No. 91158-4
Court of Appeals No. 43814-3-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BESS OVERMON,

Petitioner.

PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
and the Superior Court of Pierce County, No. 05-1-05483-4

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RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

A. IDENTITY OF PETITIONER

Bess Overmon, respondent below, petitions this Court to grant review of the unpublished decision of the court of appeals designated in section B.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(3) and (4), Petitioner asks this Court to review the unpublished decision of the court of appeals, Division Two, in State v. Overmon, __ Wn. App. __, ___ P.3d ___ (2014 WL 6466659), issued November 18, 2014.[1]

C. ISSUES PRESENTED FOR REVIEW

> In Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), the U.S. Supreme Court held that trial counsel in a criminal case have an obligation to be aware of and advise their clients of the potential immigration consequences of a plea before that plea is entered.
>
> In Chaidez v. United States, __ U.S. ___, 133 S. Ct. 1103, 185 L. Ed. 2d 149 (2013), the Court held that Padilla did not apply retroactively in federal cases, applying a federal standard of non-retroactivity set forth in Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed.2d 334 (1989).
>
> 1. Did Division Two err in holding that Chaidez controlled when the U.S. Supreme Court made it clear, in Danforth v. Minnesota, 552 U.S. 264, 128 S. Ct. 1029, 169 L. Ed.2d 859 (2008), that state

[1] A copy of the Opinion is submitted herewith as Appendix A (hereinafter "App. A").

courts are free to use other standards and are not bound by Teague and our state has a long history of granting greater relief on collateral review than would be granted under the very narrow federal *habeas* standards?

2. Should this Court depart from the Teague standards and refuse to follow Chaidez where, as here, the defendant was affirmatively misadvised about the immigration consequences before entering a plea?

3. Should review be granted because these issues are of substantial public importance and involve the defendant's constitutional right to effective assistance of counsel, and because this Court has already granted review on similar issues in In re Personal Restraint of Jagana and In re Personal Restraint of Yung-Chen Tsai, consolidated under No. 88770-5?

D. STATEMENT OF THE CASE

1. Procedural facts

In 2005, Petitioner Bess Overmon was charged by amended information with and entered an Alford[2] plea to second-degree theft. CP 3; RCW 9A.56.002(1)(a); RCW 9A.56.040(1)(a). She was sentenced to three days of confinement with credit for time served. CP 12-21.

In 2011, she filed a CrR 7.8 motion to withdraw her plea and, after a hearing before the Honorable Judge Beverly G. Grant on May 11, 2012,

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[2]North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

the motion was granted. CP 34-39, 120; 1RP 9.[3] The prosecution appealed and, on November 18, 2014, Division Two of the court of appeals reversed in an unpublished opinion. See CP 36-40; App. A at 1-3. This Petition follows.

2. Facts relating to offense

The allegation was that the Ms. Overmon reached into someone's pocket while that person was gambling at a casino and removed some unspecified amount of cash. CP 1-2.

3. Entry of the plea and motion to withdraw

On July 11, 2006, in accepting the Alford plea, the trial court asked questions including whether Overmon understood that the court did not have to accept the plea agreement and "that if you are not a citizen of the United States that the entry of this plea would be grounds for deportation or denial of rights to enter the United States." CP 29-30. At the hearing on the plea, however, counsel told the court that Overmon

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[3]The verbatim report of proceedings in this case originally consisted of three volumes filed as transcripts and a fourth volume filed as clerk's papers. They will be referred to as follows:

the plea and sentencing proceedings of July 11, 2006, filed as clerk's papers, as designated on appeal, at CP 24-33;
the proceedings of May 11, 2012, as "1RP;"
the proceedings of May 29, 2012, as "2RP;"
the proceedings of August 9, 2012, as "3RP."

> as my understanding, has consulted with an immigration attorney and that shouldn't lead to problems with this charge for this amount of money, it's my understanding. I don't know what to say about that so I would have to go with the person who has expertise in that area regarding deportation[.]

CP 32.

In the written statement of defendant on plea of guilty, there was no signature or other indications next to "boilerplate" language which provided "I am [_] am not [_] a United States citizen," and further provided that "a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization." CP 4-8. In contrast, in another section, there were initials next to every section which was stricken out. CP 7.

In Fall of 2011, Overmon moved to withdraw her plea. CP 34-102. She was now being subjected to removal proceedings by immigration authorities, based on the plea. CP 42-43. She said that her trial attorney had given her the wrong information about that. CP 43. That attorney, Mr. DePan, had told her that the "amount" taken in theft would control and protect Overmon against potential immigration consequences. CP 47. This was false, however, because the conviction meant Overmon was subject to deportation regardless of length of the sentence or timing of the

offense. CP 47-48.

In addition, Overmon pointed out, DePan did not notify her that if she ever left the U.S., the conviction would bar her from reentry. CP 48. At the hearing on the CrR 7.8 motion, DePan first could not recall specifics of the case and only knew what his "typical practices" were in the past. 1RP 5-7. Ultimately, he admitted to spending possibly about three hours with Overmon in total. 1RP 6-7.

DePan did not recall conversations about immigration with Ms. Overmon but had read the transcript of the hearing on the entry of the plea. 1RP 8. DePan said his usual practice was to ask if a client was a U.S. citizen and admitted that he knew Overmon was not a citizen. 1RP 8.

According to DePan, he would usually have contacted someone at the Immigrant Rights Project to find out "what the risk was" in a criminal case, and, if he had done so, he would have passed on that information to Overmon. 1RP 8-9. He did not recall specifically if it happened that way with Overmon. 1RP 9. DePan conceded that his advice to Overmon was based on his understanding that the value of the item allegedly stolen was such that "it shouldn't have any deportation effects for her." 1RP 10. DePan admitted he would not have discussed "exclusion" with Overmon at all. 1RP 9-11.

Bess Overmon testified that she had not herself consulted with an immigration attorney at the time of the entry of the plea in this case. 1RP 13. She did not remember discussing her immigration status with DePan but she did remember telling him that she wanted to get the case over quickly, so that she could try to go home to Nigeria for a visit. 1RP 14. She thought he then asked if she was an immigrant and, when she said, "[y]es," that he said, "[w]ell, for the amount I don't think that would be a problem." 1RP 14.

Overmon was clear that she did not have a conversation with her attorney about any immigration consequences to the plea. 1RP 15. She also said that if she had known there was going to be a problem with her immigration status, she would have taken her case to trial. 1RP 15. It was only after she returned from a trip to England that she realized the actual consequence of the plea, because the authorities told her that she was going to be removed from the country based on the conviction. 1RP 17-19.

Overmon's motion was based on Padilla,supra, in which the U.S. Supreme Court had held that a trial attorney was ineffective in failing to be aware of and advise a client of the potential immigration consequences of entering a proposed plea. CP 42-48.

In ruling on Overmon's motion, the trial court stated the issue was not "retroactivity" of Padilla but rather whether counsel was ineffective. 1RP 23. The court's written findings and conclusions provided:

> 2. Prior to entering her plea, the Defendant received inaccurate information about the consequences of that plea. Specifically, she was incorrectly advised that the amount she was alleged to have taken was not an amount sufficient to trigger adverse immigration consequences.
>
> 3. The consequences of Ms. Overmon's guilty plea, given her immigration status, were or should have been reasonably ascertainable to counsel.
>
> 4. Mr. DePan's failure to ensure that Ms. Overmon knew and understood correct immigration consequences of her plea prior to entry of that plea constituted ineffective assistance of counsel.
>
> 5. The ineffective assistance and misinformation caused the Defendant to resolve this matter with a guilty plea to the reduced charge of Theft 2. As a result, Ms. Overmon's plea was not knowingly and voluntarily entered.
>
> 6. Accordingly, Ms. Overmon is entitled to withdraw her guilty plea[.]

CP 116-119.

The prosecution appealed, arguing, *inter alia*, that the trial court erred in applying Padilla, which the prosecution argued should not be applied retroactively. Brief of Appellant State ("BOAS") at 1-21. The prosecution also argued that Overmon's CrR 7.8 motion was "time barred"

under RCW 10.73.090. See App. A at 1. During the pendency of the appeal, before the prosecution's opening brief was filed, Chaidez had been decided, and the prosecution also relied on that case as holding that Padilla did not apply retroactively. BOAS at 14-15.

Division Two reversed, relying on Chaidez and holding that Padilla did not apply to Overmon's case because Chaidez held Padilla was not retroactive. App. A at 3.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THE COURT SHOULD GRANT REVIEW BECAUSE THE ISSUES PRESENTED ARE OF SERIOUS PUBLIC INTEREST AND INVOLVE THE VERY SIGNIFICANT RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL

Both the state and federal constitutions guarantee the accused in a criminal case the right to effective assistance of appointed counsel. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996); Sixth Amend.; Art. I, § 22. In this case, the trial court found that Ms. Overmon was not told by her attorney that entering a plea to the theft offense would result in her facing deportation/exclusion, that she was unaware of that potential consequence until years later, when removal proceedings began, that she was actually specifically *misadvised* that her

conviction would not have an immigration effect because of the dollar amount underlying the theft, and that counsel's failures amounted to ineffective assistance. CP 116-19.

In reversing, the court of appeals did not disagree with the trial court's conclusion that counsel was ineffective and Overmon's plea was not knowing, voluntary and intelligent. App. A at 1-2. The court agreed that Padilla had held that counsel had the obligation to advise a client if "the offense to which he was pleading guilty would result in his removal from this country," and that counsel's failure to so advise a defendant "constituted deficient performance." App. A at 3. But Division Two held that Overmon was not entitled to relief from her involuntary, unknowing plea, because the U.S. Supreme Court had held, in Chaidez, that Padilla did not apply retroactively. App. A at 3. Overmon had specifically argued that the federal retroactivity standard applied in Chaidez should not be applied, because that standard came from Teague, supra, but the U.S. Supreme Court had made it clear that the Teague standard was not binding on the states. Resp. at 21-30.

More specifically, Overmon noted, in Danforth the U.S. Supreme Court had held that state courts were still empowered "to give broader effect to new rules of criminal procedure than is required" under Teague.

Danforth, 552 U.S. at 267; see Resp. at 23. Further, she pointed out, the Danforth Court made it clear that Teague did not answer the question of "whether States can provide remedies for violations" of newly defined rights "in their own postconviction proceedings." Danforth, 552 U.S. at 275; see Resp. at 23-25. She urged Division Two to adopt a standard more in keeping with our state's broad grant of authority for postconviction relief, contained in RAP 16.4(c)(4), and RCW 10.73.100(6). Resp. at 20-30.

Division Two did not address this argument, nor did it mention Teague or Danforth in deciding this case. App. A at 1-3. Instead, it simply relied on language it pulled from Chaidez which provided that "a person whose conviction is already final may not benefit from the [Padilla] decision in a habeas *or similar proceeding.*" App. A at 3 (emphasis in opinion). The court of appeals then apparently concluded that this language meant all proceedings in all courts, federal or state, were governed by Chaidez. App. A at 3.

This Court should grant review. This Court has not yet ruled conclusively on whether it will decide to follow Chaidez or adopt a standard other than the federal non-retroactivity standard in Teague in this context See, e.g., In re Gentry, 179 Wn.2d 614, 316 P.3d 1020 (2014); In

re Haghighi, 178 Wn.2d 435, 309 P.3d 459 (2013). But this Court has recognized that the purposes behind the federal non-retroactivity standards set forth in Teague are the federal purposes of achieving "the goals of federal habeas while minimizing federal intrusion into state criminal proceedings." Gentry, 179 Wn.2d at 626-27. This Court has also declared that there may well be a case where our state scheme of collateral relief "would authorize or require retroactive application of a new rule of law when Teague would not." See State v. Evans, 154 Wn.2d 438, 448-49, 114 P.3d 627, cert. denied, 546 U.S. 943 (2005).

This is consistent with this Court's rulings in the past. This Court has granted greater relief on collateral review than the constitutional minimum set in federal habeas cases. See, State v. Brand, 120 Wn.2d 365, 368, 842 P.2d 470 (1992). Indeed, our state laws on collateral review contains exceptions to the general one-year time limit (in RCW 10.73.100) which this Court has described as "broad" and which the Court further stated were drafted that way in order to preserve the important role of collateral relief in ensuring justice. Brand, 120 Wn.2d at 368.

And the scope of relief and grounds for relief permitted under our laws is, in fact, greater than that provided under the federal habeas standards or in federal courts. See In re Runyan, 121 Wn.2d 432, 443, 853

P.2d 424 (1993). As this Court has noted;

> the Legislature chose to write the statute so that it allows exceptions when later developments bring into question the validity of the petitioner's continuing detention. . . These exceptions are broader than is necessary to preserve the narrow constitutional scope of habeas relief. The Legislature, of course, is free to expand the scope of collateral relief beyond that which is constitutionally required, and here it has done so to include situations which affect the continued validity and fairness of the petitioner's incarceration.

Runyan, 121 Wn.2d at 440, 444-45.

This Court has also recognized that the Teague standard presents a hurdle so high it is very difficult to overcome. Gentry, 179 Wn.2d at 628. The U.S. Supreme Court has itself declared that the Teague rule of "nonretroactivity" was "fashioned to achieve the goals of federal habeas while minimizing federal intrusion into state criminal proceedings." Danforth, 552 U.S. at 280-81. It was not intended to serve as a limit on state courts, the U.S. Supreme Court declared:

> It was intended to limit the authority of federal courts to overturn state convictions - not to limit a state court's authority to grant relief for violations of new rules of constitutional law when reviewing its own State's convictions.

Danforth, 552 U.S. at 280-81.

Given that the Teague standard was adopted in light of the limits of habeas relief, the broadness of our statute granting relief if there are simply

"sufficient reasons" for retroactive application of a significant change in the law, and of RAP 16.4, allowing relief from restraint when that restraint is simply "unlawful" and defining restraint as including collateral consequences - establishes that the Teague standard is inappropriate here.

Division Two's decision to simply follow Chaidez without any analysis of this history of broader relief, the purpose and ruling of Teague and Danforth's holding that Teague was not binding on state courts was in error. This Court should accept review in order to address whether Teague should be applied in this context or whether more is required under the broader principles set forth in our laws, statutes and rules. On review, it should follow the reasoned decisions of several other state courts, which had declined to follow Teague in this context. See Commonwealth v. Sylvain, 466 Mass. 422, 423-24, 995 N.E.2d 760 (2013); Denisyuk v. State, 422 Md. 462, 380 A.3d 914 (2011).

Notably, this Court has already granted review on similar issues in two other cases, In re Personal Restraint of Jagana and In re Personal Restraint of Yung-Chen Tsai, consolidated under No. 88770-5. The Court's ruling in those cases will likely involve a decision on whether Padilla should apply retroactively in our state and/or whether the extremely strict Teague standard sufficiently honors the greater protections

and provisions for collateral relief provided in this state, as opposed to in federal courts with habeas corpus. At a minimum, review should be granted and this case stayed pending the decision in Jagana/Yung-Chen Tsai, in order to ensure that the decision in that case can inform whether the court of appeals erred here or whether issues remain in this case once that case is decided.

F. CONCLUSION

The trial court did not abuse its discretion in entering its findings and the prosecution's claims to the contrary are unsupported by proper

DATED this 18th day of December, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel via the upload portal at the Court of Appeals, Division Two, at their official service address, pcpatcecf@co.pierce.wa.us, and petitioner by depositing the same in the United States Mail, first class postage pre-paid, as follows: Bess Overmon, 5715 - 52nd Avenue N.E., Marysville, WA. 98270.

DATED this 18th day of December, 2014.

/s Kathryn Russell Selk
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. BESS EDAWAYNE OVERMON, Respondent.	No. 43814-3-II UNPUBLISHED OPINION

JOHANSON, C.J. — The State appeals from a superior court order granting Bess Overmon's CrR 7.8 motion to withdraw her guilty plea for second degree theft. The State argues that Overmon's motion must be dismissed as time barred because her motion was filed beyond the one-year time limit, and the rule announced by the United States Supreme Court in *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), does not apply retroactively. We agree and hold that Overmon's CrR 7.8 motion is time barred under CrR 7.8 and RCW 10.73.090.[1] Accordingly, we reverse the order allowing Overmon's guilty plea withdrawal and remand to the trial court to reinstate Overmon's conviction.

[1] The State's remaining claims are immaterial because the time bar claim is dispositive.

FACTS

In 2005, the State charged Overmon with first degree theft in Pierce County. At that time, Overmon was a lawful United States permanent resident. In 2006, Overmon pleaded guilty to second degree theft. During the plea hearing, Overmon answered affirmatively when the superior court asked whether she understood "that if you are not a citizen of the United States that entry of this plea would be grounds for deportation or denial of rights to enter the United States?" Clerk's Papers (CP) at 28-29.

Regarding potential adverse immigration consequences stemming from the plea, the superior court heard further from Overmon's attorney, who told the superior court that it was his understanding that

> [Overmon] has consulted with an immigration attorney and that shouldn't lead to problems with this charge for this amount of money, it's my understanding. I don't know what to say about that so I would have to go with the person who has expertise in that area regarding deportation.

CP at 31. The superior court accepted Overmon's plea.

In 2008, Overmon traveled to England to visit family members. Upon her return, authorities stopped Overmon at Sea-Tac Airport and she was told that she would not be permitted to remain in the United States as a result of her Pierce County theft conviction. Shortly thereafter, the United States initiated exclusion proceedings against Overmon. According to Overmon, she had not consulted an immigration attorney before her 2006 plea. In 2011, pursuant to CrR 7.8, Overmon moved to withdraw the plea on grounds that she received ineffective assistance of counsel because her attorney failed to fully inform her of the immigration consequences associated with a second theft conviction.

Notwithstanding the State's contention that CrR 7.8(c)(2) required the superior court to transfer Overmon's motion to this court for consideration as a personal restraint petition (PRP), the superior court held a fact-finding hearing. The State argued that Overmon's CrR 7.8 motion was time barred, but the superior court concluded that the United States Supreme Court's decision in *Padilla* controlled, permitting Overmon to collaterally attack her conviction beyond the one-year time limit set forth under RCW 10.73.090. The superior court ruled that Overmon was entitled to withdraw her plea. The State appeals.

ANALYSIS

TIME BAR

The State contends that reversal is required because Overmon's claim is time barred by CrR 7.8 and RCW 10.73.090 and because *Padilla* does not apply retroactively. We hold that Overmon's motion is time barred because the United States Supreme Court's decision in *Chaidez v. United States*, ___ U.S. ___, 133 S. Ct. 1103, 1113, 185 L. Ed. 2d 149 (2013), unequivocally states that *Padilla* is not intended to have retroactive effect.

A. STANDARD OF REVIEW AND RULES OF LAW

We review a trial court's ruling on a CrR 7.8 motion for abuse of discretion. State v. Martinez, 161 Wn. App. 436, 440, 253 P.3d 445, *review denied*, 172 Wn.2d 1011 (2011). CrR 4.2(f) provides that a trial court "shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice." Where, as here, a criminal defendant moves to withdraw her guilty plea after judgment has been entered, CrR 7.8 governs. CrR 7.8 motions are subject to the provisions of RCW 10.73.090 and .100. CrR 7.8(b). And CrR 7.8(c)(2) provides that a court shall transfer a motion filed by the defendant to

the Court of Appeals for consideration as a PRP unless the court determines that the motion is not barred by RCW 10.73.090 and either (1) the defendant has made a substantial showing that he or she is entitled to relief or (2) resolution of the motion requires a factual hearing.

RCW 10.73.090 states in part,

> (1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.
>
> (2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

Notwithstanding RCW 10.73.090, motions for collateral attack on a judgment and sentence in a criminal case may be made beyond the one-year time limit if one of the exceptions enumerated in RCW 10.73.100 applies. RCW 10.73.100 provides in relevant part,

> The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:
>
> . . . .
>
> (6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

B. *PADILLA* NOT RETROACTIVE

The State contends that the trial court erred by holding a hearing to address Overmon's motion rather than transferring her motion to this court to be considered as a PRP. While the State is correct that Overmon's motion should have been transferred to this court, the trial court nonetheless held the hearing. Based apparently on unsettled questions of law at the time, including

the retroactive effect of *Padilla*, the trial court did reach the merits. Consistent with the trial court's ruling, Overmon now asserts that she should be entitled to avail herself of the rule announced by the United States Supreme Court in *Padilla* and that under *Padilla*, her motion is not time barred. We disagree with Overmon.

In *Padilla*, the United States Supreme Court concluded that "Padilla's counsel had an obligation to advise him that the offense to which he was pleading guilty would result in his removal from this country," and that the failure to advise him of the immigration consequences constituted deficient performance. 559 U.S. at 360. Then, the Supreme Court held in *Chaidez* that defendants whose convictions became final prior to *Padilla* in 2010 could not benefit from its holding. 133 S. Ct. at 1113. Thus, *Padilla* is not applied retroactively.

We have previously followed *Chaidez* in *State v. Martinez-Leon*, 174 Wn. App. 753, 300 P.3d 481, *review denied*, 179 Wn.2d 1004 (2013), a case factually similar to Overmon's. There, over five years after entry of his guilty plea, Martinez-Leon attempted to withdraw his plea, asserting that he had not been fully advised as to potential immigration consequences resulting from his decision. *Martinez-Leon*, 174 Wn. App. at 757. We upheld the superior court's denial of Martinez-Leon's CrR 7.8 motion holding that *Chaidez* foreclosed the possibility that Martinez-Leon could avail himself of the rule announced in *Padilla* and, therefore, the exception contained in RCW 10.73.100(6) did not apply and his collateral attack was time barred. *Martinez-Leon*, 174 Wn. App. at 760-61.

Here, Overmon filed her CrR 7.8 motion more than five years after her judgment became final, which was before *Padilla* was decided. Overmon attempts to distinguish *Chaidez* by asserting that *Chaidez* held that *Padilla* was intended only to apply to federal habeas petitions. But

the *Chaidez* court stated unequivocally that "a person whose conviction is already final may not benefit from the [*Padilla*] decision in a habeas *or similar proceeding*. 133 S. Ct. at 1107 (emphasis added).

Accordingly, because *Padilla* is not applied retroactively, the superior court abused its discretion in allowing Overmon to withdraw her guilty plea when it was time barred and, therefore, we reverse the order allowing Overmon's guilty plea withdrawal and remand to the trial court to reinstate her conviction.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Bjorgen, J.
BJORGEN, J.

Melnick, J.
MELNICK, J.