED TO SUBSTANTIALLY PREVAIL AND IS NOT ENTITLED TO COSTS ON APPEAL.

"RCW 10.73.160 provides for recoupment of appellate costs from a convicted defendant." *State v. Blank*, 131 Wn.2d 230, 234, 930 P.2d 1213 (1997). RCW 10.73.160(3) states that costs "shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure[.]"

RAP 14.2 authorizes the award of costs “to the party that substantially prevails on review.” “The determination as to who substantially prevails turns on the substance of the relief which is accorded the parties.” *Marine Enterprises, Inc. v. Security Pacific Trading Corp.*, 50 Wn. App. 768, 772, 750 P.2d 1290 (1988). A “prevailing party” is any party that receives some judgment in its favor. *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669 (1997). If neither party completely prevails, the court must decide which, if either, substantially prevailed. *Id.* Where neither party substantially prevailed, each party must bear its own costs. *Goedecke v. Viking Inv. Corp.*, 70 Wn.2d 504, 513, 424 P.2d 307 (1967). *See, e.g., Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 832, 965 P.2d 636 (1998) (Developers were not substantially prevailing party on appeal where one land use petition was found to have been properly dismissed but dismissal of the other petition was reversed); *Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 702, 915 P.2d 1146 (1996) (when both parties prevail on a major issue, there may be no prevailing party for attorney fee purposes).

1. Contrary to the Commissioner's conclusion, Mr. Stump was the substantially prevailing party.

Here, counsel for Mr. Stump filed a motion to seeking a specific form of relief; to be allowed to withdraw as counsel for Mr. Stump.

Based on the foregoing evaluation of the record, there is no basis in law or fact upon which a claim for relief could be granted ... Counsel requests this Court independently review the record in order to determine whether there is any further basis for appellate review ... In the event that the Court concurs, the undersigned seeks to withdraw as appointed counsel on appeal without prejudice to Mr. Stump's right to proceed pro se.

Motion to Withdraw at 2 (emphasis added).

The State filed a brief agreeing with counsel's assessment and agreeing that allowing counsel to withdraw was the appropriate remedy.

The State has reviewed this case and cannot find any viable issues ... For the reasons stated, the conviction of the defendant should be affirmed and the defense counsel's request to withdraw should be granted.

Brief of Respondent at 2-3 (emphasis added).

This Court granted defense counsel's motion and granted the relief requested by *appellant*, by permitting counsel to withdraw. Thus, Mr. Stump was the prevailing party because he received the relief he sought. *See Marine Enterprises*, 50 Wn. App. at 772.

2. Alternatively, there was no substantially prevailing party.

Here, each party requested the same relief – to allow counsel for Mr. Stump to withdraw. As a consequence, *both* parties prevailed since the relief requested by *both* parties was granted. See *Phillips Bldg. Co.*, 81 Wn. App. at 702.

3. Alternatively, costs are not appropriately assessed as there was no brief addressing the merits of the case filed.

Finally, neither party was the substantially prevailing party, since Mr. Stump did not file a brief addressing the merits of the appeal. Instead, after fully reviewing the record, counsel for Mr. Stump filed a Motion to Withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), seeking the Court to independently review the record to determine if there were any non-frivolous issues, and if the Court agreed, allowing counsel to withdraw. The State agreed with counsel's assessment and sought the same remedy -- allowing counsel to withdraw. This Court agreed with the parties that there were no non-frivolous issues, and granted counsel's motion to withdraw. The motion filed by counsel for Mr. Stump did not address the merits of any issue on appeal, merely concluding there were no non-frivolous issues on appeal.

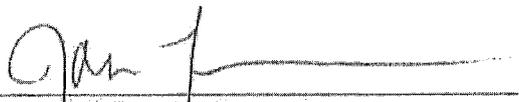
As such, in light of the fact that a motion, not a merits brief, was filed, neither party substantially prevailed. *Suquamish Indian Tribe*, 92 Wn. App. at 832. Thus, the State's request for costs should have been denied and the cost bill stricken.

V. CONCLUSION

Mr. Stump respectfully asks this Court to modify the Commissioner's ruling and order that no costs be imposed on appeal.

DATED this 10th day of December, 2014.

Respectfully submitted,



JAN TRASEN (WSBA 41177)
jan@washapp.org
Washington Appellate Project – 91052
Attorney for Appellant

APPENDIX

The Court of Appeals
of the
State of Washington
Division III

NOV 13 2014

RECEIVED

NOV 13 2014

Washington Appellate Project

STATE OF WASHINGTON,)	
)	
Respondent,	)	COMMISSIONER'S RULING
	)	NO. 32015-4-III
v.)	
)	
CURTIS G. STUMP,)	
)	
Appellant.)	

On September 15, 2014, this Court filed its decision in this matter, affirming the trial court decision. The State of Washington timely filed a cost bill in the amount of \$3,024.50. Mr. Stump objects claiming the State did not substantially prevail on appeal.

RAP 14.2 provides that costs may be awarded "to the party that substantially prevails on review."

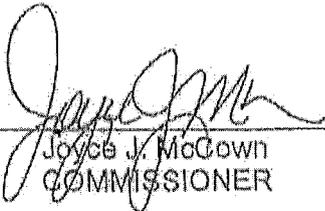
Mr. Stump's logic is faulty. He filed a notice of appeal seeking review of his Spokane County Superior Court conviction. After reviewing the trial court record, his attorney filed an *Anders* brief conceding there was no basis in law or fact upon which a claim for relief could be granted. The State of Washington filed a responsive brief. This

No. 32015-4-III

Court also reviewed the record and also did not find any non-frivolous issues. This Court therefore affirmed the trial court's decision. Thus, the State of Washington did prevail in that the trial court's decision was affirmed. Now, therefore,

IT IS ORDERED, costs in the amount of \$6.00 are awarded to the Spokane County Prosecutor's Office and \$3,018.50 to the Office of Public Defense (Indigent Defense Fund) to be paid by Mr. Curtis G. Stump.

November 13, 2014.



Joyce J. McCown
COMMISSIONER

ATTACHMENT J

FILED
FEBRUARY 26, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 32015-4-III
)	
Respondent,)	
)	
v.	)	ORDER DENYING
	)	MOTION TO MODIFY
CURTIS G. STUMP,	)	COMMISSIONER'S RULING
)	
Appellant.)	

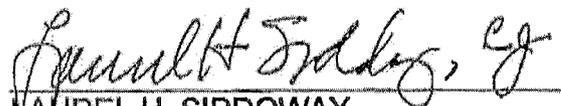
Having considered appellant's motion to modify the commissioner's ruling and the record and file herein;

IT IS ORDERED the motion to modify the commissioner's ruling is denied.

DATED: February 26, 2015

PANEL: Judges Lawrence-Berrey, Brown, Siddoway

FOR THE COURT:


LAUREL H. SIDDOWNAY
CHIEF JUDGE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CURTIS G. STUMP,

Appellant,

NO. 91531-8-III
(COA #32015-4)

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on November 16, 2015 I e-mailed a copy of the Notice of Substitution of Counsel in this matter, pursuant to the parties' agreement, to:

Jan Trasen
wapofficemail@washapp.org

11/16/15

(Date)

Spokane, WA

(Place)

Kim Cornelius

(Signature)

OFFICE RECEPTIONIST, CLERK

To: Cornelius, Kimberly A.
Cc: wapofficemail@washapp.org
Subject: RE: 915318, Curtis Guy Stump

Rec'd 11/16/2015

Supreme Court Clerk's Office

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: Cornelius, Kimberly A. [mailto:KCORNELIUS@spokanecounty.org]
Sent: Monday, November 16, 2015 1:37 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: wapofficemail@washapp.org
Subject: 915318, Curtis Guy Stump

Attached please find the Supplemental Brief of Respondent. Note the Certificate of Service is attached as the last page to the document.

Kim Cornelius
Spokane County Prosecutor's Office
kcornelius@spokanecounty.org
(509) 477-2873

Confidential & Privileged Legal/Personnel Materials - PLEASE NOTE: This e-mail, its contents and attachments are confidential and privileged. If you are not an intended recipient, promptly notify sender that you received this e-mail in error and destroy all copies. You are not to print, copy, forward or use this e-mail or its contents for any purpose. Thank you.