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CLERK OF COURT OF APPEALS DIV II
THE SUPERIOR COURT OF PIERCE COUNTY STATE OF WASHINGTON
IN AND FOR THE STATE OF WASHINGTON

JASON DE LA CRUZ
Petitioner,
vs.
STATE OF WASHINGTON
Respondent.

)
)
) Case No.: 09-1-02999-9 / 45656-7-II
)
) MOTION TO MODIFY OR CORRECT
) JUDGMENT AND SENTENCE
)
) (CrR 7.8)
)
)

I. MOTION

- 1.1 Comes now JASON DE LA CRUZ, petitioner, pro se, in the above-entitled matter, and moves this Court to modify or correct his judgment and sentence.

- 1.2 The defendant appeared originally before Judge Flemming on the 4th day of OCTOBER, 20010 for [] trial / [] sentencing.

- 1.3 The State was represented by, Dione Hauger, of the Pierce County Prosecutors Office.

- 1.4 The defendant was represented by William Ferrell.

- 1.5 The case was decided by (a guilty plea) (or trial) and Plaintiff/Petitioner received a sentence of 300 months in prison.

II. GROUNDS

2.1 In accordance with CrR 7.8 of the Superior Court Rules of Criminal Procedure, and the court imposed sentence.

The Defendant only seeks modification and/or correction of sentence, not retrial.

2.2 An error in the trial court happened when:

- A sentence was given which is ambiguous with respect to time, and manner in which to be served; *See In Re Costello*, 131 Wn.App. 828, 129 P.3d 827 (2006);
- An incorrect offenders score and/or offender seriousness level was used to calculate Petitioners sentence;
- The sentencing Judge was not clear in pronouncement about whether the sentence would run concurrent or consecutive, *U.S. Preston*, 643 F.2d 1285 (1983); in accordance with RCW 9.94A.400; *U.S. Nass*, 755 F.2d. 1133, 1136 (5th Cir. 1985);
- A sentence was given which is not within the sentencing guidelines as stated by the U.S. Supreme Court and various lower courts in, *Apprendi v. New Jersey*, 530 U.S. 466, 490.; *Blakely v. Washington* (02-1632) 111 Wash.App 851, 47 P.3d 149.; *State v. Evans* No. 74851-9 (Wash 06/16/2005)

Other: _____

Other _____

~~ADDITION~~ Grounds: During sentencing state failed to prove I had previously been convicted of a serious crime in order to enhance my unlawful possession of FIREARM 2° to (1°) first degree. Out-of-state comparability analysis was not used.

From a due process stand point the adversarial testing process requires the state to prove every element of the crime beyond a reasonable doubt; it follows that defense counsel has a basic duty to protect the defendants due process interests by challenging the states failure to prove an essential element of the charged crime. U.S.C.A Const. Amends. 6, 14

6th Amendment Sentencing Guidelines

The constitution protects criminal defendants against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

An error is manifest if it has practical and identifiable consequences in the trial of the case for the purpose of determining whether an appellate court will examine an alleged constitutional error for the first time on appeal.

Where a defendants criminal history includes out-of-state convictions, The sentencing Reform Act requires these convictions be classified according to the comparable offense definitions and sentences provided by Washington law, and trial court must compare the elements of a comparable Washington crime.

A challenge to the classification of out-of-state convictions like other sentencing errors resulting in unlawful sentences may be raised for the first time on appeal.

A person is guilty of (UPOF 1°) if the person owns has in his possession or control any FIREARM after having been convicted in this state or elsewhere of any serious offense.

9.41.040 Unlawful Possession of FIREARM 1°

~~XXXXXXXXXX~~ Grounds: STATE of Washington V. Jason A. Wilson NO. 83797-0
170 Wn. 2d 682 STATE V. Wilson (Wash 2010)

ERROR in sentencing defendant based erroneously scored
PRIOR conviction WAS a legal error, and thus defendant
WAS entitled to be resentenced. RCW 9A.04A.025(4)

STATE V. McCORKLE (Wash 1999) 137 Wn. 2d 490

state rules and regulations say that, we have further
held that the state must prove by a preponderance of
the evidence the comparability of the defendants out-of-state
convictions.

State V. Olsen 175 Wn. App. 269, (Wash. App. Div 2 2013)

Courts employ a two-part test to determine the comparability
of a foreign offense to Washington offense to increase an
offender score: (1) courts determine whether the elements of
the foreign offense are substantially similar to the elements
of the Washington offense; and (2) if the foreign offense
elements are broader than Washington elements, precluding
legal comparability courts determine whether the offense is
factually comparable that is, whether conduct underlying the
foreign offense would have violated the comparable Washington statute.

STATE V. LARKINS 147 Wn. App. 858 199 P.3d 441

Held that defendant's Ohio burglary conviction did not equate
to a conviction for a crime equivalent under Washington
law for purposes of calculating his offender score under
Sentencing Reform Act. (SRA)

STATE V. THOMAS 135 Wn. App. 474 (Wash. App. Div. 1 2006) 144 P.3d 1178

STATE V. ROWLAND 149 Wn. App. 496 (Wash. App. Div. 1 2009) 204 P.3d 953

Under the two (above) cases relief was sought and granted due
to the challenging of prior out-of-state burglary convictions,
and it not being comparable to Washington statute.

Relief Requested: I seek relief and ask this court to sentence me to unlawfull possession of FIREARM 2° not under 1°. Also to correct my offender score, so as to not affect due process rights.

I, JASON DE LA CRUZ, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. (RCW 9A.72.085)

Dated this 8th day of September, 2014

Signature 

JASON DE LA CRUZ
Printed Name