

69732-3

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No. 69732-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

VERNON MAURICE WALKER,

Appellant.

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

The Honorable Dean S. Lum

REPLY BRIEF OF APPELLANT

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COURT OF APPEALS
STATE OF WASHINGTON

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A. ARGUMENT

THE COURT VIOLATED MR. WALKER'S CONSTITUTIONALLY PROTECTED RIGHT TO APPEAR AT SENTENCING WITHOUT RESTRAINTS

The State in its response predictably argues due process is only violated where the shackling of the defendant occurs before the jury, thus no violation where the defendant is shackled at sentencing. Brief of Respondent at 10-23. Yet the United States Supreme Court has acknowledged that shackling a defendant also violates the defendant's Sixth Amendment right to counsel and the "dignity and decorum of judicial proceedings that the judge is seeking to uphold." *See Deck v. Missouri*, 544 U.S. 622, 630-31, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2007) (shackling also infringes on the defendant's right to counsel in that it interferes with the defendant's ability to communicate with his lawyer).

The State also ignores the cases cited by Mr. Walker finding the right to be free from shackling has been extended to civil matters as well. *See, e.g., Duckett v. Godinez*, 67 F.3d 734, 748 (9th Cir.1995), *citing Tyars v. Finner*, 709 F.2d 1274, 1284-85 (9th Cir.1983) (unconstitutional to compel the subject of a civil commitment hearing to wear physical restraints at trial); *Lemons v. Skidmore*, 985 F.2d 354,

356-58 (7th Cir.1993) (impermissible to shackle plaintiff prison inmate in a civil rights action alleging excessive force by corrections officers).
Cf. Holloway v. Alexander, 957 F.2d 529, 530 (8th Cir.1992)
(constitutional to shackle plaintiff prison inmate in civil rights action challenging constitutionality of living conditions in state prison, because plaintiff's status as dangerous felon irrelevant).

Finally, in *State v. Williams*, the Supreme Court cited decisions from the English courts interpreting the common law dating to the 1700's finding it a violation of the defendant's right to be free from shackling at all court appearances, including those where the jury was not present:

It was the ancient rule at common law that a prisoner brought into the presence of the court for trial upon a plea of not guilty to an indictment was entitled to appear free of all manner of shackles or bonds; and, prior to 1722, when a prisoner was arraigned or appeared at the bar of the court to plead, he was presented without manacles or bonds, unless there was evident danger of his escape. 2 Hale, P.C. 219; 4 Bl. Comm. 322; Layer's Case, 6 State Trials (4th Ed., by Hargrave) 230, 231, 244, 245; Waite's Case, 1 Leach, 36. In J. Kelyng's Reports (pleas of the crown adjudged in the reign of Charles II.), "it was resolved that, when prisoners come to the bar to be tried, their irons ought to be taken off, in that they be not in any torture while they make their defense, be their crime never so great. And accordingly, upon the arraignment and trial of Hewler and others, who were brought in irons, the court commanded their irons to be taken off." The common law of England was

expressly adopted by legislative enactment at the first session of the legislative assembly of this territory, and there is no doubt that the ancient right of one accused of crime under an indictment or information to appear in court unfettered is still preserved in all its original vigor in this state.

18 Wash. 47, 49-50, 50 P. 580 (1897).

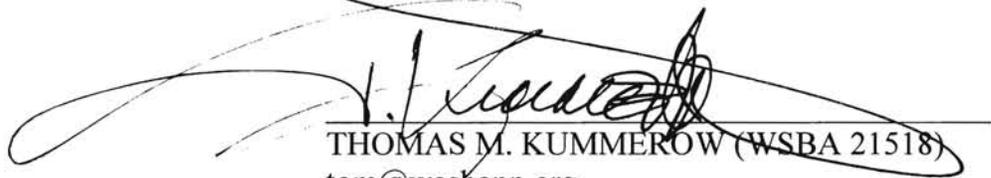
Mr. Walker acknowledged in his opening brief that Washington courts have not addressed this specific issue. But Mr. Walker urges this Court to extend the right to sentencing hearings in order to reinforce his right to right to confer with counsel, and to uphold the “dignity and decorum of judicial proceedings.” *Deck*, 544 U.S. at 630-31.

B. CONCLUSION

For the reasons stated in this reply brief and the previously filed Brief of Appellant, Mr. Walker asks this Court to reverse his sentence and remand for resentencing without the restraints.

DATED this 29th day of January 2014.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read 'T. M. Kummerow', is written over a horizontal line. The signature is highly cursive and loops around the line.

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DIVISION ONE**

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)	
Respondent,)	
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v.)	NO. 69732-3-I
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VERNON WALKER,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 29TH DAY OF JANUARY, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DONNA WISE, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
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SIGNED IN SEATTLE, WASHINGTON THIS 29TH DAY OF JANUARY, 2014.

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