

NO. 93605-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARCO BAILON WENCES,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Richard J. Thorpe, Judge
The Honorable George F. Appel, Judge

SUPPLEMENTAL BRIEF OF PETITIONER

JENNIFER WINKLER
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

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A. ISSUES PRESENTED

1. Where the petitioner has a constitutional right to appeal, and the petitioner did not knowingly waive that right, does the general rule that a new rule of criminal procedure applies to cases on direct review apply in this case, warranting relief?

2. Is relief barred by the single Washington case relied on by the Court of Appeals?

3. Is relief barred by the “former fugitive doctrine,” which has been applied in Oregon, but which this Court has expressly rejected, and the rationale for which does not apply in this case?

4. Is application of the Oregon doctrine to this case, moreover, inconsistent with the United States Supreme Court case that is the source of the Oregon doctrine?

B. STATEMENT OF THE CASE¹

The State charged Wences with possession of a controlled substance, methamphetamine, with intent to manufacture or deliver. CP 88-89; former RCW 69.50.401(a)(1)(ii) (1998). The State also alleged that Wences was armed with a firearm at the time of commission of the crime.

¹ This brief refers to the verbatim reports as follows: 1RP – 7/2/04; Supp. RP – 2/22/04 (proceedings before jury selection); 2RP – 2/22/04 (proceedings after jury selection); 3RP – 2/23/05; 4RP – 4/8/05; 5RP – 2/9/15; 6RP – 2/10/15; and 7RP – 3/23/15 (sentencing).

CP 88; former RCW 9.94A.602 (2001) (recodified as RCW 9.94A.825 by Laws of 2009, ch. 28, § 41).² The charge stemmed from a September 12, 2003 traffic stop of Wences and subsequent search. CP 86-87.

A jury convicted Wences as charged as to the underlying offense. CP 31. As to the enhancement, the jury was instructed that “[f]or purposes of a special verdict, the State must prove beyond a reasonable doubt that [Wences] was armed with a deadly weapon at the time of commission of

² Current RCW 9.94A.825, which retains the same language as its predecessor, states:

In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

the crime.” CP 50; 11 Wash. Prac., Pattern Jury Instr. Crim. 2.07.02 (3d Ed. 2008). The special verdict form asked jurors if Wences was “armed with a deadly weapon at the time of commission of the crime.” The jury answered “[y]es.” CP 30.

Wences did not appear for his initial sentencing hearing in 2005. 4RP 2-4. He was ultimately sentenced in 2015. 7RP 2-9. The court sentenced Wences to 100 months of confinement, including a 36-month firearm enhancement and a 64-month standard range base sentence. CP 19-20; former RCW 9.94A.310(3)(b) (2001) (three-year firearm enhancement for class B felonies and crimes with maximum sentence of 10 years) (recodified as RCW 9.94A.533 by Laws of 2002, ch. 290, § 11, to take effect July 1, 2004).

On appeal, Wences argued that the jury’s verdict authorized only a deadly weapon enhancement. Therefore, the sentencing court violated Wences’s right to a jury trial by sentencing him to a term corresponding to a firearm enhancement rather than the 12-month deadly weapon enhancement. Former RCW 9.94A.310(4)(b) (recodified as RCW 9.94A.533). See Brief of Appellant at 19-21 (citing State v. Williams-Walker, 167 Wn.2d 889, 895, 225 P.3d 913 (2010)).

In a July 25, 2016 opinion, Division One of the Court of Appeals rejected Wences’s sentencing argument on grounds raised sua sponte by the

Court. The Court appeared to agree as to the substance of the rule set forth in Williams-Walker but stated that because Wences did not appear for his original sentencing hearing, he should be sentenced based on the law in effect at the time of the original sentencing date. State v. Marco Bailon Wences, noted at 195 Wn. App. 1013, 2016 WL 3982912 at *3-4 (July 25, 2016).

Wences filed a timely motion for reconsideration, arguing in part that the doctrine relied on in the cases cited by the Court of Appeals had not been followed in Washington and that, in any event, the doctrine did not bar relief on appeal under the facts of Wences's case. The motion was denied.

On February 9, 2017, this Court accepted review.

C. ARGUMENT

THE JURY'S VERDICT IN THIS CASE AUTHORIZED ONLY A DEADLY WEAPON SENTENCE ENHANCEMENT.

This Court should reverse and remand for resentencing based on the jury's verdict, which authorized only a deadly weapon sentence enhancement.

"The rule of law is important in the stability of society." Morrissey v. Brewer, 408 U.S. 471, 499, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (Douglas, J., dissenting in part). Wences has the constitutional right to appeal his conviction and sentence. Rejecting the general rule that a new

rule of criminal procedure applies to cases still on direct review, the Court of Appeals employed a rationale that is novel in Washington, in conflict with Washington law, and incompatible with the facts of this case.

Wences's case was still pending when Williams-Walker was decided. Under the law that applied at the time of Wences's sentencing, therefore, the jury's verdict authorized only a deadly weapon enhancement. Under Washington law, Wences did not waive or forfeit his right to relief on appeal.

This Court should also reject any invitation to import the doctrine used to deny relief in the two Oregon cases cited by the Court of Appeals. The rationale for applying the doctrine in the Oregon cases does not apply in this case. Moreover, application of the doctrine is inconsistent with the United States Supreme Court decision that Oregon relied on to formulate its own doctrine. This Court should reverse and remand for resentencing.

1. Wences has a constitutional right to appeal, which he did not waive, and he is entitled to relief under Washington law.

Wences has the right to appeal his conviction and sentence. The State cannot prove he knowingly waived that right. He is, moreover, entitled to be sentenced based on the law in effect at the time of his sentencing hearing.

Article 1, section 22 of the state constitution³ expressly guarantees the right to appeal in all criminal cases. “The constitutional right to an appeal functions as a check against the risk of erroneous deprivation of liberty.” State v. Rolax, 104 Wn.2d 129, 139, 702 P.2d 1185 (1985) (Dore, J., concurring in part and dissenting in part). An individual may relinquish his right to appeal only through a voluntary, knowing, and intelligent waiver. State v. Tomal, 133 Wn.2d 985, 988-89, 948 P.2d 833 (1997) (citing State v. Sweet, 90 Wn.2d 282, 286, 581 P.2d 579 (1978)). Doubts should be resolved in favor of protecting the right to appeal, and courts should be slow to deprive a litigant of that right. State v. Lewis, 42 Wn. App. 789, 795, 715 P.2d 137 (1986) (citing City of Goldendale v. Graves, 88 Wn.2d 417, 424, 562 P.2d 1272 (1977)). In other words, the State bears the burden of demonstrating a valid waiver of the right. Sweet, 90 Wn.2d at 286.

This Court has held that failure to appear at a post-conviction review hearing does not constitute a knowing, voluntary, and intelligent waiver of the right to appeal. City of Seattle v. Klein, 161 Wn.2d 554, 559-62, 166

³ “In criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed *and the right to appeal in all cases[.]*” CONST. art. I, § 22 (amend. 10) (emphasis added).

P.3d 1149 (2007) (rejecting application of “fugitive disentitlement doctrine” in light of constitutional right to appeal).

Considering the right to appeal, moreover, an appeal cannot be dismissed under the fugitive disentitlement doctrine, as the concept has been referred to in Washington, simply because a defendant absconds after conviction but before sentencing. State v. French, 157 Wn.2d 593, 600-03, 141 P.3d 54, 59 (2006) (expressly rejecting State v. Estrada, 78 Wn. App. 381, 896 P.2d 1307 (1995), which employed the fugitive disentitlement doctrine to find waiver of the right to appeal where a defendant fled after conviction, was apprehended eight years later and sentenced, and then attempted to appeal).

Correspondingly, within the context of this constitutional right to an appeal, the general rule to be followed on appeal is as follows: A “new rule for the conduct of criminal prosecutions^[4] is to be applied retroactively to all cases . . . pending on direct review . . . with no exception for cases in which the new rule constitutes a ‘clear break’ with the past.” Griffith v. Kentucky, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987). This

⁴ See In re Eastmond, 173 Wn.2d 632, 272 P.3d 188 (2012) (Williams-Walker announced a new rule of criminal procedure).

is the rule followed by Washington courts. In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 326, 823 P.2d 492 (1992).

Wences's case was still pending on direct review at the time he raised this claim on appeal. Thus, the sentencing court was obliged to apply the rule set forth in Williams-Walker, 167 Wn.2d at 895. In that case, this Court held that a sentencing court's imposition of a sentence enhancement different than the one authorized by the jury's special verdict violates the right of the accused to a jury trial. As in Williams-Walker, the jury's verdict in this case authorized a deadly weapon enhancement only. CP 30. Thus, the jury's verdict authorized a single year enhancement, in addition to the 64-month base sentence. CP 19-20.

The Court of Appeals, while appearing to acknowledge the controlling law regarding the sentence enhancement, relied on three cases to deny Wences relief. The first case, the sole Washington case, is factually and legally distinguishable. The two Oregon cases rely upon a doctrine that this Court has explicitly rejected, and the rationale for which is wholly absent from this case. The Court of Appeals was incorrect to rely on these cases and should be reversed.

2. State v. Moore, one of three cases relied on by the Court of Appeals to deny relief, is factually and legally inapposite.

The first case the Court of Appeals relies on is State v. Moore, 63 Wn. App. 466, 470-71, 820 P.2d 59 (1991). See State v. Wences, 2016 WL 3982912 at *3 n. 26. But, as review of that case makes clear, the superior court in that case had statutory authority to impose the sentence challenged on appeal. No such statutory authority permitted the illegal sentence in this case.

In Moore, the Court of Appeals was asked to decide if former RCW 9.94A.400(1)(a), or rather former RCW 9.94A.400(3),⁵ governed defendant Evans's sentencing proceedings. 63 Wn. App. at 468. Evans had failed to appear for sentencing for two 1987 felony convictions. Three years later, he appeared before the same court for sentencing on those 1987 convictions, plus an unrelated 1990 assault conviction. Id. at 467-68.

The pertinent subsections of RCW 9.94A.400 are as follows:

(1)(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score[.] . . . Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and

⁵ Those provisions are currently codified in substantially similar form under RCW 9.94A.589. Laws of 2001, ch. 10, § 6.

9.94A.390(2)(e) or any other provision of RCW 9.94A.390

...

.....

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was *not under sentence of a felony*, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced *unless the court pronouncing the current sentence expressly orders that they be served consecutively*.

Former RCW 9.94A.400(1)(a) and (3) (emphasis added).

The Moore court held that former RCW 9.94A.400(3) applied because Evans committed the 1990 assault before he was “under sentence” for the two 1987 felony convictions. The sentencing court ruled that the sentence for the assault conviction would run consecutively to the sentences for the burglary convictions, consistent with its discretion under RCW 9.94A.400(3). Moore, 63 Wn. App. at 469. “In effect, the trial court merely completed the overdue task of sentencing Evans for the 1987 burglary convictions and then proceeded to sentence Evans for the 1990 assault conviction.” Id. Significantly, a trial court has unfettered discretion to impose a consecutive sentence under former RCW 9.94A.400(3). All that is required is that the judge expressly order it. In re Long, 117 Wn.2d 292, 302, 815 P.2d 257 (1991) (discussed in Moore, 63 Wn. App. at 470 n. 2).

In Moore, the superior court had statutory authority, and under that authority unfettered discretion, to impose the sentence challenged on appeal. No such authority permitted the unlawful sentence in this case. Moore is of no assistance to the State here.

3. The Oregon cases relied on by the Court of Appeals are also factually and legally inapposite, and they rely on a United States Supreme Court case establishing relief is warranted.

The Court of Appeals also cited two Oregon cases, State v. Sills, 260 Or. App. 384, 388-89, 317 P.3d 307 (2013) and State v. Ristick, 204 Or. App. 626, 628-29, 131 P.3d 762 (2006), to deny Wences the relief to which he was entitled under the law. Wences, 2016 WL 3982912 at *3 n. 26. But, even assuming those cases could trump controlling Washington law, the rationale for the Oregon courts' application of the "former fugitive doctrine" is absent from this case. The requested relief would not lead to a new trial or sentencing hearing, but rather a simple correction of Wences's judgment and sentence. Moreover, application the doctrine in this case would divorce it from its rationale and be inconsistent with the source of the doctrine, the Supreme Court's decision in Ortega-Rodriguez v. United States, 507 U.S. 234, 113 S. Ct. 1199, 122 L. Ed. 2d 581 (1993).

- i. *The Oregon cases fail to support the Court of Appeals' denial of relief in this case.*

The two Oregon cases relied on by the Court of Appeals are factually and legally distinguishable. As explained in Sills, the first case, under the “former fugitive doctrine” as applied in Oregon, an appellate court has inherent judicial authority to dismiss a defendant’s appeal if the defendant’s former fugitive status significantly interfered with the operation of the appellate process. Sills, 260 Or. App. at 388-89 (citing State v. Lundahl, 130 Or. App. 385, 390, 882 P.2d 644 (1994)).

In Lundahl, Oregon had adopted the doctrine, relying on the United States Supreme Court’s decision in Ortega-Rodriguez, 507 U.S. 234. The Lundahl court concluded that the defendant’s lengthy escape significantly interfered with the appellate process, warranting outright dismissal of his appeal. 130 Or. App. at 390. The rationale underlying adoption of the doctrine was that it would be unfair to grant the defendant a new trial, the remedy he sought on appeal. The passage of time would work to the defendant’s advantage on retrial based on “the amount of time that had passed since trial, the age of the victim, the availability of witnesses, how the jury would react to the testimony of the victim now that she was older,

and the effect of the passage of time on the witnesses' memories of the events." Id.

The Sills court, applying the doctrine from Lundahl, rejected Sills's claim on nearly identical grounds. Sills was sentenced 10 years after his conviction for first degree sexual abuse and public indecency. The victim was 13 at the time of the initial trial. Sills, 260 Or. App. at 386. Similar to the Lundahl court, Sills concluded

a new trial would pose significant obstacles in regard to the witnesses [the state] had called in the first trial. Although the state was able to locate the two victims for the sentencing hearing . . . , and presumably would be able to find them again, the state had called a total of 21 witnesses at the original trial. Even if the state could find all of those witnesses—now 13 years later—the testimony of those witnesses has likely been affected by the protracted delay caused by defendant. Additionally, as in Lundahl, if a new trial were granted, the jury may react differently to the testimony of the now older victims than they would have to the testimony of 14-year-olds.

Sills, 260 Or. App. at 392-93.

Ristick is the other Oregon case relied on by the Court of Appeals. Wences, 2016 WL 3982912 at *3 n. 26. In Ristick, also relying on the former fugitive doctrine, the Oregon court held the doctrine applied where a defendant sought resentencing rather than a new trial. 204 Or. App. at 628-29. Yet the Oregon's court's qualms with granting resentencing

mirrored the issues in Lundahl and Sills, given that resentencing required a hearing before a jury and witnesses.

Ristick was convicted of two counts of aggravated theft in 1995, but before he could be sentenced, he fled and remained a fugitive for over seven years. He was sentenced in 2004. He appealed. The court determined that the former fugitive doctrine applied and warranted dismissal of the appeal. Ristick, 204 Or. App. at 630. In reaching that conclusion, the court explained that a number of the same issues inherent in a delayed trial would apply to the resentencing hearing. For example, the sentencing court would be required to empanel a jury to establish the enhancement facts. Id. at 631. Based on the passage of 10 years, the state would face difficulty in locating witnesses and in presenting the testimony of the victim, then 90 years old and suffering from dementia. Id. From those circumstances, the court concluded that “the condition of the evidence, worsened by [the] defendant’s long flight from the jurisdiction, would limit the state’s ability to support a recommendation of upward departure and the resentencing court’s ability to exercise the full range of tools at its disposal to impose an appropriate sentence.” Id.

The Oregon courts’ rationale for employing the “former fugitive doctrine” is absent from Wences’s case. The relief Wences requests does

not require a new trial or sentencing hearing. He seeks, instead, a simple correction of his judgment and sentence.

- ii. *The Supreme Court granted relief under circumstances analogous to those in this case.*

Like the foregoing cases, Ortega-Rodriguez, the origin of the doctrine in Oregon, fails to support the result reached by the Court of Appeals. Instead, it supports the relief Wences now requests. See, e.g., York v. Wahkiakum Sch. Dist. No. 200, 163 Wn.2d 297, 331, 178 P.3d 995 (2008) (even where it does not bind this Court, United States Supreme Court precedent may serve as persuasive authority).

In Ortega-Rodriguez, the Supreme Court addressed whether a rule allowing the *automatic* dismissal of appeals by former fugitives was permitted. 507 U.S. at 242-43. The Supreme Court rejected such a rule, explaining that

the justifications we have advanced for allowing appellate courts to dismiss pending fugitive appeals all assume some connection between a defendant's fugitive status and the appellate process, sufficient to make an appellate sanction a reasonable response. These justifications are necessarily attenuated when . . . a defendant's fugitive status at no time coincides with his appeal.

Id. at 244 (footnote omitted). The Court reversed the Eleventh Circuit,⁶ which had denied relief to an appellant who, like Wences, was a fugitive during proceedings in the lower courts but who was incarcerated during the pendency of the appeal. Id. at 238-39, 250-52.

But, although automatic dismissal was not appropriate, the Supreme Court did comment that appellate courts might have some authority to dismiss an appeal due to prior fugitive status, *provided there was a rationale for such*. Id. at 249-50. The Court explained that “a long escape, even if ended before sentencing and appeal, may so delay the onset of appellate proceedings that the Government would be prejudiced in locating witnesses and presenting evidence at retrial after a successful appeal [T]his problem might, in some instances, make dismissal an appropriate response.” Id. at 249. But that was not so in Ortega’s case, where, on appeal, he raised a claim of insufficient evidence. The remedy, in that case, would be outright dismissal of the charge. Thus, dismissal of the appeal was inappropriate. Id. at 250.

In summary, the Oregon courts’ rationale for employing the Ortega-Rodriguez “former fugitive doctrine” is absent in Wences’s case. The requested relief does not require a new trial or sentencing hearing, but rather

⁶ The Eleventh Circuit had previously developed the rule in United States v. Holmes, 680 F.2d 1372, 1373 (1982), cert. denied, 460 U.S. 1015 (1983).

correction of the judgment and sentence to comply with the law at the time of sentencing. In fact, Ortega-Rodriguez itself, relied on by the Oregon courts, avoided application of the doctrine under circumstances analogous to those in the present case.

This Court should reject any invitation by the State to apply the Oregon former fugitive doctrine, or some simulacrum thereof, in this case. There was simply no reason for the Court of Appeals to deny relief, other than, perhaps, a general feeling that Wences needed to be punished. But the Court of Appeals did not have the authority to exact its chosen punishment.

4. This Court has expressly rejected the doctrine relied on by the Court of Appeals, holding instead that relinquishment of the right to appeal must be guided by principles regarding the waiver of a constitutional right.

This Court rejects the doctrine relied on by the Oregon courts cited in the Court of Appeals' opinion. This Court had held, in the past, that a convicted person who flees the court's jurisdiction *while his appeal is pending* might waive his right to pursue the appeal. E.g. State v. Johnson, 105 Wn.2d 92, 97, 711 P.2d 1017 (1986); State v. Handy, 27 Wash. 469, 67 P. 1094 (1902). This rule, sometimes called the "fugitive from justice doctrine," has two bases. First, flight renders the appeal moot insofar as the appellate court's judgment may not be given effect. Second, "having scorned the court's authority over him, the fugitive is deemed 'disentitled'

to appellate action.” State v. Ortiz, 113 Wn.2d 32, 33-34, 774 P.2d 1229 (1989) (citing, *inter alia*, Smith v. United States, 94 U.S. 97, 97, 24 L. Ed. 32 (1876); Molinaro v. New Jersey, 396 U.S. 365, 366, 90 S. Ct. 498, 24 L. Ed. 2d 586 (1970)); *see also* Ortega-Rodriguez, 507 U.S. at 239-42 (explaining doctrine in a similar manner and citing many of same cases that Ortiz did three years earlier). However, this Court has now rejected this rule in favor of well-established principles regarding waiver of constitutional rights, which is accompanied by stringent safeguards. Klein, 161 Wn.2d at 559-62; *see* State v. Hoa Van Tran, 149 Wn. App. 144, 146, 202 P.3d 969 (2009), opinion after reinstatement of appeal, 155 Wn. App. 1016 (2010) (noting that this Court has rejected a fugitive doctrine “insofar as it purports to substitute involuntary forfeiture for the well-established waiver principles”).

This Court has, moreover, explicitly rejected the former fugitive/fugitive disentitlement doctrine, as discussed above. *See* French, 157 Wn.2d at 601 (rejecting Estrada, 78 Wn. App. 381).⁷ Both French and Estrada, the case roundly rejected in French, involved, as in this case, a lengthy pre-sentencing absence, followed by a return to custody, followed by an appeal. Yet, in French, the petitioner was found not to have waived

⁷ Notably, Estrada also relied on Holmes, 680 F.2d 1372, the Eleventh Circuit case that was overruled in Ortega-Rodriguez.

his right to appeal and was permitted to pursue his claims. As in French, Wences must be permitted to pursue relief on appeal.

5. The right to appeal encompasses the right to the application of a new rule to a still-pending case.

Wences's right to appeal encompasses his right that the rule in Williams-Walker be applied to his still-pending case. Undersigned counsel has found no indication that, under Washington law, if an appeal is permitted to go forward following fugitive status, courts must take pains to apply the case law from some prior era. If not current law, which law should be applied? Given the protracted nature of the appeal process, such a rule would be unworkable. It is also worth noting that Wences's sentencing was originally set for 2005. The first decision in the Recuenco line of cases was issued in 2003. See State v. Recuenco, noted at 117 Wn. App. 1079, 2003 WL 21738927 (July 28, 2003) (holding error similar to error in this case harmless), rev'd, 154 Wn.2d 156, 110 P.3d 188 (2005) (Recuenco I), rev'd and remanded, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006) (Recuenco II), and aff'd, 163 Wn.2d 428, 180 P.3d 1276 (2008) (Recuenco III).

As this Court is aware, the new rule in Williams-Walker, relied on by Wences, derives from this line of cases. 167 Wn.2d 889. And, while perhaps of limited significance given the state of the law in Washington,

there is no indication that Wences, an immigrant who became a beekeeper during his absence from Washington, 7RP 6, fled because he anticipated the Recuenco network of cases would bear fruit.

In summary, Wences's post-conviction, pre-sentence absence cannot be considered a knowing waiver of his right to appeal. Wences is therefore entitled to relief on appeal.

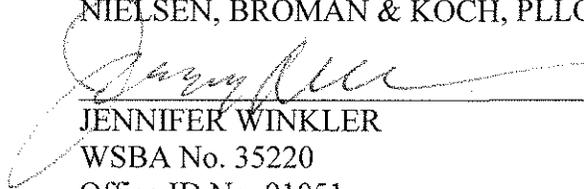
D. CONCLUSION

For the reasons stated, Wences respectfully requests that this Court reverse the Court of Appeals and remand for resentencing based on the law in effect at the time of his sentencing hearing.

DATED this 13TH day of March, 2017.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER WINKLER

WSBA No. 35220

Office ID No. 91051

Attorney for Petitioner