

89628-3

SUPREME COURT NO.

68734-4

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondant,

v.

RAMONE ECHOLS

Appellant.

FILED

DEC 10 2013

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON



1:21

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE

STATE OF WASHINGTON FOR KING COUNTY

The Honorable Lori K. Smith, Judge

PETITION FOR REVIEW

RAMONE ECHOLS, Pro Se
Stafford Creek Corr. Center
191 Constantine Way
Aberdeen, WA 98520

A. IDENTITY OF PETITIONER

Petitioner RAMONE ECHOLS, the Appellant below, asks this Court to review the following Court of Appeals decision, referred to in Section B.

B. COURT OF APPEALS DECISION

ECHOLS requests review of the decision in State v. ECHOLS, Court of Appeals No. 68734-4-1 (filed Oct. 7, 2013), attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

- 1) Did the Court err in denying ECHOLS' motion to correct his Judgment and Sentence?
- 2) Did the Court err in referring to matters outside the four corners of the Judgment and Sentence in ruling on ECHOLS' motion?
- 3) Did the Court err in transferring ECHOLS' motion to a different judge and courthouse without first granting him notice and an opportunity to be heard?
- 4) Did the Court err in failing to transport ECHOLS' from prison to the courthouse for a hearing on the motion to correct his Judgment and Sentence?
- 5) Did the Court err in denying ECHOLS' motion based upon reasons which are not supported by the record, thereby abusing its discretion?

D. STATEMENT OF THE CASE

In 1995, Appellant RAMONE ECHOLS was convicted of First-Degree Murder that occurred in 1994. The Judgment and Sentence states his standard range as between 262 and 345 months. The Court imposed 340 months. There is a box on the Judgment and Sentence to check if the jury has entered a special verdict that the defendant was armed with a deadly weapon. That box was not checked.

On February 1, 2012, ECHOLS filed a CrR 7.8 motion

to correct or modify his Judgment and Sentence. In it, he pointed out that the standard range for his offense is actually 255-333 months, exactly 12 months lower than the standard range recited on his Judgment and Sentence. He asked the court to vacate the original Judgment and Sentence and enter a corrected Judgment and Sentence because his 340 month sentence was 7 months longer than the top of the standard range. He also asked that the State be required to appear and show cause why this relief should not be granted.

In response, the State supplied a copy of the special verdict form from ECHOLS' case, showing that the jury found he was armed with a deadly weapon. Under former RCW 9.94A.310(4)(1995), 12 months shall be added to the standard range if the defendant was armed with a deadly weapon. The State argued the standard range described on the Judgment and Sentence included the 12 month deadly weapon enhancement and the failure to check the box was a scrivener's error.

On April 9, 2012, the court entered an order denying ECHOLS' motion. The court entered factual findings that the jury found ECHOLS was armed with a deadly weapon, that the standard sentencing range was 250-333 months plus 12 months for a deadly weapon enhancement for a total standard range of 262-345 months and that the 340 month sentence was within this standard range, and that the box reflecting the deadly weapon special verdict was inadvertently left unchecked.

On April 13, 2012, ECHOLS filed an objection and reply to the State, arguing that the Judgment and Sentence was invalid on its face, that the State could not rely on other documents to prove the validity of the Judgment and Sentence, and that he should be transported to court for a resentencing hearing.

On April 30, 2012, ECHOLS filed a motion asking the court to reconsider its denial of his motion. He also filed a declaration in support of this motion, incorporating his reply and objecting to the changes, without notice or a hearing, of venue and of a judge.

ECHOLS noted his motion to correct his Judgment and Sentence for hearing at the downtown Seattle King County Courthouse before the same judge who presided over his original sentencing in 1995, Judge Ann Schindler. But his motion was decided by Judge Lori K. Smith at the Regional Justice Center in Kent.

On May 2, 2012, ECHOLS filed notice of appeal from the change of venue, the change of judge, the April 9, 2012 order denying his CrR 7.8 motion to correct or modify his Judgment and Sentence, and the findings made in that order.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

ECHOLS hereby adopts and incorporates by reference the RAP 10.10 SAG brief filed in the below court as if the said brief was set forth in full herein.

- 1) THE COURT ERRED IN DENYING ECHOLS' MOTION TO CORRECT HIS JUDGMENT AND SENTENCE.**

"Clerical mistakes in judgments, orders, and other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time. A clerical mistake is one that, when amended, would correctly convey the intention of the court based on other evidence." State v. Davis, 160 Wn. App. 471, 478, 248 P.3d 121, 124 (2011)(citing State v. Priest, 100 Wn. App. 451, 456, 997 P.2d 452 (2000)).

In this case, the standard range for ECHOLS' offense was 250-333 months. Former RCW 9.94A.310(1994). When the jury finds the defendant committed a felony while armed with a deadly weapon, an additional 12 months "shall be added to the presumptive sentence." Former RCW 9.94A.310(1994). But nothing in the judgment and Sentence mentions a deadly weapon enhancement. ECHOLS 340 month sentence is clearly outside the standard range without the enhancement.

2) THE COURT ERRED IN REFERRING TO DOCUMENTS OUTSIDE THE FOUR CORNERS OF THE JUDGMENT AND SENTENCE TO DETERMINE THE EXISTENCE OF A SCRIVENER'S ERROR.

A Judgment and Sentence may be challenged after the one year time limit in RCW 10.73.090 if it is invalid on its face. RCW 10.73.090. "A judgment and sentence is invalid on its face if the alleged defect is evident on the face of the document without further elaboration." In re Pers. Restraint of West, 154 Wn.2d 204, 211, 110 P.3d 1122 (2005). Courts cannot look beyond the verdict, judgment, sentence to determine facial invalidity.

State v. Ammons, 105 Wn.2d 175, 189, 713 P.2d 719 (1986).

3) THE COURT ERRED IN TRANSFERRING THE CASE TO ANOTHER JUDGE AND ANOTHER COURTHOUSE WITHOUT GRANTING ECHOLS NOTICE AND A HEARING.

ECHOLS expressly noted his motion to correct his Judgment and Sentence before Judge Ann Schindler, the same judge who sentenced him in 1995, at the King County Courthouse in downtown Seattle. Yet his motion was ruled on by the Honorable Lori Kay Smith at the Regional Justice Center in Kent. These changes occurred without notice to ECHOLS or an opportunity for him to object.

The essence of due process is notice and a meaningful opportunity to be heard. In re Dependency of M.S., 98 Wn. App. 91, 94, 988 P.2d 488 (1999). Venue in criminal actions lies in the county in which the offense was committed. A change of venue is required upon a showing that an action was not prosecuted in the correct county. In the trial context, when a judge is unable to continue with a trial, any other judge may be appointed, but if the defendant objects, a mistrial must be granted.

3) THE COURT ERRED IN RULING ON ECHOLS' MOTION WITHOUT TRANSPORTING HIM TO THE COURTHOUSE FOR A HEARING.

Sentencing is a critical stage of the proceedings at which a defendant is entitled to be present and to have the assistance of counsel. State v. Davenport, 140 Wn. App. 925, 932-33, 167 P.3d 1221 (2007). CrR 7.8 lays out the procedure on a motion to vacate a judgment: "If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing

a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted." CrR 7.8(c)(3).

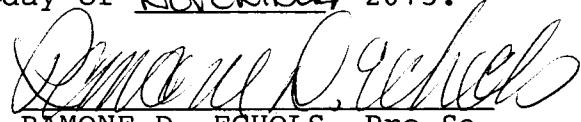
5) THE COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED ECHOLS' MOTION BASED UPON FACTS NOT SUPPORTED BY THE RECORD.

A trial court decision on a CrR 7.8 motion is reviewed for an abuse of discretion. State v. Hardesty, 129 Wn.2d 303, 317, 915 P.2d 1080 (1996). A court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). A court decision is based upon untenable reasons if it is based upon an incorrect standard or the facts do not meet the requirements of the correct standard. In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). The courts decision is based upon untenable grounds if the factual findings are unsupported by the record. Id.

F. CONCLUSION

In sum, ECHOLS invokes both the State and Federal Constitutions regarding each issue raised relying on the due process clause. Based on the foregoing this Court should reverse the trial court's Order Denying ECHOLS' CrR 7.8 motion and remand for resentencing hearing. Additionally, ECHOLS requests an evidentiary hearing in the alternative.

Respectfully submitted this 24th day of NOVEMBER, 2013.



RAMONE D. ECHOLS, Pro Se,
#725548, SCCC, H5B121
191 Constantine Way
Aberdeen, WA 98520

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, RAMONE D. ECHOLS, declare and say:

That on the 24th day of NOVEMBER, 2013, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, with First Class U.S. Mail, pre-paid postage affixed, under cause No. 08734-4-1:

- 1) GR 3.1
- 1) PETITION FOR REVIEW

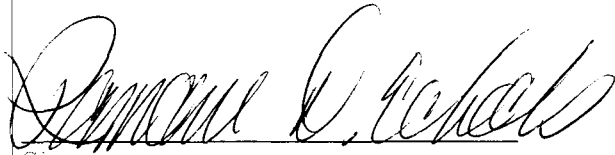
addressed to the following:

<u>COA-DIV I</u>	<u>SCOTT M. OTCOLE</u>	<u>JENNIFER J. SWEIGERT</u>
<u>ONE UNION SQUAR</u>	<u>KING CO. PROC OFFC</u>	<u>NIELSEN, BROMAN, & KOCH PLLC</u>
<u>600 UNIVERSITY ST</u>	<u>516 3RD AVE STE W554</u>	<u>1908 E. MADISON ST</u>
<u>SEA, WA</u>	<u>SEA, WA</u>	<u>SEA, WA</u>
<u>98101</u>	<u>98104</u>	<u>98122</u>

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my belief.

DATED THIS 24th day of NOVEMBER, 2013, in the City of Aberdeen, County of Grays Harbor, State of Washington.

WITH ALL RIGHTS RESERVED.


Signature

RAMONE D. ECHOLS
Printed Name

c/o [DOC 725548 UNIT H5B121
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
Aberdeen, Washington (98520)]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 RAMONE DEPAR ECHOLS,)
)
 Appellant.)

No. 68734-4-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: OCT 7 2013

2013 OCT -7 AM 8:00
COURT OF APPEALS
STATE OF WASHINGTON

PER CURIAM. Ramone Echols challenges the denial of a CrR 7.8 motion to modify his 1995 judgment and sentence for first degree murder. His court-appointed attorney has filed a motion to withdraw on the ground that there is no basis for a good faith argument on review. Pursuant to State v. Theobald, 78 Wn.2d 184, 470 P.2d 188 (1970), and Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), the motion to withdraw must:

- (1) be accompanied by a brief referring to anything in the record that might arguably support the appeal. (2) A copy of counsel's brief should be furnished the indigent and (3) time allowed him to raise any points that he chooses; (4) the court-not counsel-then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.

Theobald, 78 Wn.2d at 185 (quoting Anders, 386 U.S. at 744).

This procedure has been followed. Echols' counsel on appeal filed a brief with the motion to withdraw. Echols was served with a copy of the brief and informed of his right to file a statement of additional grounds for review. Echols did file a supplemental brief.

No. 68734-4-1/2

The material facts are accurately set forth in counsel's brief in support of the motion to withdraw. The court has reviewed the briefs filed in this court and has independently reviewed the entire record. The court specifically considered the following potential issues raised by counsel:

- (1) Did the superior court err in denying Echols' CrR 7.8 motion?
- (2) Should Echols have been provided the opportunity to object when the motion was assigned to: (a) a judge that was not the trial judge, and (b) to the Kent location instead of the Seattle location of the King County Superior Court?
- (3) Did the superior court err when Echols was not transported to the courthouse for his motion?

The court also reviewed Echols' statement of additional grounds, which reiterated the issues raised by counsel.

The issues raised by Echols and his counsel are wholly frivolous. The motion to withdraw is granted and the appeal is dismissed.

For the court:

Cox, J.
Leach, C. J.
Spears, J.