

FILED  
COURT OF APPEALS  
DIVISION II

2013 NOV -5 AM 8:57

STATE OF WASHINGTON

BY  DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,  
Respondent.

v.

NICHOLAS M. HIGGS,  
Appellant.

No. 43097-5-II

ORDER GRANTING MOTION TO MODIFY  
AND AMENDING OPINION

Nicholas Higgs has filed a motion to modify our opinion previously filed in this case on October 29, 2013. Granting this motion, we hereby amend the opinion as follows:

On page 1, lines 2-3, delete “with intent to manufacture or deliver”.

On page 4, delete the last sentence, which currently reads:

“The jury convicted Higgs on all four drug counts, and he appeals.”

And replace this sentence with the following new sentence and new footnote number 2:

The jury found Higgs guilty of two counts of unlawful possession of a controlled substance (methamphetamine and amphetamine<sup>2</sup>), use of drug paraphernalia, and unlawful delivery of a controlled substance (amphetamine).

<sup>2</sup> For the unlawful delivery of a controlled substance (amphetamine) with intent to manufacture or deliver charge, the jury found Higgs guilty of the lesser included offense of unlawful possession of a controlled substance.

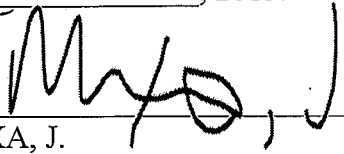
No. 43097-5-II

Subsequent footnotes are consequently renumbered.

Accordingly, it is

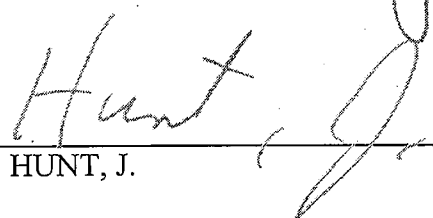
**SO ORDERED.**

DATED this 5th day of November, 2013.

  
\_\_\_\_\_  
MAXA, J.

We concur:

  
\_\_\_\_\_  
WORSWICK, C. J.

  
\_\_\_\_\_  
HUNT, J.