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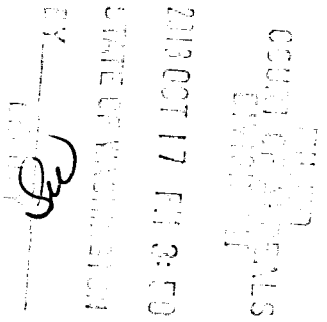


NO. 42441-0-II

SUPREME COURT OF THE STATE OF WASHINGTON

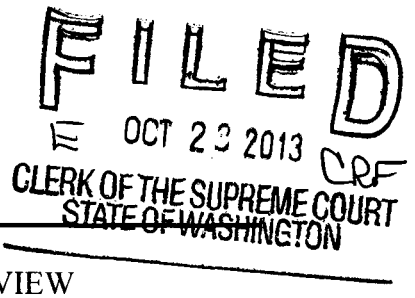
SHERRI BOSESKI,

Appellant/Defendant

v.

STATE OF WASHINGTON,

Respondent/Plaintiff.



MOTION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

This Petition for Discretionary Review to the Washington State Supreme Court is made by and on behalf of the Appellant/Defendant Sherri Boseski ("Ms. Boseski").

II. CITATION TO COURT OF APPEALS DECISION

Ms. Boseski seeks the Supreme Court's review of the decision of the Court of Appeals, Division Two, contained in the Unpublished Opinion, dated and filed on September 17, 2013 in the matter of No. 42441-0, *State v. Boseski*, denying Ms. Boseski's Appeal. The Unpublished Opinion is attached as appendix A.

III. ISSUES PRESENTED FOR REVIEW

Did Ms. Boseski receive written notice in the judgment and sentence to satisfy RCW 10.73.110 when the record reflects no evidence that she reviewed the judgment and sentence and she was not advised of the one year time limit required on a motion for collateral attack in any fashion?

IV. STATEMENT OF THE CASE

On January 8, 2009, the Tumwater Police Department received a report that a domestic dispute was heard coming from Ms. Boseski's apartment. Officers were dispatched to the apartment and knocked on Ms.

Boseski's door. Ms. Boseski came to the door with a gun in her hand and the police tased her. CP 6.

The prosecution alleged that Ms. Boseski pointed her gun at the police. Ms. Boseski adamantly denies this allegation. She told her defense attorney, after her arrest and throughout her arraignment and plea negotiations, that she never pointed a gun at the police officers. CP 127.

The prosecution alleges that Ms. Boseski fought with the police officers after she recovered from the tasering.

The EMS assessment stated that she was suffering from a psychiatric disorder. CP 134. The police transported Ms. Boseski to jail, where she was booked and held. The EMS Report, asserts that she was transported to Providence St. Peter Hospital, but this is incorrect. She was taken straight to jail. CP 135.

On January 8, 2009, following Ms. Boseski's arrest, the court found probable cause for a charge of first-degree assault, based on the prosecution's assertion that Ms. Boseski allegedly said she would have shot the police officers if they had entered her home. CP 141, lines 23 and 24. Ms. Boseski was in jail and watched the hearing from a video monitor. Attorney Eric Pilon appeared on her behalf.

The deputy prosecutor asked the court to order a "safe-to-be-at large" evaluation, because "the State has got mental health concerns

here...[due to] the fact that there wasn't anybody [else] in the apartment, that she was screaming and yelling as if somebody was there[.]" The Court ordered the evaluation. CP 143, lines 7-14.; CP 144, lines 20-21.

A second preliminary hearing was held on January 12, 2009, while Ms. Boseski still was in jail. Contrary to what is indicated on the transcript, Ms. Boseski was not present at this arraignment as evidenced by the fact that she made no statements and was not addressed by the judge. CP 151. She was again represented by Eric Pilon. Both prosecution and defense counsel asked for a referral to Lisa Kertzman at the jail, to work out special release conditions to address Ms. Boseski's mental health problems. CP 152, lines 18-25; CP 153, lines 1-2). The Court noted that the "safe-to-be-at large evaluation indicates concern about [Ms. Boseski's] safety and the safety of others, unless she is under controlled circumstances." CP 151, lines 14-21. Deputy Prosecutor Wheeler told the Court that charges had been filed for assault second in the degree with a deadly weapon, and assault in the third degree. CP 154, lines 19-23. The Court set bail at $25,000, with return to court for special conditions, if posted. CP 154, lines 8-9).

Ms. Boseski appeared before Judge Gary Tabor on January 14, 2009, represented by Eric Pilon. As conditions of release from jail, the court ordered that she take any prescribed medications and that Pretrial

Services provide supervision. CP 165, lines 7-9; lines 19-23. Ms. Boseski was then transferred to Madigan Army Medical Center for inpatient psychological evaluation. She remained there until her release approximately three weeks later. CP 169. Subsequent to her release she was ordered to be confined on base by Judge Tabor without any military hearing.

On February 10, 2009, Ms. Boseski appeared in court for arraignment, represented by attorney Kevin Trombold. Mr. Trombold acknowledged receipt of the information, waived formal reading, and entered a plea of "not guilty" to Counts I and II, on Ms. Boseski's behalf. CP 173, lines 12-14; CP 175, lines 22-24.

On June 22, 2009, the defendant entered a plea of guilty to assault in the second degree and assault in the third degree; she was again represented by Kevin Trombold. CP 177.

As part of the plea bargain, the State agreed to dismiss the firearm enhancement. Ms. Boseski was never arraigned on the amended charge of Assault in the Second Degree. CP 191. The plea agreement which Ms. Boseski signed states that "On January 8, 2009 in Thurston County, I intentionally assaulted a person and inflicted (recklessly) substantial bodily harm." Ms. Boseski denies that she inflicted substantial bodily harm on either of the officers who came to her apartment. The record

contains no evidence that defendant inflicted substantial bodily harm on anyone. The Judgment and Sentence reflected that Ms. Boseski plead guilty to RCW 9A.36.021 (c) involving assault with a deadly weapon when the language reflected in the plea agreement cites RCW 9A.36.021 (a).

The plea language in paragraph 11 of the plea form asking what she did in her own words merely recited the Assault 2 and Assault 3 statutes and gives a legal conclusion, rather than a factual basis for the plea as is required by CrR4.2(d). CP 184.

After serving her full sentence of six-and-a-half months in prison, defendant was released. She now lives in New Jersey. The Court of Appeals, Division II denied her appeal.

V. ARGUMENT

Review of this matter should be accepted for the following reasons:

A. Ms. Boseski's Motion to Withdraw Guilty Plea was not Time Barred Because of Equitable Tolling.

The Court of Appeals held that Ms. Boseski's judgment and sentence expressly informed her of the one year time limit to move to withdraw her guilty plea. The appellate decision improperly assumes that Ms. Boseski had the opportunity to review her judgment and sentence.

CrR 7.8(b)(2) and (5) provide:

> On motion and upon such terms as are just, the court may relieve a party from final judgment, order, or proceeding for the following reasons:
>
> ...
>
> (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;
>
> ...
>
> (5) Any other reason justifying relief from the operation of the judgment.

CrR 7.8 further requires:

> "the motion shall be made within a reasonable time and for [reason in subsection(b)(2)] not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140."

RCW 10.73.090 provides that a motion for collateral attack on a judgment and sentence in a criminal case may not be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.100 enumerates specific reasons why the collateral attack may be brought outside the one-year time bar. If a petition is based on grounds

not listed in RCW 10.73.100, the petition is subject to the one-year time bar of RCW 10.73.090 unless it qualifies under the exceptions to the time bar in .090 itself. *In re Personal Restraint of Stoudmire*, 141 Wn.2d 342, 346, 5 P.3d 1240 (2000).

Washington law also recognizes equitable exceptions to the time bar of RCW 10.73.090. "When a statute requires that a court or DOC notify a defendant of a time bar and the notice is not given, this omission creates an exemption to the time bar and a court, therefore, must treat the defendant's position for collateral review as timely." *State v. Schwab*, 141 Wn.App. 85, 91, 167 P.3d 1225, 1228, *rev. den.* 164 Wn.2d 1009, 195 P.3d 86 (2008), *cert. denied* by *Schwab v. Wash.*, 129 S.Ct. 1348, (2009). RCW 10.73.110 requires the court to advise the defendant of the time limit. The one-year time limit of RCW 10.73.090(1) for collateral attack on a judgment and sentence is conditioned on the court's compliance with RCW 10.73.110, requiring notice of its terms. *State v. Golden*, 112 Wn. App. 68, 78, 47 P.3d 587 (2002). "RCW 10.73.110 is unambiguous. It imposes the duty that the court shall advise the defendant at the time judgment and sentence is pronounced in a criminal case of the time limit specified in RCW 10.73.090. The general rule of statutory interpretation is that 'shall' is imperative." *Id.*, 112 Wn. App. at 78, *citations omitted.*

In *Golden,* the defendant filed his motion to vacate more than eight

years after his guilty plea was entered, on the ground that the juvenile court which sentenced Mr. Golden, did not enter a written finding of capacity. Furthermore, it never informed Mr. Golden of his right to collaterally challenge the conviction, nor of the one-year time limit. *Golden,* 112 Wn. App. at 71.

The trial court granted Mr. Golden's motion to vacate the guilty plea, and the Court of Appeals affirmed. It held that eight and one-half years was not an unreasonable delay in seeking relief from judgment and granted the motion to withdraw the plea. *Golden*, 112 Wn.App. at 78.

In this case, the court accepted Ms. Boseski's guilty plea and entered a sentence without advising her, in writing or orally, of the one-year time limit in which to collaterally attack the sentence. A careful review of the plea statement which Ms. Boseski signed shows that it did not advise her of the one-year time limit for a motion to withdraw the plea. CP 177 – CP 185. The report of proceeding for the sentencing hearing also shows that the court did not inform Ms. Boseski of the one-year time limit. CP 196-216. Ms. Boseski never had the opportunity to read the judgment and sentence and it was never addressed by the judge or her counsel.

In the Unpublished Decision, the Court of Appeals cites *State v. Robinson,* 104 Wn. App. 657, 664, 17 P.3d 653 (2001) and states that in

that case the Defendant received proper notice of her one year time limit to collaterally attack the judgment because she signed the Judgment and Sentence. 104 Wn. App. 664.

Here, the record reflects Ms. Boseski never signed the Judgment and Sentence. *See Clerk's Papers for Judgment and Sentence.* In fact, it is customary for only the defense attorney to sign the Judgment and Sentence after review. There is no evidence on the record in the Reported Proceedings or the Clerk's Papers to support that Ms. Boseski read or even had the opportunity to view the Judgment and Sentence.

This Court should recognize the reality that a Judgment and Sentence is not signed by the Defendant and is typically not provided to the Defendant. Rather, the Judgment and Sentence is handed to the defense attorney and the prosecuting attorney to ensure that the Judgment and Sentence complies with the Court's sentence given orally on the record. Thus, the Court of Appeals concedes that the trial court did not verbally inform Ms. Boseski of her right to collaterally attack. The Court of Appeals then improperly assumed that Ms. Boseski had the opportunity to read her Judgment and Sentence. Nothing in the record reflects that she read the Judgment and Sentence. She did not and therefore her motion to withdraw her plea of guilty should not be time barred. In light of the fact that her motion to withdraw is not time barred, the subsequent arguments

made in the Court of Appeals, Division II should be reviewed and granted. Ms. Boseski's guilty plea should be withdrawn.

B. Ms. Boseski's Declaration in Her Appeal Supports She Did Not Read the Judgment and Sentence.

In Ms. Boseski's appeal she states in her declaration that she was forcibly medicated without a proper hearing and these medications interfered with her cognition. She stated there was fraud in effort to get her to plea. She states that justice requires a reversal. Even if this Court concludes Ms. Boseski read her Judgment and Sentence, her lack of cognition should be taken into consideration in her understanding of any documents placed in front of her.

VI. CONCLUSION

For the foregoing reasons, Ms. Boseski seeks a reversal of her convictions and respectfully requests that the Court withdraw her guilty plea based on the fact that her plea was not valid and the fact that she never received notice of her one year time limit to collaterally attack.

DATED this 17th day of October, 2013.

Respectfully submitted,

Law Office of Corey Evan Parker

Corey Evan Parker

Corey Evan Parker WSBA No. 40006
Attorney for Sherri Boseski

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SHERRI A. BOSESKI, Appellant.	No. 42441-0-II UNPUBLISHED OPINION

BJORGEN, J. — Sherri A. Boseski appeals the trial court's denial of her motion to withdraw her guilty plea as untimely. Boseski argues that her motion was not time barred because: (1) her judgment and sentence was invalid, (2) equitable tolling applies, and (3) she presents new evidence. On the merits, she argues that her plea was not knowing, intelligent, and voluntary because: (1) it lacked factual basis, (2) she did not plead guilty to the elements of the offense, (3) she lacked competency at arraignment, and (4) she received ineffective assistance of counsel. Additionally, in her statement of additional grounds, Boseski argues that (1) the court never arraigned her on the amended charges; (2) police violated her rights by attempting to enter her home without a search warrant; (3) after her imprisonment, she was illegally tased, tackled, and refused medical care; (4) authorities illegally held her on a military base; (5) the court ordered that she take any medically prescribed medications, including antipsychotic medication, which interfered with her rights to a fair trial; and (6) the court denied her a public defender, which interfered with her right to a fair trial. Finding that her motion is time barred, we affirm the trial court.

FACTS

I. UNDERLYING ASSAULT

Responding to a domestic dispute report, police knocked several times on Boseski's apartment door. In response, Boseski yelled, "[F]*ck you, get a warrant." Clerk's Papers (CP) at 270. The police officers were concerned about possible domestic violence and instructed her to come to the door. Boseski refused, announcing, "If anyone comes in, someone's going to die!" CP at 267.

After several more minutes of knocking, Boseski came to the door with a gun in her hand, positioned across her stomach and pointed in the direction of one of the officers. Police used a taser gun on Boseski and she fell over, dropping her gun. Boseski resisted the police officers' efforts to bring her to a patrol car, attempting to kick the officers. Eventually, they carried her to the patrol car and transported her to jail.

II. PROCEDURAL FACTS

The trial court found probable cause for a charge of first degree assault and also ordered that Boseski receive a "safe-to-be-at-large evaluation" based on concerns for her mental health. Verbatim Report of Proceedings (VRP) (Jan. 8, 2009) at 7. The State charged Boseski with second degree assault with a deadly weapon[1] and third degree assault on a law enforcement officer.[2] Boseski entered a not guilty plea to both counts. In an amended information, the State

---

[1] RCW 9A.36.021(1)(c):

> (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:
>
> . . . .
>
> (c) Assaults another with a deadly weapon.

[2] RCW 9A.36.031(1)(g).

added a firearm enhancement to the second degree assault charge.

Boseski made a plea bargain with the State. Her statement on the plea read,

> I am charged with Assault 2 & Assault 3. The elements are: In [the] state of Washington, intentionally assaulted another & intentionally assaulted a law enforcement officer while performing their official duties.

CP at 49. Her statement also acknowledged that she pleaded guilty to "count I -Assault II" and "count II-Assault III in the amended information." CP at 55.

In exchange for her plea, the State removed the firearm enhancement and, in a second amended information, re-alleged the charges for second degree assault with a deadly weapon and third degree assault on a law enforcement officer. When Boseski entered her guilty plea, the court asked if she understood that second degree assault is a strike offense, informed her of the maximum sentence range for each charge, informed her of the State's sentencing recommendations, and Boseski affirmed that she understood. The trial court read her factual statement into the record:

> I intentionally assaulted a person and inflicted reckless substantial bodily harm. I also intentionally assaulted a police officer who was performing his official duties at the time of the assault.[3]

VRP (June 22, 2009) at 6.

On July 9, 2009, the court sentenced Boseski to 10 months for second degree assault and 8 months for third degree assault, with the sentences running concurrently. Boseski's judgment and sentence informed her in writing that she had one year to move to withdraw her guilty plea, but the trial court did not verbally inform her of that fact.

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[3] This language mirrors RCW 9A.36.021(1)(a) and RCW 9A.36.031(1)(g).

Two years after receiving her sentence, Boseski moved to withdraw her guilty plea. She argued that her claim was not time barred because she did not mention a deadly weapon in her guilty plea statement and that, therefore, her judgment and sentence was invalid on its face. Boseski told the court that she did not know that she could move to withdraw her plea and she did not review her judgment and sentence. The trial court rejected her argument, finding that the judgment and sentence was valid on its face and that Boseski's motion was time barred. The trial court denied Boseski's reconsideration motion. Boseski appeals.

ANALYSIS

I. TIMELINESS

Boseski argues that her motion was not time barred because: (1) the trial court failed to advise her that she could collaterally attack, making her judgment and sentence invalid, (2) equitable tolling applies, and (3) she presents new evidence. The State responds that Boseski's collateral attack is time barred because (1) her judgment is valid on its face, (2) equitable tolling does not apply, and (3) she does not meet the standard for new evidence. The State is correct.

A. Standard of Review

We review the trial court's decision to deny a motion to withdraw a guilty plea for abuse of discretion. *State v. A.N.J.*, 168 Wn.2d 91, 106, 225 P.3d 956 (2010). "'A trial court abuses its discretion when it bases its decisions on untenable or unreasonable grounds.'" *State v. Martinez*, 161 Wn. App. 436, 440, 253 P.3d 445, *review denied*, 172 Wn.2d 1011, 259 P.3d 1109 (2011) (quoting *State v. Pierce*, 155 Wn. App. 701, 710, 230 P.3d 237 (2010)).

B. Judgment And Sentence Valid On Its Face

Under RCW 10.73.090[4] Boseski could move to withdraw her guilty plea on any ground within one year from the time her judgment became final. After that one-year period, the plea could be withdrawn only if the judgment were invalid on its face or were rendered by a court without jurisdiction, RCW 10.73.090(1), or if one or more of six specific grounds listed in RCW 10.73.100 were present.

Generally, the judgment and sentence is invalid for purposes of RCW 10.73.090 when the trial court imposes an unlawful sentence, unauthorized by statute. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 135, 267 P.3d 324 (2011). Examples of a sentence unauthorized by statute include: (1) a sentence exceeding the statutory maximum, (2) a sentence for a nonexistent crime, and (3) a sentence that included a washed out prior offense. *Coats*, 173 Wn.2d at 135-36.

Although we will look beyond the judgment and sentence's four corners, we limit our review to only the documents that reveal facially validity. *Coats*, 173 Wn.2d at 138-39. Consequently, we may review, among other documents, charging documents, verdicts, and a defendant's guilty plea statement in order to determine whether a judgment and sentence is valid

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[4] RCW 10.73.090 provides, in relevant part:

> (1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.
>
> (2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

on its face. *Coats*, 173 Wn.2d at 140. However, we will not examine documents related to the fairness of a trial, such as jury instructions or trial motions. *Coats*, 173 Wn.2d at 140.

Although we will examine a plea statement to evaluate a claim that a judgment and sentence is not valid on its face, we will not examine the judgment and sentence to determine whether the plea was voluntary. *Coats*, 173 Wn.2d at 142. An involuntary plea does not render a judgment and sentence facially invalid. *Coats*, 173 Wn.2d at 141. In *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 531, 55 P.3d 615 (2002), no one informed the defendant that a consequence of his guilty plea was mandatory community placement. Nevertheless, our Supreme Court rejected his argument that the judgment and sentence was facially invalid, despite acknowledging that had he timely raised that challenge in a personal restraint petition, he likely would have prevailed. *Coats*, 173 Wn.2d at 141 (citing *Hemenway*, 147 Wn.2d at 533). Stated another way, "an invalid plea agreement cannot on its own overcome the one year time bar or render an otherwise valid judgment and sentence invalid." *In re Pers. Restraint of McKiearnan*, 165 Wn.2d 777, 782, 203 P.3d 375 (2009).

Boseski relies on *State v. Golden*, 112 Wn. App. 68, 78, 47 P.3d 587 (2002), to argue that the trial court failed to advise her, either "in writing or orally, of the one-year time limit in which to collaterally attack the sentence." Br. of Appellant at 12. She is correct that *Golden* does hold that RCW 10.73.090(1)'s time limit is conditioned on compliance with RCW 10.73.110[5] and that, therefore, the trial court has a duty to advise a defendant of the one-year time limit when it

[5] RCW 10.73.110:

> At the time judgment and sentence is pronounced in a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100.

pronounces judgment and sentence. *Golden*, 112 Wn. App. at 78. In *Golden*, however, there was "no record of Mr. Golden having been informed about the rights and restrictions of chapter 10.73 RCW." *Golden*, 112 Wn. App. at 78. In contrast, Boseski's judgment and sentence expressly informed her of the one-year time limit to move to withdraw her guilty plea. Written notice in the judgment and sentence satisfies RCW 10.73.110's requirement that the court advise the defendant of the one-year time limit. *State v. Robinson*, 104 Wn. App. 657, 664, 17 P.3d 653 (2001). Boseski received that notice.

Further, *Golden* did not base its timeliness holding on RCW 10.73.110. Rather, *Golden* held that the defendant met the timeliness threshold because the juvenile court never held a capacity hearing or entered capacity findings, and, thus, failed to establish jurisdiction over Golden; therefore, the 1992 disposition was invalid on its face. *Golden*, 112 Wn. App. at 76, 72. Here, the trial court had jurisdiction and nothing about the trial court's sentence is unlawful or unsupported by statute; specifically, the trial court imposed 10 months for second degree assault and 8 months for third degree assault, with the sentences running concurrently. *See Coats*, 173 Wn.2d at 135-36. Under *Coats* and *Golden*, the judgment and sentence are valid on their face.

II. EQUITABLE TOLLING

Boseski argues that equitable tolling prevents application of RCW 10.73.090's one-year time bar. The State responds that her equitable tolling argument is without merit because that remedy applies in only the narrowest of circumstances. We agree with the State.

"Equitable tolling is a remedy that permits a court to allow an action to proceed when justice requires it, even though a statutory time period has elapsed." *In re Pers. Restraint of Bonds*, 165 Wn.2d 135, 141, 196 P.3d 672 (2008). We are, however, "reluctant to apply

exceptions to legislative time limits." *Bonds*, 165 Wn.2d at 143. Justice generally requires equitable tolling in cases involving another's bad faith, deception, or false assurances. *Bonds*, 165 Wn.2d at 144. Our Supreme Court has also recognized that equitable tolling is available under the "actual innocence doctrine," which does not require bad faith or other malfeasance. *In re Pers. Restraint Carter*, 172 Wn.2d 917, 929, 263 P.3d 1241 (2011). Nonetheless, it recognized that actual innocence only allows equitable tolling in "the narrowest of circumstances" and only "where justice requires." *Carter*, 172 Wn.2d at 929.

Here, Boseski's judgment and sentence included written notice of the one-year time limit to move to withdraw her guilty plea. As noted above, under *Robinson* notice of the one-year limit in the judgment and sentence satisfies the notice requirement of RCW 10.73.110. *Robinson*, 104 Wn. App. at 664. Boseski argues that the trial court did not verbally advise her of the time limit and that she never had the opportunity to read her judgment and sentence. The record, though, shows that Boseski received a copy of her judgment and sentence and suggests nothing that prevented her from reading it. More significantly, there is no evidence of malfeasance on anyone's part. Boseski has not demonstrated that her motion was untimely because of another's deception or due to another circumstance of the sort approved in *Bonds* and *Carter*. Therefore, equitable tolling does not apply.

III. ADDITIONAL EVIDENCE

Boseski also argues that her motion was not time barred because she discovered new evidence as provided by RCW 10.73.100. The State responds that the exception does not apply because her proffered evidence does not meet the statutory requirements for newly discovered evidence. Again, we agree with the State.

RCW 10.73.100(1) provides that the one-year time limit does not apply when the petitioner bases a motion on "[n]ewly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion." Under this rule, the defendant must show that the evidence:

> (1) will probably change the result of the trial; (2) was discovered since the trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching.

In re Pers. Restraint of Lord, 123 Wn.2d 296, 319-20, 868 P.2d 835 (1994) (quoting *State v. Williams*, 96 Wn.2d 215, 223, 634 P.2d 868 (1981)) (emphasis omitted).

Boseski argues that her motion is not time barred based on the new evidence from a fire department incident report. That report includes the text, "P/Exam, v/s, Pt transported via TPD to SPH." CP at 135. With minimal elaboration, Boseski appears to argue that the report indicates the police took her to the hospital rather than to jail. In contrast, the police report stated that police transported Boseski to jail. Boseski argues that this is material evidence because it reveals inconsistencies between the reports from the police department and the fire department.

Here, the fire department's report potentially impeaches the police officer's report. But Boseski's own declarations support the police officers' report that she did not go to the hospital that night. Thus, it is unclear how this potential impeachment is significant. Boseski does not address the five *Williams* prongs; nor does she appear to meet the first, fourth, or fifth of them. We therefore, reject her "new evidence" argument.

Because we reject Boseski's arguments that her motion avoided the time bar, we do not consider the merits of her motion to withdraw her guilty plea.

IV. STATEMENT OF ADDITIONAL GROUNDS (SAG)

In addition to arguments made by her attorney, Boseski further argues in her SAG[6] that (1) the court never arraigned her on the amended charges; (2) police violated her rights by attempting to enter her home without a search warrant; (3) police illegally tased and tackled her while making the arrest and then illegally refused her medical care; (4) authorities illegally held her on the military base; (5) the court ordered that she take any medically prescribed medications, including antipsychotic medication, which also interfered with her rights to a fair trial; and (6) the court denied her a public defender, which interfered with her right to a fair trial.[7]

We do not address these claims on the merits for a number of reasons. First, Boseski has waived her claims (1) that the State did not rearraign her on the amended charges, (2) that police attempted to enter her home without a warrant, (3) that the trial court ordered her to take prescribed medications, and (4) that the trial court denied her a public defender. As held above, her attempt to withdraw her guilty plea is time barred, and the plea stands. "'[A] voluntary plea of guilty waives all defenses other than that the complaint, information, or indictment charges no offense. This includes the right to trial and the incidents thereof.'" *State v. Wilson*, 25 Wn. App. 891, 895, 611 P.2d 1312 (1980) (quoting *Woods v. Rhay*, 68 Wn.2d 601, 606-07, 414 P.2d 601 (1966)). Thus, these claims are waived.

We cannot review her claims that after her imprisonment, she was illegally tased, tackled, refused medical care, and held on the military base, because they rely on information outside the

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[6] RAP 10.10(a).

[7] Boseski does not challenge the trial court's finding that as an army captain she is not indigent.

record. A personal restraint petition is the appropriate means to raise such issues.[8] *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995).

We affirm the trial court.

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.

BJORGEN, J.

We concur:

PENOYAR, J.

WORSWICK, C.J.

[8] Boseski's SAG contains a portion labeled Personal Restraint Petition. As stated in the letter of June 14, 2002 from the clerk of this court, we will not consider this as a personal restraint petition, because such a petition is subject to a different set of rules in the RAP. Boseski may file a personal restraint petition if consistent with the proper rules.

CERTIFICATE OF SERVICE

The undersigned certifies that on October 17, 2013, he sent by legal messenger the Petition for Discretionary Review on behalf of Sherri Boseski, No. 42441-0-II to the following parties: Thurston County Prosecutor's Office, Appellate Division 2000 Lakeridge Dr S.W., Building 2, Olympia, WA 98502 and the Defendant Sherri Boseski via e-mail at sabdmlsam@gmail.com.

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