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FILED

SEP 24 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

FILED
OCT - 8 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CPJ

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
Plaintiff,

v.

THOMAS R LEVITON
Petitioner,

Case No. 31641-4-III (consolidated w/
(P.R.P.) 32136-3-III
MOTION FOR
DISCRETIONARY REVIEW

P.R.V.

I. IDENTITY OF MOVING PARTY

COMES NOW, THOMAS R LEVITON Petitioner, seeks the relief designated in part II.

II. STATEMENT OF RELIEF SOUGHT

REVIEW OF ALL FACTS, INFORMATION & FILINGS SUBMITTED TO DIV. III COURT OF APPEALS. REVERSAL OF OPINION ISSUED AUG 12, 2014 ON ABOVE STATED CASE No. (APPEAL) 31641-4-III & (P.R.P.) 32136-3-III. SUPREME COURT RULING ON THESE MATTERS REFLECTING THE ABSENCE OF EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT, AND BY DEFINITION OF STRICKLAND V. WASHINGTON. PETITIONER FURTHER REQUESTS LEGAL RECOGNITION OF UNLAWFUL SENTENCE AS A RESULT OF CLEARLY MISCALCULATED OFFENDER SCORE IN WHICH PETITIONER REPEATEDLY SOUGHT OF THE SUPERIOR COURT TO CORRECTLY CALCULATE. PETITIONER SEEKS RESENTENCING, IF NOT ABILITY TO WITHDRAW PLEA - AND ANY OTHER APPROPRIATE RELIEF THE SUPREME COURT DEEMS TO BE HONORABLE OF THE LAW.

III. FACTS

PETITIONER SENTENCED TO 17 MONTH SENTENCE FOR TRAF STOLEN PRPTY 2⁰ BASED UPON MISCALCULATED OFFENDER SCORE OF "5". PUBLIC DEFENDER DID NOT PROVIDE EFFECTIVE ASSISTANCE BY EITHER PRONG OF THE STRICKLAND STANDARD. THE SUPERIOR COURT DID NOT CONDUCT EVIDENTIARY HEARING, NOR WAS STATE REQUIRED TO SUBSTANTIATE SCORE. COURT OF APPEALS FAILED TO CONSIDER THE MERITS OF ANY ARGUMENT, OR GRANT RELIEF, CITING EXPIRATION OF THE UNLAWFULLY IMPOSED SENTENCE - DESPITE ACCELERATED REVIEW STATUS. SUBSEQUENT ESCAPE 1⁰ CONVICTION (WORK RELEASE WALKAWAY) RESULTED IN "2" POINT OFFENDER SCORE, THUS INDICATING PREVIOUS SCORE OF "1" VS. "5".

IV. ARGUMENT

A.

DUE TO THE MANY OBVIOUS COLLATERAL CONSEQUENCES OF THIS CONVICTION & SENTENCE, THE COURT OF APPEAL ERRED IN NOT GRANTING RELIEF BASED UPON THE SENTENCE HAVING BEEN SERVED. SIMPLY, IT WAS/IS AN UNLAWFUL CONSTITUTIONALLY INVALID SENTENCE THAT SHOULD NOT BE ALLOWED TO STAND, AS I AM "UNDER DISABILITY RESULTING FROM A JUDGMENT OR SENTENCE IN A CRIMINAL CASE". AS THIS CASE RULING WAS BASED UPON A DIRECT APPEAL AND A PERSONAL RESTRAINT PETITION, THE COURT SHOULD HAVE CONSIDERED EVIDENCE "OUTSIDE THE RECORD", AND GIVEN THE CASE MORE LATITUDE IN CONSIDERATIONS.

B.

THERE WAS NO CONCEIVABLE STRATEGIC REASON FOR NOT OBJECTING TO MY OFFENDER SCORE WHEN IT WAS NOT CORRECT AT FACE VALUE, AND ATTORNEY WAS INFORMED OF THE FACT. THE DECISION TO PLEAD GUILTY WAS GREATLY AFFECTED BY THIS FACTOR.

OUT OF A GENUINE RESPECT FOR THE SUPREME COURT'S TIME, KNOWLEDGE, EXPERIENCE, & PROFESSIONALISM I REFRAIN FROM PROVIDING COPIOUS AMOUNTS OF INFORMATION - REPETITIVE INFORMATION - , CASE LAW CITINGS, ETC. IN EFFECT, DECLINING TO PLAY "JAILHOUSE LAWYER" - A ROLE I AM ILL-EQUIPPED FOR IN ANY EVENT. THE COURT HAS THE NECESSARY INFORMATION TO ISSUE A PROPER OPINION.

C.

PETITIONER ASSERTS THAT THE COURT OF APPEALS HAD VALID AND SUBSTANTIAL INFORMATION, CASE LAW AND ARGUMENT - AND STILL ISSUED AN OPINION CONTRARY TO THE LAW. THESE CASE CIRCUMSTANCES & ISSUES HAVE REPEATEDLY BEEN ADDRESSED BY THE SUPREME COURT, WITH APPROPRIATE REMEDY, FINDINGS & OPINIONS ISSUED. THE SUPREME COURT EITHER WILL, OR WILL NOT, ISSUE AN OPINION ALLOWING A CLEARLY UNLAWFUL, UNCONSTITUTIONAL JUDGMENT, SENTENCE AND/OR CONVICTION TO STAND. A CONVICTION, JUDGMENT AND SENTENCE WHICH RESULTED IN THE LOSS OF 14 MONTHS OF MY LIFE, AND NUMEROUS COLLATERAL CONSEQUENCES BEYOND THE INCARCERATION.

V. CONCLUSION

Based on the above, this Court should accept review.

DATED this 22 day of September, 2014

Thomas R. Leviton
Signature

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