

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Oct 08, 2014, 12:56 pm
BY RONALD R. CARPENTER
CLERK

NO. 90514-2

E CDF
RECEIVED BY E-MAIL

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KEVIN STEWART CLARDY, JR.,

Appellant.

ANSWER TO PETITION FOR REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

ERIN H. BECKER
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

 ORIGINAL

TABLE OF CONTENTS

	Page
A. <u>IDENTITY OF RESPONDENT</u>	1
B. <u>COURT OF APPEALS OPINION</u>	1
C. <u>ARGUMENT</u>	1
THIS COURT SHOULD DENY CLARDY'S PETITION FOR REVIEW	1
D. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Clardy, No. 69812-5-I
(April 21, 2014) 1, 2

State v. Halstien, 122 Wn.2d 109,
857 P.2d 270 (1993)..... 2

Rules and Regulations

Washington State:

RAP 13.4..... 1, 2

A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case.

B. COURT OF APPEALS OPINION

The Court of Appeals decision at issue is State v. Clardy,
No. 69812-5-I (April 21, 2014).

C. ARGUMENT

THIS COURT SHOULD DENY CLARDY'S PETITION FOR REVIEW.

RAP 13.4(b) governs consideration of a petition for review. It provides that a petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved;
or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Clardy's petition does not meet this standard.

In its briefing before the Court of Appeals, the State fully responded to the issues originally raised by Clardy in his opening brief. In its opinion, the Court of Appeals thoroughly addressed those issues, as well as the issues that Clardy raised in his Statement of Additional

Grounds. Those responses will not be repeated here. Clardy makes no argument as to how the decision of the Court of Appeals meets the criteria for discretionary review set forth in RAP 13.4(b). It does not.

There is an additional reason to deny Clardy's petition for review: he attempts to raise a new issue that was not argued or presented to the Court of Appeals. Among other issues, Clardy originally raised a challenge to a jury instruction defining recklessness; the Court of Appeals concluded that any error was invited. Brief of Appellant at 15-19; Slip op. at 11-12. Clardy also challenged in his Statement of Additional Grounds the reliability of identification evidence; the Court of Appeals rejected that argument as well. SAG at 26; Slip op. at 18. For the first time in his petition, Clardy augments these original arguments by contending that his trial attorney rendered ineffective assistance of counsel by failing to submit jury instructions, by failing to call an expert witness on the issue of eyewitness identification, and by failing to adequately argue that the identification procedure at trial was unduly suggestive. Petition at 9-24. He does not acknowledge or explain why he did not raise these issues before the Court of Appeals.

"An issue not raised or briefed in the Court of Appeals will not be considered by this court." State v. Halstien, 122 Wn.2d 109, 130, 857 P.2d 270 (1993). Had Clardy wanted to raise these issues, he could have

moved to file a supplemental brief or included them in his Statement of Additional Grounds before the Court of Appeals. He did not. This Court should deny Clardy's petition and reject his attempt to raise new issues for the first time in his petition for review.

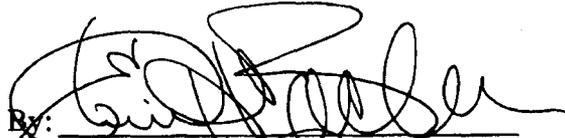
D. CONCLUSION

This Court should deny Clardy's petition for review.

DATED this 8th day of October, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

ERIN H. BECKER, WSBA #28289
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate by 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, Kevin Stewart Clardy, Jr., DOC #314747, at Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, Washington 99362, containing a copy of the ANSWER TO PETITION FOR REVIEW, in STATE V. CLARDY, Cause No. 90514-2, 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.

Dated this 8th day of October, 2014

U Brame

Name

Done in Seattle, Washington

OFFICE RECEPTIONIST, CLERK

To: Brame, Wynne
Cc: Becker, Erin
Subject: RE: State v. Kevin Stewart Clardy, Jr., No. 90514-2

Received 10-08-2014

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: Brame, Wynne [mailto:Wynne.Brame@kingcounty.gov]
Sent: Wednesday, October 08, 2014 12:41 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Becker, Erin
Subject: State v. Kevin Stewart Clardy, Jr., No. 90514-2

Please accept for filing the attached documents (Answer to Petition for Review) in State of Washington v. Kevin Stewart Clardy, Jr., No. 90514-2.

Thank you.

Erin Becker
Senior Deputy Prosecuting Attorney
WSBA #28289
King County Prosecutor's Office
W554 King County Courthouse
Seattle, WA 98104
206-296-3362
E-mail: Erin.Becker@kingcounty.gov
E-mail: PAOAppellateUnitMail@kingcounty.gov
WSBA #91002

This e-mail has been sent by Wynne Brame, paralegal (phone: 206-296-9650), at Erin Becker's direction.

CONFIDENTIALITY NOTICE

This e-mail message and files transmitted with it may be protected by the attorney / client privilege, work product doctrine or other confidentiality protection. If you believe that it may have been sent to you in error, do not read it. Please reply to the sender that you have received the message in error, and then delete it. Thank you.