90820-6

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

LEESHAWN M. REDIC,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No. 45464-5-II

MOTION FOR DISCRETIONARY OF REVIEW; RAP 13.5



1. **OPENING STATEMENT**

On August 27th, 2014, the Most Honorable Division One Justices Hunt, Maxa, and Melnick denied Mr. Redic's Motion to Modify the Commissioners Ruling. (Appendix "A" Order Denying Motion to Modify).

The Superior Court Judge during re-sentencing, the Commissioner Judge, nor the three panel of Judges have ever addressed the merits, nor the arguments that Mr. Redic has made in regard to the comparability issue. In fact Mr. Redic has never received an adjudication on the merits, every court has only rendered a procedural adjudication. Mr. Redic has been denied his Constitutionally mandated day in court because of the procedural defense & adjudication. Mr. Redic asserts that under the Doctrine of Equitable Estoppel he is the aggrieved party that is entitled to a procedural defense, not the state.

Also, the Court have failed to address the Smith v. Hedgeth, 706 F.3d 1099 (9th.Cir.(Cal)2013) argument, & the effect that Alleyne v. U.S., 133 S.Ct. 2151 (2013) has on Hedgeth and Washington State's Enhancement statutes.

Mr. Redic begs this Most Honorable Temple of Justice to please address the merits and arguments in this petition. Mr. Redic is not an attorney and is acting Pro Se, please give these pleadings liberal interpretations. Maleng v. Cook, 490 U.S. 488, 493 (1989).

## 2. CITATION TO DECISION

Mr. Redic moved to modify the June 24, 2014 Commissioner's ruling affirming his Judgment and Sentence an resentencing imposed on remand from an earlier PrP challenging the original J&S. A Panel of Three Division One Judge's denied Mr. Redic's Motion to modify on August 27, 2014. Mr. Redic seeks review of that decision.

"He contends that the commissioner failed to address the issues he raised in his statement of Additional Grounds for Review (SAG). With the exception of the Double Jeopardy issue, which we next discuss, the commissioner's ruling fully addresses all of Redic's other SAG issues." (Appendix "A" at 1). Mr. Redic objects because the commissioner did not address Mr. Redic's arguments, nor merits, only the procedural bars imposed by the other courts.

"We agree with the commissiner's conclusion and his affirmance of the Judgment and sentence. The case on which Redic relies, Alleyne v. United States, 570 U.S. ____, 186 L.Ed.2d 314, 133 S.Ct. 2151 (2013), addresses when aggravating sentencing factors must be submitted to a jury to determine; contrary to Redic's assertion, Alleyne does no require this court to hold that Redic's firearm sentencing enhancement violates double jeopardy." (Appendix "A" at 2). Division one cannot ignore the Double Jeopardy implications cast upon Washington State's Charging & Sentencing Schematic.

## 3. ISSUE'S PRESENTED FOR REVIEW

1.) Does the **State v. Ross**, 152 Wn.2d 220, 96 P.3d 1225 (Wash.2004), Analysis control Mr. Redic's comparability argument?

2.) When the State fails to perform their duty under RCW 9.94A.525(3) and instead presents fraudulent facts for stipulation, is the State allowed to assert a procedural defense based on the fraudulent facts? The Doctrine of Equitable Estoppel prevents the State from relying on the fraudulent stipulation and returns Mr. Redic to his original position before the fraud.

3.) Mr. Redic has proven an error within the four corners of his Judgment and Sentence because the Nevada Possession with intent to deliver is not comparable to the Washington State version of this offense, in Nevada mere possession constitutes intent, in Washington state More than simple possession is required. The facts & Law are not comparable. If the State would have performed their duty under the Sra's Mr. Redic would not have the Nevada Conviction calculated into his offender score, this is a manifest injustice, a fundamental defect.

4.) Is the recent United States Decision **Alleyne v. United States**, 133 S.Ct. 2151 (2013) retroactive?

5.) Does **Alleyne** & **Smith v. Hedgpeth**, 706 F.3d 1099 (9th.Cir.(Cal)2013), change the Double Jeopardy analysis under Washington State Law because the Enhancement statutes are not separate criminal offense, **State v. Claborn**, 95 Wn.2d 629, 636-38 (1981), the analysis set forth in **Albernaz v. U.S.**, 450 U.S. 333 (1981) & **Missouri v. Hunter**, 103 S.Ct. 673 (1983), only applies to two separate criminal statutory provisions, as a case of first impression, does the legislative intent matter when the punishment is being twice increased by the same fact/element that increases the punishment inside the statute for the crime and the enhancement is only that single fact/element codified separately? Mr. Redic asserts that because any fact that increases the punishment for the core crime is an element of an aggravated offense that Washington State's criminal Statutes are aggravated statutes, and the enhancement is not a separate criminal offense, therefore the legislation cannot intend to twice punish Mr. Redic for the same offense.

## 4. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

### A. THE STATE NEVER MET ITS BURDEN AND ROSS IS CONTROLLING

Mr. Redic is entitled to invoke the waiver analysis in **Goodwin** as this Court pointed out in **State v. Ross**, 152 Wn.2d 220, 96 P.3d 1225 (Wash.2004).

In **Ross**, the Supreme Court established that a stipulation to a prior criminal history can be overcome, however, to invoke the waiver analysis set forth in **Goodwin** the **Ross** Court placed the burden on the Petitioner to establish that an error of Fact or Law exist within the four corners of the J&S. The Petitioner did met this burden at the resentencing hearing and in the RAP 10.10 (SAG) by establishing both factual and legal errors, and can therefore invoke the waiver analysis in **Goodwin**. The case at bar is distinguished from **Ross** because none of the Petitioner's in **Ross** could meet the initial threshold waiver analysis requirement.

The **Ross** Court reiterated that "We have established that 'illegal or erroneous sentences may be challenged for the first time on appeal.'" Id. 95 P.3d at 1229. "The SRA requires that prior out-of-state convictions be classified 'according to the comparable offense definitions and sentenced provided by Washington Law.' RCW 9.94A.525(3)." Id. at 1230.

Waiver can be found where the alleged error involves an agreement to facts later disputed, however, this rule cannot hold true in the case at bar because under the equitable estoppel Doctrine the State cannot benefit from failing to perform their duty under RCW 9.94A.525(3), and fraudulently offering the Nevada Possession with intent Prior Conviction in the Stipulation as if the State did perform their duty. If the State would have performed their duty under the SRA's it would have discovered that there is no factual nor legal basis for comparability purposes between the Nevada Possession with intent and a Washington State Possession with intent. Washington requires more than simple possession to establish possession with intent and Nevada does not. The State is barred under the Doctrine of Equitable Estoppal from relying on the fraudulent factual stipulation.

"It is the obligation of the State not the defendant, to assure that the record before the sentencing court supports the criminal history determination. Ford, 137 P.2d 480. This reflects fundamental principles of Due Process, which requires that a sentencing court base its decision on information bearing 'some minimal indicum of reliability beyond mere allegation.' Id. at 481, 973 P.2d 452." State v. Mendoza, 165 Wn.2d 913, 205 P.2d 113, 116 (Wash.2009). The Court completely ignored this argument. The case at hand is like Ford and not Nitch due to the fact that the challenge is to the legal and factual sufficiency of the criminal history. The Ross Court made this distinction between Ford and State v. Nitch, 100 Wash.App. 512, 997 P.2d 1000 (2000), in Footnote Seven.

"Nitch made an argument that some of his criminal history constituted same criminal conduct, but Nitsch did 'not challenge the evidenciary sufficiency of the record.' Id. at 420, 997 P.2d 1000. Same criminal conduct involves both factual determinations and the exercise of discretion. Id. at 523, 997 P.2d 1000. For this reason the court of appeal in Nitsch was able to distinguish Ford: 'What constitutes same criminal conduct is not merely a calculation problem, or a question of whether the record contains sufficient evidence to support the inclusion of'" an out of state conviction. Id. Fn.7.

This case, in contrast, is similar to Ford because the challenge goes directly to the sufficiency of the evidence and whether or not the state has met its burden? Unlike the instant case, the Petitioner in Ford introduced no evidence to support the classification of the disputed out of state conviction as to the comparability to Washington State Law. The Motions previously filed prove with all the evidence the factual and legal basis for this claim.

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This issue is out side of the Sentencing Judge's discretion because it involves what punishment is authorized by the SRA's. Besides, only when the trial court has not erred in finding the facts, or in applying the correct legal standard, is the ruling truly "discretionary" in any meaningful sense. The SRA demands that out of state convictions are properly classified. "Possession of forty grams or less or marihauna ... is a misdemeanor." RCW 69.50.4014. In Washington State mere possession is not enough to establish possession of Marijuana with intent to sell, there are additional elements such as baggies, scales, notebooks with names and amounts. State v. Goodman, 150 Wash.2d 774, 783 (2004).

Mr. Redic was found in simple possession of 3.5 grams of personal smoke, however, NRS 453.337 - Felony - Possession of controlled substance with intent to sell in Nevada only requires the actus reus of possession, it is a General Intent Crime, versus in Washington State, where the same crime requires evidence that goes into the Mens Rea.

Judge Murphy erroneously relied on the Court of Appeals and the State Supreme Court Commissioner's prior opinions, to erroneously rule that the stipulation to the criminal history bars Mr. Redic from raising the claim again. However, no court has ever addressed the merits of this claim because the courts erroneously applied an equitable estoppel bar to Mr. Redic for the Stipulation. The State is not entitled to assert an equitable Estoppel nor collateral estoppel defense, and the Doctrine of Res Judicata does not bar this court from addressing the merits either. The reason is because the State cannot benefit from the fraudulent stipulation and Mr. Redic is entitled to assert the Equitable Estoppel defense, not the State. This means that Mr. Redic must be returned to his original position, before the stipulation. Lichon v. American Universal Ins. Co., 435 Mich. 403, 459 M.W.2d 288 (1990).

Since no court has ever addressed the merits of the claim, the issue has not been adjudicated by any court, and therefore collateral estoppel & res judicata do not apply, Mr. redic has never had his constitutionally mandated Day in Court. Judge Murphy's decision is based on untenable reasons because it is based on an incorrect standard and the facts do not meet the requirements of the correct legal standards discussed above. State v. Ranquist, 79 Wn.App. 786, 793 (1995).

At one point Judge Murphy suggested that the Nevada conviction is comparable because Mr. Redic plead guilty to the possession with intent charge. That is not the correct standard and is not supported by any law. "Comparability of a prior out of state conviction is reviewed De Novo. To determine whether a foreign offense is comparable to a Washington offense, we first consider if the elements of the foreign offense are substantially similar to the Washington counter part. If so, the inquiry ends, if not, we determine whether the offenses are factually comparable, that is, whether the underlying conduct for the foreign offense would have violated the comparable Washington Statute." State v. Theiefault, 160 Wash.2d 409, 414-415 (2007). When this analysis is applied the petitioner has proved there is an error within the four corners of his Judgment and Sentence. RAP 2.5(a) does not apply because the Petitioner did raise the issue in the Trial Court, and even if it did apply, by its own terms the rule is discretionary rather than absolute, and the interest of Justice requires the rule to be waived to promote the interest of Justice. RAP 1.2(a).

## Conclusion

This Court has the Duty and Power to correct this error upon its discovery even where the parties not only failed to object but agreed with the sentencing judge. Mendoza, Supra. constitutional Due Process requires the State to meet its burden at sentencing. State v. Hunley, No. 86135-8 (Wash.2d 11/01/12).

B. IF ALLEYNE HAD BEEN DECIDED BEFORE THE NINTH CIRCUIT DECISION SMITH V. HEDGPETH, 706 F.3d 1099 (2013) DOUBLE JEOPARDY WOULD BAR FASE

In Alleyne v. U.S., 133 S.Ct. 2151, 186 L.Ed.2d 314 (6/17/13), the U.S. Supreme Court overruled Harris v. U.S., 536 U.S. 545, 122 S.Ct. 2406 (2002) & McMillan v. Pennsylvania, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986). The Alleyne holding made any fact that increases a mandatory minimum sentence for a crime an "element" of the crime, and not a "Sentencing Factor." The Force & Effect of the Alleyne Rule on the Washington State Firearm & Deadly Weapon Sentencing Enhancement (FASE) must be examined. The decision in State v. Kelley, 168 Wn.2d 72, 226 P.3d 773 (2010) is no longer good law.

The Ninth Circuit heard a similar case to Kelley, on February of 2013, in Smith v. Hedgpeth, 706 F.3d 1099 (9th.cir.(Cal)2013), Just five month before the U.S. State Supreme Court decided Alleyne. The Ninth Circuit rejected the Double Jeopardy Claim for two reasons: (1) The United State Supreme Court had not determined that sentencing Factors are essential elements; and (2) If Sentencing Factors are "elements" is the Double Jeopardy Clause implicated?

The Alleyne Rule takes care of the first reason, so the only question left is whether the Double Jeopardy clause prohibits multiple punishment for the same offense? If Alleyne would have been available during the Hedgpeth decision, the Ninth circuit would have ruled that the statutory system involved in Hedpeth violated Double Jeopardy when adding the FASE, to the underlying crime that is already aggravated by the use of the firearm.

The Double Jeopardy clause bars multiple punishment for the same offense. In Re Borrasso, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007)(citing U.S.Const.amend. V;Wash.Const.art. I, sec. 9). The use of a Firearm is an element that is used in the Robbery, Assault, Burglary, and Kidnapping statutes to increase the punishment from lower degrees to higher degrees. This means that the FASE is an element of the same offense, and has already been used to increase the punishment in the Statute for the core crime. The Enhancement Statutes are not themselves criminal offenses. State v. Claborn, 95 Wn.2d 629, 636-38, 628 P.2d 467 (1981). Double Jeopardy "'protects against multiple punishment for the same offense." Ohio v. Johnson, 467 U.S. 493, 498 (1984).

The Enhancement is not a separate offense, and the single act of being armed with a firearm is already a part of the core crime. This distinction is very important because "legislative intent" is only a determinative factor when the "single act" of being armed supports separate criminal charges, under two separate statutes. In Re Borrasso, at 536. "If the legislature intended that cumulative punishments can be imposed for the crimes, double jeopardy is not offended." Id. For example, if the "single act" supports both Robbery & Assault, than the reviewing court must examine the legislatures intent. However, the "legislative intent" is not a factor when multiple Punishment is imposed for the same offense. The Claborn Court found that the FASE is not a separate criminal offense. Claborn at 636-38. Under the Alleyne Rule the FASE is in fact an "Element" of the crime. Under the Statute for the criminal offense the "Single act" of being armed is an "element" that is already being used to increase the punishment, therefore, the imposition of the FASE is multiple punishment for the same offense. The Constitution forbids this type of legislation.

The Double Jeopardy Clause safeguard is a freedom that is specifically enumerated against congress. This Fact entitles it to greater respect against the State than other liberties protected by the Due Process Clause. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938). When the Alleyne Rule is applied to Washington State the force & effect is a check & balance on the power of the legislature; that requires legislation to be reasonable and not infringe unduly on individual rights to be free from multiple punishment for the same offense. City of Seattle v. McConahy, 86 Wash.App. 557 (1997). The "Single Act" of being armed with a deadly weapon is now part of the same offense even as an enhancement, and cannot be used to twice increase the punishment, even if that is the "legislative intent."

In Apprendi Justice Thomas correctly observed that the Apprendi rule was much too narrow for what is required under the Constitution. "The elements of a crime include every fact that is by law a basis for imposing or increasing punishment. Id. at 501, 120 S.Ct. 2348." Hadgpeth, at 706 F.3d 1104. The Alleyne Rule is a more broad version of the Apprendi Rule. "This reality demonstrates that the core crime and the fact triggering the mandatory minimum sentence together constitutes a new aggravated crime." Alleyne. Pursuant to Alleyne the FACT is now an essential element of an aggravated offense. The Firearm element is twiced used to increase the punishment, and this violates the Double Jeopardy Clause. An element that is part of the charging document cannot be used twice, this violates double jeopardy. State v. Freidrich, 4 Wash. 204, 224-25, 29 P. 1055 (1892); State v. Gilbert, 842 P.2d 1029.

i. HUNTER CANNOT APPLY TO A STATUTE THAT IS NOT A SEPARATE CRIMINAL OFFENSE

The Washington State Enhancement statute is not a separate criminal offense. CLARKSON at 636-38. The Two Statutory provisions in Hunter & Albernaz were both criminal offenses. The enhancement statute in the case at bar is merely the same fact/element that has already been used to impose the core crime & increase the punishment within the criminal statute. The enhancement statute is not a separate criminal offense, it is merely the same fact/element codified separately, and used to twice increase the punishment for the same offense that it first, is already part of, and second has already increased the punishment. "It is contrary to the nature and genius of our government to permit an individual to be twice punished fro the same act." Ex Parte Lange, 85 U.S. 163, 172 (U.S.N.Y. 1873). "'If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense. And * * * there has never been any doubt of (this rule's) entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense.

"'* * * (T)he constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it.' Id, at 173." North Carolina v. Pearce, 89 S.Ct. 2072, 2076-77, 395 U.S. 711 (U.S.N.C. 1969).

The Blockburger test may be a test of Statutory Construction when two separate statutory provisions for two separate criminal offenses are being challenged. However, the Blockburger test was built from cases determining the constitutional validity of statutes, not the legislative intent. The Petitioner asserts that under the facts of this case, when the enhancement statute is not a separate criminal offense, but merely an element of the same offense: (1) Blockburger is a test of constitutional validity; or (2) Blockburger does not matter because the legislative intent cannot violate the constitution by authorizing double punishment for the same fact/element. This is what Justices Marshall and Stevens dissented to in **Hunter**. The **Hunter** & **Albernaz** dissent is in compliance with the constitution as proven in the opinion of **Ex Parte Lange**:

"On the difficulty of deciding when a statute under modern systems does or does not describe a felony when it defines and punishes as an offense, we shall see a sole reason for holding that the principle intended to be asserted by the constitutional provision must be applied to all cases where a second punishment is attempted to be inflicted for the same offense by a judicial sentence.

"For of what avail is the constitutional protection against more than one trial if there can be any number of sentences pronounced on the same verdict? Why is it that, having once been tried and found guilty, he can never be tried again for that offense? Manifestly it is not the danger or jeopardy of being a second time found guilty. It is the punishment that would legally follow the second conviction which is the real danger guarded against by the Constitution.

"But if, after judgment has been rendered on the conviction, and the sentence of that judgment executed on the criminal, he can be again sentenced on that conviction to another and different punishment, or to endure the same punishment a second time, is the constitutional restriction of any value?

"Is not its intent and its spirit in such a case as much violated as if a new trial had been had, and on a second conviction a second punishment?

"The argument seems to us irresistible, and we do not doubt that the constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it." **Ex Parte Lange** at 85 U.S. 173.

There is no difference in this case between multiple punishment and being tried or convicted twice for a single offense.

The United States Supreme court addressed a similar issue (not identical) in **Albernaz v. U.S.**, 450 U.S. 333 (1981) & **Missouri v. Hunter**, 103 S.Ct. 673, 459 U.S. 359 (1983). However, both cases were decided before the **Alleyne** Rule was announced, and during the **Mcmillan** era, where FASE were "Sentencing Factors." The Legislature has the power to define and codify the punishment for "Sentencing Factors" in anyway it pleases, and the Double Jeopardy protection does no more than stop the courts from sentencing the convicted beyond what the legislature intended. **State v. Caldwell**, 47 Wn.App. 317, 319, 734 P.2d 542, review denied, 108 Wn.2d 1018 (1987); **Missouri** Supra.

The **Hunter** & **Albernaz** analysis used the Double Jeopardy standard for "Sentencing Factors" & "Separate Offense," which is dependent on Statutory Construction, Blockburger, and the Legislative Intent. However, that analysis cannot be applied to the case at bar, to decide if Double Jeopardy is violated **because** the FASE is an "Element" of the "Same Offense," and not a "Sentencing Factor." The **Alleyne** Rule removes the FASE "element" out of the legislatures jurisdiction because the FASE "Element" is the "same offense" for Double Jeopardy purposes. The Double Jeopardy Doctrine prohibits multiple punishment for the "same offense." **North Caroline v. Pearce**, 393 U.S. 711, 717-18 (1969).

The three Dissenting Justices in **Hunter** (1983) & **Albernaz** (1981), have **been** vindicated by the **Alleyne** Rule. This Court must reexamine the **Kelley** decision in light of **Alleyne**, and adopt the three wise Judges dissent in **overruling Kelley**. Justices Stewart, Marshall, and Stevens maintained in **Albernaz** & **Hunter** that the State has a wide latitude to define crimes and to prescribe the punishment for a single offense. But the Constitution does **not** permit a State to punish as two crimes conduct that constitutes only **one offense** withine the meaning of a crime under State Law.

The Scope and Function of the Alleyne Rule substantially increases the Fundamental Fairness of the criminal process, even affecting the indictment process, therefore the right to present a defense, and the fair administration of Justice. The Watershed Alleyne Rule serves as a reminder to the American Justice System of a Fundamental Principle of the Constitution, that:

"The Powers of the Legislature are defined and limited, and that those limits may not be mistaken or forgotten, the constitution is written .... Every Law enacted by congress must be based on one or more of its powers enumerated in the Constitution .... The Constitution is Superior to ordinary acts of the legislature." Marbury v. Madison, 5 U.S. 137, 176 (1803)(Marshall C.J.).

Only lawfully enacted statutes are "The Supreme Law of the land." U.S.C. Article VI.

If the Legislative and Executive branches are not checked by including Double Jeopardy Protection to Multiple Punishment for the same Element, in the same offense, then both branches are free to unreasonably & unconstitutionally infringe upon the individual rights of the People. "The Constitution withholds from Congress a plenary police power that would authorize enactment of every type of legislation." U.S. v. Lopez, 514 U.S. 549, 566 (1995). The Alleyne Rule activates the Double Jeopardy Clause as a substantive and procedural Due Process safeguard.

The Constitution is designed to protect the rights of the minorities against the arbitrary actions of those in power. Extending the 5th amendment protections to the Alleyne Rule protects and maintains the application of that design. The application of the FACE twice increases the punishment for the same offense, and that "element" has already increased the punishment. Once inside the aggravated Statute and twice with the FACE. The increasing function can only be used once, a fact may not perform the same function twice, the imposing function, or the increasing function, to do so violates Double Jeopardy by imposing multiple punishment for the same offense.

## CONCLUSION

MR. Redic prays for whatever relief this Court deems necessary. Please vacate the firearm enhancement due to the Double Jeopardy violation.

Respectfully Submitted,

This 7th Day of September, 2014.

X _____

LEESHAWN REDIC

# APPENDIX A

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II



STATE OF WASHINGTON,

Respondent,

v.

LEESHAWN MYLES REDIC,

Appellant.

No. 45464-5-II

ORDER DENYING MOTION TO MODIFY

Appellant Leshawn Myles Redic has moved to modify the June 24, 2014 commissioner's ruling affirming his judgment and resentencing imposed on remand from an earlier personal restraint petition challenging his original judgment and sentence. He contends that the commissioner failed to address the issues he raised in his Statement of Additional Grounds for Review (SAG). With the exception of the double jeopardy issue, which we next discuss, the commissioner's ruling fully addresses all of Redic's other SAG issues.

Redic is correct that the commissioner's ruling does not specifically address (1) Redic's assertion that his firearm enhancement constituted double jeopardy because it replicated the same firearm use that elevated the decree of his homicide conviction and increased his sentence, SAG at 12; and (2) whether this double jeopardy assertion is exempt from the one-year time bar (RCW 10.73.090(1)) under RCW 10.73.100(3), which provides that double jeopardy issues are not subject to the one-year time bar. Although the commissioner's ruling does not expressly address this double jeopardy exemption, the ruling notes generally that Redic's counsel filed an *Anders*[1] brief stating that there are no good faith issues to raise on appeal and that "Redic's appeal is frivolous." Ruling at p 1.

[1] *Anders v California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967); *see also State v Theobald*, 78 Wn.2d 184, 470 P 2d 186)1970).

We agree with the commissioner's conclusion and his affirmance of the judgment and sentence. The case on which Redic relies, *Alleyne v. United States*, 570 U.S. ___, 186 L. Ed. 2d 314, 133 S. Ct. 2151 (2013), addresses when aggravating sentencing factors must be submitted to a jury to determine; contrary to Redic's assertion, *Alleyne* does not require this court to hold that Redic's firearm sentencing enhancement violates double jeopardy. Accordingly, we deny Redic's motion to modify.

**IT IS SO ORDERED.**

**DATED** this 27th day of August, 2014.

**PANEL:** Jj. Hunt, Maxa, Melnick

**FOR THE COURT:**

Hunt, J.

PRESIDING JUDGE