

FILED

MAY 17 2013
COURT OF APPEALS
STATE OF WASHINGTON
By: 

31479-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ETHAN DOOLEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
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I.

ASSIGNMENTS OF ERROR

The Defendant has not listed any assignments of error.

II.

ISSUES

The defendant has presented an *Anders* brief based on the holding in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 498 (1967). Pursuant to the *Anders* opinion, the defendant has requested permission to withdraw.

III.

STATEMENT OF THE CASE

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

IV.

ARGUMENT

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

One of the defendant's arguments is based on ineffective assistance of counsel. The defendant claims he did not want his counsel to proffer a fourth degree assault instruction. There appears to be no validity to this argument as the

defendant's trial defense counsel gave reasons for the giving of the contested instruction. Additionally, the trial judge stated that he would have given the fourth degree assault instruction even if it had not been requested. At the time of discussions regarding the instructions, there was no objection from the defense. The State agrees with appellate defense counsel that the question of ineffective assistance of counsel is controlled by *State v. Relefor*, 148 Wn. App. 478, 497-98, 200 P.3d 729 (2009).

The State submits that the arguments raised by the defendant are without merit and this case should be dismissed.

V.

CONCLUSION

For the reasons stated above, the State respectfully requests that the defendant's appeal be dismissed.

Dated this 17th day of May, 2013.

STEVEN J. TUCKER
Prosecuting Attorney



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

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DIVISION III

STATE OF WASHINGTON,)
)
 Respondent,)
 v.)
)
 ETHAN DOOLEY,)
)
 Appellant,)

NO. 31479-1-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on May 17, 2013, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

Dennis W. Morgan
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and mailed a copy to:

Ethan Dooley
c/o Spokane County Detention Services
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Spokane WA 99260

5/17/2013
(Date)

Spokane, WA
(Place)

Dennis W. Morgan
(Signature)