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

STATE OF WASHINGTON,	)	No. 30075-7-III
Respondent,	)	
v.	)	
RANDAL LEE RAPH,	)	UNPUBLISHED OPINION
Appellant.	)	

Korsmo, C.J. • Randal Raph challenges the special verdict forms used at his trial. A subsequent Washington Supreme Court opinion has rendered his challenges moot. We affirm.

FACTS

Mr. Raph was charged in the Ferry County Superior Court with four felony charges and one gross misdemeanor offense relating to a domestic relationship. There were two trials. The first trial resulted in the jury convicting Mr. Raph of unlawful imprisonment and theft of a motor vehicle. The jury also returned a special verdict that

the unlawful imprisonment was a domestic violence offense. The jury was unable to agree on the remaining three charges.

Those counts were tried to a second jury, which convicted Mr. Raph as charged of attempted second degree rape, interfering with a report of domestic violence, and felony harassment. The jury also returned special verdicts finding that the rape and harassment crimes were domestic violence offenses. The jury also found two aggravating circumstances present on the rape count.

In accordance with the then recent decision in *State v. Bashaw*, 169 Wn.2d 133, 234 P.3d 195 (2010), the court at the first trial instructed the jury that it must be unanimous to return a special verdict, but it did not have to be unanimous to reject a special verdict. The same special verdict format was used at the second trial. Defense counsel did not object to the form of the special verdicts at either trial.

The court imposed an exceptional sentence on the attempted rape conviction and set a minimum term of 120 months for that offense. Concurrent standard range terms were imposed on the other counts. Mr. Raph then timely appealed to this court.

ANALYSIS

The appeal alleges that the special verdict forms were inconsistent with the court's

general instruction that the jury had to be unanimous to return a verdict in a criminal case and that defense counsel was ineffective for not raising the issue.[1] The Washington Supreme Court has recently resolved these arguments, which we will address as one.

In *Bashaw*, the court, expanding upon its earlier decision in *State v. Goldberg*, 149 Wn.2d 888, 72 P.3d 1083 (2003), ruled that juries should not be instructed that they had to be unanimous to return a "no" answer (i.e., reject) on a special verdict form. *Bashaw*, 169 Wn.2d at 145-47. The court cited *Goldberg* and various policy reasons for its decision, but did not identify the *Bashaw* rule as having a constitutional basis.

Recognizing that the rule appeared to have its basis in the court's supervisory powers, this court ruled that a challenge to a special verdict form could not be raised for the first time on appeal because it did not present a question of constitutional magnitude. *State v. Guzman Nunez*, 160 Wn. App. 150, 159-63, 248 P.3d 103 (2011), *aff'd*, 174 Wn.2d 707, ___ P.3d ___, 2012 WL 2044377 (Wash. June 7, 2012).

In its review of *Guzman Nunez*, the Supreme Court agreed that the rule of *Bashaw* had been based on common law sources rather than the constitution. *Guzman Nunez*, 174

[1] Mr. Raph has filed a pro se Statement of Additional Grounds that lists, but does not argue, several potential issues. We cannot address his issues because they either have no support in the record or are insufficiently argued. RAP 10.10(c).

Wn.2d at 712-16. The court also decided that its rulings in *Goldberg* and *Bashaw* were wrong and overruled them. *Id*. at 718.

The Supreme Court's ruling is dispositive of the issues presented in this appeal. First, there is no basis for challenging the special verdict forms because there was no objection to them. They do not present a question of "manifest error affecting a constitutional right." RAP 2.5(a)(3). The failure to challenge the verdict forms in the trial court renders the argument unreviewable in this court. *Id*.

There likewise is no basis for finding defense counsel ineffective. The Sixth Amendment guarantee of counsel is analyzed under the two-part test of *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A reviewing court must determine whether or not (1) counsel's performance failed to meet a standard of reasonableness, and (2) actual prejudice resulted from counsel's failures. *Id*. at 690-92. In evaluating ineffectiveness claims, courts must be highly deferential to counsel's decisions and there is a strong presumption that counsel performed adequately. *Id*. at 689-91. When a claim can be disposed of on one ground, a reviewing court need not consider both *Strickland* prongs. *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726, *review denied*, 162 Wn.2d 1007 (2007).

It was not unreasonable for counsel to agree with the *Bashaw*-approved format for the special verdict forms. They worked to the benefit of his client• a single juror could prevent the return of a special verdict. There is no basis for finding that counsel erred. For the same reason, there also is no basis for finding any prejudice to Mr. Raph. The instruction format benefitted him. While we do not agree that the court's instructions were in conflict, as Mr. Raph now argues, the alleged conflict also did not harm him because he had no entitlement to the erroneous verdict format. Any error, again, would have been to his benefit. For all of these reasons, Mr. Raph has not established that his counsel erred.

The claim of error was not preserved and, in light of *Guzman Nunez*, was also without merit. Accordingly, the convictions are affirmed.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be for public record pursuant to RCW 2.06.040.

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Korsmo, C.J.

WE CONCUR:

_____ _____

Sweeney, J. Siddoway, J.