

No. 29363-7-III

Sweeney, J. (concurring) — I concur in both the majority’s analysis and disposition here. I write separately to say, respectfully say, that I think our Supreme Court’s opinion in *State v. Furth* sets out the preferable rule. *State v. Furth*, 82 Wash. 665, 144 P. 907 (1914), *overruled by State v. Devin*, 158 Wn.2d 157, 142 P.3d 599 (2006). Christopher Devlin is dead. The “defendant” does not exist. He no longer walks this earth. Moreover, his estate has no assets. Indeed, there is no showing that any claim has even been made against his estate. So there is no way for the State to relieve him of any punishment or, for that matter, to punish him further.

Sweeney, J.