

68456-6

68456-6

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2011 MAY -4 P 1:32

BY RONALD R. CARPENTER

CLERK

g
h

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

STEVEN ANDREW JANDA,

Petitioner.

NO. ~~85909-4~~

68456-6

STATE'S ANSWER TO
MOTION FOR DIRECT
REVIEW

1. IDENTITY OF MOVING PARTY

The State of Washington, respondent, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

This Court should deny direct review of the judgment entered against the Petitioner Steven Andrew Janda (hereinafter "Defendant") in the trial court.

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

3. FACTS RELEVANT TO MOTION

The Defendant was convicted by a jury in King County Superior Court of two counts of the Unlawful Practice of Law and two counts of Theft in the First Degree, on March 16, 2011. CP 282-83. On April 20, 2011, Defendant was sentenced by Judge Hollis R. Hill.¹ The jury's convictions of Defendant were based on the charges filed by the State in a Third Amended Information on March 7, 2011, charging him with two counts of the Unlawful Practice of Law (Counts I and II) and two counts of Theft in the First Degree (Counts III and IV). CP 175-77.

The original Information below was filed in King County Superior Court on June 10, 2010. It charged Defendant Steven A. Janda with one count of the Unlawful Practice of Law, in violation of RCW 2.48.180, with one count of Theft in the First Degree, in violation of RCW 9A.56.030 (1)(a) and 9A.56.020 (1)(b), and one count of Theft in the Second Degree, in violation of RCW 9A.56.040 (1)(a) and

¹ The Defendant's "Notice of Direct Review" filed in the trial court states that he is seeking direct review in this Court of "The King County Superior Court decision entered on March 16, 2011", and also recites that a "copy of the decision is attached". CP 286-87. The document attached is a copy of a King County Superior Court form designed to inform the Sentencing Coordinator of the jury's verdict and of the setting of a sentencing date. CP 287, The Judgments and Sentences ("J&S") were not actually entered until April 20, 2011, when Defendant was sentenced. CP 304-13, 314-15. The State assumes that this Court will deem the Defendant to be seeking direct review of the Judgments entered

9A.56.020 (1)(b). CP 1-8. An Amended Information was filed on September 16, 2010, charging the Defendant with two counts of the Unlawful Practice of Law and with two counts of Theft in the First Degree. Count I charged the Defendant with unlawfully practicing law and holding himself out as being entitled to practice law to Dale J. Frelin and Irene Frelin. Count II made a similar allegation about the Defendant's holding himself out as being entitled to practice law to William McGraw and Mary McGraw. Count III charged the Defendant with Theft in the First Degree, alleging that he obtained the property of Dale and Irene Frelin "by color and aid of deception," and Count IV likewise charged him with Theft in the First Degree with respect to obtaining the property of William McGraw "by color and aid of deception." CP 9-11. The charges in the Third Amended Information are basically the same, with some technical changes only.

The Defendant filed various pretrial motions. He represented himself *pro se* in the Superior Court (as he is in this Court). On September 22, 2010, the Defendant filed a "Motion to Join Defendants and Confirmation of Issues." CP 12-15. He then filed an "Amended Motion to Join Defendants and Confirmation of Issues" on October 7, 2010. CP 20-

against him on April 20.

27. Somewhat confusingly, he then filed another pleading, also captioned "Amended Motion to Join Defendants and Confirmation of Issues" on October 12, 2010. CP 28-35.

In these pleadings, the Defendant essentially demanded that the Court add two more defendants to this case, Irene Frelin and the personal representative of the estate of Mary McGraw, as Ms. McGraw is now deceased. The Defendant's theory as to why these two other persons had to be added can be summed up as follows: Because Irene Frelin and her now deceased husband, Dale Frelin, and Mary McGraw² paid the Defendant for the services which the State was alleging constituted the Unlawful Practice of Law, the Frelins and Ms. McGraw (or her estate) were complicit in any criminal activity that the Defendant may have undertaken, and should also be charged. CP 12-14.

In his second "Amended Motion to Join Defendants and Confirmation of Issues," the Defendant also included a section captioned "Motion to Dismiss Based Upon Misrepresentation of Statute" (hereinafter "Motion to Dismiss"), even though no motion to dismiss was referenced in the caption to this pleading. CP 31-34. In the Motion to Dismiss, the

² The Certification for Determination of Probable Cause filed with the original Information alleged that it was Mary McGraw's son, William McGraw, who actually paid the Defendant for his services.

Defendant argued that he was entitled to dismissal of, presumably, Counts I and II (though he was not specific in this regard). The Defendant argued, in essence, that because he never has been a member of the Washington State Bar Association ("WSBA"), he was not a "nonlawyer" for purposes of RCW 2.48.180, the statute proscribing the Unlawful Practice of Law, which he was charged with violating in those counts. *Id.*

The trial court, the Honorable Hollis R. Hill, denied all of the Defendant's pretrial motions. Judge Hill entered an "Order on Findings of Fact and Conclusions of Law" ("Order") on November 9, 2010. CP 78-80. In her Order (at 2), Judge Hill ruled that she could not add other defendants to the criminal case against Defendant because the trial court did "not have the authority or the responsibility to file criminal charges, and it could not 'join defendants' without violating the separation of powers among the three branches of government". CP 79. Judge Hill's Order (at 2) also denied the Defendant's "Motion to Dismiss Based Upon Misrepresentation of Statute", holding that, contrary to Defendant's argument, the definition of "nonlawyer" in RCW 2.48.180 (1)(b) "applies to a person who has never been an active member of the state bar". CP 79.

On March 2, 2011, shortly before the start of trial, the Court entered an "Order in Limine". CP 169. This Order in Limine was entered

in response to the State's Motion in Limine to exclude the Defendant's argument that the definition of "nonlawyer" in RCW 2.48.180 (1) (b) did not apply to him because he has never been an active member of the WSBA. The Order in Limine instructed both sides that they were not "to argue or otherwise imply or infer during trial that RCW 2.48.180 excludes from the definition of 'nonlawyer' individuals who have never been active members of the state bar". CP 169.

After several days of trial, the jury returned a verdict of Guilty on all four counts on March 16, 2011. CP 282-83. The Defendant filed his "Notice of Direct Review to Supreme Court" on April 13, 2011. CP 286-87. The Court sentenced Defendant on April 20, 2011. CP 304-15.

4. GROUNDS FOR RELIEF AND ARGUMENT

Defendant here is seeking to bypass direct appeal to the Court of Appeals in order to have this Court review this matter now. RAP 4.2 (a) sets out the types of cases reviewed directly in the Supreme Court. In his "Statement of Grounds for Direct Review by the Supreme Court" ("Statement of Grounds") at 2-3, Defendant cites only RAP 4.2 (a) (4), which reads: "(4) *Public Issues*. A case involving a fundamental and urgent issue of broad public import which requires a prompt and ultimate determination." Defendant attempts to put his criminal conviction within

this subsection by arguing that it does raise a "fundamental and urgent issue of broad public import" because "it is the providence (sic) of the High Court to ultimately govern and to regulate the practice of law and to safeguard and to protect what is not the unauthorized practice of law as defined by the legislature and U.S. Supreme Court." Defendant's Statement of Grounds at 2-3.

These conclusions fall far short of justifying direct review here by the Supreme Court. The fact that it is this Court that is the ultimate arbiter of the practice of law, admission to the Court, and related subjects, does not mean that every single case involving charges of the Unlawful Practice of Law must bypass orderly appeal by the Court of Appeals. Defendant has shown no reason why the Washington Court of Appeals cannot review this case on direct appeal from the Superior Court.

Moreover, Defendant's arguments are clearly without merit. Four out of five of the Assignment of Error set out in Defendant's Statement of Grounds at 3-4 have to do with his claim that because he has never been an active member of the WSBA, the definition of "nonlawyer" in RCW 2.48.180 (1)(b) does not apply to him.³ The term "nonlawyer", as used in RCW 2.48.180, is defined in RCW 2.48.180 (1) (b) thus:

³ Assignment of Error No. 3 concerns Defendant's argument that the trial court

"Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership

Defendant's argument goes like this: this definition includes only those persons who are "not an active member in good standing of the state bar"; "not active" means the same as "inactive", and the definition therefore only applies to those persons who are "inactive" members of the WSBA. The Defendant has never been a member of the WSBA at all, the argument continues, and so he is not an "inactive" member of the WSBA: therefore he does not come within the statutory definition of "nonlawyer", and, as a matter of law, he is incapable of the Unlawful Practice of Law in violation of RCW 2.48.180 (2)(a).

To articulate the Defendant's argument is to refute it. To adopt the Defendant's interpretation of the definition of "nonlawyer" would mean not only accepting his torturous equating of "not an active member" with "inactive member", but also his implied explanation of legislative intent, namely, that in enacting RCW 2.48.180, the Legislature intended only to bar suspended and disbarred members of the WSBA from practicing law. The Defendant's reading of this definition of "nonlawyer" is not supported

erred by not joining as co-defendants the persons who paid him for his services.

by logic or any authority, and is contradicted by the most basic comprehension of the English language. The State's evidence at trial demonstrated that Defendant has never been a member of the WSBA at all, and the Defendant agreed that that was true. Such evidence is sufficient to show that Defendant is a "nonlawyer" for purposes of the Unlawful Practice of Law statute, and the Defendant's argument to the contrary is absolutely without merit.

Similarly, the trial court did not err in issuing its Order in Limine. The parties agreed that the evidence at trial would demonstrate that the Defendant was never a member of the WSBA at all. The application of such evidence to the statutory definition of "nonlawyer" was a question of law, and thus within the province of the trial judge. Judge Hill did not err in directing the Defendant not to make his misleading and inaccurate argument on that issue to the jury.

Defendant's only other argument is his claim that the trial court erred in refusing to "join" other defendants to the criminal prosecution against him. This is Defendant's Assignment of Error No. 3, set out at 9-11 of his Statement of Grounds. As in the trial court, Defendant provides no authority whatsoever to support his claim that a trial judge has the power to "join" defendants in a criminal case. Judge Hill correctly ruled in her

Order that the bringing of criminal charges was a function of the executive branch, and an action that she could not take without running afoul of the separation of the powers between that branch and the judiciary. There was no error here.

5. CONCLUSION

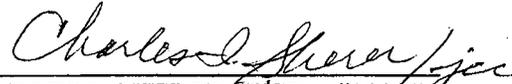
For the foregoing reasons, the State respectfully asks this Court to deny direct review of the judgment entered against the Defendant in the trial court.

DATED this 4th day of May, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
JOHN C. CARVER, WSBA #23560
Senior Deputy Prosecuting Attorney

By: 
CHARLES I. SHERER, WSBA #39277
Deputy Prosecuting Attorney
Attorneys for Respondent

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to the Petitioner Steven A. Janda, 233 1st Ave. S., Kent, WA 98032, containing a copy of the State's Answer to Motion for Direct Review, in STATE V. STEVEN ANDREW JANDA, Cause No. 85909-4, in the Supreme Court, for the State of Washington.

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



MONICKA LY-SMITH
Done in Seattle, Washington

5/4/11
Date

Schiewe, Timothy

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, May 04, 2011 1:30 PM
To: Schiewe, Timothy
Subject: FW: State v. Steven Andrew Janda, Supreme Court No. 85909-4

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: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, May 04, 2011 1:29 PM
To: 'Ly-Smith, Monicka'
Subject: RE: State v. Steven Andrew Janda, Supreme Court No. 85909-4

Rec. 5-4-11

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

From: Ly-Smith, Monicka [<mailto:Monicka.Ly-Smith@kingcounty.gov>]
Sent: Wednesday, May 04, 2011 11:52 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: State v. Steven Andrew Janda, Supreme Court No. 85909-4

Clerk of Supreme Court:

Please find attached for filing the *State's Answer to Motion for Direct Review* in the case, **State v. Steven A. Janda**, Cause No. 85909-4.

Please contact me at 206-296-8699 or Monicka.Ly-Smith@kingcounty.gov if there is any problem with this e-filing.

Thank you for your assistance.

Monicka Ly-Smith
Paralegal, Economic Crimes Unit
King County Prosecutor's Office
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104
Phone: 206-296-8699
Email: monicka.ly-smith@kingcounty.gov

Confidentiality Notice: The information contained in this ELECTRONIC MAIL transmission is confidential. It may also be subject to the attorney-client privilege or be privileged work product or proprietary information. This information is intended for the exclusive use of the addressee(s). If you are not the intended recipient, you are hereby notified that any use, disclosure, dissemination, distribution (other than to the addressee(s), copying or taking of any action because of this information is strictly prohibited.

