



State of Washington,  
Respondent,

v.

BOBBY D. COLBERT,  
Appellant.

No. 96058-5

Washington State  
Supreme Court

Motion Requesting  
An Order

COMES NOW Appellant Colbert and moves this Court to order the Court of Appeals, Division One to address the following issue:

Did The Skagit County Superior Court Err In Imposing A 36-Month Term Of Community Custody Based On The Prohibition Against Ex Post Facto Laws ?

Memorandum

On September 27, 2017, the Honorable Superior Court Judge DAVID NEEDY granted Colbert's Motion to Modify Sentence. This exercise of

discretion under Wash. Rev. Code § 9.94A.701 was not the law in effect at the time of the offense. The governing law is former Wash. Rev. Code § 9.94A.715. RCW 9.94A.345

Both the United States and Washington State Constitutions prohibit ex post facto laws. U.S. Const. Art. 1, § 10; Wash. Const. Art. 1, § 23. The Skagit County Superior Court violated the prohibition when it imposed punishment for conduct that was not punishable when committed and increased the quantum of punishment. In re Pers. Restr. of Flint, 174 Wn. 2d 539 (2012).

RCW 9.94A.701 by its own terms applies to Colbert's resentencing retroactively. Also, it makes a formerly discretionary punishment mandatory. Lindsey v. Washington, 301 U.S. 397, 401-02, 57 S.Ct. 797, 81 L.Ed. 1182 (1937).

This is Colbert's first opportunity to raise this claim based on the denial of appeal.

Bobby D. Colbert

Bobby D. Colbert

8-14-18

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Temple of Justice  
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