

Publicans Prevail

By: Monte E. Hester; Jan 2005

Our State Supreme Court in Personal Restraint Petition of Christopher A. Orange, Docket No. 72485-7 filed 11/10/2004, has courageously evidenced its commitment to “stare decisis.” The court reversed and remanded for a new trial convictions of eight felonies (first degree murder, first degree attempted murder, two counts of first degree assault and four counts of reckless endangerment).

The trial court, because of space limitations, excluded the defendant’s family and friends from the courtroom during the voir dire portion of the trial. Trial counsel didn’t object to the court’s decision. The Supreme Court found that the lawyer’s failure to do so constituted ineffective assistance of counsel.

The court based its decision on both the State and Federal Constitutions which provide for a “public” trial and that the guaranty applies to “the process of juror selection.”

The case makes it clear that it is possible to close a trial or a portion of it to the public but points out that specific hearings and findings must be made before such an exclusion would be justified. The court stated “The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.”

Additionally, the court also found that the double jeopardy clause resulting in an order that the state, upon retrial, was to dismiss either a first degree attempted murder or first degree assault charge as applied to the same victim.

Those two charges were based upon a single shot being fired at the same victim.

The court made a great analysis of all of the various formulas that historically have been used to evaluate double jeopardy claims. Relying upon the Blockburger test, the court stated:

The crimes of first degree attempted murder (by taking the “substantial step” of shooting at Walker) and first degree assault (committed with a firearm) were the same in fact and in law. The two crimes were based on the same shot directed at the same victim, and the evi-

dence required to support the conviction for first degree attempted murder was sufficient to convict Orange of first degree assault.

End

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