IN THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON
DIVISION II
TACOMA, WA.

State of Washington
PLAINTIFF

89833-2

COA CASE# 42396-1-II

vs. Thomas Leland Floyd
DEFENDANT

FILED
JAN 23 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

Petition for discretionary REVIEW / Statement of Additional Grounds for Relief and Reconsiderations

Comes Now Thomas Leland Floyd petitioner "IN PROPRIA PERSONA" AS A Indigent Litigant "IN FORMA PAUPERIS" to SEEK RELIEF FROM CLEAR AND UNMISTAKABLE ERROR (CUE "motion") RISING to the level of an COMPLETE MISCARRIAGE of Justice. A PRO SE Litigants ARE to be construed LIBERALLY, however "IN ARTfully" Pleaded. HALL V BRAMON 935 f2d 1106 AND ETC - LESS STRINGENT STANDARDS than formal pleadings drafted by LAWYERS, REGARDLESS of His POOR SYNTAX And SENTENCE CONSTRUCTION or his unfamiliarity with. INGS... JONES V ROBINSON 2011 US Dist. LEXIS 105429 @ COURT of Appeals Chief Judge VAN DEREN PRO TEMPORE ORDERED the dismissal of Accused PERSONAL RESTRAINT Petition, RULING that petitioner FAILED to MEET his BURDEN of PROOF to providing sufficient EVIDENCE to support his petition. This PRO-SE Litigant plagued with INEFFECTIVE COUNSEL STEVEN GANT, JANE PIERSON, ARRON TAINEY And Stephanie CUNNINGHAM, HAS Applied to the Court, IN PROPRIA PERSONA due to the VIOLATIONS of RULES of PROFESSIONAL CONDUCT By conflict of INTEREST

CLEARLY demonstrated By State Actor who deliberately Refused to pursue the truth finding fact finding functio of the courts. Likewise Court Appointed Counsel on Appeal Stephanie Cunningham failed to Address one single Issue of Error set out in the PRP that Chief Justice Van Deren dismissed for lack of supporting Evidence to validate the Assertations presented for Review See Attached "(1A25)... Appeal Attorney was Asked to withdraw and her Brief which failed to Address Any of the Areas of Misconduct Amounting to Equal Access due Process deprivation to be striken from Accused Appeal. See Attached "(1A9) "his motion to strike his counsel's Brief And order her to withdraw As counsel is denied.

But for counsels Inaction the Def. would not be in Custody And would Not have been found guilty or convicted of Any crime.

Steven Grant Jane Pierson, Arron Tainey, And Stephanie Cunningham All of whom are Un-Wanted State Actors Have Each one of them served to delay, Hamper, Defeat, Obstruct, compromise And conflict the Petitioner Equal Access to the Courts causing Speedy, Trial violations, Spoliation, destruction of Evidence and deliberately Refused to with draw from Mr Floyds Proceedings. [IN Disp. Proc. Against Anschell] 149 Wash 2d 484 (2003)

Conflict of Interest (false conclusions of LAW)
ARRON TALNEY And JANE PERSON told the Docs At WESTERN STATE THAT "Automatism" CANNOT BE USED AS SELF defense UNLESS Accused Admits to the commision of the CRIME. This is not what the diminished capacity term "Automatism" stand for. Both public defenders Admitted that they did not know what the term Automatism meant WHEN DR Hendrickson And Gagliardi Had to BE Explained what the petitioner WAS SEEKING AS His defense.

Automatism is A comatose State, AS IN the Post traumatic syndrom UNAWARENESS, SLEEP-WALKING, Loss of CONSCIOUSNESS NEGating MENS REA.

California, INDIANA, South DAKOTA, WASHINGTON, And WEST VIRGINA RECOGNIZE "Automatism" defense. People v MARTIN 87 CAL.App 2d 581, State v Caddell, 287 N.C. 266, 215 S.E. 2d 348, 363 (N.C. 1975) JONES v State 1982 OK CR 112, 648 P2d 1251, 1258 (OKLA. Crim Ct App 1982) Automatism defense IS A form of UNCONSCIOUSNESS AS NEGating the MENS REA OR INTENT ELEMENT of A CRIME, THE JURY MAY WELL HAD RETURNED A VERDICT of Not Guilty BECAUSE the ABSENCE of INTENT.

Judge MERRIT in HASKELL v BERGHUIS 511 Fed Appx 538 (JAN 2013) SAID "I BELIEVE that if HASKELL's COUNSEL HAD PRESENTED his Automatism defense NEGating the MENS REA.... JURY may have found

RETURNED A VERDICT of Not Guilty"... BY VIRTUE OF THE FAILURE to RAISE THE Automatism DEFENSE By Attorneys to THE ELEMENT of INTENT, THE JURY REQUIRED THE defendant to PROVE SELF-defense And Not THE PROSECUTION (State) to PROVE THE ABSENCE of SELF-defense".

"THERE WAS A PLAUSABLE defense THEORY that OBVIOUSLY would HAVE NEGATED INTENT AS A Result of MENTAL ILLNESS At the time of the INCIDENT."

THE Attorneys ARRON TALNEY And JANE PIERSON "WERE SO INEFFECTIVE that the JURY gave the JURY a (CHANCE) opportunity to consider it As undermining Intent. I would put that Kind of LAWYER MALPRACTICE on A EQUAL PLANE with the LAWYER who SLEEPS through the TRIAL [Judge MERRITT] Fuchter V State 633 P2d 142 AS [illegible] WAS Any other defense.

ARRON TALNEY And JANE PIERSON Mistook the "Automatism" for the "MANIA TRANSITORIA" defence [in the HEAT of PASSION] such deprivation of due PROCESS guidelines tainted the case for FURTHER more. for these And many other REASONS the Accused WAS compelled to REPRESENT HIMSELF. "SEE TRANSCRIPT" (Motions IN LIMINE) (Pg 384) MR Floyd: "IN MY OBJECTION... [3/28/11]... to MR. TALNEY bring co-COUNSEL, you'll SEE that I pointed out that MARTIN DUNNHOLTER, WAS Appointed co--NO-Conflict COUNSEL Attorney in LAKEWOOD ON

Those Violations of a No-Contact order. They were
) Municipal court cases, And Hr and I worked
diligently on those-to get them Removed...
Hr worked with me for six months" [Trial Court
Erred in forcing An Ineffective Counsel
upon the Accused (Pg 39(L4)) "So I'm denying
your Request to Appoint Mr Dunnhoe Hr (Court)
to be your lawyer"... Mr Tainey does the Defendant
Have Any witness list or other witnesses that
Hr Intends to call?" [Tainey] Pg 39(L-15) "Not that I
Know of Your Honor"... Floyd - I Have Put in A
witness List And it's in the file!"... "This is what I'm
saying Hr doesn't even Know that I have
got subpoenas in or witnesses in." "He doesn't
Know that I have Motions in Limine." They have
Not even Addressed my wi-nesses. Pg(40(L1)) All of
this stuff I have had in since June 2010"... (Court:)
"Mr Tainey, have you ever seen a witness list
from him?" "No your Honor" (L14) pg 41... I know that
there are several Attorney that he is pursuing.
I don't Believe that Any of them will get past the
State's Objection. (There is No excuse for him to Credit State)
Further Proof Attorneys Biasness in his continued
Role As "State Actor" An Adversary for "Ineffective"
Through out the Remaining time, defendant disclosed
All the motions, evidence, subpoenas, And dis-
covery Materials of which "Aron Tainey" Had No
Clue that the defendant conducted T.R. 21

PREPARATION IN Light of TALNEY'S (EXPARTE) COMPANION-
Ship duties designated to him in his WORK for
NIEL HORIBE'S PROSECUTIONAL QUEST for OBTAINI. A
An unConstitutional Conviction.

WE shall find through the ENTIRE TRANSCRIPTS
that the State Actors set themselves in OBVIOUS
OPPOSITION to EVERY First, Fourth, Fifth, Sixth, Eighth,
And FOURTEENTH Amendment Right the ACCUSED
Sought And the PROSECUTION had deprived.
[RCP 4.1] FALSE STATEMENTS [RPC 1.4] Lack of due
diligence And promptness. [IN RE PROC. AGAINST
PETERSON] 120 WN 2d 838, 854 (1993) KNOWN SERIOUS
Conflict of INTEREST CAUSING VERY SERIOUS CON-
SEQUENCES to MR Floyd, And TAINTING ENTIRE
CASE. [IN RE Disp. PROC. AGAINST TUAREZ] 143 WN 2d
840 (2001) [ABA Standards std. 4.41 b, c] DISBARMENT
is APPROPRIATE WHEN failed PERFORMANCE is CAUSE
of SERIOUS or potentially SERIOUS INJURY to A
CLIENT. (c) ENGAGES in A PATTERN of NEGLECT &
EGREGIOUS ETHICAL VIOLATIONS) A TRIAL COURT ABUSES
its discretion when its decision is BASED UPON
MANIFESTLY UNREASONABLE OR UNTENABLE GROUNDS
OR REASONS [IN RE. PERS. RESTRAINT of DUNCAN] 167
WN 2d 398, 404-05 (2009) THE THRESHOLD to admit
RELEVANT EVIDENCE is LOW and EVEN the MINIMALLY
RELEVANT EVIDENCE is ADMISSIBLE. State V Gregory
158 WN 2d 759, 835 (2006)

THE TRIAL COURT ERRORED IN FORCING the ACCUSED

TO TRIAL without a complete discovery OR without INTERVIEW of WITNESSES. See Transcript of 3/18/11 Page 48(L8) Mr Floyd: "I AM passing to you "O'Leary's" INVESTigation FROM GRANT GRIFFEN" THE Court: Pg 48(L21) I don't WANT to look at this." >THE REPORT WAS NOW IN Judge McCarthy's HAND when those WORDS WERE SPOKEN. < REMEMBER please... that ARON TALNEY HAS ALREADY MENTIONED the "the defendant's witness list won't get past the states OBJECTIONS." HOW ON EARTH could TALNEY possibly know this? HIS EXPARTE CONVERSATIONS with NIEL HORIBE And Quite possibly Judge McCarthy could HAVE been the ONLY WAY HE COULD manifest such A BIASED deduction WHEN HE HAD NO IDEAL who the defendant INTENDED to CALL, OR who the prosecutions witnesses were.

ARON TALNEY WARNED the ACCUSED that JOHN McCarthy PRESIDING would WAIT till the middle of closing ARGUMENT and REMOVE the defendant High And dry with NO CHANCE to CLOSE.

THE petitioner then showed EVERYONE in the COURTROOM where ANNETTE cut herself ON Both HER EARS. The LEFT EAR with HER FINGERNAILS, A FILE, And TEARING. The Right EAR with A RAZOR BLADE. DEMONSTRating by using ARON TALNEY AS A Model the ACCUSED touched HIS HEAD EXACTLY AS ACCUSED touched

ANNETTES' HEAD THE NITE of THE INCIDENT, And Showed How ACCUSED Showed PEG GRIFFIN WHERE ANNETTES SELF INFLICTED WOUNDS WERE LOCATED.

NEIL HORIBE IMMEDIATELY WROTE NOTES IN THE PALM of His HAND AS HE MURMURED BLOOD on His HANDS, BLOOD on His HANDS. This took PLACE BEFORE THE ACCUSED EVEN SAW JUDGE McCARTHY ON the day of the TRIAL.

EVERY ONE, THE COURT REPORTER, COURT CLERK, POLICE ESCORTS, TALNEY And HORIBE, INCLUDING THIS, PETITIONER COULD NOT PASS A POLYGRAPH ON this topic, without CONFIRMATION that the FOREGOING is TRUE. FURTHERMORE, the demonstration of WHERE ANNETTES SELF INFLICTED WOUNDS WERE ONLY PRESENTED At that time JUST BEFORE TRIAL BECAUSE THE OTHERWISE INNOCENT defendant felt POSITIVE that HE WOULD get to CROSS EXAMINE PEG GRIFFIN to SUPPORT THESE facts.

THIS BRINGS US to the 3/28/11 TRANSCRIPT Pg 48 At LINE TEN WHERE the COURT is REFUSING to READ the INVESTIGATORS REPORTS - INTERVIEWS with the GRIFFINS. ON LINE 16 MR Floyd: WELL it's going to BE EVENTUALLY IN AS AN EXHIBIT IF WE go further IN THIS CASE. It's simply ANSWERING YOUR QUESTION to MR TALNEY (on Page 47 LII) MR TALNEY: "My understanding is that Floyd WANTED to ESTABLISH that the SAME ALLEGED victim in this CASE HAD made A FALSE

Allegation Against Another Individual on a prior occasion, And that is the Individual that he wanted Kristin O'Leary to track down."

Plainly compromising manifested in Talneys Ineffectiveness, Here Stating falsely what the defendant was offering the Court. In fact Aaron Talney knew that Niel Horibe had threatened Kristin O'Leary's job if she ever spoke to the Jackson family again. This is Exactly the Reason the State and Prosecutors in conjunction claimed to Have lost the cassette of O'Leary's Interview of the Jacksons. diliberally they distroyed Exculpatory Evidence favorable to the defense.

Kristin had an valuable Interview, she said, with Attorney Vicky Curry And Marvin Jackson of which "She" Recorded. They made Arrangements for Another Interview But when Niel Horibe found out About it He threatened O'Leary's Job.

Now when Jana Pitcon was fired the taped cassette, CD's, DUD's, 911 Phone calls All Suddenly came up missing Ironically. Proof of Self Inflicted wounds Vanished And the Investigators Jobs in Jeopardy for Seeking Only the truth.

The Constitution does Not force A Lawyer upon A Pro Se/or Any defendant [Id. At 279, 87 L.Ed 269]

Brady And Youngblood the State must "preserve" And "disclose" Such Evidence for the defendant.
ARRON TALNEY NEVER had A clue As to what A defense was Because He had Close to Assist HORIBO the Prosecution As the next Review of the Transcripts will show.
State v Wittenbarger 124 Wn 2d 467, 475 State Violates due process Right to A fair trial if it Fails to Full Filler duty. Preserve" & disclose"
The trial court erred By Restricting the Legal documents from Kitsap County "as stated" (1A29 & 1A30) US v Glee f3d 885 (7th Cir) If A Jury Rationally could find in the defendants favor on Some Material fact issue, then the Jury must be Instructed on that subject.
Williams v Taylor 250 f3d 1202 Right to Attorney with undivided Loyalty. Morgan v Burk 17 Wn App 193 "Judgments Vacated on grounds that counsel Acted Against the wishes of the client. There was a misunderstanding of the two." There was No Understanding Between Floyd and Any of His State Actors Appointed to him Against his will. But for their Ineffectiveness and Violations of [RPC 1.4 & 4.1.] the defendant would not have Been found Guilty.
The deficient performance of State Actor Arron Talney will Astound you. See Transcripts of 3/28/11 (Pg 49 L 7) the Court: So you would Like to

Subpoena for Grand Griffin"? (Yes) "And who else?" (From this point through further witness list the Judge Presiding errored in denying Subpoenas for further witness. The defendant Requested the Right to Have Kristin O'Leary Interview the State witnesses Against the Accused As was Scheduled prior to trial, However the threat from Nikl Holder Stopped Her from Responding to My Calls or Requests. See Transcript" [Page 46 Line 3] MR. TALNEY - Court: Do you know if Kristin O'Leary has spoke to Grant Griffin?".... Talney: I don't Believe that she has, I Asked Her Specifically About, Even today, About whether there were any outstanding Interview to Be Conducted. And No, that there were a Number of people that she had Asked if Mr. Floyd wanted, Specifically Interviewed!"

"Compromising the Accused case was a pleasure to Talney who stood there and Lied to the Court Blantently!" Why then had he Not told the Accused About Her [Ex parte] Being in contact with the Investigator Instead of Running Interferences Between Floyd And fact finding truth finding function of the Courts. Talney Always Answers in Contradiction to the facts As Fahmoia Moisiaa Attorney At Law (Pg 46 l 21) was Marvin Jacksons Lawyer

WHEN GRANT GRIFFIN WAS fooled BY ANNETTE into BRING A WITNESS AGAINST JACKSON WHEN ANNETTE INFLICTED HER OWN WOUNDS AS THE INTERVIEW O'LEARY CLEARLY COVERED Professionally, THE TRIAL COURT ERRORED IN SUPPRESSING THOSE STATEMENTS BY THE ONLY EYE WITNESSES to BOTH INCIDENTS of QUESTION.

THE defendant first FAAMOIA MOISIAA IN LAKEWOOD MUNICIPAL COURT ON A CHARGE that HE got dismissed out of this SHEER fact THAT THE EVIDENCE SURROUNDING that ficticious ARREST WAS EXACTly WHAT WAS done to MARVIN JACKSON. JACKSON WAS LAYING IN BED WHEN ANNETTE SNATCH THE COVERS off HIM STARTING AN FAKE fight to place MARVIN IN JAIL SO SHE COULD EMPTY MARVIN BANK ACCOUNT. THE VERY thing She did some in the first 30 thirty days of OUR RELATIONship, "Lucky" for the Accused that FAAMOIA WAS HERE IN COURT - HEARING FAMILAR CHARGES, NAMES (BURTON) and CIRCUMSTANCES. "UNLucky" for this Accused that the ACCUSED did Not LEARN to STAY AWAY FROM ANNETTE AFTER THE municipal Judge PRESIDING THREW THE CASE out! HOW is it that ARRON TAINEY could REMAIN ON A CASE HE REFUSED to RESEARCH OR READ, VIEW, OR PURSUE the facts Shown.

ARRON TAINEY BEGAN A SERIES OF CROSS EXAMINATIONS

of this otherwise Innocent litigant, which HE could have called for a RECESS and for HIS first time discuss the defense presentation the Accused had completed without Him." SEE TRANSCRIPTS "P447(L12) MR TAINEY: "MR Floyd wanted to ESTABLISH that the victim in this CASE, had made A FALSE Allegation Against another Individual .. HE WANT ... O'Tracy & Track Him (down.) <[State AS derogatorily AS possible] MR floyd: "... SHE did TRACK Him down ... I HAVE HAD this INFORMATION SINCE MAY ... GRIFFIN was CALLED to BE A WITNESS Against HER HUSBAND." SEE TRANSCRIPTS P447(23 [TAINEY: "Who was the Individual that SHE wrongly Accused?"

That BEGAN the STATE ACTORS LAUNCHING PAD to undermine, HAMPER, further DELAY and Compromise the defense ENTIRELY. Therefore the defendant was made to scratch the MAJORITY of His witness for LACK of ATTORNEY'S diligence And His deficient PERFORMANCE IN front of the COURT. STATE V CRISTINE 177 WN 2d 370 IMposing A defense on an UNwilling defendant Impinges on the Independent Autonomy defendant must have to defend Against the Charges. [Id At 377] TRIAL IMPERMISSIBLY shifted the BURDEN of PROOF since it lead His JURY to BELIEVE that the defendant HAD to PROVE SELF-defense "AUTOMATISM." "SEE TRANSCRIPTS" PAGE

SSLG 3/28/11 THE Court: You had within your package of subpoenas, one directed to Diana Roberts, primary care." MR Floyd: "Diana Roberts is a primary care doctor I went to visit on December 30th 2009." Court: "What kind of evidence would she present?" MR Floyd: "She would provide the evidence that I was in a diabetic coma; that I was suffering from High Blood Sugar, hypoglycemia.... I told her I couldn't mow the lawn, walk the dog, I couldn't take out the garbage, wash the car, I could go there (?) Free from my bed because of the way of the Vertigo... I had an Adverse Reaction to a cortisone shot." The Court: "What would be the relevance?" MR Floyd: "to prove the victim And the State have been withholding.... evidence in my favor that will shed a light in my favor"... "According to the "Franks" test if the police or State leave out evidence ....which could determine whether a magistrate would find probable cause ... then ... the right to a Franks hearing to find out why they didn't get the cameras ... recorder ... And evidence.... The State want's to block out this fact ... Her past is shaded, ... And that she is a liar .... married 10 times, ... She was on drugs that night.... in a stupor... I told (officers) (Grand Griffin) him that ... give her a urine test.. She took my prescription; She Jumped on me while I was

IN BED,... that I took pictures of HER INJURIES... BEFORE SHE CAME [illegible]... that I had EVIDENCE SPEAKING BY MARVIN JACKSON.... EVERY SINGLE ITEM I ASKED FOR FOR OR FIVE DAYS AFTER ARRESTED THEY STATE HAS REFUSED to go AHEAD and get THAT INFORMATION... ... THE DOCTOR would testify to my condition two days BEFORE THE INCIDENT... WHEN I WAS ARRESTED AND I SEEN Judge (illegible) PPER that NEXT MORNING ON THE fourth (OF JAN 2010) told him I WAS VERY VERY ILL, VERY SICK, get me to HOSPICE (PEACE) A NURSING HOME OR SOMETHING, BECAUSE I HAD A BAD REACTION to A CORTAZONE SHOT!" THE COURT: "WHO IS RAMONOI MASANAI?" MR Floyd: MASANAI, HE WAS AN INDIVIDUAL WHO REPRESENTED MARVIN JACKSON. THE COURT: "AN ATTORNEY?" Floyd: "AN ATTORNEY... REPRESENTING, both, ON THEIR "divorce" And ... SUBSEQUENT ASSUALT CHARGES... SHE filed BOGUS, ASSAULT ON ME, THEY took me to JAIL... WENT to COURT THE NEXT day, HE REMEMBERED HER from JACKSON WHEN SHE did THE SAME THING... SNATCHED THE COVERS off of MARVIN JACKSON, JUMPED ON HIM, SCRATCHING HIM AS I got SCRATCHES ASWELL... I did not KNOW GRAND KNEW ABOUT THIS... I found out WHEN I got THIS PAPER from O'TARY" SEE ATTACHED (1A29)(1A30)

This PETITIONER HAS DONE NOTHING but REVEAL THE TRUTH through out THE ENTIRE TIME

of his court proceedings and incarceration. The trial court erred in forcing accused to testify for the witness instead having the in court to testify for themselves and when the witness which the state called, began to testify in favor of the petitioner the Judge presiding cut off the cross examination by the defendant.

Every Court Judge seen by Accused presured him with the "three strikes tag" page (60 L14)

The Griffins' depositions were Admissible, It was error Not to Allow Accused to publish under [Rule 32(a)(3)(B)] Herzog v United States 99 Fed 1299

The trial courts denial of the defendants Request to inspect a witness testimony in order to impeach them raises a "Substantial Question within the meaning of Rule 46(a)(2)... Mr Floyd's written witness list was denied, scratched or out ruled "See Transcripts" Pg 49 thru Pg 59 - 3/28/14 Then back to Bogus Three Strikes tag "See Transcripts" Page 63(L2) "We haven't had a suppression hearing... So we can say we are going to trial, but until I listen to All of the stuff that they are withholding... I sign... I listen to every bit of that CD, that DVD, that cassette that I don't know where located... She says she gave it to Sargent Johnson... Sargent Johnson says He doesn't have it... I have paper work that

SAYS SHE HAS it." PAGE(61 L2) SEE I NEED to use that, if this case goes to trial ... SINCE he is..... -TALNEY INTERUPTS with a(L23) "Its going to trial" "MR. Floyd I MEAN WHEN.. you dont know that.. You dont know if its going to trial OR NOT" TALNEY: THATS why WE ARE HERE." MR. Floyd: OKAY, Again I would LIKE to REMOVE Him from DEFENSE Attorney. As you can SEE Right NOW, he DOESN'T KNOW Anything About How I WAS going to APPROACH this case. All He HAS been doing is hampering, Effecting my trial, And compromising And COMPROMISING my EVERY MOVE. PAGE(62 L19) WE HAVENT covered (the) Right to have A motion to dismiss, Evidence I have NOT SEEN, the CD, DVD, And CASSETTE... I didnt get ANY of it. Look at it, HEAR it.

THE trial COURT ERRORED IN Not continuing the trial date on the defendants REQUEST, EVEN though the ARRESting officer was out of town And would NOT be BACK till WEDNESday.. SEE TRANSCRIPTS PAGE(65 L15) "He is the WITNESS that is flying IN... he would be AVAILABLE ON WEDNESday. (Pg67 L9) defendant CANNOT REFERENCE Any ALCOHOL OR drug ABUSE By Any WITNESS to IMPEACH THEM.

Prosecution MISCONDUCT ENDORCED By Judge Knowing defendants REQUEST for URINE SAMPLES the day of the INCIDENT which WERE Among the REQUEST for CAMERA, COMPUTER, DATAMAS, MUGSHOT, 911 CALL, DVD, CD, CASSETTE, HOSPITAL Record

And EXCULPATORY EVIDENCE FAVORABLE to the def SEE "SEE ATTACHED" (1A31), LINE 20 FOR THE TIME PERIOD FROM JANUARY 1, 2000 UNTILL PRESENT ALL REPORTS, INCLUDING POLICE REPORTS AND/OR POLICE RESPONSES TO ANNETTE BARLOW. THE SUBPOENA DUCES WAS NOT COMPLIED WITH AT ALL. INSTEAD NIEL HORIBS GAVE JANE PIERSON THE ACCUSED CRIMINAL ABSTRACT AND ARREST RECORD AS IF THE DEFENDANT DIFFERENCE FROM ANNETTES RECORDS AND THE ACCUSED. THIS DECEPTION MADE JANE PIERSON FURIOUS, AND THE COURT WAS APPRIZED OF THE NON COMPLIANCE AND THE 30 PAGES MISSING FROM THE DISCOVERY. NIEL HORIBS MALICIOUS PROSECUTION CONTINUED TO BE ENHANCED BY Judge McCarthy SEE TRANSCRIPTS (PAGE 6 & 7) HORIBE: "MY REQUEST IS TO EXCLUDE THE WITNESS BECAUSE HE did not comply with the RULE."

THE FACT IS that the defendants motions AND SUBPOENAS WERE WITHHELD IN THE computer AS LETTERS ERRONEOUSLY. (SINCE MARCH) SEE motions. THE ENTIRE State's motion IN LIMINE WAS designed to KEEP ALL THE EXCULPATORY EVIDENCE the defendant was forced to supply to the Court through the Judges QUESTIONS & INTERROGATIONS OF defendant AS to what his WITNESSES would say, Out of the eyes and EARS of the Jury Rendering No defense AT ALL NO TRIAL Just A CONVICTION. SEE TRANSCRIPTS

(Pg 70 L1) TAINTY: "I don't think it's appropriate to Allow Any witness (DR ROBERTS) to a diminished CAPACITY DEFENCE... He should not be ALLOWED to ABUSE it" ...I move to include any EVIDENCE Regarding False Allegations by the VICTIM... (PAGE 115 L10) I WANT to dismiss (TAINTY)... "I HAVE a LAWSUIT AGAINST him in District Court." THE COURT (116 L21) I don't care if you have sued Him!... if you think you can ELIMINATE YOUR ATTORNEY OR the JUDGE by suing him that doesn't RESULT in (Pg 122 L8) Floyd: I'm NOT Ready for TRIAL. "DENIED (PAGE 152 L12) ANNETTE: "He CAME IN and IGNORED me, went to BED... I was upset... (Pg 152 L14) "You only come to TELL him to STOP" "He went completely BALLISTIC, leaped out of BED... I was standing in the HALLWAY" (3/29/11 TRANSCRIPT)

As SOON as the ACCUSED HEARD that LIE ABOUT HER standing in the HALLWAY I KNEW that when NEIL HORNER COACHED, CORRECTED AND SUBORNED that PERJURY, That ACCUSED only PRAYED we'd believe the POLICES testimony. SEE ATTACHED (1A31) (1A32) AND the VICTIMS IMPACT STATEMENTS All of which contradict each other. "SEE "TRANSCRIPT" 3/29/11 ANNETTE: on page (154 L12) "I got SLAPPED ONE time in the face." When ASKED How MANY times she was struck in the FACE AND HEAD? "ALL of this is ORCASTRATED ANSWERS to STAGED QUESTIONS. TRANSCRIPTS (Pg 224 L14) Floyd "(could) I... PRESERVE this for LATER?" "SAVE this FOR LATER... I'm AFRAID if I don't get to LISTEN to the (CD... DVD. CASSETTE)

THERE is QUESTIONS I would want to ASK.... LATER. in COURTION (PAGE 225 L8) "IF SOMETHING COMES UP IN THE COURSE of the trial... to RECALL this WITNESS WE CAN discuss it at that time." Floyd: "THEN - MAYBE COULD LOOK AT... I would like to BRING the INFORMATION... that is IN their CUSTODY as EVIDENCE... CASSETTES... (ECF)... I want the JURY to HEAR that EVIDENCE." "HE HAS NOT PROD. credited yet." THAT would PUT ME IN A VERY BAD KIND. "SEE TRANSCRIPT (PG 320 L10) 3/30/11 COURT;" DUE THE Admitted PHOTOS ON THE... DESK" Floyd: I would like THESE IN to EVIDENCE, too." TAINEY: I AM definitely keeping them SEGREGATED." "I AM RE-STACKING them." (WHILE the JUDGE REMOVED Accused PROSE status BECAUSE TAINEY took 17 minutes to HAND the EXHIBITS photo, McCARTHY ERRONEOUSLY tolled those MINUTES to the defendant. Judge WAS ALREADY tired BECAUSE LATE RETURN (25 MINUTES) DUE to OFFICER Burdick pooping HIS PANTS on the WAY to the RESTROOM in RECESS time. Both delays WERE BLAMED on Accused PRE Judicially - UNDULY! ON PAGE (332 L-17) "SHE told you SHE WAS standing OVER the accused WHEN HE got UP QUICKLY And STARTED punching HER in the FACE with his fist." OFFICER: "She did. CORRECT SHE did SAY that!

DECLARATION of PETITIONER/Accused.

I Thomas Leland Floyd, declare that, Every Officer and EMT Team Members at the scene Heard Brian swear that the Accused got up Quickly out of A deep sleep and Forcibly Started Punching Her in the face with fist. That Her change to Another Lie... Her only Statement Ever finish with an opening Statement

The Judge presiding Refused to Allow Recross Examination of the witness After considering defendants Request Earlier in the proceedings. The Judge Ignored Pro Se Status and Allowed Withholding of Evidence, Erased DVD of victims statements And 911 Calls Came in the middle of the trial, Judge Scolded Doctor for turning trial into An Evidentiary Hearing. State Actors Cause Violations of Due Process Rights Access to the Courts. The facilities of Accused Incarceration All Have withheld Legal Mail, Pro Se Box of Materials Against Constitutional Guidelines. Forced Ineffective Counsel causing Speedy Trial Violations, Spoliation, and distruction Of Evidence, But for their deficient Performance, defendant would not be Guilty

True to my knowledge:

1-16-14 (Conclusion)

Thomas Floyd
In Pro Se

IN THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON
DIVISON II

COURT OF APPEALS
DIVISION II

2014 JAN 27 PM 1:10

STATE OF WASHINGTON

BY
DEPUTY

STATE of Washington
Plaintiff
vs
Thomas Leland Floyd
Petitioner
910 Tacoma Ave So.
Tacoma, WN 98402

ATTACHMENTS GUIDE
COA CASE # 42396-1-II
STATEMENT of Additional
Grounds for RELIEF

Comes Now, Thomas Leland Floyd, Petitioner in the Aforementioned case No. 42396-1-II with his pleadings for Additional grounds for Relief As Attachment.

Petitioner endured under delays, intentional withholding of pro se materials including but not limited to legal mail, transcripts, briefs, kites, grievances, grievance forms, Medical Records and response kites, Addresses and phone numbers, Motions filed, Notes and Legal Documents, Affidavits And petitions in violation of equal Access Due Process Guarantees of the fourth, eighth, Sixth, fifth, first And fourteenth Amendments.

Please See the Numerous Applications to the Courts of competent Jurisdiction And their Attachments with outer whelming disregard for Petitioners' Right to Be Heard.

Enclosed And or Attached are letters to And from the Courts of competent Jurisdiction, of which this Litigant Suffered deprivation of the Right to Apply to the courts, by the Court Clerks Abuse of discretion. The Public Defenders Incompetence, And the State

(1)

Prosecuting Attorneys Mismanagement Including Violations of the Rules of Professional Conduct Violations of Judicial Canons Along with Clear And unmistakable Errors, Accumulation there- of and Prosecutional Misconduct.

Petitioner was denied Right to file Personal Restraint petitions As the Court Clerk David Ponzoh overlook the Established Informa Pauperis State matter of finances where they are filed Herein. (See Attachments). (A-1/A4)

Petitioner was denied Equal Access to the Courts By Coyote Ridge Correction Center who held And claimed they Lost the Petitioners Pro Se Materials on July 3, 2012. Furthermore, Not until October 2013 did the Correction Center disclose that they Had found the said Pro Se Materials and the Remaining Personal Property which $5.90 Money Order was sent And Still No Property as of this date JAN 14 2014 See Attached (1A2/1A3/1A4)

ON March 27 2012 Court of Appeals granted An Extention of time to file Statement of Additional Ground for Relief. [Clerks Ruling] by David Ponzoha See Attached" (1A5)

ON March 16 2012 Court of Appeals sent an Order dismissing Petition for Relief from 1972 Assual and 1972 Robbery Convictions which were unlawfully Obtained. The Chief Justice Mistakenly Ruled that

THE PERSONAL RESTRAINT WAS TIMELY FILED.

To the contrary, "Actual INNOCENCE doctrine" AND Newly discovered evidence RELIEVES the LIMITATION RESTRICTIONS for want of due process. furthermore this Court And the Superior Court held that the 1972 Robbery was NO comparable to a 2013 ROBBERY AND that the 1972 ASSAULT WAS INVALID on its face. See Exhibit "J" (1A8)

BECAUSE the State withheld EXCULPATORY EVIDENCE favorable to the defense Concerning the Alledged prior Assaults and the Active five WARRANTS out for the ARREST of DEAN SEVIN And MICHAEL FUESTON of Whom Both HAS A POLICE CRIMINAL history for Assaults. (Cause # 42366

Deputy Fredrick Fleming prosecutor of the case IN 1972 failed to REVEAL OR disclose to the petitioner that said Bouncers would NEVER BE Called As WITNESSES Against the Accused. That Withholding of EVIDENCE WAS Newly discovered EVIDENCE favorable to the Accused And would have made the difference in Accused Right to trial By Jury. This "Actually INNOCENT" litigant would HAVE NEVER PLED Guilty to a charge EVEN though the Accused was threatened And his Mothers HOUSE WAS in JEOPARDY of BEING Bombed AS SET OUT in the Collateral Attack Applications to this Court. See Attach. "I" (1A6/1A7)

THE MAJORITY of this petitioners COMPLAINTS

Surround the Pierce County Prosecution Attorneys complete disregard for the Rules of Professional Conduct where the withholding of Evidence is Blatent, And the Bench seem to condone Such Action as the Prosecuting Attorneys Office deliberate usurpation of the Judges duties By Engaging in Ex parte Conversation with Court officials and the Public defenders to do Anything to gain a Conviction.

ON May 8 2012 a Ruling By Commissioner Schmidt Washington State Court Of Appeals was sent By David Ponzoha Extending the time for (SAG) And Accused Motion to Strike His Counsels Brief And order her withdrawal was denied in Violation of Equal Access Guidelines. "See Attached" (1A9)

ON April 12 2012 A motion for discretionary Review on the personal Restraint of Floyd No. 42206-9-11 was Sent to the Supreme Court Clerk Honorable Ronald Carpenter By David Ponzoha Court Clerk of the Court of Appeals. "See Attached" (1A10) (1A11) (1A12) is Supreme Court No. 87265-1 PRP of Thomas Leland Floyd Court of Appeals No 42206-9-11.

On May 23, 2012 David Ponzoha mistakenly asked for $250.00 to file PRP # 42474-6-11 The Accused Statement of finances were already at His disposal. "See Attached" (1A13)

ON JUNE 8 2012 SUSAN CARLSON Supreme Court Deputy CLERK SET PRP Supreme Court # 87265-1 And Court of Appeals No 42206-9-11 on Deputy Clerks June 28, 2012 Calendar for consideration of A Clerks motion to dismiss "SEE Attached" (1A14)
ON JUNE 14 2012, Court of APPEALS Commissioner RB Schmidt CAME on A matter of Hearing the CLERKS Motion to dismiss on ground that the filing fee or Statement of finances were Not filed. Accordingly the Court made Another Inadvertant mistake. for ALL INTENTS And PURPOSES this INFORMA PAUPERIS IN PROPRIA PERSONA Status HAS BEEN IN Effect SINCE JAN 3 2010 "SEE Attached" (1A15) ON JUNE 25 2012 this Commissioner VACATED Ruling dismissing the Petition. SEE Attached (1A16)
ON JUNE 26 2012 DAVID PONZOHA, CLERK for the COURT of APPEALS CASE NO. 42474-6-11 PRP of THOMAS Floyd WAIVED filing FEES AS REQUIRED. "SEE Attached" JUNE 26 2012 (1A17)
ON July 2 2012, Susan Carlson Supreme Court Deputy Clerk on CASE # 87265-1 PRP Thomas Floyd Court of Appeals # 42206-9-11 dismissed Petition. SEE Attached (1A18)
ON July 9 2012 DAVID PONZOHA, CLERK for the COURT of APPEALS SENT Notice that ACCUSED Appeal case was Consolidated OVER this Petitioners OBJECTION. That Stephanie Cunningham would REMAIN UNWARRANTED

As petitioner's Appellate counsel See filing (1A19) ON July 11, 2012 Acting Chief Judge in the Court of Appeals pro tempore dismissed Prof of 1972 plea of Guilty As Being time Barred in Violation of the "Actual Innocence doctrine" Prosecution with Held the Alledged warrants for Arrest. That was Newly discovered Evidence, Unconstitutionally withheld by prosecuting Frederick Fleming. "See Attached" (1A20)

On July 13, 2013 David Pozzoha, sent petitioner Notice that the Court would Not Accept 1 Statement for filing that Stephanie Cunningham will Represent the petitioners OBJECTION, in the unwarranted consolidation of case C.O.A. No. 43021-5-11 Now Consolidated w/ COA 42396-1-11 See Attached" (1A21) Stephanie Cunningham failed to OBTAIN Complete Transcript of Both Cases, fail to Speak with Petitioner and does Not KNOW ONE bit of Appeal MERITS in this Matter. She Refuses to Review or Research the CASE. HER SORRY EXCUSE for a BRIEF only duplicated A MOOT SUBJECT of PRIORS which were Previously Resolved in Superior Court, HER Lack of due diligence was CAUSE for the MANY Petitions to these Courts of Competent Jurisdiction. These Courts have not Reviewed the petitioners Supporting Affidavits and Documentary Material Evidence due to the States

Intentional withholding of Evidence, Prose Legal Materials, Motions, Briefs, Affidavits, Legal mail, Medical Records, Police Reports, And Any And All Legal Property under their exclusive control.

These Items are plain and obviously Prose Materials unmistakably. Purposeful destruction, withholding and Interference By Lawyers, Gaurds, Walla Walla County Jail, Coyote Ridge Correctional Center and Pierce County Jail have cause the Aforementioned reported dismissal of Petitioners Application that Court Action is Showing to the many Blocked Efforts to Seek Relief.

The petitioner is compelled to continue displaying the Injustice unconstitutionally placed upon an otherwise Innocent Litigant.

On Aug 23rd 2012, David Ponzoha Court of Appeals Clerk sent Certificate of Finality on Cause # 42474-6-II See Attached (1A22)

On Sept 21 2012, David Ponzoha Court of Appeals Clerk sent Certificate of Finality of Case # 42206-9-II Super Court No. 13205 See Attached (1A23)

On October 9, 2012 David Ponzoha sent Notice that Case # 42396-1-II Statement of Additional Grounds was Being placed in a pouch without futher Action, See Attached (1A23)

On October 24 2012, David Ponzoha Court of Appeals Clerk sent Notice of Motion to modify Commissioners

Ruling of Sept. 21, 2012. See Attached

ON October 26 2012 Acting Judge VAN DEREN Court of Appeals sent Order dismissing Petition CASE NO. 42979-1-II for failure to provide sufficient Evidence to support petition. This Petition See's the following complaints of Constitutional Magnitudes: (1) Newly discovered Evidence - And THIRTEEN ACCUMULATED other ERRORS of a UNCONSTITUTIONAL Level Reaching a COMPLETE MISCARRIAGE of Justice.

What is so REMARKABLE is that Trial Strategist Cunningham does Not know the Substance of Any of these ERRORS of MERIT. The Appeal Attorney Refused to OBTAIN PRETRIAL TRANSCRIPTS in Judge JOHNSON's trial or Post TRIAL TRANSCRIPTS. Ms CUNNINGHAM further Refused to OBTAIN PRETRIAL JAN 4 2010 through June 22 2010 TRANSCRIPTS or Post TRIAL TRANSCRIPTS IN Judge McCarthy's TRIAL. See PRIOR Court Cases #10-1-00619-6 & #11-1-02808-1.

THERE IS NO COMMUNICATION Between Appeal Attorney And AS AFORE mentioned HERETO, The petitioner After WRITING SEVERAL LETTERS to Ms CUNNINGHAM CONCERNING HER LACK of due diligence, which HAMPERED, delayed, frustrated And OBSTRUCTED All CHANCES FOR A MEANINGFUL Appeal

of these charges the absence of Petitioners trial transcripts and Petitioners pro se legal materials which were unconstitutionally with-held by the Pierce County Sheriffs' property room sargent upon the accused transfer to DOC in Shelton Jan 28 2012, and the newly accumulated pro se material confiscated July 3 2012 by the Coyote Ridge Correction Centers property room sargent upon the transfer back to Pierce County Jail to have accused judgment and sentence corrected by Judge Johnson on July 6 2012

The Coyote Ridge property have not returned Petitioners legal pro se materials yet.

The Walla Walla County Jail confiscated accused pro se legal materials on Feb 12 2013 upon transfer to Pierce County Jail where the accused is housed today. Then after several months the property room sargent and sargent Miller here at the jail returned the newly accumulated pro se materials, but however they removed DOC grievance reports, medical reports kites, telephone and addresses and

REQUEST for THE Superior Court to CORRECT Goodtime Credits Along with His Accused Sentence And Judgement were In Appropriately Sent to the Court of Appeals As A Personal Restraint Petition Against the Objection and Against the defendants will, "See Attachment" (1A26)

Now please take Notice How the pattern of INJustice plagued the Entire Course of proceedings in [illegible] through the use of [illegible] and Conversations Outside of the Record and [illegible] Accused Rights [illegible] at All Stages of His defense.

As we watch the following unconstitutional violations of the petitioners Rights Begining to unfold please consider the constant MANipulation of the presiding Judges power being usurped By Malicious prosecutions deception, Misrepresentation of facts and the co-conspiracy through Emails with State Actors Jane Pierson, Aaron Talney and Steven Gant, the states public defenders who used Emails to deny defendants Constitutional Rights. Such ABUSE of discretion Has Cause unconstitutional convictions which must Be Vacated, Reversed & Remand.

Ironically Appeal Attorney that the petitioner sought to remove from these Applications to the Court of Appeals Ms. Stephanie Cunningham did not, has not, and will Not Address Any of the Aforementioned points of unconstitutional errors which are All Clear And unmistakable Error, Some of which were Included in petitioners [CUE] Motion for Relief. See Attached (IA25)

Ms Cunninghams Violations of [RPC 1.4] and [4.1] Are only Surpassed By Public defenders Steven Grant, Jane Pierson And Arron Tainey Respectively. See (IA26)

Attachment (IA26) is proof positive of the Serious unconstitutional deprivation of due process Guarantees Provided by the Eighth And fourteenth Amendments By Arron Tainey Public Defender of whom plainly used [Ex parte] [illegible] to Hamper, delay, fetter And obstruct the Accused equal Access to the courts. "I dont think the court need to take Any Action."

This came About as defendant motioned the courts for Absent trial transcripts that Appeal Attorney Stephanie Cunningham Refused to obtain. This [illegible] Along with [illegible] Requested by Asking for a "Subpoena Duces Tecum" and the

ON NOVEMBER 18, 2010 JANE PIERSON VIOLATED THE DEFENDANTS RIGHTS BY SUPRIZE IN CONFUSING THE COURTS ENTERTAINMENT OF WHAT WAS SCHEDULED AS A MOTION TO PROCEED IN PROPRIA PERSONA TO HAVE JANE PIERSON REMOVED FROM THE CASE, SEE TRANSCRIPTS" PG 2 (18) I WAS NOT AWARE OF THE RE ARRAIGNMENT. [SUPRIZE?] I EMAILED PROSECUTOR NIKI HORIER (EXPARTE) WHO TOLD ME A COUPLE OF THINGS. [THINGS UNBEKNOWNST TO THE ACCUSED.]

RULES OF PROFESSIONAL CONDUCT RPC1.4/RPC 4.1 REQUIRE DUE DILLIGENCE WHERE JANE PIERSON, ARRON TAINEY AND STEVEN CLAY TOOK LITTLE OR NO ACTION SEE ATTACHED (1A26) "I AGREE. I DONT THINK THE COURT NEEDS TO TAKE ANY ACTION ← [ARRON TAINEYS EMAIL]

JANE PIERSONS EMAIL "TRANSCRIPTS" PG 2(18) HAS NEVER TO THIS DATE BEEN SHARED OR THE CONTENTS DISCUSSED WITH MR FLOYD HER CLIENT.

DOUBLE JEOPARDY ATTACHES THROUGH THE DOCTRINE OF "COLLATERAL ESTOPPEL" WHERE THE LAKEWOOD MUNICIPLE COURT JUDGE HELLERIN CAUSE # 10L0494! HEARD MOTIONS, EVIDENCE, 3.5 HEARING, BILL OF PARTICULARS STILL PENDING AND HIS DECISION "MR FLOYD I BELIEVE YOU WON THIS ONE, COME BACK WITH MARTIN DUENHOELTER IN A WEEK AND I WILL ENTERTAIN YOUR DISMISSAL." SEE TRANSCRIPTS"

Letters, post card, legal notes with the study material use to prepare applications to the courts of competent jurisdiction.

Such deliberate obstruction designed to deter any meaningfull application to the courts came as revenge and retaliation for filing a lawsuit in district court and for helping other litigants with problems of the law.

For these unconstitutional deprivation the defendants petition No 42979-9-11 setting out (1) newly discovered evidence (2) prosecutional misconduct (3) instruction errors (4) false testimony (5) failure to provide discovery (6) threats to defense witnesses (7) comments on guilt (8) suppression of evidence reguarding victims drug use (9) the suppression of other defense exhibits (10) racial profiling (11) speedy trial violation (12) lack of jurisdiction (13) ineffective assistance of counsel (14) deprivation of right to present a diminished capacity defense (15) jury tampering (16) tampering with defense investigator and threating her job for interviewing the Jacksons (17) judicial canon violation (18) RPC 1.4 RPC 4.1 violation (19) deliberate indifference to medical care. (20) as ever amended.

HTTAR, EACH of you NOW, found the Acting PROSECUTOR "UNDERMINED" Judge HELLER'S decision And STRATEGICALLY TRIGGERED the SUPERIOR COURT PROSECUTING Authority NOW HERE, IN ORDER to COMPEL [illegible] CONSPIRE to UNCONSTITUTIONALLY REVIVE the Already DECIDED MUNICIPAL COURT CASE NUMBER #1012094, WHERE FOR ALL INTENTS And PURPOSES the LAKEWOOD MUNICIPAL COURT Judge HELLER HEARD EVIDENCE, MOTIONS And SUPPRESSION HEARINGS DISCOVERY HEARINGS And TESTIMONY SURROUNDING the INVALID VIOLATION of RECORDING ORDERS BEFORE his DECISION to DISMISS.

ONLY DUE to the MALICIOUS, VINDICTIVE PROSECUTION And FAILURE of the COURT APPOINTED ATTORNEYS for this DEFENDER, WERE the ACCUSED RIGHT to A FAIR TRIAL ABRIDGED. PROSECUTORS MICHAEL MCKENZIE And MATT KITZER of LAKEWOOD WENT And UNDERMINED Judge HELLERS Rulings to USURP the POWER of the BENCH - to ILLEGALLY BREACH "DOUBLE JEOPARDY" Standards of A "COLLATERAL ESTOPPEL" And SMUGGLE the MUNICIPAL DISMISSED CHARGES INTO the SUPERIOR COURT CRIMINAL IN CHIEF IN ORDER to HINT VIA through DECEPTION, INTERFERE with ACCUSED RIGHTS to BE FREE of SELECTIVE PROSECUTIONS.

MASSARO V US, 538 US 500, 123 S.Ct 1690 INEFFECTIVE COUNSEL CLAIM MAY BE BROUGHT FOR

This first time in collateral proceedings.
ON 3/9/10 in Superior Court cause 10-1-00196
the Honorable Judge Culpepper presiding,
the Accused subsequently filed a motion to
Reconsider and Proceed in Propria Persona.
This fact that Steven Grant had done All
He could do to Assist prosecutor John Sheridan
in obtaining his goals to convict an other-
wise innocent Litigant to life without
Parole as State Actor-Public defender through
emails with Victim Annette Berlin, and State
Prosecutor John Sheridan, by proxy, the Accused
was compelled to Apply to the courts for Pro-
Se Status. "See Attached" (1A26) on April 28,
2010 pursuant to RCW Ch 736.5 5003-9 Show
Cause or Release.
Throughout the first six months into the
pretrial proceedings Public defender did not
show up once for pretrial hearings. The multiple
continuances were objected to and the
petitioner sought self-Representation, Speedy
trial violations, Spoliation, distruction of
evidence, Racial profiling and motions to
Seek discovery Items, through "Subpena Duces
Tecum" which Along with change of venue
& this Habeas Corpus Notice of April 28 2010 (1A27)
"See Attached" (1A28) Because of the State Actor
Steven Grant causing Speedy trial violations, the

Petitioner was with funds, supplies, tools, Paper or Reference materials to Apply to the Courts, Accused was compelled to Stop unconstitutional deprivations of Liberty Property, Health and Safety and freedom, By stating Record of Abuse By Steven Grant As Shown in the Litigants MANY motions to the Court and the testimony on Records Begining with Jan 4 2010 Before Judge Culpepper the day After Arrest in this Incident.

Provided State Actor Arron Tolney and Stephanie Cunningham did Not Interfere with motions to the Court for Transcripts and the documentary Evidence sought... "See Attached" (1A26)... then the Honorable Judge Van Deren Chief Judge Pro Tempore for the Court of Appeals would have had All Necessary Evidence needed to meet this Litigants Burden of Proof on the Assertations Contained in the Personal Restraint Petition COA# 42979-9-II.

This Litigant was Arrested on Jan 3 2010 in the parking lot of His Residence where Accused walk out to meet Incoming Police Before they Arrived As previous false 911 calls to Lakewood Had police officers convincing Annette Barton that She could kill this petitioner And they would look the other way. Officer Richards went further to say that Because Mr Floyd Has

HEAVY WEAPON CHARGES!.. "SEE Attached" (1A6) "while ARMED with 45." ... "that BERTAN could do what EVER And NOT BE CHARGED." So the Accused, After telling GRANT GRIFFEN to HAVE the police get the "CAMERA" with pictures the Accused took of the SELF Inflicted INJURYS And to get a URINE SAMPLE from BERTAN BECAUSE SHE HAD OVER dosed on PERCODAN prescribed to the Accused that EVENING And WAS in the PROCESS of A NERVOUS BREAK down." While GRANT GRIFFEN WAS STILL on the PHONE with 911 HE RESPONDED to the REQUEST for URINE SAMPLES And CAMERA photo. of ANNETTE faking INJURY with "SHE did the SAME thing to MIKE!" "YOUR BOTH going to JAIL"

At that POINT Accused put on PANTS OVER the PJ JAMMS And A JACKET, A watch and RING, took $400 dollars of the DINNING ROOM TABLE And CONTINUED to go find the first police RESPONDING to the 911 CALL in a MANNER that would NOT HAVE OFFICERS AGGRESSIVELY MANHANDLE the Accused. SEE transcripts (of OFFICERS ARRIVAL on the SCENE)

The TRIAL COURT REFUSED to ALLOW petitioner to PROVIDE testimony CONCERNING the PHOTOS taken at the CRIME SCENE OR to CROSS EXAMINE ANNETTE BERTAN ABOUT SAID photographs of which PLAINLY depict FRAUDULENT faking of INJURIES And Actions of Bertan to distroy CRIME SCENE

EVIDENCE FAVORABLE to the defense.

State Actors STRUENGANT, JAMES PIERSON, ARRON TAINTY and STEPHANIE CUNNINGHAM ENGAGED in (1) a conflict of INTEREST with FALSE Conclusions of LAW (2) FAILED to TAKE LITTLE OR NO ACTION in Floyd's [IN disciplinary PROCEEDINGS AGAINST ARCHER] 149 WASH 2d 484 (2003) (3) KNOWING MADE FALSE STATEMENTS of MATERIAL FACTS OR LAW to a third PARTY (EX PARTE) And OR the COURT (RPC 4.1)(4) ENGAGED IN dishonest conduct (RPC 8.4)(5) FAILED to REPRESENT Floyd with REASONABLE diligence And PROMPTNESS. [IN RE PROCEEDINGS AGAINST PETERSON] 120 WA 2d 833, 854 (1993) (6) KNOWN SERIOUS conflict of INTEREST causing SERIOUS CONSEQUENCES to MR Floyd. [IN RE Disp. Proc. AGAINST JUAREZ] 143 WN 2d 840 (2001) [IN RE Disp. Proc. AGAINST BORCHER] 139 WN 2d 81, 98 (1999) [RPC 1.3] FAILURE to KEEP CLIENT fully INFORMED (7) (RPC 1.3) (RPC 1.15) FAILURE to PROPERLY withdraw from REPRESENTATION.

THROUGHOUT the PROCEEDINGS the Judge PRESIDING FAILURE to RULE ON PRETRIAL motions... SEE TRANSCRIPT TUESDAY JUNE 22 2010 RONALD CULPEPPER PRESIDING in SUPERIOR COURT CAUSE 10-1-00096 (Pg 3 (L13) "IN JAMES PIERSON... MR Floyd's ATTORNEY... I WAS SUBSTITUTING IN FOR MR GANT ... BEFORE Judge MURPHY... WE WERE BEFORE Judge for a CONTINUANCE... OVER MR Floyd's OBJECTION, but Floyd MADE it VERY CLEAR in COURT that he had motions... so WE SET this motion HEARING FOR that PURPOSE (Pg 3 L23) THE COURT: WELL I HAVEN'T SEEN them (Pg 3 L25) MR HORIBE:

"Before we start addressing... defendant's HAND WRITTEN Motions that HE SUBMITTED on his Own, I ASK THE COURT first to RULE whether or Not this COURT will FURTHER ENTERTAIN HANDWRITTEN MOTIONS PRESENTED By defendant, BASICALLY, NOT ENDORSED By his COUNSEL.

This ERROR of constitutional magnitude KEPT the Litigants PRO SE APPLICATION to the COURT from BEING HEARD for the length of ACCUSED FURTHER proceeding into these MATTERS. The Accused MAY AS WELL HAVE BEEN Bound and Gagged. (Pg 4 L 16) "So I would ASK the COURT NOT to ENTERTAIN SUB-STANTIVE motions from the defendant HIMSELF. I ASK the COURT to RESTRICT it, BASICALLY, to the defendant's ATTORNEY IN PERSON. (Pg 6 L 4) Defendant: "The PROSECUTION HAS BEEN withholding EVIDENCE from the COURT, Your Honor. I have ABOUT EIGHT ENVELOPES showing where the State HAS BEEN WITH-Holding these MOTIONS. They HAVE KEPT ME AWAY from... the COURT without a HEARING (Pg 6 L 24) The Court: I'm going to DECLINE to RULE ON the motions.

Judge (J) Tapper WAS NOW IN Violation of Judicial CANONS 3D WHERE HE WAS ESSENTIALLY "Hoggtied" OVER the [CANONS] HYSTERIA (Pg 9 L 1) ... RULE ... ON A dismissal for A SPEEDY TRIAL Violation, you won't RULE ON that ONE EITHER?" (Pg 9 L 6) You can PRESERVE that for APPEAL if you NEED to... "WE HAVE A TRIAL date, will get this done, I hope. IT HAS BEEN dragging A BIT. that's it for today (CLEARLY EQUA

ACCESS deprivation CAUSE UNDUE SUPPRESSION of EXculpatory FAVORABLE to the defense IN A PATTERN of ABUSE of discretion, FRAUD, SUBORDINATION of PERJURY, AND FRAUDULENT DIVORCE INFORMA PAUPERIS filing to FALSELY IMPRISON the OTHERWISE INNOCENT Accused.

ON NOV 18 2010 "TRANSCRIPTS" (Pg 2-18) JANE PIERSON "I WASN'T AWARE of the RE ARRAIGNMENT..." "I EMAILED PROSECUTOR HORIBE (EXPARTE)... who told me A COUPLE of things [UNBEKNOWNST to the ACCUSED] (DOUBLE JEOPARDY in PROGRESS) COLLATERAL ESTOPPEL (FORBIDS WHAT HAPPENED NEXT,... But FIRST LETS EXAMINE the MOST IMPORTANT ISSUES of this petition.

A PROSE Litigants pleadings ARE to be LIBERALLY CONSTRUED AND His Applications to the COURTS of competent JURISDICTION held AS TRUE.

This PETITIONER is without his PRO SE Legal MATERIALS from Coyote Ridge AS shown in ATTACHMENTS, THUS for ACCUSED IS SENDING SOME PRELIMINARY PRETRIAL Motions of which HAVE NOT BEEN HEARD EVEN AFTER SUPREME Court MANDAMUS WRIT WAS directed to Judge McCarthy to comply.. HE REFUSED the ORDER, Ruling on Motion for NEW TRIAL only. SEE ATTACHED" (1A32) WHEREFORE this PETITIONER NOW DECLARES HE is ENTITLED for RELIEF from Judgement And SENTENCE INVALID ON ITS FACE. ACCUSED did NOT PLEAD GUILTY AS (1A33) IS ERRONEOUS. (X) PLEAD Thomas Floyd GUILTY

Personal Restraint Petition of: Thomas Lee Floyd
Court of Appeals Case No. 44638-3-II

STATEMENT OF FINANCES:

If you cannot afford to pay the $250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill out this part of the form. **If currently in confinement, please attach a copy of your prison finance statement.**

1. I (do) X do not _____ ask the court to file this without making me pay the $250 filing fee because I am so poor and cannot pay the fee.

2. I have $ 0.00 in my prison or institution account.

   (NOTE: you must complete #2 of this statement, whether you submit a copy of your prison account summary or not).

3. I (do) X do not _____ ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.

4. I am _____ am (not) X employed. My salary or wages amount of $ 0.00 a month. My employer is _____

5. During the past 12 months I did ____ did (not) X get any money from a business, profession or other form of self-employment. (please identify type of self-employment here NONE) and the total income I received was $ 0

6. During the past 12 months I:

   I did ____ did (not) X receive any rent payments, if so, the total I received was $_____

   I did _____ did (not) X receive any interest. If so, the total I received was $_____

   I did _____ did (not) X receive any dividends. If so, the total I received was $_____

   I did ____ did (not) ✓ receive any other money. If so, the total I received was $_____

I do _____ do not X have any cash except as said in question 2 of this statement of finances. If so the total amount I have is $ 0

I do _____ do not X have any savings or checking accounts. If so, the total amount in all accounts is $ 0

I do _____ do not X own stocks, bonds or notes. If so, their total value is: $ 0

7. List all real estate and other property or things of value that belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing that you or your family need:

ITEMS	VALUE
None	

8. I am _____ am not X married. If I am married, my wife or husband's name and address is: _____

9. All of the persons who need me to support them are listed below:

NAME & ADDRESS	RELATIONSHIP	AGE
None		

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount Owed
LFO	9,000.00

STATEMENT OF FINANCES

I, Thomas [illegible], certify that I cannot afford to pay the $250 filing fee normally required to file a PR / Mandamus / Appeal.

1. I request that the filing fee be waived and that I be allowed to file Notice of Appeal without prepayment of the filing fee.
2. My request in this matter is brought in good faith.
3. I am _____ am not X employed. My salary or wages amount to $ 0 per month. My employer is (Name and address):

   _____

4. I do _____ do not X have any checking or savings accounts in any financial institutions. The total amount of funds I have in any such accounts of any type is $ 0.
5. In the past 12 months, I did _____ did not X receive any interest, dividends, rental payments, or other money. The total amount of such money I received was $ 0. The total amount of cash I have other than otherwise indicated above is $ 0.
6. I own or have an interest in the following real estate, stocks, bonds, notes, and other property (list any property of a present value of more than $50, its current value and the amount, if any, currently owed against said property):

Item	Value	Amount Owed
0	0	0
0	0	0
0	0	0
0	0	0

(for example: an automobile, make, model, and year; the present value, $3,000.00; still owe $500.00).

7. I am _____ am not X married. My spouse is _____ is not X employed. His or her salary or wages amount to $ 0 per month. He or she owns the following property not already described above:

   0

8. These following persons depend on me for support (list name, relationship to you, and address for each person):

0

---

9. I owe the following bills (list name and address of creditors and any amount currently owed):

0

[IF APPLICABLE - Petitioner incarcerated in a correctional facility-COMPLETE #10]

10. I have a spendable balance of $ 0 in my prison or institutional account as of the date of this financial statement.

I declare under the penalty of perjury (pursuant to the laws of the State of Washington) that I have read this financial statement, know its contents, and I believe all of the information and statements contained therein to be true.

Dated this 31 day of July, 2013

PETITIONER

COYOTE RIDGE CORRECTIONS CENTER

PROPERTY ROOM
P.O.BOX 769
CONNELL, WA
99326

NAME: FLOYD, THOMAS

NUMBER: 234034

AMOUNT FOR SHIPMENT: $5.90

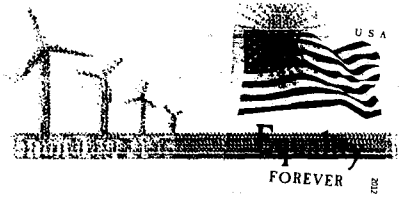
THE ABOVE LISTED PROPERTY BEING HELD IN THE MAIL ROOM AWAITING DISPOSITION. IF YOU WOULD LIKE THIS PROPERTY SENT TO OUT TO YOUR HOME , SEND A MONEY ORDER OR A CASHIER CHECK ATTN: PROPERTY WITH YOUR NAME AND DOC #. THIS PROPERTY WILL BE DONATED TO A CHARITABLE ORGANIZATION OR WILL BE DESTROYED WITHIN 90 DAYS OF THIS LETTER BEING SENT OUT.

THANK YOU,
THIS WILL BE THE ONLY NOTIFICATION YOU WILL RECEIVE

(1A2)

Grant Griffin
8539 Zircon Dr SW, #76
Lakewood, WA 98498

TACOMA WA 983
OLYMPIA WA
30 SEP 2013 PM 2 L



3WA18

(143)

Thomas L. Floyd
2013043049
Pierce County Sheriff's Department
910 Tacoma Avenue South
Tacoma, WA 98402-2168

98402 1.80 9

Thomas L. Floyd
2013043049
Pierce County Sheriff's Department
910 Tacoma Avenue South
Tacoma, WA 98402-2168

September 29, 2013

Hi Thomas, I received your letter on the 27th. As I wrote in June, I sent the form and money to Coyote Ridge on June 15th by mail with a label to have it shipped to you at the above address at the Pierce County Jail. Coyote Ridge did caution me that Pierce County Jail policy is not accept inmate mail unless it is only in a single letter or legal size white envelope; anything else has to be hand delivered to the jail in person. I'm sorry but I don't have the means to go to Coyote Ridge to look for the material and there is no tracking number associated with the money order I sent.

As for the 5 boxes of other materials I have here in storage for you; please have your attorney call me and I can get them to that person and they can get it into the jail for you. You'll need an attorney to do this. Give the attorney the name of the judge and the case number and they should be able to help get the boxes to you.

Hope you are going to meetings and studying the Big Book,

You're Sponsor,

Grant

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, Issue Summaries, and General Information at http://www.courts.wa.gov/courts

March 27, 2012

Stephanie C Cunningham (via email)
Attorney at Law
4616 25th Ave NE # 552
Seattle, WA 98105-4183

Melody M Crick (via email)
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171

Thomas Lee Floyd (via USPS)
#234038
Washington Correction Ctr.
PO Box 900
Shelton, WA 98584

CASE #: 42396-1-II
State of Washington, Respondent/Cross Appellant v. Thomas Lee Floyd, Appellant/Cross-Respondent

Mr. Floyd & Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY THE CLERK:

Appellant is granted an extension of time to and including 04/30/12 to file the Statement of Additional Grounds for Review. Absent a ruling granting supplementation of the record, the court will not grant any further continuance requests for filing the Statement. Appellant need only identify and discuss the issues not adequately presented in the opening brief. RAP 10.10(a). If issues are raised in the Statement that require additional record or briefing, the court may direct that it be filed. RAP 10.10(f). For these reasons, if the brief is filed after the above date, it will be placed in the case file without action.

Very truly yours,

David C. Ponzoha
Court Clerk

(IAS)

APR 9 - 1972

In the Superior Court of the State of Washington for the County of Pierce

THE STATE OF WASHINGTON,

Plaintiff,

vs.

THOMAS LEE FLOYD, and
RONALD JAMES FLOYD,

Defendants.

No. 42366

AMENDED
INFORMATION

Comes now RONALD L. HENDRY *Prosecuting Attorney in and for the County of Pierce, State of Washington, and by this* amended *information accuses* THOMAS LEE FLOYD and RONALD JAMES FLOYD

of the crime of ASSAULT IN THE FIRST DEGREE

committed as follows, to-wit:

That the said THOMAS LEE FLOYD and RONALD JAMES FLOYD *in the County of Pierce, in the State of Washington, on or about the* 20th *day of* April *Nineteen Hundred and* Seventy-two *did then and there being unlawfully and feloniously* with intent to kill Richard Dean Strain, did assault the said Richard Dean Strain with a firearm and deadly weapon likely to produce death, to-wit: a .45 caliber automatic pistol, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Washington.

COUNT II.

And for a Second Count and further cause of action the same being of the same class of crimes and a part of the same transaction as that set forth in Count I hereof, comes now RONALD L. HENDRY, Prosecuting Attorney in and for the County of Pierce, State of Washington, and by this amended information accuses THOMAS LEE FLOYD and RONALD JAMES FLOYD of the crime of ASSAULT IN THE SECOND DEGREE committed as follows, to-wit: That the said THOMAS LEE FLOYD and RONALD JAMES FLOYD in the County of Pierce, in the State of Washington, on or about the 20th day of April, 1972, did then and there being unlawfully, wilfully and feloniously commit an assault upon the person of Steven Michael Fueston under circumstances not amounting to an assault in the first degree, to-wit: did wilfully assault Steven Michael Fueston with a weapon, instrument or thing likely to produce bodily harm, to-wit: a .45 caliber automatic pistol,

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Washington.

Dated this 21st day of April, 1972.

RONALD L. HENDRY

Prosecuting Attorney in and for said County and State.

By Frederick W. Flemming
Deputy.

Z-97a

FILED
IN COUNTY CLERKS OFFICE
A.M. P.M.
APR 24 1972
PIERCE COUNTY, WASHINGTON
DON PERRY, County Clerk
By ..... DEPUTY

(1A6)

STATE OF WASHINGTON, } ss.
County of Pierce

42366

FREDERICK W. FLEMING, being first duly sworn, on oath, says he is the duly **appointed**, acting and qualified **Deputy** Prosecuting Attorney in and for the said County and State, that he has read the foregoing ~~information~~ **amended information**, knows the contents thereof, and believes the same to be true.

Frederick W. Fleming

Subscribed and sworn to before me **this 21st day of April, 1972.**

John Babcock
Deputy Clerk of the Superior Court of said County and State.

No.

SUPERIOR COURT
County of Pierce

STATE OF WASHINGTON, Plaintiff,

vs.

..... Defendant.

INFORMATION

WITNESSES

Filed ....., 19....

..... County Clerk

By ..... Deputy

Z-97b

(1A7)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of

THOMAS LELAND FLOYD,

Petitioner.

No. 42206-9-II

ORDER DISMISSING PETITION

Thomas Floyd seeks relief from personal restraint imposed following his 1972 conviction for second degree robbery.[1] He argues that he has newly discovered evidence that he did not commit robbery.

RCW 10.73.090(1) requires that a petition be filed within one year of the date that the petitioner's judgment and sentence becomes final. Floyd's judgment and sentence became final on November 28, 1972, when the trial court entered it. RCW 10.73.090(3)(a). He did not file his petition until May 17, 2011, more than one year later. Unless he shows that one of the exceptions contained in RCW 10.73.100 applies or that his judgment and sentence is facially invalid, his petition is time-barred. *In re Personal Restraint of Hemenway,* 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

[1] Floyd's 1972 conviction was counted as a prior conviction in calculating his offender score for his current conviction of second degree assault. Because the prior conviction increases his standard sentence range, under the liberal definition of "restraint" that this court employs, he is under restraint of his 1972 conviction.

(148)

Floyd does not show that his judgment and sentence is facially invalid. And his claim of an exemption from the time bar under RCW 10.73.100(1) fails. That exemption applies only for newly discovered evidence "that the defendant acted with reasonable diligence in discovering." Floyd does not show that he acted with reasonable diligence in discovering what he believes to be newly discovered evidence. Nor does he provide documentation of where that evidence came from.

Floyd's petition is not exempt from the one-year time bar. Accordingly, it is hereby

ORDERED that Floyd's petition is dismissed as time-barred under RAP 16.11(b).

DATED this 16th day of March, 2012.

Chief Judge

cc: Thomas L. Floyd
Pierce County Prosecuting Attorney
Pierce County Clerk
County Cause No. 43205

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

May 8, 2012

Stephanie C Cunningham (via email)
Attorney at Law
4616 25th Ave NE # 552
Seattle, WA 98105-4183

Melody M Crick (via email)
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171

Thomas L. Floyd (via USPS)
#234038
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

CASE #: 42396-1-II
State of Washington, Respondent/Cross Appellant v. Thomas Lee Floyd, Appellant/Cross-Respondent

Mr. Floyd and Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

Appellant is granted an extension to June 30, 2012, to file the remainder of his Statement of Additional Grounds for Review. His motion to strike his counsel's brief and order her withdrawal as counsel is denied.

Very truly yours,

David C. Ponzoha
Court Clerk

(1A9)

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, Issue Summaries, and General Information at http://www.courts.wa.gov/courts

April 12, 2012

Honorable Ronald Carpenter
Clerk of the Supreme Court
Temple of Justice
Olympia, WA 98504

Re: Motion for Discretionary Review
Personal Restraint Petition of Thomas LeLand Floyd, No. 42206-9-II

Dear Mr. Carpenter:

A Motion for Discretionary Review has been filed in the above-referenced matter. That petition, together with our file and the briefs, are enclosed.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:ldr
Encl.

Cc: Thomas Leland Floyd
#234038
Washington Corrections Center
P.O. Box 900
Shelton, WA 98584

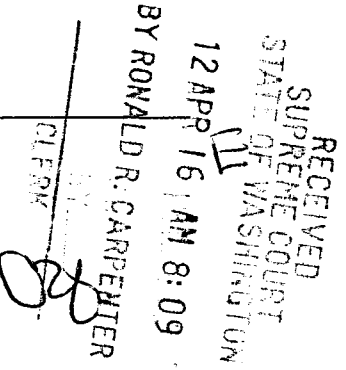
(1A10)

42206-9

The State of Washington
The Court of Appeals
Division II

87265-1

SUPREME COURT
OF THE STATE OF WASHINGTON



Thomas Leland Floyd, Petitioner

V.

Judge Stephanie A. Arend, Respondent

MOTION FOR DISCRETIONARY REVIEW

/s/ Thomas Leland Floyd, Acting pro se as Petitioner

(1A11)

THE SUPREME COURT
STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

April 16, 2012

Thomas Lee Floyd
234038
Washington Corrections Center
PO Box 900
Shelton WA 98584

Hon. David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway
Suite 300, MS TB-06
Tacoma, WA 98402-4454

Re: Supreme Court No. 87265-1 - Personal Restraint Petition of Thomas Leland Floyd
Court of Appeals No. 42206-9-II

Clerk and Mr. Floyd:

The Petitioner's "MOTION FOR DISCRETIONARY REVIEW" was forwarded to this Court by the Court of Appeals and received on this date. The Court of Appeals file in the matter was also received. The case has been assigned the above referenced Supreme Court cause number.

Review of the motion for discretionary review reveals that it was dated March 13, 2012, which is three days before the order was entered in the above-referenced Court of Appeals case. In addition, the envelope indicates it was mailed on March 14, 2012. For these reasons, and the indication on the title page that it is in the case of "Thomas Leland Floyd v. Judge Stephanie A. Arend", it appears that this pleading was not intended to be a motion for discretionary review of this Court of Appeals case.

A copy of the title page is enclosed for Mr. Floyd and he is requested to advise this Court as to whether this was intended to seek review of a Court of Appeals decision, and, if so, verify the Court of Appeals number for the case of which he is seeking review.

(1A12)

The status of this case will be reviewed on my Deputy Clerk's May 3, 2012, motion calendar. Mr. Floyd should respond to the issue in the above paragraph by letter prior to May 3, 2012.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:alb

Enclosure for Petitioner as stated

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

May 23, 2012

Thomas LeLand Floyd
#234038
Coyote Ridge Corr. Ctr.
P.O. Box 769
Connell, WA, 99326-0769

CASE #: 42474-6-II
Personal Restraint Petition of Thomas LeLand Floyd

Dear Mr. Floyd:

We have opened your personal restraint petition under the above-referenced case number. To date, we have not received a filing fee in this case. Under RAP 16.8(a), this court may not consider a petition unless the petitioner pays the $250 filing fee or the clerk determines that the petitioner is unable to pay the filing fee. I reviewed the petition and found no statement of finances. See RAP 16.7(a)(3). Accordingly, I will hold the petition for 20 days pending receipt of the filing fee ***or*** a statement of finances, **together with your prison account statement**, if available. If we do not receive the filing fee or required documentation within 20 days of the date of this letter, this petition will be dismissed without further notice from this court.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:ldr
Encl.

(1A13)

THE SUPREME COURT
STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

June 8, 2012

Thomas Lee Floyd
234038
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

Re: Supreme Court No. 87265-1 - Personal Restraint Petition of Thomas Leland Floyd
Court of Appeals No. 42206-9-II

Mr. Floyd:

I am enclosing for your review a copy of your "MOTION FOR DISCRETIONARY REVIEW" that was forwarded to this Court by the Court of Appeals with an indication that it was seeking review of the order entered in Court of Appeals No. 42206-9-II on March 16, 2012.

Review of the motion for discretionary review indicates that it does not address the order entered in that Court of Appeals matter and appears to seek review of some other decision. Therefore it appears that you do not intend to seek review of Court of Appeals No. 42206-9-II.

Accordingly, I have set this matter on my Deputy Clerk's June 28, 2012, Motion Calendar for consideration of a Clerk's motion to dismiss. If you object to the dismissal of this case, Supreme Court No. 87265-1, please respond in writing by not later than June 25, 2012, as to why this case should not be dismissed.

I am also enclosing a copy of my letters dated May 8, 2012, and April 16, 2012, as further background in this matter.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:alb

Enclosures

(1A14)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of THOMAS LELAND FLOYD, Petitioner.	No. 42474-6-II RULING DISMISSING PETITION

THIS MATTER came on for hearing of the clerk's motion to dismiss on the ground of abandonment as petitioner has not paid a filing fee or filed a statement of finances. Petitioner has not responded to the Clerk's letter dated May 23, 2012, and it appears that the petition was taken for delay and should be dismissed for want of prosecution. RAP 18.9(a)-(b). Accordingly, it is

ORDERED that this petition is dismissed.

DATED this 14th day of June, 2012.

COURT COMMISSIONER

Thomas LeLand Floyd
#234038
Coyote Ridge Corr. Ctr.
P.O. Box 769
Connell, WA, 99326-0769

(1 A 1 C)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

THOMAS LELAND FLOYD,

Petitioner.

No. 42474-6-II

RULING VACATING RULING DISMISSING PETITION

THIS MATTER came before the undersigned upon a motion from the Court to vacate the ruling dismissing petition issued on June 14, 2012. The ruling was issued due to abandonment for failure to timely file a filing fee or statement of finances. Petitioner's statement of finances was filed on June 20, 2012 and therefore the ruling is vacated. Accordingly, it is

ORDERED that the ruling dismissing petition is vacated.

DATED this 25th day of June, 2012.

E B Schmidt
COURT COMMISSIONER

Thomas LeLand Floyd
#234038
Coyote Ridge Corr. Ctr.
P.O. Box 769
Connell, WA, 99326-0769

(1A16)

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

June 26, 2012

Thomas Lee Floyd
#234038
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA, 99326

CASE #: 42474-6-II/Personal Restraint Petition of Thomas Lee Floyd

Dear Mr. Floyd:

We have received your personal restraint petition, assigned it the above-referenced case number, and waived the $250 filing fee in light of your financial affidavit. After reviewing your petition, we have initially determined that a response is unnecessary and have forwarded your petition to the Chief Judge for further instructions or for a decision, either of which will issue in due course. RAP 16.11(b). **The Chief Judge will consider any decisions on motions for appointment of counsel and motions for production of the record at public expense during this initial consideration of your petition. RAP 16.11(a). We will not respond to written questions about your petition's status.**

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:kp
cc: Pierce County Prosecuting Attorney (via email)

(1A17)

THE SUPREME COURT
STATE OF WASHINGTON

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

July 2, 2012

Thomas Lee Floyd
234038
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

Hon. David Ponzoha, Clerk (**sent by e-mail only**)
Court of Appeals, Division II
950 Broadway
Suite 300, MS TB-06
Tacoma, WA 98402-4454

Re: Supreme Court No. 87265-1 - Personal Restraint Petition of Thomas Leland Floyd
Court of Appeals No. 42206-9-II

Clerk and Mr. Floyd:

Review of the file in this matter indicates that the motion for discretionary review that was forwarded to this Court by the Court of Appeals was not intended to seek review of the decision in Court of Appeals No. 42206-9-II. Accordingly, this matter, Supreme Court No. 87265-1, is hereby dismissed.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC: daf

(1A18)

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

July 9, 2012

Stephanie C Cunningham
Attorney at Law
4616 25th Ave NE # 552
Seattle, WA, 98105-4183

Aaron Douglas Talney
Pierce County Dept of Assigned Counsel
949 Market St Ste 334
Tacoma, WA, 98402-3696

Kimberley Ann DeMarco
Pierce County Prosecutor's Office
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2102

Melody M Crick
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

Thomas Lee Floyd (sent via USPS)
#234038
Coyote Ridge Corr Center
PO Box 769
Connell, WA 99326

CASE #: 42396-1-II
State of Washington, Respondent/Cross Appellant v.
Thomas Lee Floyd, Appellant/Cross-Respondent

CASE #: 43021-5-II (consolidated to 42396-1-II)
State of Washington, Appellant v.
Thomas Lee Floyd, Respondent

Dear Counsel and Mr. Floyd,

Following this court's ruling of June 29, 2012, consolidating the above-entitled appeals, the order of indigency filed in the primary case (42396-1), Mr. Floyd will be presumed to be indigent in the secondary case (43021-5), pursuant to RAP 15.2(f). Stephanie Cunningham is counsel for Mr. Floyd in the consolidated cases. Ms. Cunningham shall therefore file a respondent's brief by September 7, 2012, in response to the State's appellant brief filed in 43021-5-II on June 22, 2012.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:skw

(1A-19)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of THOMAS LELAND FLOYD, Petitioner.	No. 42474-6-II ORDER DISMISSING PETITION

Thomas Floyd seeks relief from personal restraint imposed following his 1972 plea of guilty to second degree assault.[1] He claims that he pleaded guilty because of threats made to harm him and to bomb his mother's house. He also argues that he received ineffective assistance of counsel because his counsel allowed the State to withhold prior assaults by his victim.

RCW 10.73.090(1) requires that a petition be filed within one year of the date that the petitioner's judgment and sentence becomes final. Floyd's judgment and sentence became final on April 20, 1972, when the trial court entered it. RCW 10.73.090(3)(a). He did not file his petition until May 17, 2011, more than one year later. Unless he shows that one of the exceptions contained in RCW 10.73.100 applies or that his

Walsworth - Boeing - Actual Innocence Claims

[1] Floyd's 1972 assault conviction was counted as a prior conviction in calculating his offender score for his current conviction of second degree assault. Because the prior conviction increases his standard sentence range, under the liberal definition of "restraint" that this court employs, he is under restraint of his 1972 assault conviction.

(1A20) Significant Change in the law. Malicious prosecution - withheld prior assaults by victim

judgment and sentence is facially invalid, his petition is time-barred. *In re Personal Restraint of Hemenway,* 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

Floyd does not show that his judgment and sentence is facially invalid. And his claims do not fall within any of the exceptions contained in RCW 10.73.100. Floyd's petition is not exempt from the one-year time bar. Accordingly, it is hereby

ORDERED that Floyd's petition is dismissed as time-barred under RAP 16.11(b).

DATED this 11th day of July, 2012.

Acting Chief Judge Pro Tempore

cc: Thomas L. Floyd
Pierce County Prosecuting Attorney
Pierce County Clerk
County Cause No. 42366

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

July 13, 2012

Melody M Crick (via email)
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171

Stephanie C Cunningham (via email)
Attorney at Law
4616 25th Ave NE # 552
Seattle, WA 98105-4183

Kimberley Ann DeMarco (via email)
Pierce County Prosecutor's Office
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2102

Thomas Lee Floyd (via USPS)
#234038
Coyote Ridge Correction Ctr.
PO Box 769
Connell, WA 98326-0769

CASE #: 42396-1-II
State of Washington, Respondent/Cross Appellant v. Thomas Lee Floyd, Appellant/Cross-Respondent

Mr. Floyd & Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY THE CLERK:

Appellant's motion for extension of time to file brief is denied. Attorney Cunningham has been appointed to represent appellant in COA No. 43021-5-II (now consolidated with COA No. 42396-1-II) and will prepare the brief. In addition, the time for filing appellant's statement of additional grounds for review has lapsed and, pursuant to this court's ruling dated 03/27/12 and extended by ruling dated 05/08/12, the court will not accept a Statement for filing.

Very truly yours,

David C. Ponzoha
Court Clerk

(1A-21)

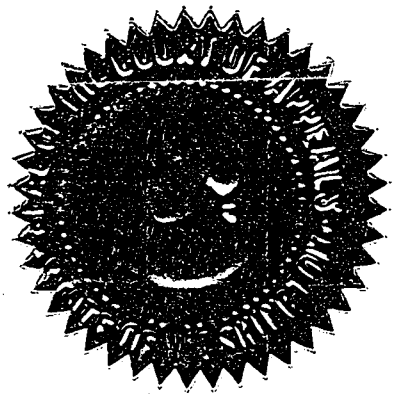
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of THOMAS LEE FLOYD, Petitioner.	No. 42474-6-II CERTIFICATE OF FINALITY Pierce County Superior Court No. 10-1-00019-6

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Pierce County.

This is to certify that the decision of the Court of Appeals of the State of Washington, Division II, filed on July 11, 2012, became final on August 13, 2012.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 23rd day of August, 2012.

David C. Ponzoha
Clerk of the Court of Appeals,
State of Washington, Division II

Thomas Lee Floyd
#234038
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA, 99326

1422

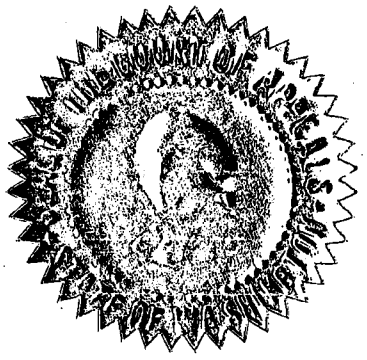
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of THOMAS LELAND FLOYD, Petitioner.	No. 42206-9-II CERTIFICATE OF FINALITY Pierce County Superior Court No. 43205

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Pierce County.

This is to certify that the decision of the Court of Appeals of the State of Washington, Division II, filed on March 16, 2012, became final on April 17, 2012.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 21st day of September 12, 2012.

David C. Ponzoha
Clerk of the Court of Appeals,
State of Washington, Division II

Thomas LeLand Floyd
#234038
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA, 99326

(1423)

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

October 9, 2012

Thomas Lee Floyd #234038
Coyote Ridge Corrections Center
PO Box769
Connell, WA 99326

CASE #: 42396-1-II
State of Washington, Respondent/Cross Appellant v. Thomas Lee Floyd, Appellant/Cross-Respondent

Mr. Floyd:

Please be advised the Statement of Additional Grounds received October 5, 2012, is being placed in the pouch without further action pursuant to this Court's ruling of July 13, 2012. Please find a copy of the ruling for your reference. Your Statement of Additional Grounds filed April 30, 2012 will be considered.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:cm

cc: Stephanie C Cunningham
Melody M Crick
Kimberley Ann DeMarco

(1423)

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

October 24, 2012

Melody M Crick
Pierce County Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2171

Thomas Lee Floyd #234038
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

Kimberley Ann DeMarco
Pierce County Prosecutor's Office
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2102

CASE #: 42396-1-II
State of Washington, Respondent/Cross Appellant v. Thomas Lee Floyd, Appellant/Cross-Respondent

Counsel and Mr. Floyd:

On October 15, 2012, a motion to modify a Commissioner's ruling of September 21, 2012 was filed in the above-referenced matter. A panel of judges will consider the motion without oral argument on the next available motion calendar. Any response to the motion should be filed no later than **November 5, 2012**. A reply, if any, must be filed in this court within seven days after the response has been filed.

If you have any questions, please contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:cm
cc: Stephanie C Cunningham

(1A24)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of

THOMAS LELAND FLOYD,

Petitioner.

No. 42979-9-II

ORDER DISMISSING PETITION

101-00019-6

Thomas Floyd seeks relief from personal restraint imposed following his conviction for second degree assault.[1] In a rambling and disjointed petition, he appears to assert: (1) newly discovered evidence; (2) prosecutorial misconduct; (3) instructional error; (4) false testimony; (5) failure to timely provide discovery; (6) threats to defense witnesses; (7) comments on guilt; (8) suppression of evidence regarding victim's drug use; (9) suppression of other defense exhibits; (10) racial profiling; (11) speedy trial violations; (12) lack of jurisdiction; (13) ineffective assistance of counsel; and (14) deprivation of right to present a diminished capacity defense. But he provides no references to the record, or other evidence, that would allow us to review his assertions. He therefore fails to meet his burden of providing sufficient evidence to support his petition. *In re Personal Restraint of Williams*, 111 Wn.2d 353, 364-65, 759 P.2d 436 (1988).

[1] Floyd filed a post-trial motion in the superior court, which that court transferred to us under CrR 7.8(c).

1425

Floyd fails to show grounds for relief from restraint. Accordingly, it is

ORDERED that Floyd's petition is dismissed under RAP 16.11(b).

DATED this 26th day of October, 2012.

Van Deren ACJ pro tem
Acting Chief Judge Pro Tempore

cc: Thomas L. Floyd
Melody M. Crick
Pierce County Clerk
County Cause No. 10-1-00019-6

Karen Ladenburg

From: Aaron Talney
Sent: Friday, February 08, 2013 8 38 AM
To: Neil Horibe
Cc: Karen Ladenburg
Subject: RE: Floyd - 10-1-00019-6

I agree. I don't think the court needs to take any action.

Aaron

From: Neil Horibe
Sent: Thursday, February 07, 2013 1:33 PM
To: Karen Ladenburg; Aaron Talney; Melody Crick
Subject: RE: Floyd - 10-1-00019-6

Karen-

After speaking with my appeals unit, my position is that since the case is before the Court of Appeals right now the trial court should wait until the appeals court makes a decision. The order correcting the J&S before Judge Johnson was to correct a scriveners error and was specific to that case.

Neil Horibe
Deputy Prosecuting Attorney
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave. S., Room 946
Tacoma, WA 98402
Phone: (253) 798-6505
Fax: (253) 798-3601

From: Karen Ladenburg
Sent: Thursday, February 07, 2013 11:33 AM
To: Neil Horibe; Aaron Talney
Subject: Floyd - 10-1-00019-6

Good Morning,

We are in receipt of pleadings from Mr. Floyd regarding a motion to modify or correct judgment and sentence regarding offender score and sentence. Mr. Floyd indicated that his other case with Judge Johnson has been corrected. I am going to route the copies to you today. Please let me know what action you would like to take with this.

Thanks,

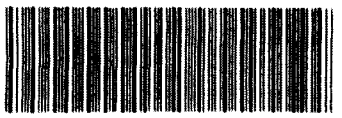
Karen

KAREN LADENBURG | Judicial Assistant to Judge John A McCarthy | Pierce County Superior Court | Dept #11 |
930 Tacoma Avenue South, Room 334, Tacoma, WA 98402 | Phone (253) 798-7571 | Fax (253) 798-7214 | Email kladenb@co pierce wa us

IMPORTANT. In order to avoid inappropriate ex parte contact, you are hereby directed to forward this communication to all other counsel/parties not already copied on this email.

(1A26)

IN The Superior Court for the State of Washington
for County of Pierce
City of Tacoma


10-1-00019-6 34204764 PT 04-28-10

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 28 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
DEPUTY

State of Washington
Respondent
v.
Thomas Leland Floyd
Defendant
910 Tacoma Ave. S. Unit 2
Tacoma, WA 98402

Cause No. 10-1-00019-6
PBP Petition for a Itradomal Cus.
Personal Restraint Petition
RCW Ch 7.36. § 5003-9
Show Cause & Release

Comes Now petitioner Thomas Floyd, into this Matter it is hereby submitted that "Fraud committed" in the "cancellation" of a OMNIBUS Hearing has Illegally committed the petitioner to Incarceration without a TRIAL, a Pre-Trial, a Evidentiary Hearing and without a Lawyer. Both Stevens and John Sheenan are working "In Tandem" to Force a Conviction on petitioner without Access to courts, or Due the Hearing of Pretrial Motions. "Tar And Feathers" Force & Sham Their RACIAL Profiling CAN NO Longer Be hidden Amongst the withholding of Evidence in favor of Defendant.

The Spoliation was Intentional,
The Lack of Counsel perpetrated in Covert actions Behind Closed doors in Violation of Every Oath, And Every Constitutional Due Process Guarantee known to MAN. Massaro v U.S. 538 U.S. 500 123 S.ct. 1690, 155 L.Ed 2d 714 (2003) In "Effective Counsel" Claim, may be made for first time in Collateral proceedings (UNLAWful Restraint) Show Cause

Why must I suffer with this Abuse of Misrepresentation. True to My knowledge.

Date: 4/22/10

In Proper
Thomas Floyd

(1A 27)
(1A 27)

(1A28)

Tank 3-WA-16 LEGAL-MAIL Date 3/9/10

TO: JUDGE CULPEPPER

Talk to your Attorney

Message: SUPERIOR Court CASE # 10-1-00019-6, PIERCE County State of WAShington, Motion to Reconsider And Proceed In Pro-Se / In forma Pauperis. As soon as defendant can be heard. Due process denied by counsel. Thomas Floyd

NO KITES ACCEPTED AFTER 6:00 A.M.

(Print Name)

THIS IS TRUE TO THE BEST OF KNOWLEDGE

Z-176

OVER → LEGAL MAIL → OVER

Need 2 3 of 4 ... Printed by Jail Hamilton, Jan 19, 2010 9:52 AM

(1A28)

Attorney: Jane Pierson

Client: Thomas Floyd

Cause No: 10-1-00019-6

Investigator: Kristin O'Leary

Name, Address and Phone Number for Witness:

Grant Griffin

Type of Interview, Date and Time: In person on 6/11/2010 @ 1440 hours.

Investigator Identified Self and Purpose of Interview: Yes.

On the above date and time I, Kristin O'Leary, Defense Investigator working for the above Attorney, conducted an interview with Grant Griffin. Griffin is a Witness in the above matter and stated the following regarding the incident:

Griffin lives with his wife Peg in the apartment directly below the unit shared by Thomas Floyd and Annette Bertran. They have lived in the building for numerous years and Bertran was a tenant when they moved in. Griffin said that Bertran was married to Marvin Jackson when he and his wife Peg moved into the complex. Griffin remembered that Bertran had filed numerous restraining orders against Jackson and eventually they divorced. Griffin added "There was lot's of arguing all the time". Griffin explained that he was actually going to testify in one of the "restraining order hearings" but for some reason his testimony wasn't need. Griffin further explained that he did

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Wauna, WA 98395
(253) 884-6363

(1429)

testify in against Jackson in the assault case where Bertran was the alleged victim. Griffin testified that he heard "a big bang" or "body slam" against the wall of the apartment upstairs. He did not see either party on the date of that incident and he was not the person who called 911. Bertran and Jackson divorced shortly after this alleged incident.

Griffin said that Marvin Jackson told him that although he was charged with assaulting Bertran she inflicted her own injuries and then reported that he was responsible.. Griffin added "At that time I didn't believe it and I actually testified for her, now I'm not so sure". Griffin added "She is so theatrical, so shrill". Griffin told me that Bertran does not work and hasn't worked since he has known her. Griffin added "She worked in an old folks' home for a little while and I think she and Thomas researched cases for some T.V. Judge in California".

Bertran began dating again and "Mike" became a frequent visitor of Bertran's. Griffin does not know Mike's last name and does not believe that "Mike" actually resided with Bertran. Griffin explained that just like Jackson, Bertran and Mike argued all the time and he could hear "cussing". Griffin further explained that he thinks the Police came to Bertran's apartment due to the arguments but he isn't sure. There was "one other guy" after Mike and Bertran told him that she met this individual at the

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casino. Griffin added "That's her thing, that's where she likes to go hang out". Griffin can't remember the name of the male but does not think they dated long and then she met Floyd.

Griffin said "She was always giving keys to the main entrance out to these guys so when they argued the arguments tend to spill out into the hallway" and "Then we hear door slamming, yelling and lock outs". Griffin, Bertran and other residents in this particular building share a main foyer. All the individual units' stairs and landings are connected. Griffin said that he has had to help Bertran "change her locks" on prior occasions but she "changes her mind" and the men are right back in the building again.

I asked Griffin if he believes there is some illegal drug use going on upstairs. Griffin replied "I've never seen it but based on her schedule I think there is" and "Her midnight is two p.m. for you and I". Griffin said that Bertran was often up until two or three at night and would commonly sleep until noon. Griffin said that Bertran has told him she used to take her mother's prescription pills before her mother passed away. Griffin explained that Bertran had some strange behavior and "has been known to repeat things over and over". He said these behaviors may be due to illicit drug use but he can't be certain. Griffin further explained that he is Floyd's Sponsor

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for Alcoholics Anonymous and that is how he met Floyd. Griffin has been Floyd's Sponsor for approximately three years. Floyd is very active in the program and is trying to do the program as best he can. He often chairs meetings.

I asked Griffin if he remembers Floyd talking about being assaulted by Bertran after receiving a cortisone shot. Griffin replied "I remember something about his blood sugar being out of whack but nothing about an assault". I asked Griffin if he could tell me anything about Bertran's friend Helen. Griffin replied "I know stories but I have only actually met her one time" and "I knew that when Helen comes around Annette starts going out with Helen all the time and it causes problems".

I asked Griffin if he has ever heard arguments between Floyd and Bertran. Griffin replied "Let me ask you this, if you were married to someone and you loved them would you call them a nigger?" Griffin said that Bertran called Floyd a "nigger" all the time. During our conversation Griffin stood up to make sure the sliding glass door to his patio was closed. Griffin said when the door is open you can hear everything between the two units. He has heard many arguments upstairs and during the arguments he would mostly hear Bertran screaming at Floyd and calling him names. Griffin added "Thomas does have a low voice and she is very shrill".

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On the date of the above alleged incident Griffin said at approximately 8:00 p.m. and after dinner he and his wife were watching television in the living room. He does not recall if he heard yelling upstairs and added "We just heard normal noises that night, Thomas' usual heavy feet, we didn't hear any yelling or arguing nothing unusual". There was a knock at the front door and his wife answered. Griffin heard Peg say something like "Are you hurt?" Griffin came to the front door and observed Bertran sitting in the foyer "acting all woozy and out of it". Griffin again told me that Bertran is "theatrical". He observed blood coming from Bertran's ear, he told Bertran they were calling 911 and Bertran protested claiming she didn't have any money to go to the hospital. Griffin added "I'm not sure if that was for show now". Griffin said that during the encounter at the front door Bertran said "Thomas beat me". He did not notice anything specific about Bertran's injuries.

Griffin informed me that Floyd came downstairs "shortly after" and made some comment about having pictures. Griffin said that although Thomas was in close proximity to Bertran she didn't seem scared and Floyd did not touch her. Griffin added "He may have, I was on the phone with 911 at that point". Officers arrived on scene in less than ten minutes and he gave them a verbal statement. Griffin added "I told them what I always tell

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them, she does this all the time, this happens all the time with her". Griffin added "there was an incident a few weeks prior and the SWAT team responded.

Griffin said approximately two weeks prior to the above alleged incident he was driving through the neighborhood on his way home and observed Bertran pulled over on the side of the road, out of her vehicle speaking with Officers. Griffin approached the complex and saw numerous Law Enforcement vehicles and the SWAT team around the building. Griffin spoke to the Officers that were banging on Floyd and Bertran's door. Again he reported to Officers "She does this all the time" and "If you think there are any weapons up there you are crazy, there is absolutely no weapons in that apartment". Griffin added "He was smart and never opened the door and they eventually left" and "Probably because they knew she does this all the time or they have responded so many times in the past they knew what was really going on".

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Wauna, WA 98395
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Jane Pierson

From: Kristin O'Leary [krykl@hotmail.com]
Sent: Sunday, July 1[illegible]2010 3:15 PM
To: Jane Pierson
Subject: [illegible]

Hi,

Interviewed Peggy Griffin... for an hour, very interesting indeed!
Some main points:

AV would not come inside after she was asked repeatedly by Griffin. Griffin (rape survivor) found this behavior to be extremely strange. Not only did she refuse to come inside but she "never once appeared fearful" of D, who allegedly just assaulted her and was standing directly behind AV while Griffin attended to her bloody ear.

Griffin description of AV: Very dramatic, used to be a meth head, used to take pills and possibly still uses both, never worked, been married like 10 times, always the same thing with every guy, tried to commit suicide at one point, always the one that calls the cops, can't do without drama, calling the cops "just feeds her", she has a wild imagination and creates uproars.

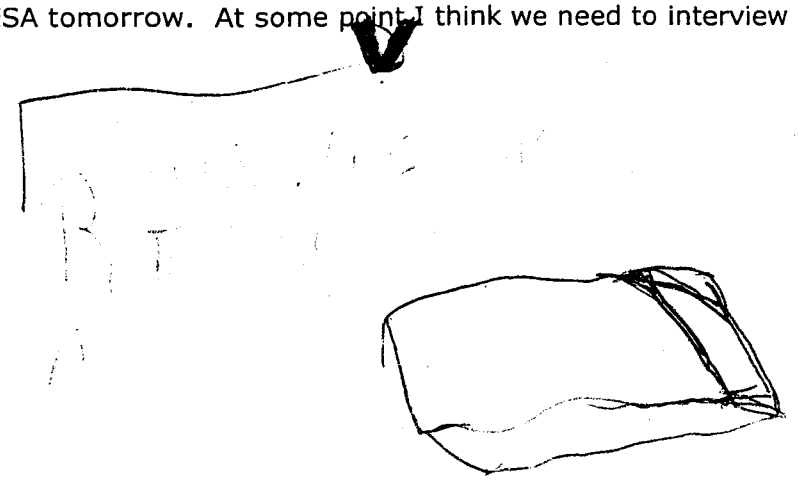
Grant and Peggy heard ABSOLUTELY nothing prior to AV knocking on their door!! NOTHING!??

Best point:
Just prior to the incident AV had a face lift. You and I both know, as does Ms. Griffin that the scars for a face lift are located directly behind the ears!! Griffin thought, "Oh god, she just had plastic surgery and the scars have opened up".

Found address for Marvin Jackson. Going to send him a letter as the phone number listed is NIS.
Found address for Helen Lynch... If we decide we want to speak to her. I don't think she will be helpful as she will side with AV... Something to explore maybe.

Will continue efforts with LESA tomorrow. At some point I think we need to interview cops and med personnel...

Thanks,
K



(1A30)

(1A30)

State ID:		Local CH No:			
Driver License No:	FLOYDTL472LG	Driver License State:	Washington	Driver License Country:	
Hair Length:		Glasses:		Facial Hair:	
Hair Style:		Teeth:		Facial Shape:	
Hair Type:		Speech:		Complexion:	
Appearance:	Angry	Right/Left Handed:		Facial Feature Oddities:	
SMT:				Distinctive Features:	
Attire:				Body Build:	HVY - Heavy
Gangs:				Tribe Affiliation:	
Significant Trademarks:				Identifiers:	
Suspect Pretended to Be:			Modus Operandi:		
Place Of Birth:		Habitual Offender:	Domestic Violence	Custody Status:	
Date/Time Arrested:	1/3/2010 20:39:00	Booked Location:	Pcj	Date/Time Booked:	1/3/2010 21:08:00
Arrest Location:	8539 Zircon Dr Sw #78 Lakewood, WA 98498	Released Location:		Held For:	
Arrest Offense:	1303 - Assault - Aggravated - Family - Strongarm			Date/Time Released:	
Arrest Type:	On-view Booked - New Probable Cause			Juvenile Disposition:	
Armed With:	Unarmed			Adult Present Name:	
Miranda Read:	Yes	Miranda Waived:	Yes	Detention Name:	
No. Warrants:		Multi. Clearance:	Not Applicable	Notified Name:	
Fingerprints:		Photos:	Yes	Previous Offender:	
Type of Injury:	None reported			Fire Dept Response:	
Hospital Taken To:		Medical Release Obtained:	No	Taken By:	
Attending Physician:		Hold Placed By:			

New Charges

Arrest #	Book/Cite	Charge Description – RCW/Ordinance	Free Text Charge Description	Court	Bail	Count
1	Book	F - - Assault 2nd Degree - RCW - 9A.36.021		Pierce County Superior Court		1

Warrants

Arrest #	Warrant #	Free Text Charge Description	Agency	Court	Bail

Arrest Notes:

Probable Cause: Floyd and Bertan engaged in a verbal altercation, which turned physical when Floyd punched Bertan in the face and head several times causing a large laceration to her inner ear, concussion, swelling and bruising to her head and face. He then drug her across the floor by her hair and aggressively rubbed her face with wash clothes yelling at her to clean up the blood. She was eventually able to get out of the apartment and have the neighbor call 911. Floyd was contacted and detained and advised of his Miranda Rights, which he waived and admitted to pushing Bertan, but stated she fell which caused her injuries. He had blood on his hands and stated it was from wiping her face. He was subsequently booked into PCJ for Assault 2nd Degree. Bertan was transported to the hospital for her injuries, which required stitches.

Weapon 1: Personal Weapon (hands, fists, feet, etc.)

Offense:	1303 - Assault - Aggravated - Family - Strongarm	Serial No:	
Offender:	A1 - Floyd, Thomas Lee	OAN:	
Weapon:	Personal Weapon (hands, fists, feet, etc.)	Automatic:	
Other Weapon:		Caliber:	

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. THOMAS LEE FLOYD, Defendant.	CAUSE NO. 10-1-00019-6 DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

GRANT E. BLINN, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the LAKEWOOD POLICE DEPARTMENT, incident number 100031042;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 3rd day of January, 2010, the defendant, THOMAS LEE FLOYD, did commit the crime of assault in the second degree.

Police responded to a report of a domestic assault. The defendant was seen walking through the parking lot and was detained. He admitted that he "pushed her cause she kicked me in the balls". When police contacted Annette Bertan inside, they noticed blood on the floor. She was being treated for a large laceration inside of her ear. The injury was bleeding heavily and she had several areas of swelling to her face. She was crying and stated "he tried to kill me". Her blouse was soaked with blood on the front. She directed police to the bathroom where blood was found on the floor, tub, walls, and toilet area. There was a large amount of blood that had been saturated into the rug on the floor. The shower curtain had been pulled down and there was also blood and water soaked rags in the sink.

At the hospital, the physician reported that she had a laceration to the ear which would require stitches. She had a concussion and swelling and bruising to the face and head. Bertan reported that they had been arguing when he punched her in the face and head several times. She realized that she was bleeding heavily. She ran to the bathroom but became dizzy and fell. He grabbed her by the hair and started dragging her across the floor. He ripped down the shower curtain and said "do you want some more bitch." He brought some wash rags and commanded her to "get that fucking blood off your face bitch."

***

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

257

(1A32)

July 20, 2010 → Mr. Floyd, LESA (Law Enforcement Support Agency) has not responded to my subpoena, so I'm asking the Court to sign this. Jane

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AN FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. THOMAS LEE FLOYD, Defendant.	**CAUSE NO. 10-1-00019-6** **SUBPOENA DUCES TECUM**

TO: LESA RECORDS
County-City Building, Room 239
Attn: Records Custodian
Tacoma, WA 98402

You are hereby commanded to produce the following records, documents, and materials, to defense counsel, Jane Pierson (Dept of Assigned Counsel, phone number 253-798-3982) on or before July 30, 2010:

Any and all reports, including police reports and/or police responses, for the time period from January 1, 2000 through present, involving: ANNETTE BERTRAN, d.o.b. 01/02-54, as a complainant, victim, or suspect.

GIVEN under my hand this ___ day of July, 2010 by:

_____
The Honorable

Prepared and Presented by: Jane Pierson
Jane Pierson, WSB#23085

(1A31)

Department of Assigned Counsel
949 Market Street, Suite 334
Tacoma, Washington 98402-3696
Telephone: (253) 798-6062

Pierce County

Office of Prosecuting Attorney

REPLY TO:
CRIMINAL FELONY DIVISION
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Victim-Witness Assistance: (253) 798-7400
(FAX) (253) 798-6636

MARK LINDQUIST
Prosecuting Attorney

Main Office: (253) 798-7400
(WA Only) 1-800-992-2456

September 28, 2011

Susan L. Carlson, Deputy Court Clerk
Washington State Supreme Court
Temple of Justice
P. O. Box 40929
Olympia, WA 98504-0929

Re: Floyd v. The Honorable John A. McCarthy, Pierce County Superior Court Judge.
Supreme Court Case No. 86404-7

Dear Ms. Carlson:

In response to your letter of August 25, 2011, directing my office to advise the court of the status of "any motions referenced in the petition" for writ of mandamus, I have reviewed the Superior Court Clerk's file in Pierce County Cause No. 10-1-00019-6 and found that on August 10, 2011, a motion for "Mistrial/Newly Discovered Evidence, etc," was filed in Mr. Floyd's criminal case. A copy of this motion is attached as Appendix A. As far as I am able to discern from the petition and the contents of the superior court file, this is the only motion referenced in the petition. I can find no indication in the superior court file that Judge McCarthy has taken any action on this motion. I would also add that I can find no indication in the court file that Judge McCarthy is aware of this motion. There have been no hearings since the motion was filed where the court would have had the court file before it. Mr. Floyd did not file a "Note of Motion" to get his motion onto a court docket for hearing. It appears that Mr. Floyd sent his pleadings directly to the Superior Court Clerk. Such action will assure that the pleadings are filed, but not that the court is given notice of the existence of the motion.

I have taken the initiative of sending a letter to Judge McCarthy - with a copy to Mr. Floyd - to alert the court as to the existence of this motion. I have attached a copy of the letter for this court. See Appendix B.

(1A-32)

I believe that this addresses the information requested in your letter, but await further direction from the court in this matter.

Sincerely,

Kathleen Proctor
Deputy Prosecuting Attorney
(253) 798-6590

KP/tbh
cc: T. Floyd

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. THOMAS LEE FLOYD, Defendant	CAUSE NO. 10-1-00019-6
DOB: 06/07/55 RACE: BLACK SEX: MALE AGENCY: W 462723 INCIDENT #: 10003104[illegible]	JUDGMENT AND SENTENCE (Misd. and/or Gross Misd.) [X] Plea of Guilty [ ] Found Guilty by Jury [ ] Found Guilty by Court SUSPENDED

This matter coming on regularly for hearing in open court on the 15 day of July, 2011, the defendant THOMAS LEE FLOYD and his attorney AARON TALNEY appearing, and the State of Washington appearing by NEIL HORIBE Prosecuting Attorney for Pierce County, following a verdict of guilty by jury by the court on the 6th day of April, 2011

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That said Defendant is guilty of the crime(s) of COUNT II: VIOLATION OF A NO CONTACT ORDER - PRE SENTENCE; Charge Code: (J47Q), COUNT IV: VIOLATION OF A NO CONTACT ORDER - PRE SENTENCE; Charge Code: (J47Q, COUNT V: VIOLATION OF A NO CONTACT ORDER - PRE SENTENCE; Charge Code: (J47Q, COUNT VI: VIOLATION OF A NO CONTACT ORDER - PRE SENTENCE; Charge Code: (J47Q, COUNT VII: VIOLATION OF A NO CONTACT ORDER - PRE SENTENCE; Charge Code: (J47Q, COUNT VIII: VIOLATION OF A NO CONTACT ORDER - PRE SENTENCE; Charge Code: (J47Q as charged in the Second Amended Information herein, and that he shall be punished by confinement in the Pierce County Jail for a term of not more than 365 days per count.

(1A33)

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent/Cross Appellant, v. THOMAS LEE FLOYD, Appellant/Cross Respondent.	No. 42396-1-II (Consolidated w/ No. 43021-5-II) PART PUBLISHED OPINION

BJORGEN, J. — Thomas Floyd appeals from his convictions for second degree assault and six violations of a no-contact order, as well as the sentencing court's use of his 1972 convictions for robbery and second degree assault in calculating his offender score. The State cross appeals the sentencing court's determination that Floyd does not qualify as a persistent offender subject to a mandatory life sentence under the Persistent Offender Accountability Act (POAA), RCW 9.94A.570. The State also appeals from a different sentencing court's offender score calculation, resulting from Floyd's subsequent conviction for stalking and violation of a no-contact order based on conduct involving the same victim.

Floyd, aided by standby counsel, represented himself in a jury trial in the first proceeding after the State charged him with assault and violating a no-contact order under cause number 10-1-00019-6. Shortly after Floyd began his closing argument, the trial court terminated his pro se status and directed standby counsel to complete the argument. The jury found Floyd guilty of all charges. The State had asked that Floyd be sentenced to a life term as a persistent offender based

on the two 1972 convictions, but the sentencing court ultimately refused, finding the robbery[1] conviction unconstitutional on its face and the assault conviction not comparable to a "most serious offense" under RCW 9.94A.030(32). Verbatim Report of Proceedings (VRP) (Dec. 2, 2011) at 106. The sentencing court nonetheless used both prior convictions in calculating Floyd's offender score, sentencing him to the maximum standard-range term of confinement.

The State subsequently charged Floyd under cause number 11-1-02808-1 with stalking and an additional count of violating a no-contact order involving the same victim. Floyd again represented himself, and a jury returned guilty verdicts on both counts. The sentencing court agreed with the prior sentencing court's determinations concerning the 1972 convictions, but independently calculated Floyd's offender score, again sentencing him to the maximum standard-range term.

Floyd argues that (1) the first trial court violated his right to defend in person by terminating his pro se status; (2) insufficient evidence supports his convictions for violating a no-contact order at the first trial; and (3) the first sentencing court erroneously included his 1972 convictions for robbery and assault in his offender score. The State argues that (1) the first sentencing court erred by refusing to count the two 1972 convictions as "strikes" for purposes of the POAA, and (2) the second sentencing court erred by refusing to include the 1972 convictions in calculating Floyd's offender score.

[1] In 1972, the robbery statute did not define varying degrees of the crime. Former RCW 9.75.010 (1909), *repealed by* LAWS OF 1975, 1st Ex. Sess. § 260.

In this consolidated appeal, we affirm each of Floyd's challenged convictions, as well as the sentence imposed after Floyd's second trial. We vacate the sentence imposed after the first trial, however, and remand for resentencing in accordance with this opinion.

FACTS

I. FLOYD'S FIRST TRIAL

Floyd and his wife,[2] Annette Bertan, had an altercation on the night of January 3, 2010 at their Lakewood condominium. Their downstairs neighbor called 911 after Bertan came to his door bleeding from a wound near her left ear. Responding officers encountered Floyd in the parking lot, noticed blood on his hands, and arrested him.

On January 4, 2010, the trial court entered an order in open court prohibiting Floyd from contacting Bertan. Over the next few months, Floyd nonetheless attempted to call Bertan several times from the Pierce County jail and Western State Hospital.[3] The State ultimately charged Floyd by amended information with one count of second degree assault involving domestic violence and six counts of violating a no-contact order.

The State filed a notice that it intended to seek a mandatory life sentence under the persistent offender statute, based on Floyd's 1972 convictions for robbery and assault. The trial court allowed Floyd to represent himself, finding Floyd's request explicit, knowing, and voluntary, but appointed standby counsel over Floyd's objection.

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[2] Bertan obtained a divorce after the events giving rise to the assault charge, but prior to Floyd's trial.

[3] Floyd underwent multiple court-ordered competency and other medical evaluations at Western State Hospital after various pretrial proceedings.

At trial, Floyd's limited knowledge of court procedures and rules of evidence, as well as his apparent confusion and frustration when the trial court sustained most of the State's objections, led to many disruptions and repeated admonitions by the court. The trial court also spent considerable time hearing motions brought by Floyd that it ultimately found duplicative or meritless. However, Floyd rarely interrupted the presentation of the State's evidence, addressed the court respectfully, generally accepted the court's rulings on his objections without protest, and appeared to make a genuine effort to follow the court's instructions.

During closing argument, Floyd referred to several facts not in evidence, drawing repeated objections from the State. VRP at 733-34, 736, 738. After the court admonished Floyd again to argue only from evidence properly before the jury, Floyd asked questions which demonstrated some confusion as to what the court meant. VRP at 739. Floyd also attempted to offer additional evidence through his statements during closing. VRP at 743.

At that point the court excused the jury and, after expressing the opinion that Floyd had intentionally acted to "scuttle" the trial, engaged in a colloquy with Floyd and heard argument from the State and Floyd's standby counsel. VRP at 740. Then, over objections from both Floyd and the State, the court terminated Floyd's pro se status and appointed standby counsel to complete closing argument. Standby counsel argued that the jury could convict Floyd only of third degree assault because Bertan did not suffer substantial bodily harm. The jury returned guilty verdicts on all counts.

At sentencing, the court concluded that the State could not rely on either of Floyd's 1972 convictions as "strikes" for purposes of the POAA. VRP (July 15, 2011) at 106. The court ruled the robbery conviction invalid on its face because the information and two of the jury

instructions misstated the elements of the crime, and it found the assault conviction not comparable to a "most serious offense" under current law because of differences in the mens rea and degree-of-injury elements. VRP (July 15, 2011) at 106. The court then concluded that both 1972 convictions counted towards Floyd's offender score, making it four. The court ultimately sentenced Floyd to 20 months' confinement on the assault charge and to a 3-year suspended sentence for the remaining counts.

II. FLOYD'S SECOND TRIAL

The State subsequently charged Floyd with violation of a domestic violence court order and stalking, based on his further attempts to contact Bertan. Floyd again represented himself, aided by the same standby counsel assigned by the previous trial court, and the jury returned guilty verdicts on both charges. The sentencing court sua sponte raised a question as to whether collateral estoppel required it to accept the prior sentencing court's determinations concerning Floyd's criminal history. Ultimately, the court accepted the argument made by Floyd's standby counsel that it should agree with the prior sentencing court's conclusions as to Floyd's 1972 convictions, but not the prior offender score calculation. The court sentenced Floyd to 17 months on each charge, running concurrently with each other but consecutively to the previous sentences.

ANALYSIS

I. THE RIGHT TO SELF-REPRESENTATION

Floyd contends that the trial court violated his right to represent himself. Because the court's determination that he intentionally disrupted the proceedings was not manifestly unreasonable and rests on a sufficient factual basis in the record, we disagree.

Washington's constitution explicitly guarantees criminal defendants the right to self-representation. *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010) (citing WASH. CONST. art. I, § 22 ("the accused shall have the right to appear and defend in person")). The United States Supreme Court has also held that the Sixth Amendment to the United States Constitution implicitly guarantees this right. *Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Courts regard this right as "so fundamental that it is afforded despite its potentially detrimental impact on both the defendant and the administration of justice." *Madsen*, 168 Wn.2d at 503 (citing *State v. Vermillion*, 112 Wn. App. 844, 51 P.3d 188 (2002)). Improper denial of the right to proceed pro se requires reversal, whether or not prejudice results. *Vermillion*, 112 Wn. App. at 851.

We review a trial court's denial of the right to defend in person for abuse of discretion. *State v. Hemenway*, 122 Wn. App. 787, 792, 95 P.3d 408 (2004). A trial court abuses its discretion if its "decision is manifestly unreasonable or 'rests on facts unsupported in the record or was reached by applying the wrong legal standard.'" *Madsen*, 168 Wn.2d at 504 (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

A trial court may terminate pro se status if a defendant "deliberately engages in serious and obstructionist misconduct,"[4] *Faretta*, 422 U.S. at 834-35 n.46; that is, "if a defendant is

[4] The case cited by the *Faretta* court in its discussion of conduct that would justify denial of the right to self-representation, *Illinois v. Allen*, involved the defendant's right to be present at trial. 397 U.S. 337, 338, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970). In that context, a court may only order a defendant removed from the courtroom who "engages in speech and conduct which is so noisy, disorderly, and disruptive that it is exceedingly difficult or wholly impossible to carry on the trial." *Allen*, 397 U.S. at 338. While the record before us does not establish that Floyd's conduct exceeded that limit, we do not take the *Faretta* court's citation to *Allen* to mean that the degree of disruption required to justify revocation of a defendant's pro se status under the United

sufficiently disruptive or if delay becomes the chief motive." *Madsen*, 168 Wn.2d at 509 n.4. That a defendant is "obnoxious" and "unfamiliar with legal rules," however, does not justify a trial court's denial of the right to proceed pro se. *Madsen*, 168 Wn.2d at 509. A court may impose lesser sanctions for failure to adhere to proper procedures, but "must not sacrifice constitutional rights on the altar of efficiency." *Madsen*, 168 Wn.2d at 509.

Here, the trial court explicitly based its decision on its finding that Floyd was intentionally disrupting the trial:

> THE COURT: Well, I am considering—I gave Mr. Floyd the floor 17 minutes ago at 2:22. He has taken 17 minutes now in closing argument, and I would say all but one minute of it has been an effort to argue facts not in evidence, or to make inappropriate statements that are, I think, disruptive. It's become pretty clear to me that he is undertaking to, as I said, scuttle this trial.
> MR. FLOYD: No, sir.
> THE COURT: He is disruptive. And what is most important is he has consistently showed an inability to follow or respect the Court's directions. The Court has directed him to argue the facts in evidence. He has gone beyond the facts. He is arguing what—holding up investigative reports. He wants to testify anew as to what the pictures show, which he can't do. And I think he is intentionally doing that to disrupt this proceeding.

VRP at 743. These remarks show that the trial court applied the correct legal standard, as articulated by our Supreme Court in *Madsen*.

The next inquiry under *Madsen* is whether the trial court's action rested on a sufficient factual basis in the record. Because the trial court has the opportunity to observe a defendant's demeanor and nonverbal conduct, appellate courts owe considerable deference to a trial court's finding in this regard. *See State v. Read*, 163 Wn. App. 853, 864, 261 P.3d 207 (2011) (noting that even an "independent constitutionally based review requires us to give due regard 'to the

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States Constitution is as extreme as that required to justify removing a defendant from the courtroom.

trial judge's opportunity to observe the demeanor of the witnesses' and the trial court's determination as to credibility.") (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499-500, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984)).

As described above, the record shows repeated disruptions by Floyd and repeated admonitions by the court, as well as considerable time spent by the court hearing motions brought by Floyd that the court ultimately found duplicative or meritless. The record shows that much of Floyd's closing argument was devoted to attempting to argue facts not in evidence, including testifying anew as to what pictures in an investigative report showed.

On the other hand, the force of these complications is diluted by the timing of the court's action: the trial had proceeded nearly to its conclusion, thus reducing the time that would be wasted by further problems. Nonetheless, the record is clear that the obstacles from Floyd's actions were continuing unabated into closing argument. Taken as a whole, the record contains sufficient evidence to support the trial court's finding that Floyd intentionally disrupted the proceedings. Under the circumstances presented, we are unwilling to second-guess the trial court's determination.

Finally, whether the trial court's decision was manifestly unreasonable presents a closer question for two reasons. First, during the discussion leading up to the court's termination of his pro se status, Floyd asked for one more chance and promised to consult closely with standby counsel to avoid further disruption. The court, however, did not give Floyd the opportunity to follow through on this promise. We are troubled that the trial court did not attempt this measure as a last resort, since it is the sort of less severe course of action discussed in *Madsen*, 168 Wn.2d at 509 n.4. However, the numerous delays and disruptions continuing well into closing argument

supply a plausible basis for terminating pro se status without trying this last alternative. Although it would have been better practice to attempt this measure, declining the invitation was not manifestly unreasonable.

Second, prior to the revocation of Floyd's pro se status, standby counsel informed the court that he would make the closing argument he deemed best supported by the law and the facts, even though Floyd desired to make a different argument.[5] In establishing the right to represent oneself, *Faretta*, 422 U.S. at 819-21, made clear that the right to control one's defense, although subject to limitations, supports the implication of the right to represent oneself from the Sixth Amendment.[6] If the control of one's defense plays a role in the recognition of the right to pro se representation, it should also play a role in determining whether revocation of that right is an abuse of discretion. Therefore, the court's knowledge that revocation of pro se status would force an unwanted defense on Floyd must be considered in deciding whether that revocation was an abuse of discretion.

Under *Faretta* and *Coristine*, forcing an unwanted defense on a criminal defendant may in many cases slip into a violation of the Sixth Amendment. *Faretta*, 422 U.S. 819-21; *State v. Coristine*, 177 Wn.2d 370, 376-77, 300 P.3d 400 (2013). Here, however, the trial court revoked pro se status only after unabated missteps sufficient to support the finding that the defendant was

[5] Floyd sought to defend by asserting that the victim had harmed herself. When his pro se status was terminated, his counsel argued that he was at most guilty only of third degree assault, because the victim did not suffer substantial bodily harm.

[6] Although not involving pro se representation, the recent decision in *State v. Coristine*, 177 Wn.2d 370, 300 P.3d 400 (2013), is in harmony with *Faretta*, holding that the Sixth Amendment requires the court to honor a defendant's voluntary and intelligent choice to forgo an affirmative defense and that instructing the jury on an affirmative defense over the defendant's objection is unconstitutional. *Coristine*, however, does not analyze whether the revocation of pro se status is flawed if it leads to the presentation of an unwanted defense.

intentionally disrupting the proceedings. In that posture, revocation does not become manifestly unreasonable because it results in an unwanted defense that, in counsel's opinion, will better serve the defendant's case. *See State v. Bergstrom*, 162 Wn.2d 87, 95, 169 P.3d 816 (2007).

The trial court did not abuse its discretion in terminating Floyd's pro se status based on the determination that he intentionally disrupted the proceedings. We therefore affirm his convictions.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

II. THE TRIAL COURT'S PERSISTENT OFFENDER DETERMINATION

The State argues that the first trial court erred in refusing to sentence Floyd to a life term as a persistent offender. The State challenges the trial court's conclusions that Floyd's 1972 assault conviction is not comparable to a most serious offense under RCW 9.94A.030(32)(u), and that his 1972 robbery conviction does not count as a "strike" under the statute because the conviction is invalid on its face. We review de novo a trial court's application of relevant statutes in making sentencing determinations under the persistent offender statute. *State v. Carpenter*, 117 Wn. App. 673, 679, 72 P.3d 784 (2003) (citing *In re Post-Sentencing Review of Charles*, 135 Wn.2d 239, 245, 955 P.2d 798 (1998)). Under that standard, we hold that the 1972 assault conviction was not comparable to a most serious offense under RCW 9.94A.030(32)(u) and that the 1972 robbery conviction was facially invalid. Consequently, the trial court did not err in refusing to sentence Floyd as a persistent offender.

A. Comparability of Floyd's 1972 Assault Conviction to a Most Serious Offense

A Washington conviction that predates the POAA counts as a strike only if it is "comparable" to a "most serious offense" listed elsewhere in RCW 9.94A.030(32). RCW 9.94A.030(32)(u); *State v. Failey*, 165 Wn.2d 673, 677, 201 P.3d 328 (2009) (applying comparability analysis to 1974 Washington robbery conviction). The statute includes second degree assault as a "most serious offense," but not lesser degrees of assault. RCW 9.94A.030(32)(b).

To determine which current offense most closely compares to a prior conviction, courts must first look to the specific elements of the crimes. *State v. Morley*, 134 Wn.2d 588, 606, 952 P.2d 167 (1998). If the elements differ, we must then examine the information to determine whether those allegations in the information "directly related to the elements of the charged crime" would suffice under current Washington law to convict a defendant of the most serious offense at issue. *Morley*, 134 Wn.2d at 605-06 (involving comparability of an out-of-state conviction). The State bears the burden of establishing the comparability of a prior conviction. *State v. Thomas*, 135 Wn. App. 474, 487, 144 P.3d 1178 (2006).

We begin with the elements of the crime at issue, second degree assault. The 1972 statute under which Floyd was convicted required the State to prove that Floyd "willfully inflict[ed] grievous bodily harm" on the victim. Former RCW 9.11.020(3) (1909) (LAWS OF 1909, ch. 249, § 162, *formerly codified at* REM. & BAL. CODE § 2414). To convict under the current statute defining second degree assault, the State must prove the defendant "[i]ntentionally assault[ed] another and thereby recklessly inflict[ed] substantial bodily harm." RCW

9A.36.021(1)(a). Thus, the elements differ as to both the mens rea and the degree of harm required.

We have held that "wil[l]fully" equates to "knowingly," a "less serious form of mental culpability than 'intent.'" *City of Spokane v. White*, 102 Wn. App. 955, 961, 10 P.3d 1095 (2000) (citing *State v. Thomas*, 98 Wn. App. 422, 424-25, 989 P.2d 612 (1999)). Thus it appears that the trial court could have convicted Floyd in 1972 based on a lesser degree of culpability than required by the current second degree assault statute.

More importantly, the difference in the degree of harm required by the two statutes shows that they are not comparable under the POAA. In 1972 the "grievous bodily harm" element in former RCW 9.11.020 was defined as "hurt or injury calculated to interfere with the health or comfort of the person injured" or "atrocious, aggravating, harmful, painful, hard to bear, [and] serious in nature." *State v. Salinas*, 87 Wn.2d 112, 121, 549 P.2d 712 (1976) (internal quotations omitted) (citing *State v. Linton*, 36 Wn.2d 67, 95-96, 216 P.2d 761 (1950)). Current law defines "substantial bodily harm" as

> bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

RCW 9A.04.110(4)(b). Thus, a painful injury that interfered with the comfort of the victim, but did not cause disfigurement or fracture or impair the function of any bodily part, would suffice to establish grievous bodily harm under the 1972 statute, but not substantial bodily harm under the present statute. The 1972 court could therefore have also convicted Floyd based on a lesser degree of injury.

The State argues that case law establishes that both the degree-of-harm (grievous bodily harm) and mens rea (willfullness) elements of the 1972 assault statute are comparable to the current second degree assault statute, citing *State v. Hovig*, 149 Wn. App. 1, 202 P.3d 318 (2009), and *State v. Stewart*, 73 Wn.2d 701, 440 P.2d 815 (1968), respectively.

Hovig involved a challenge to the sufficiency of the evidence under the "substantial bodily harm" standard. *Hovig*, 149 Wn. App. at 10-11. Hovig argued that because the injury to the victim was less serious than the injury in an earlier case, *State v. Miles*, 77 Wn.2d 593, 464 P.2d 723 (1970), in which a conviction obtained under the "grievous bodily harm" standard was overturned on a sufficiency challenge, the evidence against Hovig must also be insufficient as a matter of law because the "substantial bodily harm" standard was higher. *Hovig*, 149 Wn. App. at 11-12. We rejected that argument not because we decided that "substantial bodily harm" was the same as or less than "grievous bodily harm," but because the injury in *Miles* could have satisfied the grievous bodily harm standard had the State presented more testimony:

> *Miles* did not hold that a cut and swollen lip could never constitute "grievous" bodily harm. Instead, the Supreme Court reversed Miles's conviction for second degree assault because the State had failed to produce sufficient evidence to show that the injury was "grievous." The *Miles* court reached that conclusion because (1) "[n]one of the witnesses was called upon to elaborate upon the nature, size, extent, or degree of the cut or the swollen lip"; and (2) "[t]here was no testimony whatsoever as to any other bruises or contusions."

Hovig, 149 Wn. App. at 12 (quoting *Miles*, 77 Wn.2d at 600-01) (citations omitted).[7] Thus, to

[7] Ultimately, the *Hovig* court relied on a different authority, *State v. Ashcraft*, 71 Wn. App. 444, 455-56, 859 P.2d 60 (1993), to hold that the bruising injury at issue satisfied the "substantial bodily harm" standard based on the "substantial disfigurement" prong. *Hovig*, 149 Wn. App. at 12.

the extent that *Hovig* is relevant to the comparability analysis at all, it does not support the State's position here.

In the other case cited by the State, *Stewart*, 73 Wn.2d 701, the defendant assigned error to the trial court's refusal to give an instruction that the jury must find "specific intent" to convict for assault. Our Supreme Court rejected the challenge, holding that the term "willfully," appearing in instructions given to the jury, properly explained the mental element of the crime, was not ambiguous, and did not require additional definition, citing cases holding that "willfully" meant "'intentionally and designedly.'" *Stewart*, 73 Wn.2d at 704 (quoting *State v. Spino*, 61 Wn.2d 246, 377 P.2d 868 (1963)

Current law, however, provides that an action is taken "willfully" if the State proves the defendant acted "knowingly," a lesser form of culpability than intent. RCW 9A.08.010(4); *White*, 102 Wn. App. at 961. Thus, it is far from clear that the *Stewart* court's "intentionally and designedly" language equates with the degree of culpability now codified as "intentionally." *See also State v. Bauer*, 92 Wn.2d 162, 167-68, 595 P.2d 544 (1979) (noting that "[t]he term 'willful' has been given many meanings" and "is often used to denote an act which is voluntary or knowing").

Regardless, the "willfulness" issue does not affect our analysis regarding the degree-of-harm requirement, which itself confirms the trial court's ruling that the conviction was not comparable to second degree assault under post-POAA law. At most, the 1972 assault conviction is comparable to a lesser degree of assault, and thus does not qualify as a most serious offense. RCW 9.94A.030(32). The State's argument fails.

Because the elements of the crime underlying Floyd's 1972 assault conviction differ from those of the most closely related most serious offense under RCW 9.94A.030(32)(u), we proceed to the second step of the comparability analysis. *Morley*, 134 Wn.2d at 606. At this step, we examine the 1972 information to determine whether those allegations in the charging document "directly related to the elements of" second degree assault would constitute a violation of the post-POAA second degree assault statute. *Morley*, 134 Wn.2d at 606.

The second amended information on which Floyd's 1972 assault conviction rests merely parroted the language from the statute, alleging that Floyd "did willfully inflict grievous bodily harm upon the" victim, under circumstances not amounting to first degree assault. Ex. 3. Thus, the allegations in the information also fail to establish that the conviction is comparable to second degree assault under current law. Therefore, the differences in the elements support the conclusion reached by both sentencing courts that the State failed to prove the 1972 assault conviction was comparable to a "most serious offense" under RCW 9.94A.030(32)(u).

B. Facial Invalidity of Floyd's 1972 Robbery Conviction[8]

The State argues that the sentencing court improperly looked "behind the face" of Floyd's 1972 robbery conviction in assessing its validity. Br. of Resp't at 24. Because documents properly considered by the sentencing court establish the conviction's invalidity, the State's argument fails.

[8] The State asserts that "[t]he trial court erred in allowing [Floyd] to collaterally attack his 1972 conviction for robbery" in the sentencing proceeding. Br. of Resp't at 21. However, a challenge to the use of a prior conviction in a sentencing proceeding is not a collateral attack, as our courts have long recognized. *See State v. Knippling*, 166 Wn.2d 93, 102-04, 206 P.3d 332 (2009); *State v. Holsworth*, 93 Wn.2d 148, 158, 607 P.2d 845 (1980). The argument the State actually presents involves whether the sentencing court went "behind the face" of the conviction, and we address it as such. Br. of Resp't at 24.

In a sentencing proceeding, the defendant's ability to challenge the validity of a prior conviction is "severely restricted." *State v. Bembry*, 46 Wn. App. 288, 289, 730 P.2d 115 (1986). A sentencing court may not rely, however, on a conviction "constitutionally invalid on its face" to increase the punishment. *State v. Ammons*, 105 Wn.2d 175, 187-88, 718 P.2d 796 (1986).

In both *Ammons*, 105 Wn.2d at 189, and *Bembry*, 46 Wn. App. at 291, the "face" of the conviction included the documents signed as part of a guilty plea, which incorporate the charging document. *See* CrR 4.2(g). Our Supreme Court, furthermore, relied on the interpretation of "invalid on its face" appearing in *Ammons*, 105 Wn.2d at 187-89, a case involving whether prior convictions counted towards a defendant's offender score at sentencing, to interpret similar language in RCW 10.73.090, which bars most personal restraint petitions filed more than one year after a judgment becomes final. *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000).

Similarly, in interpreting the meaning of "constitutionally valid on its face" for purposes of deciding what documents a court may consider when a defendant challenges the inclusion of a prior conviction at sentencing, we relied on a case involving the RCW 10.73.090 time bar. *State v. Gimarelli*, 105 Wn. App. 370, 375, 20 P.3d 430 (2001) (citing *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 718, 10 P.3d 380 (2000)). Thus, the phrase "on its face" clearly has a similar meaning in both lines of cases.

In the context of whether a "judgment and sentence is invalid on its face" for purposes of overcoming the one-year time limit on personal restraint petitions, arguably the more restrictive

of the two lines of cases,[9] our courts have relied on "charging documents, verdicts, and plea statements of defendants on plea of guilty." *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 140-43, 267 P.3d 324 (2011). The *Stoudmire* court, for example, held the judgment and sentence at issue there facially invalid because the date on the information showed that the charges had been filed after the time specified by the statute of limitations. 141 Wn.2d at 354-55. Our courts have generally not, however, based invalidity decisions on "jury instructions, trial motions, and other documents that relate to whether the defendant received a fair trial." *Coats*, 173 Wn.2d at 140.

Here, the sentencing court looked to the charging document and the jury instructions. The charging document plainly qualifies as part of the "face" of the conviction under the precedents discussed above. Thus the sentencing court did not err in considering it.

A criminal defendant has a constitutional right "to be informed of the criminal charge against him so he will be able to prepare and mount a defense at trial." *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). Thus, a charging document that fails to clearly set forth "[e]very material element of the charge" renders the resulting conviction constitutionally invalid. *McCarty*, 140 Wn.2d at 425. In this review, an information "not challenged until after the verdict will be more liberally construed in favor of validity than" one challenged before the verdict. *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86 (1991). Nonetheless, "[i]f the necessary elements are not found or fairly implied" in the charging document, we must reverse "without reaching the question of prejudice." *McCarty*, 140 Wn.2d at 425-26.

The 1972 information charging Floyd with robbery alleges that he took "personal property from the person or in the presence of [the alleged victim], the owner thereof, against his

[9] See our discussion in *Gimarelli*, 105 Wn. App. at 377.

will *or* by means of force or violence or fear of immediate injury to his person." Clerk's Papers at 272 (emphasis added). The statute in effect in 1972 defined "robbery" as

> the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery.

Former RCW 9.75.010 (1909) (LAWS OF 1909, ch. 240, § 166, *formerly codified at* REM. & BAL. CODE § 2418). This plainly required that the taking be both against the will of the victim *and* by force or threat of violence.

By stating two necessary elements in the disjunctive, the information allowed a conviction based on only one of those elements. Thus, the 1972 court could have convicted Floyd merely for taking property against the will of the victim, even if it did not find that Floyd had used force or threats. This effectively omitted a material element of the charge, which cannot be "fairly implied," and therefore evidences constitutional invalidity without the need to show prejudice. *See McCarty*, 140 Wn.2d at 425-26.

The court's additional consideration of the jury instructions, which repeated the error found in the information, does not affect our analysis. Even if the court should not have considered the jury instructions, it properly considered the charging document in determining facial invalidity. As shown, the charging document alone establishes the constitutional infirmity of Floyd's 1972 robbery conviction. Therefore, the sentencing court properly declined to count that conviction as a strike under the POAA because it is facially invalid.

III. THE SENTENCING COURTS' OFFENDER SCORE CALCULATIONS

Floyd argues that the first sentencing court erred in using his 1972 convictions to calculate his offender score. Because a court may not use facially invalid convictions for any sentencing purpose, and the 1972 assault conviction washed out, Floyd is correct.

We review offender score calculations de novo. *State v. Powell*, 172 Wn. App. 455, 459, 290 P.3d 353 (2012) (citing *State v. Knippling*, 166 Wn.2d 93, 98, 206 P.3d 332 (2009)). A sentencing court may not rely on a conviction invalid on its face to increase the penalty for an offense. *Morley*, 134 Wn.2d at 614 (citing *Ammons*, 105 Wn.2d at 187-88).

As shown above, Floyd's 1972 robbery conviction is constitutionally invalid on its face. Thus the first sentencing court erred in using it to calculate Floyd's offender score.

For sentencing purposes, a conviction for a class C felony washes out of an offender's criminal history if the offender spends five years in the community without any criminal convictions. RCW 9.94A.525(2)(c). As discussed above, Floyd's 1972 assault conviction is not comparable to second degree assault, a class B felony. Thus, for sentencing purposes it may be considered at most a class C felony. *See Thomas*, 135 Wn. App. at 487.

The criminal history submitted by the State at Floyd's sentencing shows that Floyd had no criminal convictions between his conviction for third degree driving with a suspended license on November 3, 2001, and July 29, 2007, a period of approximately five years and seven months. Thus, the 1972 assault conviction washed out pursuant to RCW 9.94A.525(2)(c), and the first sentencing court should not have considered it.

The State contends that the first sentencing court properly considered the 1972 convictions, and that the second sentencing court erred in refusing to consider them based on the

first court's comparability and facial invalidity analyses.[10] The State asserts that in doing so the second sentencing court improperly relied on principles of collateral estoppel.

The record shows, however, that the second sentencing court accepted the arguments of Floyd's standby counsel as to the offender score calculation: standby counsel alone argued for an offender score of two, the score ultimately determined by the court. Floyd's standby counsel explicitly argued against using collateral estoppel, instead relying on the same arguments he had made in Floyd's first sentencing proceeding.

For the reasons discussed above, these arguments are correct. Thus, the second sentencing court independently and properly calculated the offender score, as the statute requires. RCW 9.94A.345. As concluded, the first sentencing court improperly included the 1972 convictions in the offender score calculation. Because Floyd made a specific and timely

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[10] The State also contends that the second sentencing court erred by refusing to include "a 1981 conviction for taking a vehicle without permission" in calculating Floyd's offender score. Br. of Resp't (No. 43021-5-II) at 6. The record shows that the State furnished both sentencing courts with a copy of a California judgment and sentence from 1981, reflecting that Floyd was convicted of "receiving stolen property," namely, "a 1979 moped" valued at more than $200. Ex. 1 (Cause No. 11-1-02808-1). However, the State presented no argument to either sentencing court, and presents none here, establishing that this conviction is comparable to any class A or B felony under Washington law. Notably, the State's claim assumes the questionable proposition that a moped qualifies as a "motor vehicle" for purposes of crimes against property. *See United States v. Dotson*, 34 F.3d 882, 886 (9th Cir. 1994) (holding that a moped is not a motor vehicle for purposes of Washington's driving under the influence statute).

The State has the burden of establishing the comparability of foreign convictions at a sentencing proceeding. *Thomas*, 135 Wn. App. at 487. A cursory inspection of the elements and related allegations in the information suggests that the conviction is at most comparable to a class C felony: second degree taking a motor vehicle without permission under RCW 9A.56.075 or second degree theft under RCW 9A.56.040. Thus, were we to find the issue properly before us, this conviction would also apparently have washed out under RCW 9.94A.525(2)(c), because Floyd later spent five crime-free years in the community. At any rate, we generally do not consider issues not supported by argument or authority in a party's brief. RAP 10.3(a)(5); *State v. Blunt*, 118 Wn. App. 1, 7 n.6, 8, 71 P.3d 657 (2003). Furthermore, we generally do not address claims of error not properly raised in the trial court. RAP 2.5(a). We thus decline to address the merits of the claim.

objection in the first sentencing proceeding to the use of the 1972 convictions, the appropriate remedy is to "'remand for resentencing without allowing further evidence to be adduced'" by the State. *State v. Lopez*, 147 Wn.2d 515, 520-22, 55 P.3d 609 (2002) (quoting *State v. Ford*, 137 Wn.2d 472, 485, 973 P.2d 452 (1999)).[11]

IV. SUFFICIENT EVIDENCE THAT FLOYD KNOWINGLY VIOLATED THE NO-CONTACT ORDER

With respect to the six convictions for violating a no-contact order resulting from his first trial, Floyd argues that the State failed to present sufficient evidence that he "knowingly" violated the order because no testimony established that Floyd knew that the court had entered it. Br. of Appellant at 14-16. Because a rational juror could have inferred from the signature on the order, above the line marked "Defendant," that Floyd was present when the court entered it, this claim fails.

In evaluating the sufficiency of the evidence at a jury trial, we consider the evidence, and the reasonable inferences from them, in the light most favorable to the State. *Salinas*, 119 Wn.2d

[11] We note that last sentence of RCW 9.94A.530(2), added in 2008, appears to permit the State to supplement the record with materials not previously considered by the court at a sentencing proceeding following remand, notwithstanding a specific objection raised by the defendant at the previous sentencing hearing. The legislature plainly intended the 2008 amendment to overturn our Supreme Court's holdings in *Ford* and *Lopez* prohibiting presentation of such additional evidence. LAWS OF 2008, ch. 231, § 1 (identifying by name those decisions, among others, as the reason for the amendments). The holdings in *Ford* and *Lopez*, however, appear to rest on constitutional due process concerns. *See State v. Hunley*, 175 Wn.2d 901, 912-15, 287 P.3d 584 (2012) (noting that "the *Ford* decision was rooted in principles of due process"); *Ford*, 137 Wn.2d at 482 (relying on "basic principles of due process" in its analysis); *Lopez*, 147 Wn.2d at 522 (rejecting as "'inconsistent with the principles underlying our system of justice'" the argument that the State, despite the defendant's reasonably specific and timely objection, could present additional evidence of prior convictions following remand) (quoting *Ford*, 137 Wn.2d at 480) (internal quotation marks omitted). "The legislature may change a statutory interpretation, but it cannot modify or impair a judicial interpretation of the constitution." *Hunley*, 175 Wn.2d at 914. Thus, until our Supreme Court expressly accepts the 2008 amendment to RCW 9.94A.530(2) as consistent with due process, we continue to follow the no-second-chance rule articulated in *Ford* and *Lopez*.

at 201. We then ask whether a rational juror could have found the defendant guilty beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201. We consider circumstantial and direct evidence equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The fact finder may infer, but not presume, knowledge. *State v. Womble*, 93 Wn. App. 599, 604, 969 P.2d 1097 (1999). The jury may "pyramid[]" reasonable inferences derived from the proven evidence so long as the court instructs it that it must find that the State has proven beyond a reasonable doubt the element of the crime that those inferences support. *State v. Bencivenga*, 137 Wn.2d 703, 708-11, 974 P.2d 832 (1999).

Here, the trial court admitted a certified copy of the no-contact order as evidence, and the document prominently states, "FILED IN OPEN COURT." Ex. 70. The signature line on the order marked "Defendant" bears a handwritten signature. Ex. 70. The court properly instructed the jury on the burden of proof. A rational juror could therefore have properly inferred that Floyd signed the document in open court, and from that inferred that Floyd knew of the order. For these reasons, Floyd's claim fails.

V. FLOYD'S STATEMENT OF ADDITIONAL GROUNDS

Floyd raises a number of issues in his one-page pro se statement of additional grounds (SAG), including spoliation of evidence, prosecutorial misconduct, double jeopardy, ineffective assistance of counsel, violation of judicial canons, and violation of his right to a speedy trial. While a pro se SAG need not include citations to the record or legal argument, the appellant must "inform the court of the nature and occurrence of the alleged errors." RAP 10.10(c). Floyd's vague, conclusory assertions do not allow for proper review of most of these claims, and we

therefore do not reach them. Only the speedy trial and spoliation claims merit consideration under these standards. On the record before us, however, these claims also fail.

Whether Floyd's bare assertion of a speedy trial violation satisfies the requirements of RAP 10.10 presents a doubtful proposition. Even a cursory evaluation of the record before us, however, suggests that Floyd may have a colorable claim in this regard: Floyd spent over a year in custody before commencement of his first trial and asserted his right to a speedy trial on several occasions. *See State v. Ollivier*, No. 86633-3, slip op. at 10, 312 P.3d 1 (Wash. Oct. 31, 2013). Furthermore, the trial court granted a number of continuances over Floyd's objections.

Proper analysis of the claim, however, requires consideration of the reasons for each delay. *Ollivier*, No. 86633-3, slip op. at 14-15 (citing *State v. Iniguez*, 167 Wn.2d 273, 294, 217 P.3d 768 (2009) (citing *Barker v. Wingo*, 407 U.S. 514, 531, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972))). The record does not reveal exactly how many continuances the court below granted or the reasons it granted each one. The party seeking review is responsible for transcription of those portions of the proceedings necessary to evaluate the claim. RAP 9.2. We therefore decline to reach the issue on the record before us. *See Stuart v. Consol. Foods Corp.*, 6 Wn. App. 841, 846-47, 496 P.2d 527 (1972) ("In order to evaluate a trial court's decision, the basis for the decision must be known.").

As for the spoliation claim, Floyd alleges that the "victim, detectives, & State of Washington Correction officers" destroyed "D[igital]V[ideo]D[isc]'s, C[omputer]D[isc]'s, Cassettes, mug shot, pajamas etc." SAG at 1. The record before us shows that, with one exception, the State provided every item Floyd requested, other than those the trial court properly found to have no possible relevance to the case. The one exception involves the recorded police

interview with Bertan, the alleged victim. The DVD copy provided by the State had no audio track, and therefore no practical value to the defense. While the relevance of the recording cannot be disputed, Floyd made no showing that the contents would have helped his defense. Further, because Bertan testified at trial, the recording could at most have had some impeachment value.

Absent an affirmative showing that the evidence had exculpatory value, the State's failure to preserve "'potentially useful'" evidence does not violate a criminal defendant's right to due process of law unless the police acted in bad faith. *State v. Straka*, 116 Wn.2d 859, 884, 810 P.2d 888 (1991) (quoting *Arizona v. Youngblood*, 488 U.S. 51, 58, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988)). The State did produce the requested recording, explaining that it had no audio track because the recording equipment at the police station may have malfunctioned. While unfortunate, the explanation is plausible, and Floyd points to nothing suggesting any subterfuge. Because Floyd shows neither that the contents of the recording were exculpatory nor that the State acted in bad faith, his claim fails.

CONCLUSION

We affirm Floyd's convictions for second degree assault and violations of a no-contact order following his first trial, under cause number 10-1-00019-6. We vacate the resulting sentence, however, and remand for resentencing using an offender score calculated without consideration of Floyd's 1972 assault and robbery convictions. We also affirm the sentence

imposed after his subsequent trial on charges of stalking and violation of a no-contact order under cause number 11-1-02808-1.

BJORGEN, J.

We concur:

HUNT, P.J.

PENOYAR, J.