

FILED
SUPREME COURT
STATE OF WASHINGTON
4/20/2022 11:00 AM
BY ERIN L. LENNON
CLERK

Supreme Court No. 100854-6
COA No. 55078-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent.

v.

KEVIN ANTHONY RED,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

Kevin Red #998636 - Petitioner
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, Wa. 98520

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A IDENTITY OF PETITIONER AND DECISION BELOW

Kevin Red, petitioner here and appellant below, respectfully asks this Honorable Court to accept review pursuant to RAP 13.4(b)(1) and (4) of the Court of Appeals' decision attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

(1). To determine whether the Court of Appeals' decision is in conflict with this Court's long standing holding highlighted in State v. Ford; and to determine whether that decision also creates an Equal Protection violation, violates the doctrine of Stare Disis, and is a matter of Public Interest

(2). To also determine whether the interest of Judicial Economy is applicable regarding relief in this matter.

C. STATEMENT OF THE CASE

On February 27, 1999, Mr. Red was charged by way of Information in Pierce County Superior Court and arraigned on March 1, 1999 with One Count of Attempted Murder in the First Degree RCW 9A.32.030(1) with Firearm Enhancement: Count Two; Burglary in the First Degree RCW 9A.52.020(1)(a) and the alternative RCW 9A.52.020(1)(b) with Firearm Enhancement: and Count Three; Unlawful Possession of a Firearm in the First Degree RCW 9.41.040(a). Clerk's Papers at 1-4.

After a single trial on all counts, Mr. Red was found guilty of Attempted Murder in the Second Degree with Firearm Enhancement, Burglary in the First Degree with Firearm

Enhancement, and First Degree Unlawful Possession of a Firearm. He was sentenced to 357 months.

On April 21, 1999 before Judge Sergio Armijo, Department of Assigned Counsel Mr. Douglas Tuffs moved to withdraw as Mr. Red's Counsel due to a conflict of interest. After the hearing on the matter, he was allowed to withdraw and Mr. Clayton Dickenson WSBA #1372 was placed on the case to represent Mr. Red. Clerk's Papers at 16 (Nun Pro Tun Order replacing Judge Sergio Armijo's signature). Arrangements were made for the record of the hearing to prove DAC was removed from Mr. Red's case, but for some reason the Court Reporter stated they were destroyed. See attached Appendix B (Court Reporter's Affidavit.

Mr. Red's Pierce County Superior Court Case Docket reveals no request for the destruction of any records or an order approving any destruction as required by law. See attached Appendix C (Pierce County Superior Court Case Docket.

On 2-23-2001 on Direct Appeal, the Court of Appeals remand Mr. Red back to the trial court for resentencing to conduct a Comparability Analysis as to his Louisiana conviction of manslaughter due to the record not showing an analysis was performed. See COA Decision No. 24938-3-II at page 7 and 8.

On 9-27-2002, Mr. Red appeared before the court. However, instead of being taken before his trial judge Thomas P. Larkin for a Comparability Analysis, he was taken before Judge Sergio Armijo for a brief Cost Bill hearing, sent an order regarding

his Louisiana conviction, and sent back to prison without any idea of the illegal ramifications involved due to his lack of education and past mental history, documented in the state of Louisiana where he was born and raised.

The trial court's order signed by Judge Thomas P. Larkin, the State, and another DAC Attorney certified that on 9-27-2002 a Comparability Analysis was conducted finding his Louisiana conviction (at least) comparable to First Degree Manslaughter. See attached Appendix D (Trial Court's Order).

After filing a number of timebarred collateral attacks over the years on the alleged comparability hearing, Mr. Red was finally properly assisted in filing a late notice of appeal and was granted appeal for failure to inform him of the right to appeal this matter.

After filing the Designation of Clerk's Papers and Statements of Arrangements, the Pierce County Superior Court (Court Reporter) Raelene Semago for Department #3 filed an affidavit in the court of appeals revealing the transcript of the alleged 9-27-2002 resentencing hearing and Clerk's Minutes were destroyed, despite Mr. Red's Superior Court Case Docket revealing no order or request validating or proving any possible destruction as mandated by law. She also stated she was not present. See attached Appendix B (Court Reporter's Affidavit).

In his appeal brief Mr. Red raised the following issues:

The State violated Mr. Red's due process rights in failing for the second time to properly perform a Comparability Analysis on the record pursuant to the SRA and the Court of Appeals order, warranting resentencing in his favor. Also; The State violated Mr. Red's due process right to be present at his factually based resentencing hearing. See Petitioner's Appellant Brief at page 1.

Despite Mr. Red arguing and proving the State should not be granted a third opportunity to prove the classification of his Louisiana conviction pursuant to this Court's holding in *State v. Ford*, 137 Wn.2d 472 (3-11-1999), the Court of Appeals granted the State a third opportunity based on bold assertions as well as the States failure to make and preserve a record as required by law. See attached Appendix A (COA Decision).

D. ARGUMENT

1. The Court of Appeals decision is in conflict with this Court's holding in *State v. Ford*,

In *State v. Ford*, 137 Wn.2d 472 (3-11-1999) citing *State v. McCorkle*, 88 Wn. App. 485, 500, 945 P.2d 736 (1997) this court held:

"In the normal case, where the disputed issues have been fully argued to the sentencing court, we would hold the State to the existing record, excise the unlawful portion of the sentence, and remand for resentencing without allowing more evidence to be adduced"

Although it is highly questionable whether a resentencing hearing in fact took place in Mr. Red's case, the court of

appeals held a hearing took place, acknowledged the existing record is again insufficient of a comparability analysis, but still gave the State a third opportunity to prove the classification of his Louisiana conviction. See attached Appendix A (COA Decision).

Even though Mr. Red requested the court of appeals remand for resentencing in accordance with this court's holding, it ignored that request and based its decision on the bold assertion that the record was destroyed.

The court of appeals did not even consider that there are no evidence of any destruction of records and that any destruction of records must be accomplished by way of a court order (General Rule GR (c)(1)(A), GR (3)(A)(B) or (C). Also that such records must be made and preserved CrR 7.2(c): and Retention Schedule RCW 2.32.050 and RCW 36.23.030. Mr. Red's Superior Court Case Docket is insufficient on these factors and the court of appeals ignored that as well.

However, it is the State's burden of proving the classification of Mr. Red's Louisiana conviction as well as making a record and preserving it. It was also the State and trial court's fault the trial court's order is devoid of a comparability analysis. Mr. Red should not be deprived of a resentencing in accordance with this court's holding in *State v. Ford, Id.* because of their failures and unsubstantiated excuses.

THE COURT OF APPEALS DECISION CREATES AN EQUAL PROTECTION VIOLATION

The Washington Constitution article I, section 12, and the Fourteenth Amendment to the United States Constitution ensures that persons similar situated as to the legitimate purpose of law receive equal treatment. *State v. Pedro*, 148 Wn. App. 932, 944, 201 P.,3d 398, 403 (2009).

The court of appeals decision denying Mr. Red the full benefit of this court's ruling in *State v. Ford, Id.* creates an equal protection violation. The circumstances in Mr. Red's case are similar situated with *Ford*, where the State must be held to the existing record and must not be afforded a third opportunity to prove the classification of his Louisiana conviction. Mr. Red incorporates all legal arguments contained in this petition for review to substantiate this claim, establishing why an equal protection violation exist.

When an equal protection claim is established, the remedy is generally to extend the withheld benefit to alleviate the disparate treatment. *Sessions v. Morales-Santana*, _____ U.S. ____, 137 S.Ct. 1678, 1699, 198 L.Ed.2d 150 (2017).

THE COURT OF APPEALS DECISION VIOLATES STARE DECISIS

The court of appeals decision also violates the doctrine of stare decisis where it fails to follow this court's ruling in *State v. Ford, Id.*

Stare Decisis is a doctrine mandating lower courts must follow higher courts decisions. *State v. Otton*, 185 Wn.2d 673,

678, 374 P.3d 1108 (2016). In re Rights to Waters of Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d (1970).

To overcome the doctrine a party must show the prior decision was incorrect and harmful or the underpinning of the court's precedent have changed. Stranger Creel, Id. at 653.

The State has not put forth argument or any evidence on this point and neither did the court of appeals. As a result, this court's holding in State v. Ford, Id. controls and must be adhered to.

THE COURT OF APPEALS DECISION IS A MATTER OF PUBLIC INTEREST
In State v. Ford Id. this court expressed; To uphold procedurally defective sentencing hearings would send the wrong message to courts, criminal defendants, and the public. Also; Our concept of the dignity of individuals and our respect for the law itself suffer when inadequate attention is given to a decision critically affecting the public interest, the interests of victims, and the interests of the person being sentenced.

The court of appeals decision in Mr. Red's case allowing the State a third opportunity in the face of its failures and disregard for justice is harmful, undermines the system of justice and this courts authority, and sends the wrong message to the pierce county prosecutor's office as well as the trial court.

Mr. Red is respectfully requesting this honorable court to reinforce its inspirational words of affirmation in its june

4th 2020 letter to the Judicial and Legal Community, calling for the eradication of corrupt injustice within our systems of justice.

IN THE INTEREST OF JUDICIAL ECONOMY

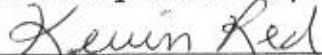
In the interest of judicial economy in an effort to avoid possible future litigation as a result of this matter, Mr. Red respectfully request; if this court should reverse the court of appeals and remand for his Louisiana conviction to be removed from his criminal history, he also request the following:

- (1). That his conviction of First Degree Unlawful Possession of a Firearm be dismissed, as it is predicated on his Louisiana conviction in this matter, and he be granted a new trial where he had a single trial and his jury was illegally apprised of the Louisiana conviction.
- (2). and or, all of his convictions be vacated and dismissed with prejudice, where his conviction of First Degree Unlawful Possession of a Firearm is an element to all counts.

E. CONCLUSION

The Petitioner respectfully request this honorable court to accept review of this matter and renders justice.

Respectfully Submitted,



4-18-22

Declaration of Service

I hereby certify that on the 20 day of April 2022, I electronically filed the foregoing from Stafford Creek Prison, with the Clerk of the Court of Appeals and the Supreme Court using both Portals which will send notification of such filing and an electronic copy to attorneys of record for the Respondent and any other party.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20 day of April 2022, at Stafford Creek Corrections Center, Aberdeen, Wa. 98520

RESPECTFULLY SUBMITTED,

Kevin Red

APPENDIX A
(Court of Appeals Decision)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON April 5, 2022

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

KEVIN ANTHONY RED,

Appellant.

No. 55078-4-II

UNPUBLISHED OPINION

MAXA, J. – Kevin Red appeals a 2002 trial court order on remand from this court determining that his offender score was correctly calculated in 1999.¹ He argues that the trial court erred because his prior Louisiana manslaughter conviction included in his offender score was not comparable to a Washington offense.

We conclude that the Louisiana conviction is not legally comparable to a Washington offense and the record does not support a finding of factual comparability. Accordingly, we reverse the trial court’s 2002 order and remand for the trial court to address factual comparability and, if necessary, resentencing.²

FACTS

In 1999, Red forced his way into a hotel room with a firearm and shot one of the occupants. A jury found him guilty of attempted second degree murder, first degree burglary,

¹ In July 2020, Red filed a direct appeal of the trial court’s September 2002 order. Even though the order was entered 18 years previously, a commissioner of this court accepted Red’s late notice of appeal for filing because Red was not properly advised of his right to appeal.

² Red also argues that he was not permitted to attend the 2002 comparability hearing in violation of his right to be present. Because we remand for resentencing, we do not address this argument.

and first degree unlawful possession of a firearm. The court sentenced him to 357 total months of confinement based on an offender score of 7. Red's offender score included a 1991 first degree manslaughter conviction from Louisiana for an offense committed in 1990.

This court affirmed Red's convictions in 2001 but remanded to the trial court for a hearing to determine the nature of Red's Louisiana conviction and therefore his offender score.

The trial court scheduled a resentencing hearing. But the record contains no submission from the State regarding Red's 1991 Louisiana conviction or comparability in general.

After a hearing in September 2002, the trial court concluded that Red's Louisiana manslaughter conviction was at least comparable to Washington's crime of first degree manslaughter. Therefore, the court ruled that Red's offender score had been properly calculated in 1999 and that Red's sentence was correct. The court provided no written findings or analysis regarding comparability in the order. And the transcript from the hearing was destroyed after 15 years pursuant to retention guidelines.

Red appeals the trial court's comparability order.

ANALYSIS

Red argues that the trial court's 2002 order must be reversed because nothing in the record supports the court's conclusion that his Louisiana conviction was comparable to a Washington offense.³ We agree.

³ Red filed four prior personal restraint petitions (PRPs) challenging the inclusion of his Louisiana conviction in his offender score. This court dismissed all four as untimely. The State argues that the comparability argument already has been rejected by this court in one of those PRPs, claiming that *res judicata* applies. But while dismissing the PRPs as untimely, this court did not address the merits. The court merely noted that the trial court had reaffirmed its prior sentence.

A. LEGAL PRINCIPLES

Out-of-state convictions can be included in a defendant's offender score only if they are either legally or factually comparable to a Washington conviction. *State v. Arndt*, 179 Wn. App. 373, 378, 320 P.3d 104 (2014). The State bears the burden of proving comparability. *State v. Ross*, 152 Wn.2d 220, 230, 95 P.3d 1225 (2004). We review the trial court's comparability analysis de novo. *State v. Olsen*, 180 Wn.2d 468, 472, 325 P.3d 187 (2014).

We apply a two-part test to determine whether an out-of-state offense is comparable to a Washington offense. *In re Pers. Restraint of Canha*, 189 Wn.2d 359, 367, 402 P.3d 266 (2017). First, we determine if the offenses are legally comparable by comparing their elements. *Id.* The elements of the out-of-state offense must be compared to the elements of a Washington criminal statute that was in effect when the out-of-state crime was committed. *In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). Legal comparability exists when the out-of-state offense is the same or narrower than the Washington offense. *Olsen*, 180 Wn.2d at 473.

Second, if the offenses are not legally comparable, we determine whether the offenses are factually comparable by deciding if "the defendant's conduct would have violated a Washington statute." *Canha*, 189 Wn.2d at 367. In assessing factual comparability, we can consider only those facts in the out-of-state proceeding that were proven to a trier of fact beyond a reasonable doubt or to which the defendant admitted or stipulated. *Id.*

B. COMPARABILITY ANALYSIS

1. Legal Comparability

Nothing in the existing record explains the trial court's analysis in concluding that Red's Louisiana conviction was comparable to a Washington offense. But legal comparability is a question of law, and our review is de novo. *Olsen*, 180 Wn.2d at 472. Therefore, we can

address legal comparability without an adequate record by comparing the Louisiana and Washington statutes.

In 1990 when Red committed his Louisiana offense, the Louisiana manslaughter statute was former Louisiana Statutes Annotated (LSA) § 14:31 (1973). Section one of that statute defined manslaughter as a homicide that would be first or second degree murder “but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection.” Former LSA § 14:31(1). First degree murder required a specific intent to kill or inflict great bodily injury. Former LSA § 14:30 (1990). Second degree murder required (1) a specific intent to kill or inflict great bodily injury, (2) killing someone in the course of certain crimes without such intent, (3) unlawfully distributing controlled substances that causes the death of a person, or (4) unlawfully distributing controlled substances to another person who subsequently disputes the controlled substance that causes the death of a person. Former LSA § 14:30.1 (1987).

Section two of former LSA § 14:31 defined manslaughter as a homicide committed without any intent to cause death or great bodily harm when (a) the offender was engaged in a felony not listed in Louisiana Statutes Annotated § 14:30 or any intentional misdemeanor directly affecting the person, or (b) the offender is resisting lawful arrest under certain circumstances. Former LSA § 14:31(2).

In Washington, second degree murder required intent to cause death but without premeditation or causing the death of a person while committing or attempting to commit any felony. Former RCW 9A.32.050(1) (1976). Former RCW 9A.32.060(1)(a) (1975) defined first degree manslaughter as recklessly causing the death of another person. The criminal code defined the “recklessness” mental state as when a person “knows of and disregards a substantial

risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.” Former RCW 9A.08.010(1)(c) (1975).

Louisiana’s offense of manslaughter was not legally comparable to Washington’s offense of second degree murder. The second section of the Louisiana manslaughter statute did not require an intent to cause death as in Washington. And that section defined manslaughter to include a death that occurred during the commission of a misdemeanor, not only during the commission of a felony as in Washington.

Louisiana’s offense of manslaughter also was not legally comparable to Washington’s offense of first degree manslaughter. As noted, the second section of the Louisiana manslaughter statute required only that the death occur in the course of certain felonies and intentional misdemeanors without any reckless conduct requirement as in Washington.

Therefore, we conclude that the Louisiana manslaughter conviction was not legally comparable to a Washington offense.

2. Factual Comparability

Even if there was no legal comparability, Red’s Louisiana conviction could be included in his offender score if there was factual comparability. *Canha*, 189 Wn.2d at 367. However, we do not know whether the trial court ruled based on factual comparability as opposed to legal comparability. In addition, nothing in the record shows that the State submitted any information to the trial court about the Louisiana conviction that would support a finding of factual comparability. And the State had the burden of proving comparability. *Ross*, 152 Wn.2d at 230.

Therefore, we must reverse the trial court’s ruling that the Louisiana conviction was comparable to a Washington offense.

CONCLUSION

We reverse the trial court's 2002 comparability order and remand for the trial court to address factual comparability and, if necessary, for resentencing. On remand, the State will have the opportunity to prove the factual comparability of the Louisiana conviction.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.




MAXA, J.

We concur:



WORSWICK, P.J.



VELJACIC, J.

APPENDIX B
(Court Reporter's Affidavit)

FILED
2/26/2021

Court of Appeals
Division II
State of Washington

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)	
)	
Plaintiff,)	Superior Court
)	No. 99-1-00860-1
Vs.)	
)	Court of Appeals
KEVIN ANTHONY RED,)	No. 55078-4-II
)	
Defendant.)	

I, Raelene Semago, Official Reporter of the Pierce County Superior Court, retired on December 31, 2020.

I received a Statement of Arrangements on 2-26-2021 for this matter.

The transcripts that Mr. Red wishes to order are from 4-21-1999 and 9-27-2002, neither of which are available. As per the guidelines, all notes were destroyed after 15 years. I did not work in Department 3 on these dates.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of February, 2010.


 Raelene Semago, CCR, RPR, CMRS

APPENDIX C
(Pierce County Superior Court Case Docket)

Pierce County Superior Court Criminal Case 99-1-00860-1

Defendant: KEVIN ANTHONY RED
 Access: Public
 Jurisdiction: SUPERIOR CT - PIERCE CTY
 Initial Arrest Date: 02/27/1999

Attorneys

Type	Name	Firm	Role
Pros	PATRICK COOPER	Prosecuting Attorney	LEAD COUNSEL
Defe	MELANIE L. MACDONALD		LEAD COUNSEL

Charges

Count	Type	Description	RCW	Disposition	Sentence Date
1	Original	ATTEMPTED MURDER IN THE FIRST DEGREE	<u>9A.28.020</u> , <u>9A.32.030(1)(a)</u>	PLED GLTY LESSER CHG	07/30/1999
	Final	ATTEMPTED MURDER IN THE SECOND DEGREE	<u>9A.28.020</u> , <u>9A.32.050(1)(a)</u>		
2	Original	BURGLARY IN THE FIRST DEGREE	<u>9A.52.020(1)(a)</u>	PLED GLTY AS CHGD	07/30/1999
	Final	BURGLARY IN THE FIRST DEGREE	<u>9A.52.020(1)(a)</u>		
3	Original	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	<u>9.41.040(1)(a)</u>	PLED GLTY AS CHGD	07/30/1999
	Final	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	<u>9.41.040(1)(a)</u>		

Filings

Filing Date	Filing	Access	Pages	Microfilm
03/01/1999	AFFIDAVIT/DECLARATION PROB CAUSE	Public	2	1834-1596
03/01/1999	INFORMATION	Public	4	1834-1592
03/01/1999	INITIAL ARRAIGNMENT	Public		
03/01/1999	PRE-TRIAL REPORT	Public		
03/01/1999	NOTICE TO LAW ENFORCEMENT	Public		
03/01/1999	REQUEST FOR DISCOVERY	Public		
03/01/1999	ORDER TO APPEAR PRETRIAL HRG/CONF	Public		
03/01/1999	ORDER ESTABLISHING COND. OF RELEASE	Public		1835-146
03/10/1999	ORDER SETTING TRIAL DATE & OMNIBUS	Public		
03/17/1999	ORDER FOR HEARING OMNIBUS	Public		
03/18/1999	DECLARATION OF ROUTING	Public		1841-2723
03/25/1999	DECLARATION OF MAILING	Public		1846-5137
03/30/1999	ORDER FOR HEARING CONTINUANCE	Public		
04/01/1999	DECLARATION OF MAILING	Public		1846-1687
04/07/1999	ORDER SETTING TRIAL DATE/CONT	Public		
04/20/1999	ORDER FOR WITHDRWL OF ATTORNEY	Public		
04/21/1999	MOTION HEARING	Public		
04/21/1999	ORD FOR CONTINUANCE OF TRIAL DATE	Public		
06/09/1999	STATE S LIST OF WITNESSES	Public		
06/10/1999	RETURN ON SUBPOENA G	Public		
06/15/1999	RETURN ON SUBPOLNA	Public		
06/28/1999	ORDER DIR ISSUANCE OF B W MAT WIT 3	Public		
06/28/1999	BENCH WARRANT MAT WIT 3	Public		
06/29/1999	MOTION HEARING	Public		
06/29/1999	ORDER ESTABLISHING COND. OF RELEASE	Public		1887-1587
06/30/1999	MOTION HEARING	Public		
06/30/1999	MOTION HEARING	Public		
06/30/1999	ORDER ESTABLISHING COND. OF RELEASE	Public		1892-4927
06/30/1999	ORDER ESTABLISHING COND. OF RELEASE	Public		1892-4929
07/01/1999	STIPULATION	Public		
07/01/1999	ORDER OF RELEASE MATERIAL WITNESS	Public		1892-954
07/01/1999	ORDER RE: MOTIONS IN LIMINE	Public		1892-955
07/01/1999	ORDER QUASHING BENCH WARRANT	Public		1890-45
07/02/1999	JURY PANEL	Public		
07/02/1999	JURY PANEL	Public		

07/02/1999	DEFENDANT S PROPOSED INSTRUCTIONS 2	Public	
07/02/1999	PLAINTIFF S PROPOSED INSTRUCTIONS	Public	
07/02/1999	PEREMPTORY CHALLENGE SHEET	Public	1892-957
07/02/1999	WITNESS RECORD	Public	
07/02/1999	EXHIBITS RECEIVED STRIGHT TO JOHN R	Public	
07/06/1999	JURY TRIAL	Public	
07/06/1999	WITNESS RECORD	Public	
07/06/1999	ORDER ESTABLISHING COND. OF RELEASE	Public	1892-1085
07/06/1999	PRESENTENCE INVESTIGATION ORDER	Public	1 1892-1084
07/06/1999	EXHIBITS RECEIVED ATTACHED IN FILE	Public	
07/07/1999	ASSIGNED TO DEPT 3	Public	
07/07/1999	COURT S INSTRUCTIONS TO JURY	Public	1892-958
07/07/1999	VERDICT FORM I UNSIGNED	Public	1891-2274
07/07/1999	VERDICT IA GUILTY TO LESSER CHARGE	Public	1891-2276
07/07/1999	VERDICT SPECIAL CT I W/DW *YES*	Public	1891-2277
07/07/1999	VERDICT II GUILTY BURG 1ST	Public	1891-2278
07/07/1999	VERDICT SPECIAL CT II W/DW *YES*	Public	1891-2279
07/07/1999	VERDICT III GUILTY UNLAW POSS OF A	Public	1891-2280
07/12/1999	SHERIFF S RETURN ON A BENCH WARRANT	Public	1893-2123
07/14/1999	SHERIFF S RETURN ON A BENCH WARRANT	Public	1894-1842
07/14/1999	SHERIFF S RETURN ON A BENCH WARRANT	Public	1894-1843
07/30/1999	COPY OF INFORMATION 99-1-03340-3	Public	
07/30/1999	COPY OF STATEMENT OF PLEA	Public	
07/30/1999	COPY OF WARRANT OF COMMITMENT	Public	
07/30/1999	COPY OF MISC CRIMINAL PAPERS	Public	
07/30/1999	COPY OF INFORMATION 98-1-05175-4	Public	
07/30/1999	COPY OF AMND INFORMATION	Public	
07/30/1999	COPY OF STATEMENT OF PROSECUTOR	Public	
07/30/1999	COPY OF PLEA OF GUILTY	Public	
07/30/1999	COPY OF WARRANT OF COMMITMENT	Public	
07/30/1999	MOTION AND AFFIDAVIT FOR INDIGENCY	Public	
07/30/1999	NOTICE OF COLLATERAL ATTACK	Public	1900-3823
07/30/1999	ORDER FOR HEARING RESTITUTION	Public	
07/30/1999	JDGMT & SENT & WARRANT OF COMMITM	Public	13 1900-3810
07/30/1999	ADVICE OF RIGHTS	Public	1900-4026
07/30/1999	ORDER REQ BLOOD TESTS	Public	1900-3824
07/30/1999	NOTICE OF APPEAL TO COURT OF APPEAL	Public	1900-5210
07/30/1999	ORDER OF INDIGENCY	Public	1900-5211
08/04/1999	AFFIDAVIT OF DELIVERY	Public	1902-1782
08/11/1999	COST BILL	Public	1903-5164
08/11/1999	ORDER APPOINTING ATTORNEY	Public	
08/20/1999	PERFECTION NOTICE FROM CT OF APPLS	Public	
08/24/1999	AFFIDAVIT OF MAILING 2	Public	
08/24/1999	MOTION AND AFFIDAVIT FOR INDIGENCY	Public	
08/25/1999	ORDER AUTHOR REMOVAL OF COURT FILE	Public	1909-1209
08/26/1999	ORDER APPOINTING COUNSEL ON APPEAL	Public	1909-1022
09/01/1999	PERFECTION NOTICE FROM CT OF APPLS	Public	
09/02/1999	MEMORANDUM RE RESTITUTION	Public	
09/08/1999	DESIGNATION OF CLERK S PAPERS	Public	1913-518
11/23/1999	VERBATIM RPT TRANSMITTED TO DIV II	Public	
11/23/1999	VERBATIM RPT TRANSMITTED TO DIV II	Public	
01/23/2000	ORDER AUTHOR REMOVAL OF COURT FILE	Public	1959-1850
01/24/2000	VERBATIM RPT TRANSMITTED TO DIV II	Public	
01/25/2000	DESIGNATION OF CLERK S PAPERS	Public	1961-3901
08/11/2001	NOTICE OF ISSUE	Public	
08/11/2001	MOTION FOR TELEPHONIC APPEARANCE	Public	
08/11/2001	SUBPOENA DUCES TECUM	Public	
08/11/2001	AFFIDAVIT IN SUPPORT	Public	
08/11/2001	MOTION FOR DISQUALIFICATION	Public	
08/11/2001	AFFIDAVIT OF SERVICE BY MAIL	Public	2151-3897
08/11/2001	MOTION FOR ORDER TO SHOW CAUSE	Public	
08/11/2001	AFFIDAVIT IN SUPPORT	Public	
08/13/2001	OATH OF PETITIONER	Public	
09/18/2001	NOTICE OF HEARING	Public	
04/10/2002	EXHIBITS RETURNED FROM COURT OF APPEALS	Public	1

04/10/2002	MANDATE	Public	13
06/17/2002	ORDER OF TRANSFER/TRANSFERRING	Public	2
06/18/2002	ORDER FOR HEARING	Public	1
06/20/2002	NOTICE OF RESENTENCING & MOTION TO ADD	Public	1
07/10/2002	ORDER AUTHORIZING SUBSTITUTION OF COUNSEL	Public	1
08/23/2002	ORDER OF TRANSFER/TRANSFERRING	Public	2
08/26/2002	MOTION FOR RESENTENCING	Public	1
09/27/2002	MOTION FOR ORDER ADDING APPELLATE COSTS	Public	1
09/27/2002	ORDER ADDING APPELLATE COSTS	Public	2
09/27/2002	ORDER RE: OFFENDER SCORE	Public	2
04/26/2004	CERTIFICATE OF FINALITY	Public	2
03/02/2006	COPY OF ORDER DISMISSING PRP	Public	3
04/18/2006	CERTIFICATE OF FINALITY	Public	2
05/25/2006	ORDER FOR HEARING	Public	1
05/26/2006	NOTICE OF MOTION	Public	1
06/09/2006	ORDER TO ADD APPELLATE COSTS	Public	2
05/26/2009	APPLICATION TO EXTEND JUDGMENT	Public	1
06/26/2009	ORDER EXTENDING CRIMINAL JUDGMENT	Public	2
04/04/2014	AFFIDAVIT/DECLARATION IN SUPPORT	Public	1
04/04/2014	MOTION TO DOCKET	Public	1
04/04/2014	AFFIDAVIT OF SERVICE BY MAIL	Public	1
04/04/2014	MOTION TO MODIFY	Public	20
09/17/2014	ARCHIVED RECORD	Public	142
09/24/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	1
09/24/2014	MOTION FOR ORDER GRANTING RELIEF	Public	35
03/29/2016	MOTION TO PROCEED IN FORMA PAUPERIS	Public	3
03/29/2016	NOTE OF ISSUE	Public	2
03/29/2016	MOTION FOR ORDER FOR TRANSPORT	Public	4
03/29/2016	MOTION TO CORRECT JRS	Public	134
03/29/2016	ORDER ON DEFENDANT S MOTION TO MODIFY J & S	Public	7
05/09/2016	CERTIFICATE OF FINALITY	Public	1
05/13/2016	COPY OF RULING DISMISSING PRP	Public	1
06/10/2016	COPY OF ORDER DISMISSING PRP	Public	3
06/10/2016	COPY OF RULING FROM COA/SC	Public	2
06/17/2016	CERTIFICATE OF FINALITY	Public	1
06/21/2016	NOTICE OF HEARING	Public	1
06/21/2016	ORDER FOR HEARING	Public	1
07/08/2016	MOTION FOR ORDER ADDING APPELLATE COSTS	Public	1
07/08/2016	ORDER TO ADD APPELLATE COSTS	Public	2
08/14/2017	NOTE OF ISSUE	Public	1
08/14/2017	NOTE OF ISSUE	Public	2
08/14/2017	MOTION TO TRANSPORT	Public	4
08/14/2017	MOTION FOR RELIEF FROM JUDGMENT	Public	21
08/14/2017	DECLARATION OF MAILING	Public	1
09/07/2017	ORDER ON DEFENDANT S MOTION TO MODIFY J & S	Public	7
11/27/2017	COPY OF ORDER DISMISSING PRP	Public	2
12/07/2017	CERTIFICATE OF FINALITY	Public	3
01/12/2018	CERTIFICATE OF FINALITY	Public	3
07/09/2018	NOTE OF ISSUE	Public	1
07/09/2018	MOTION TO APPOINT COUNSEL	Public	2
07/09/2018	MOTION TO TRANSPORT	Public	4
07/09/2018	AFFIDAVIT/DECLARATION IN SUPPORT	Public	1
07/09/2018	MOTION FOR RELIEF FROM JUDGMENT AND SENTENCE	Public	87
07/10/2018	ORDER TRANSFERRING CRIMINAL MOTION TO APPELLATE COURT	Public	7
07/10/2018	MOTION TO PROCEED IN FORMA PAUPERIS	Public	3
07/10/2018	NOTE FOR JUDGES MOTION CALENDAR	Public	1
07/10/2018	AFFIDAVIT OF MAILING	Public	1
07/10/2018	MOTION TO TRANSPORT	Public	4
07/10/2018	MOTION FOR APPOINTMENT OF COUNSEL	Public	2
07/10/2018	AFFIDAVIT/DECLARATION IN SUPPORT	Public	1
07/10/2018	MOTION FOR RELIEF	Public	84
07/12/2018	TRANSMITTAL LETTER COPY FILED	Public	1
10/16/2018	COPY OF ORDER DISMISSING PRP	Public	2
12/04/2018	CERTIFICATE OF FINALITY	Public	3

12/31/2018	LETTER FROM DEFENDANT	Public	2
01/02/2019	NOTE OF ISSUE	Public	2
01/02/2019	MOTION FOR RELIEF FROM JUDGMENT	Public	25
01/02/2019	MOTION FOR RELIEF FROM JUDGMENT CRR 7.8	Public	10
01/02/2019	MOTION TO TRANSPORT	Public	4
01/02/2019	MOTION TO SHOW CAUSE	Public	33
01/04/2019	MOTION TO SHOW CAUSE	Public	6
01/04/2019	MOTION TO TRANSPORT	Public	4
01/04/2019	NOTE OF ISSUE 3	Public	2
01/07/2019	ORDER TRANSFERRING CRR7.8 MOTION TO APPELLATE COURT	Public	2
01/14/2019	TRANSMITTAL LETTER COPY FILED	Public	1
03/08/2019	CERTIFICATE OF FINALITY	Public	2
03/27/2019	PERFECTION NOTICE FROM COURT OF APPEALS	Public	2
05/28/2019	COPY OF ORDER DISMISSING PRP	Public	3
07/18/2019	COPY OF ORDER DISMISSING PRP	Public	2
09/20/2019	CERTIFICATE OF FINALITY	Public	3
02/11/2020	AFFIDAVIT IN SUPPORT OF MOTION TO CORRECT J&S 7.8	Public	29
02/11/2020	NOTE OF ISSUE	Public	1
02/11/2020	NOTE OF ISSUE	Public	1
02/11/2020	MOTION AND ORDER TO TRANSPORT	Public	4
02/11/2020	MOTION TO CORRECT J&S CRR 7.8	Public	7
02/27/2020	MOTION TO COMPLY	Public	12
02/27/2020	NOTE OF ISSUE	Public	1
02/27/2020	AFFIDAVIT/DECLARATION IN SUPPORT	Public	1
03/24/2020	ORDER TRANSFERRING CRR7.8 MOTION TO APPELLATE COURT	Public	2
03/27/2020	TRANSMITTAL LETTER COPY FILED	Public	1
07/24/2020	NOTICE OF APPEAL NO FEE	Public	5
07/24/2020	MOTION AND AFFIDAVIT OF INDIGENCY	Public	5
07/27/2020	TRANSMITTAL LETTER COPY FILED	Public	1
08/06/2020	ORDER ON DEFENDANT'S MOTION TO MODIFY	Public	2
08/13/2020	ORDER DENYING ORDER OF INDIGENCY	Public	1
09/23/2020	ORDER OF FINDINGS	Public	3
10/16/2020	PERFECTION NOTICE FROM COURT OF APPEALS	Public	2
11/09/2020	DESIGNATION OF CLERK'S PAPERS	Public	2
11/16/2020	NOTICE OF APPEARANCE AND REQUEST FOR DISCOVERY	Public	3
11/16/2020	DESIGNATION OF CLERK'S PAPERS	Public	3
11/19/2020	NOTICE OF WITHDRAWAL OF DESIGNATION OF CLERK PAPER	Public	2
11/19/2020	NOTICE OF WITHDRAW	Public	2
11/23/2020	COPY OF ORDER DISMISSING PRP	Public	3
12/08/2020	DESIGNATION OF CLERK'S PAPERS	Public	1
12/08/2020	COPY(S) OF DOCUMENT(S) RE APPEAL	Public	6
01/19/2021	ORDER TRANSFERRING CRR7.8 MOTION TO APPELLATE COURT	Public	2
01/19/2021	MOTION TO OBJECT	Public	8
01/26/2021	TRANSMITTAL LETTER COPY FILED	Public	1
02/24/2021	ORDER AUTHORIZING SUBSTITUTION OF COUNSEL	Public	1
02/25/2021	CLERK'S PAPERS PREPARED	Public	2
02/25/2021	CLERK'S PAPERS SENT	Public	1
02/25/2021	INDIGENCY BILLING VOUCHER	Public	1



PURCHASE COPIES

Proceedings

Date	Judge	Dept	Type	Outcome
03/01/1999 01:30 PM	CRIMINAL DIVISION 1	CD1	ARRAIGNMENT	ARRAIGNED
03/09/1999 08:30 AM	CRIMINAL DIVISION 1	CD1	PRE-TRIAL CONFERENCE	HELD
03/17/1999 08:30 AM	CRIMINAL DIVISION 1	CD1	OMNIBUS HEARING	CONTINUED
03/30/1999 08:30 AM	CRIMINAL DIVISION 1	CD1	OMNIBUS HEARING	NOT HELD
04/07/1999 09:00 AM	CRIMINAL DIVISION 1	CD1	CONTINUANCE	CONTINUED
04/15/1999 09:00 AM	CRIMINAL DIVISION 1	CD1	CONTINUANCE	CONTINUED

04/21/1999 09:00 AM	CRIMINAL DIVISION 1	CD1	CONTINUANCE	HELD
04/26/1999 09:00 AM	CRIMINAL DIVISION 1	CD1	JURY TRIAL	CONTINUED
06/28/1999 09:00 AM	THOMAS P. LARKIN		JURY TRIAL	HELD
05/30/1999 09:00 AM	THOMAS P. LARKIN		VOIR DIRE	HELD
07/30/1999 01:30 PM	THOMAS P. LARKIN		SENTENCING DATE	HELD
09/10/1999 01:30 PM	THOMAS P. LARKIN		RESTITUTION HEARING	CANCELLED
07/05/2002 01:30 PM	THOMAS P. LARKIN		RESENTENCING	CONTINUED
08/16/2002 09:00 AM	THOMAS P. LARKIN		RESENTENCING	CONTINUED
09/06/2002 01:30 PM	THOMAS P. LARKIN		RESENTENCING	CANCELLED
09/27/2002 09:00 AM	THOMAS P. LARKIN		RESENTENCING	HELD
05/09/2006 01:30 PM	THOMAS P. LARKIN		MOTION-APPELLATE COSTS	HELD
07/08/2016 01:30 PM	CRIMINAL DIVISION- PRESIDING JUDGE	CDPJ	MOTION-APPELLATE COSTS	HELD
09/07/2017 01:30 PM	Michael E. Schwartz	03	EXPARTE ACTION BY MAIL	EXPARTE ACT W ORDER HELD
03/24/2020 09:00 AM	Michael E. Schwartz	03	EXPARTE ACTION	EXPARTE ACT W ORDER HELD

Incidents

Incident Number	Law Enforcement Agency	Offense Date
990580100	LAKEWOOD POLICE DEPARTMENT	02/21/1999

Superior Court Co-Defendants

Cause Number	Defendant
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Judgments

Cause #	Status	Signed	Effective	Filed
99-9-08169-3	OPEN	THOMAS P. LARKIN on 07/30/1999	07/30/1999	

- Hearing and location information displayed in this calendar is subject to change without notice. Any changes to this information after the creation date and time may not display in current version.
- Confidential cases and Juvenile Offender proceeding information is not displayed on this calendar. Confidential case types are: Adoption, Paternity, Involuntary Commitment, Dependency, and Truancy.
- The names provided in this calendar cannot be associated with any particular individuals without individual case research.
- Neither the court nor clerk makes any representation as to the accuracy and completeness of the data except for court purposes.

Created: Thursday March 11, 2021 2:29PM



POINT-IN-TIME COPY FILED ONLINE
 I, KEVIN STOCK, Clerk of the Superior Court, State of Washington, for the County of Pierce, do hereby certify that I have compared the foregoing copy with the original record as the same appears in my office, and that the same is a true and perfect transcript of said original as of the date indicated below. This is an electronic record and it may change over time. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court on this date 3/11/21

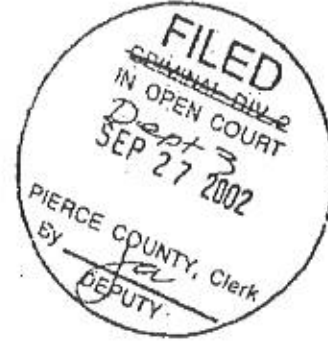
By Kevin Stock
 Kevin Stock, Superior Court Clerk
 Deane Clerk

APPENDIX D
(TRIAL COURT'S ORDER)

0003

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7/24/2020



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

KEVIN ANTHONY RED,

Defendant.

CAUSE NO. 99-1-00860-1

ORDER

THIS MATTER having come on before the above-entitled court and the State of Washington being represented by Deputy Prosecuting Attorney, KATHLEEN F. OLIVER, the Defendant, KEVIN ANTHONY RED, being represented by his attorney, MELANIE MACDONALD, and the Court being fully advised in the premises, it is hereby

ORDERED that pursuant to the mandate dated April 9, 2002, the above entitled case was before the court to determine whether or not the defendant's offender score was properly calculated. The issue was one of comparability between the Louisiana State manslaughter

ORDER - 1

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7/24/2020

99-1-00860-1

conviction and the Washington State manslaughter in the first degree charge. IT IS FURTHER

ORDERED that the defendant's Louisiana State manslaughter conviction was at least comparable to the Washington State manslaughter in the first degree. Thus, The issue of comparability has been resolved and the offender score was properly calculated in 1999.

IT IS FURTHER

ORDERED that the sentencing as previously imposed was correctly calculated.

DONE IN OPEN COURT this 27 day of September, 2002.

Th. S. U.

JUDGE

Presented by:

[Signature]
KATHLEEN F. OLIVER
Deputy Prosecuting Attorney
WSB # 18252

Approved as to Form:

[Signature]
MELANIE MACDONALD, WSB# 10802
Attorney for Defendant



ORDER - 2

INMATE

April 20, 2022 - 11:00 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 55078-4
Appellate Court Case Title: State of Washington, Respondent v. Kevin A. Red, Appellant
Superior Court Case Number: 99-1-00860-1

DOC filing of red Inmate DOC Number 998636

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The DOC Facility Name is Stafford Creek Corrections Center.

The Inmate The Inmate/Filer's Last Name is red.

The Inmate DOC Number is 998636.

The CaseNumber is 550784.

The Comment is 1of1.

The entire original email subject is 12,red,998636,550784,1of1.

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