

NO. 74035-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

GWEN ARDREY AKA GWEN GUTIERREZ,

Appellant.

FILED
May 6, 2016
Court of Appeals
Division I
State of Washington

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

The Honorable Julie Lawton Garratt, Judge
The Honorable Bruce E. Heller, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THERE ARE NO “FACE OF THE CONVICTION DOCUMENTS” BECAUSE NONE OF THE CONVICTION DOCUMENTS SURVIVED PACIFIC MUNICIPAL COURT’S DESTRUCTION OF THE COURT FILE

The State relies on the face-of-the-conviction-document rule from State v. Ammons, 105 Wn.2d 175, 713 P.2d 719 (1986), asserting this court may not “go behind” the conviction documents to determine whether Ardrey’s 2010 Pacific Municipal Court reckless driving charge resulted in a valid conviction. Br. of Resp’t at 12-15. But there are no conviction documents available in this case. Without a document whose face shows a conviction, the State’s reliance on the Ammons rule is inapt.

The cases the State cites involved actual conviction documents, such as judgments and plea agreements. See, e.g., Ammons, 105 Wn.2d at 189 (guilty plea forms, verdict, and judgment and sentence in three consolidated appeals); State v. Binder, 106 Wn.2d 417, 418-19, 721 P.2d 967 (1986) (plea documents in addition to judgment and sentence); State v. Inocencio, 187 Wn. App. 765, 769, 351 P.3d 183 (2015) (juvenile court’s findings of fact and conclusions of law); State v. Webb, 183 Wn. App. 242, 250, 333 P.3d 470 (2014) (judgment and sentence); State v. Langstead, 155 Wn. App. 448, 457, 228 P.3d 799 (2010) (relying on judgment and sentence and stating, “the question is always whether the judgment and sentence is facially

invalid—not whether a plea document is facially invalid” (emphasis added)); State v. Thompson, 143 Wn. App. 861, 867, 181 P.3d 858 (2008) (plea agreement); State v. Bemby, 46 Wn. App. 288, 290-91, 730 P.2d 115 (1986) (plea documents). The facial invalidity inquiry is always directed at the judgment and sentence that shows a conviction; other documents, such as plea agreements, are considered only insofar as they elucidate the facial validity or invalidity of a judgment and sentence. See In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 532-33 & n.2, 55 P.3d 615 (2002). Without an actual judgment and sentence that shows a conviction on its face, it is nonsensical to apply a rule directed at examining the conviction’s facial validity or facial invalidity.

There is no judgment and sentence, plea agreement, or other similar document of the type courts rely upon to determine the facial validity of a prior conviction. Available here are a docket printout, a transcript from Ardrey’s hearing on the stipulated order of continuance (SOC), and an e-mail explaining Pacific Municipal Court’s post-compliance SOC procedure. See Br. of Appellant at 6, 9-14 (discussing available documents and what they show). These documents demonstrate that Ardrey’s 2010 reckless driving charge was not reduced to a valid conviction. Br. of Appellant at 9-14. Indeed, they show Pacific Municipal Court’s procedure violated Ardrey’s constitutional right to be present and assert her rights at a formal

adjudication of her guilt. Br. of Appellant at 14-16. This court should not heed the State's request to ignore the very documents that demonstrate the constitutionally infirm procedure the municipal court followed.

Because the documents available in this record fail to prove the existence of a valid Pacific Municipal Court conviction for reckless driving, this conviction may not be used to increase Ardrey's sentence by two years under RCW 46.61.520(2).

B. CONCLUSION

This court should strike the 24-month term imposed under RCW 46.61.520(2) from Ardrey's sentence.

DATED this 6th day of May, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read 'Kevin A. March', written over a horizontal line.

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Attorneys for Appellant

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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 6TH DAY OF MAY 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] GWEN ARDREY
DOC NO. 385602
WASHINGTON CORRECTIONS CENTER FOR WOMEN
9601 BUJACICH ROAD NW
GIG HARBOR, WA 98332

SIGNED IN SEATTLE WASHINGTON, THIS 6TH DAY OF MAY 2016.

x *Patrick Mayovsky*