

NO. 91177-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Received
Washington State Supreme Court

JAN 15 2015

STATE OF WASHINGTON,

E CRF
Ronald R. Carpenter
Clerk

Respondent,

v.

DEREK CARTMELL,

Appellant.

Superior Court Cause No. 13-1-00023-8
Court of Appeals No. 70714-1-I

ANSWER TO PETITION FOR REVIEW

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I. STATEMENT OF THE ISSUES

- A. Whether review should be denied when the Court of Appeals decision denying a Drug Offender Sentencing Alternative is not in conflict with any decision of the Supreme Court.
- B. Whether review should be denied when the Court of Appeals finding that the Information contained all essential elements of Bail Jumping is not in conflict with any decision of the Supreme Court.
- C. Whether review should be denied when no basis has been provided for review of any materials included in the appellant's Statement of Additional Grounds.

II. STATEMENT OF THE CASE

The appellant was charged with Possession of a Stolen Vehicle, Attempting to Elude a Pursuing Police Vehicle, Possession of Methamphetamine, and Hit and Run (Property Damage) based on an incident that occurred November 1, 2012. 6/11/2013 RP 101-103; Ex. 3. On December 3, 2012, the appellant signed a scheduling order that set, among other hearings, a jury trial for January 29, 2013 at 8:30 am. 6/11/2013 RP 97; Ex. 2. The appellant did not appear for the jury trial. 6/11/2013 RP 105-06; Ex. 10.

Following the appellant's failure to appear for his jury trial, the appellant was charged with one count of Bail Jumping in the current case. CP 146-47. A Criminal Information was filed that described the bail jumping charge as:

On or about the 29th day of January, 2013, in the County of Island, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Island County Superior Court Cause No. [sic] Island County Superior Court No. 12-1-00250-0; contrary to Revised Code of Washington 9A.76.170.

CP 146.

The appellant made no objection to the Information, entered a plea of not guilty, and proceeded to a jury trial pro se. 3/18/2013 RP 4; 6/3/2013 RP 10-11. Following the jury trial, the appellant was found guilty of bail jumping. CP 92.

At sentencing, the State recommended a standard-range sentence of 60 months in custody, to be served consecutively to the sentence already imposed in the 2012 case. 7/1/2013 RP 3. The appellant requested a sentence under the Drug Offender Sentencing Alternative (DOSA). 7/1/2013 RP 9. At the sentencing hearing, the State conceded the appellant was statutorily eligible for a DOSA sentence but recommended against an alternative sentence based on the facts of the case and the appellant's criminal history. 7/1/2013 RP 10. The court agreed with the State's argument and imposed a standard-range sentence. 7/1/2013 RP 10-11; CP 2-12.

On appeal, the appellant challenged the language of the charging document and the trial court's decision to deny a DOSA and impose standard-range sentence. He also added a series of other challenges in his Statement of Additional Grounds. In an unpublished opinion, the Court of Appeals upheld the appellant's conviction, finding the Information satisfied the essential elements requirement by mirroring the language of the bail jumping statute. Decision at 5. The court also upheld the appellant's sentence, finding the record failed to establish a categorical refusal by the sentencing court to exercise its discretion. Decision at 7. The court also denied the appellant's additional challenges. Decision at 7-9.

III. ARGUMENT

A. The Court of Appeals finding that the trial court considered but declined the appellant's request for a DOSA does not conflict a decision of the Supreme Court.

The Court of Appeals decision upholding the appellant's sentence is not in conflict with any decision by this Court. The appellant's request for review is based solely on his claim that the Court of Appeals decision is in conflict with decisions of this court. See Petition for Review at 5. While a petition for review may be accepted if a decision of the Court of Appeals is in conflict with a decision of the Supreme Court, no such conflict exists in this case. Because there is no conflict with any Supreme

Court cases and the appellant has provided no other basis for review, his request should be denied.

The appellant's request lies entirely on his claim that the trial court did not exercise discretion in denying his request for a DOSA. Petition for Review at 5. However, he does not identify any case with which he claims the Court of Appeals decision is in conflict. Instead, his argument simply relies on the premise that a sentencing court must exercise its discretion when a request for alternative sentencing is made by an eligible defendant. The Court of Appeals agreed with that principle and based its legal reasoning on the appropriate precedential case law. Decision at 6 (citing *State v. Williams*, 149 Wn.2d 143, 147, 65 P.2d 1214 (2003)). But, despite agreeing with the appellant's legal reasoning, the Court of Appeals upheld the appellant's sentence because the facts of this case, "fail[ed] to establish either the court's categorical refusal to exercise its discretion or an impermissible basis for the refusal to impose a DOSA." Decision at 7.

The Court of Appeals decision did not conflict with any Supreme Court decision. Instead, the appellant merely disagrees with the conclusion of the Court of Appeals based on its correct application of the law. Of course, simple disagreement does not grant the appellant an opportunity to re-argue a properly considered and decided issue. This court should, therefore, deny the appellant's request for review.

B. The Court of Appeals finding that the charging document included all essential elements of the charge of bail jumping does not conflict a decision of the Supreme Court.

The appellant next seeks discretionary review of the finding below that the charging document in this case contained all essential elements of the crime of bail jumping. In support of his request, the appellant asserts the Court of Appeals decision conflicts with decisions of this Court in *State v. Kjorsvik*, 117 Wn.2d 93, 812 P.2d 86 (1991), and *State v. Quismundo*, 164 Wn.2d 499, 192 P.3d 342 (2008). However, the Court of Appeals explicitly followed the analysis required by *Kjorsvik* and, based on that analysis, was not required to reach the question of remedy addressed in *Quismundo*. Therefore, there is no conflict with a decision of the Supreme Court, and this Court should deny the appellant's petition for review.

In *Kjorsvik*, this court adopted a two-prong test for challenges to the sufficiency of charging documents: (1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and if so, (2) can the defendant show that he was nonetheless actually prejudiced by inartful language in the document. *Kjorsvik*, 117 Wn.2d at 105-06. The opinion of the Court of Appeals cited directly to the *Kjorsvik* decision and explicitly followed that two-step analysis. Decision at 4-5. As part of that analysis, the court below found all essential

elements of the charge appeared in the charging document. Decision at 5. It also found the appellant failed to address prejudice and none was apparent. *Id.* So, in accordance with its *Kjorsvik* analysis, the Court of Appeals upheld the appellant's conviction. *Id.*

Quismundo, on the other hand, only considered the appropriate remedy for an insufficient charging document that was challenged at trial. *Quismundo*, 164 Wn.2d at 500-01. This case is obviously distinguishable on its facts because the information here was not challenged at trial court level. 3/18/2013 RP 4; 6/3/2013 RP 10-11. More importantly, there can be no conflict with *Quismundo* in this case because, having found the charging document was sufficient, the Court of Appeals had no reason to consider the question of remedy that was *Quismundo's* sole consideration.

The decision by the Court of Appeals was not in conflict with either *Kjorsvik* or *Quismundo*. The lower court specifically followed the analysis outlined in *Kjorsvik* and found the charging document contained all the essential elements of the charge of bail jumping. Because the charging document was sufficient, the court was not required to reach the question of remedy that was addressed in *Quismundo*. Thus, there is no conflict with any Supreme Court decision, and this Court should deny review.

C. The appellant has provided no basis for review of the claims in his Statement of Additional Grounds.

The appellant finally requests review of “each and every issue raised in his Statement of Additional Grounds.” Petition at 16. However, his petition for review provides no facts or argument that would allow discretionary review. Instead, he has made a simple, bare assertion that, parroting the Rules of Appellant Procedure, claims the decision below is in conflict with decisions of this court and other decisions of the Court of Appeals and that this case presents a significant question of constitutional law and involves issues of substantial public interest. The Supreme Court will not consider an assignment of error where there is no argument in the brief in support thereof. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Because the appellant has provided no basis other than his bare assertion, in favor of review of his Statement of Additional Grounds, this Court should deny review.

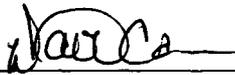
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Respectfully submitted this 12th day of January, 2015.

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By:  _____
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