

FILED

FEB - 6 2018

WASHINGTON STATE  
SUPREME COURT

95474-7

FILED  
COURT OF APPEALS  
DIVISION II

2018 JAN 12 AM 11:46

STATE OF WASHINGTON

In The Court of Appeals of The State of  
Washington, Division Two

DEPUTY

STATE of WASHINGTON  
Respondent

v.

RAY CHARLES HARRIS  
PETITIONER

No. 48618-1-11  
Consolidated with:  
No. 49909-6-11

PETITIONER FOR REVIEW  
AND REQUEST FOR  
JUDICIAL REVIEW

P/M: 1/9/18

A. FACTS RELEVANT TO MOTION

1. The PETITIONER'S OFFENDER SCORE SHOULD REFLECT FOUR POINTS WITH A SENTENCING RANGE OF 22-29 MONTHS.

The STATE ERRONEOUSLY MISCALULATED THE PETITIONER'S OFFENDER SCORE AT SIX POINTS BY INCLUDING THIRD DEGREE MALICIOUS MISCHIEF AND FOUR DEGREE ASSAULT.

MALICIOUS MISCHIEF IN THE THIRD DEGREE AND FOURTH DEGREE ASSAULT CANNOT BE USED TO CALCULATE AN OFFENDER SCORE AS DEFINED UNDER WASHINGTON STATE SENTENCING REFORM ACT PURSUANT TO, RCW 9.94A.525

### B. UNLAWFUL NATURE OF RESTRAINT

1. RESTRAINT IS UNLAWFUL IF THE CHALLENGED ACTION IS UNCONSTITUTIONAL OR VIOLATES THE LAW OF THE STATE OF WASHINGTON.

IN RE PERS. RESTRAINT OF ADAMS,  
132 WASH. APP. 640, 134 P.3d 1176 (2006).

2. IN ORDER TO OBTAIN RELIEF BY WAY OF PERSONAL RESTRAINT PETITION, THE PETITIONER MUST ESTABLISH, (1) HE IS BEING UNLAWFULLY RESTRAINED, (2) DUE TO A FUNDAMENTAL DEFECT WHICH INHERENTLY RESULTS IN A COMPLETE MISCARRIAGE OF JUSTICE. MATTER OF JOHNSON, 131 WASH. 2d 558, 933 P.2d 1019 (1997).

3. AN INCORRECT CALCULATION OF AN OFFENDER SCORE CONSTITUTES A FUNDAMENTAL DEFECT IN SENTENCING RESULTING IN A COMPLETE MISCARriage OF JUSTICE WHICH REQUIRES RELIEF IN A PERSONAL RESTRAINT PROCEEDING.

IN RE CONNICK, 144 WASH. 2D 442, 28. P.3D 729 (2001). ACCORDINGLY, THIS COURT SHOULD FIND THAT THE PETITIONER'S UNDERLYING RESTRAINT IS UNLAWFUL WITHIN THE MEANING OF RAP 16.4 (C) (2).

### C. GROUND FOR RELIEF

1. THE PETITIONER'S SOLE GROUND FOR RELIEF IS HIS CLAIM THAT THE TRIAL COURT MISCALCULATED HIS OFFENDER SCORE AT SIX POINTS. AS A RESULT, THE SENTENCING COURT IMPOSED A SENTENCE CONTRARY TO THE WASHINGTON STATE SENTENCING REFORM ACT. THE STATE PREJUDICE THE PETITIONER BY ERRONEOUSLY COUNTING MALICIOUS MISCHIEF IN THE THIRD DEGREE AND FOURTH DEGREE ASSAULT AS TWO POINTS ADDED TO THE OFFENDER SCORE.

THE FACT IS MALICIOUS MISCHIEF IN THE THIRD DEGREE AND FOURTH DEGREE ASSAULT CANNOT BE USED TO CALCULATE AN OFFENDER SCORE AS DEFINED UNDER WASHINGTON STATE SENTENCING REFORM ACT PURSUANT TO RCW 9.94A.525

#### D. CONCLUSION

WHEREFORE, THIS COURT SHOULD TAKE JUDICIAL REVIEW AND GRANT INSTANT PERSONAL RESTRAINT PETITION AND REMAND THIS MATTER TO THE SENTENCING COURT FOR RESENTENCING.

SO IT SHOULD BE ORDER

DATE THIS JANUARY 7, 2018

RESPECTFULLY SUBMITTED BY  
RAY CHARLES HARRIS

SIGNATURE



RAY CHARLES HARRIS # 271486  
COYOTE RIDGE CORRECTION CENTER  
PO BOX 769: IA-24  
CONNELL, WA. 99326-0769

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DECLARATION OF MAILING

GR 3.1

I, RAY CHARLES HARRIS on the below date, placed in the U.S. Mail, postage prepaid, 1 envelope(s) addressed to the below listed individual(s): Att

STATE OF WASHINGTON

DEPUTY

The Court of Appeals

DIVISION TWO

950 BROADWAY STE 300

TACOMA, WA 98402-3694

MARIE TROMBLEY

ATTORNEY AT LAW

PO BOX 829

GRAHAM, WA 98338

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. PETITION FOR REVIEW AND JUDICIAL REVIEW
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this JAN day of 8<sup>TH</sup>, 2018, at Connell WA.

Signature

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