943265

No. 34203-4-III

Supreme COURT
OF THE STATE OF WASHINGTON

Washington State, Respondent,
v.
Alfred Earle Brown, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

Alfred Earle Brown
[Name of petitioner]

Alfred Brown-801659
Coyote Ridge CC-MSC
PO Box 769
Connell, WA 99326
[Address]

A. Identity of Petitioner

Alfred Earle Brown [Name] asks this court to accept review of the decision designated in Part B of this motion.

B. Decisions

[Statement of the decision or parts of decision petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration.]

1. - Order denying Motion to Modify Commissioner's Ruling
   - WA St. Court of Appeals - Div. III
   - March 3, 2017 - Judges Fearing, Lawrence-Berrey, & Pennell

2. - Commissioner's Ruling Granting Ander's Motion and Severing Personal Restraint Petition
   - WA St. Court of Appeals - Div. III
   - Dec. 29, 2016 - Commissioner Monica Wasson

3. - Felony Judgement and Sentence Case # 14-1-01191-7
   - WA St. Superior Court for Yakima County
   - Feb. 4, 2016 - Judge Richard Bartheld

4. - 3.5 Pre-Trial Hearing (Leading up to Alford Plea)
   - WA St. Superior Court for Yakima County
   - Jan. 25, 2016 - Judge Michael McCarthy

C. Issues Presented for Review

[Define the issues which the court is asked to decide if review is granted.]

1. Perpetuation of S.R.A. Violations
   a. Exceptional Sentence "Clearly Excessive".
   b. No report to Sentencing Guidelines Commission
   c. Same Criminal Conduct warrants Concurrentcy
   d. Mitigating circumstances negated & ignored
2. Invalid Miranda Waiver (un-intelligent)
3. Involuntary (Alford) Plea Agreement (Coercive)
4. Ineffective, Malicious, & Traitorous Counsel
5. Brady Violations/Withholding Evidence
6. Perpetuating Constitutional Errors

D. Statement of the Case
[The statement should be brief and contain only material relevant to the motion.]

Aug. 1, 2014, Alleged Victim took a bad fall, face first, down the stairs into our basement. She has a history of falling, drug & alcohol abuse, and general dementia. Two & a half weeks later, she told the neighbors I had assaulted her.

Incredibly, everyone she lied to believed her. I spent a year and a half in jail under a quarter-million-dollars bail, fervently hoping & praying the traitorous truck public defender would get his act together.

Jan. 25, 2016, faced with Life Without Parole, due to two culpable accidents in my history, I unwillingly took a hastily and shadily prepared plea. I felt I had no choice. The fabricated circumstancial "evidence" and all the hearsay "witnesses" were too coercive.

E. Argument Why Review Should Be Accepted
[The argument should be short and concise and supported by authority.]

Commissioner Wasson erred in denying Statement of Additional Grounds / Sentence Appeal by perpetuating all the errors (including Constitutional) that I have presented in supporting documentation - Namely, my S.A.G., my Motions to Modify (with Supplement), and Petition for Discretionary Review. Additionally, Judges Fearing, Lawrence-Berrey, & Pennell erred in perpetuating those same errors by upholding her decision. Denying the validity and reality of facts; real, tangible facts, will not make them go away. (Authorities cited in Petition)

F. Conclusion
[State the relief sought if review is granted.]

* Concurrent Sentences *

I.E.; Fair and reasonable sentencing according to legislated Sentencing Reform Act.

DATED this 23rd day of March, 2017.

Respectfully submitted,

Al E. Brown
Petitioner

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Alfred Earle Brown Appelant/Petitioner	Case No.: 34203-4 Petition for Discretionary Review

I, the above stated and undersigned, do hereby petition the court for discretionary review because of the issues (and errors) contained in this document as well as other documents preceding. These other documents are matters of record, and include a Statement of Additional Grounds, (S.A.G); a Motion to Modify Ruling; and a Motion to Modify (Supplemental).

I will show cause and reason to remand my case for re-sentencing, so as to modify the Judgement & Sentence terms of confinement to run concurrent.

1. Perpetuation of S.R.A. Violations

All three judges of the Court of Appeals, and Commissioner Wasson erred in perpetuating the Superior Court of Yakima's oversentencing.

I am not an attorney, yet it becomes so blatantly obvious in having to study the law in this case, that I cannot understand how duly appointed judges and a commissioner refuse to acknowledge such a gross error:

1.a. One hundred and twenty months is ridiculously excessive for a self-inflicted split lip.

RCW 9.94A.535 (1) Mitigating Circumstances (g) "The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010."

Even if the allegations of assault were true, my standard range would be 22-29 months, and even if that were doubled, it's still only half of what they gave me. My sentence is 3 to 4 times what it shouldbe. Clearly

Excessive.

RCW 9.94A.010 (1) "Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offenders criminal history"

The seriousness of the offense consists of the simple Community Custody violation of getting drunk, Aug. 18, 2014, and saying stupid things. I could never assault my mother.

My criminal history consists of DUIs and culpable accidents. I do not have a history of malicious intent nor violence.

RCW 9.94A.010(3) "Be commensurate with the punishment imposed on others committing similar offenses."

Cris Menshew, a man I met in jail in 2015, got into a fight with his wife, blacked her eye, bloodied her nose, split her lip, and then burned her with a cigarrette; a 1st° Assault offense. His offender score was 9+, off the charts.

He took a deal for 60 months; half of what

I was forced to sign for. Commensurate?

Another man I met in jail in 2015, "Li'l Mumbles," as a gang member of the Sureños, broke into a rival gang member's home, shot him twice; once in each leg, whipped him about the head with the pistol, and then robbed him of his drugs, cash, and weapons.

He also took a deal for 60 months, half of what I was forced to sign for. Commensurate?

Those are just two examples. I could go on. Since arriving here at CRCC, I've met many more men with worse crimes and less time to serve. Clearly excessive.

1.b. No report to Sentencing Guidelines Commission

Boilerplate language, begging the question in circular logic on p. 2 of my J&S, and quoted on p. 6 of Commissioner Wasson's ruling does not fulfill compliance with RCW 9.94A.535, CrR 6.1(d), or CrR 7.2(d). No report was given to the S.G.C. (Exibits A & B)

And let there be no misunderstanding about

any stipulations: I did not, nor ever will "stipulate that justice is best served by imposition of an exceptional sentence above the standard range." How that box got checked in § 2.6 I will probably never know, nor want to know, but I certainly have my suspicions. Most likely, it was that rat bastard Paul Kelley.

(My first DUI was in 1984. In 30+ years of dealing with the courts and various attornies, I've never met a more worthless P.A.P.D.S. I tried to fire him seven times, to no avail.)

Commissioner Wasson asserts that the Sentencing Guideline Commission's inadequate response to my inquiries has no bearing on successful appeal. (p.9) This is erroneous because failure to comply constitutes an illegal sentence. (RCW 9.94A.535, CrR 6.1(d), & CrR 7.2(d) Courts must obey laws, too.

On p.6, she cites In re Pers. Restraint of Breedlove 138 Wn2d 298 for authority on the boilerplate language of J&S § 2.6, but erres on several points: 1) Breedlove was remanded for entry of findings of fact and conclusions of law. 2) Breedlove negotiated his own plea, and it was not an Alford plea. He stipulated.

3) Breedlove stabbed the victim, and there were two eyewitnesses. I've never stabbed anyone, and the absence of eyewitnesses testifies to the reasoning of the Superior Court to avoid full compliance to the law: Real Facts:

There are none. The reason there hasn't been a submission of findings of fact and conclusions of law is because there was no evidentiary hearing, and there was no evidentiary hearing because there were no real facts. They had something much quicker and easier: Coercion.

4) Breedlove wasn't threatned with L.W.O.P. And, 5) Breedlove was licensed paralegal, not necessarily needing assistance of "counsel."

"If the trial court relies on a reason which is not substantial and compelling and which is not consistent with the purposes of the SRA, the sentence is unlawful" (Ibid. - PRP of Breedlove)

The Plea Agreement, Client's Copy, which was what I was given to review, States on p. 3 (Exibit C) that the terms of confinement are to be served concurrent. Why was this box checked, but not the one on p. 11? (Exibit D) Paul Kelley conspired to deceive me!

RCW 9.94A.530(2) "In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proved pursuant to RCW 9.94A.537. Acknowledgement includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts," (which I did, many times...) "the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence, except as otherwise specified in RCW 9.94A.537. On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented."

"This doctrine limits sentencing decisions to the facts that were acknowledged, pleaded to, or proven. St v Houf 120 Wn.2d 327, 332 (1992)
"And, it ensures that sentencing courts do

not base exceptional sentences on unproved or uncharged crimes." St v. Moreira 107 WnApp 450, 458, 27 P.3d 639 (2001)

Review of the pertinence of 9.94A.530(3) is part of Motion to Modify (Supplemental).

The fact of the matter is that I did not stipulate to anything, really. Hence, the Alford Plea. And, I vehemently objected to nearly everything I was accused of.

The only reason I agreed to anything was to avoid going to trial with a traiterous truck public defender with M.V.P. status for the prosecution. (Exibit GP, p.62)

* Jan. 25, 2016, Judge McCarthy denied the applicability of "Preponderance of Evidence". Therefore, either he erred, or that was not an evidentiary hearing. (Exibit GP, p.64-5)

Basically, it all comes down to the Alleged Victim's word against mine, and even though she's not credible and not reliable, everyone believes her because I have a criminal history. People believe what they want to, in spite of truth, facts, or lack of real evidence.

So how can they (Superior Court & Court of Appeals) justify § 2.6 on p. 2 of my J&S? They cannot. That is why no report was submitted to the S.G.C., and why, among other reasons yet to come, my sentence is unlawful and must be reviewed.

1.c. Same Criminal Conduct Warrants Concurrency

Section 2.2 on page 2 of the J&S is erroneous. In Alleged Victim's first recorded interview with Paul Kelley, she states very plainly that she does not believe she was choked, yet after the Victim's Advocate, Kim Foley, (related somehow to Deputy Prosecutor Brooke Wright; cousins?) coached A.V. about how she aquired the bruises on her neck, she changed her testimony in subsequent interviews with YSO Detective Sgt. Mike Russell. Com. Wasson asserts that this somehow constitutes "temporally distinct and... separate intents." IE: First she was punched, then she was choked. (CRGAM&SPRP p. 9)

How does Com. Wasson Know? The A.V. is not credible (due to several significant factors) and quite obviously not reliable. There were no eye witnesses to her fall. I wasn't even in the house when she fell. I suspect she bruised

her neck on the cans of applesauce she was (unwisely) trying to carry downstairs, or perhaps her cane got in the way of her fall. I don't know exactly how it happened, but I know I didn't choke her. That is preposterous.

Where's the **forensics**? Where's the **sub-cutaneous X-rays**? Where's the **expert testimony**? Why did YSO Deputy Matt Steadman testify at the 3.5 Pre-Trial Hearing, Jan. 25, 2016, that my hands were clean and my knuckles unblemished on the night of my arrest??

Regardless, I wasn't convicted of choking anyone, and it's unlawful to sentence ~~for~~ for unconvicted conduct, especially when it can only be suspected, not proven. 1997 WaApp St v Welinski 1/10/1997 (Mark James Welinski) "It seems elementary that punishment may only be ordered for a crime of which the defendant is convicted..." (Footnote 5)

Circumstancial "evidence" and hearsay "witnesses" may possibly, could conceivably measure up to the Preponderance of the Evidence standard, but inevitably falls far short of the Clear and Convincing standard. (39 Fed. Appx.

(10) P4DR

558. United States v. Ronald Holmes 4/3/2002)
See also Guilty Plea p. 65, Jg. Michael McCarthy

→ See also 941 F.2d 745 US v Jose Jesus Lira-Barraza 2/21/1991 regarding unconvicted conduct and also statements of reasons for departing from guidelines as outlined and reviewed in 1.b. above.

I was convicted of one count of 3rd° assault temporally indistinct from one count of harrassment, supposedly, or so it's alleged, involving the same intent. But, since the Victim's Advocate, Kim Foley, Dep. Prosecutor Brooke Wright, YSO Det. Sgt. Mike Russell, and YSO Dep. Matt Steadman get involved, coaching the Alleged Victim about what to say, it all get counted up as separate and distinct. Corporate conspiracy? Or just job security?

RCW 9A.46.060 includes everything under the sun to run concurrent as included with harrassment, except 3rd° assault. Every other degree of assault is listed, why not 3rd°? Why is only 9A.36.031(f) not included in 9A.46.060? Corporate conspiracy? Or just job security?

Same criminal conduct applies, and it's so blatantly obvious as to warrant judicial notice as fact.

1.d. Mitigating Circumstances Negated and Ignored

RCW 9.94A.535(1)(a) "To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident."

The Alleged Victim was 74½ years old in 2014, had had multiple major surgeries requiring unconsciousness (anasthesia-induced), multiple Transient Iscemic Attacks (T.I.A.s), and was on a Pain Contract with her doctors because of her documented history of mixing perscription pain meds with alcohol. She was a well-documented Fall Risk, and had to wear a red wrist band every time she checked into the hospital. Her mother died from a deteriorative brain disease we new know as Alzheimer's, and the A.V. was showing distinctive signs of the same thing, including severe dementia at times. She should have been in a nursing home, or at least an assisted living facility, but she wanted to be at home, and we figured that as long as I was there, she wouldn't have to be institutionalized.

I told her several times not to worry about the applesauce; that I would take care of it.

I blame myself for not being more attentive, though, the DOC's CJC classes did not help.

Mitigating circumstances are more thoroughly reviewed in Motion to Modify (Suplemental) pp. 4-7. Please take note of them there.

The point is that no mitigating circumstances were taken into consideration, and that constitutes a violation of the S.R.A., and therefore makes a clearly excessive sentence unlawful, and the lower court's perpetuation of this unlawfullness warrants review & remand.

The Plea Agreement says nothing about "stipulating to justice being best served". In fact, it pretty much states the opposite in that it was an Alford plea. I did not stipulate to anything, other than the gross malfeasance of a public defender.

2. Invalid Miranda Waiver (un-intelligent)

The American Medical Association considers a .40 blood alcohol content to be a lethal dose. Dead. It is impossible, absolutely without a snowball's chance in hell to make an intelligent Miranda waiver at .419 BAC. Impossible.

Willing? Sure! Especially when Mr. Tough-Guy Sheriff is trying to start an arguement with VERY PROVOCATIVE ACCUSATIONS.

But intelligent? Not in this lifetime. He took me to the Hospital because I was too drunk to go to jail. The jail actually has two rubber rooms with a sewer hole in the floor for accidents. I was too drunk for the rubber room. I had to be taken to the hospital before the jail.

The Miranda waiver was therefore invalid, and therefore warrants remand and resentencing. Perpetuating constitutional error makes both lower courts look very, very bad.

3. Involuntary (Alford) Plea Agreement

I wanted to go to trial. Twice: Once back in 2015 on the Tampering charge, and once on the Assault charge. Mr. Kelley skillfully (and I say that sarcastically) circumnavigated both. He weasled out of the first one with a ____ motion to dismiss I reluctantly signed, and out of the second with an Alford plea I was coerced to sign.

I felt I had no choice. He'd made it very plain that I was on my own, and that a trial would be suicide. He'd dropped the ball so many times, I had to believe him. He had me so backed into the corner of Hobson's choice, I had no choice.

I was facing the certainty of Life Without Parole for something I was not guilty of, and the public defender was not on my side.

4. Ineffective, Malicious, & Traiterous Counsel

Paul Kelley, #23068, is the reason I am in prison, and I will never forgive him. I gave him every opportunity to redeem himself, again and again giving him exculpatory information to follow through with and research, but persistently and consistently he ignored and refused my requests. Unforgiven.

5. Brady Violations / Withholding Evidence

Commissioner Wasson's ruling about this errs due to one simple fact: Whether it was part of the record or not, prejudice is inherent in not knowing what else is going to be brought up in trial. Surprise! Two days before trial is in-

herently prejudicial to notify defense of two "primary witnesses". This "evidence" was exculpatory because the neighbors did not actually see anything. Their testimony would be hearsay at best, and therefore impeachable. The fact that it was they who coerced the A.V.'s permission to make the 911 call Aug. 18, 2014 is sufficient to substanciate prosecution's suppression of their existance as "witnesses". Prosecution had known about them for over a year, yet unlawfully waited until two days before trial to netify the defendant. (me) The "evidence" is material, in that they were the first "witnesses" the A.V. lied to. Their aplomb at the A.V.'s bruises, and their improper assumption of a crime, and their coercion of the A.V. to call 911 and make up the story about an assault is material. The A.V. was afraid, sure, that's why she went over to the neighbors, but she did not want to call 911. She had threatened me to turn me in to DOC for being drunk, and I threatned her in return. That's why she was afraid. The neighbor's would have had to testify to their coercion to call, which also makes it exculpatory. This constitutes the first violation of the Brady rule. Saturday, 1/23/16

The second is part and parcel with the Hobson's choice I was forced to make: I had been asking for discovery for well over a year, but received the heavily redacted copy only four days before trial was scheduled. The subsequent dialog in court to postpone yet again is part of the record. In reviewing discovery, I made multiple notes and cross-references where the A.V. had contradicted herself multiple times. Her testimony was in-credible. As in, NOT credible. And unreliable. And there were several "witnesses" I had questions for; like the deputy sheriff that had been out to the house the day before arrest, Sunday, Aug. 17, 2014, to go look for the A.V.'s lost car, where she had gone looking for the dog, had an "episode", and lost her car.

Why didn't she complain to him about assault? Did he not notice the bruises? Did he not ask her about them? What did she say? Why didn't Paul Kelley interview him the year before? Why was he suppressed?

The next time we went to court, Paul Kelley lied to Judge Barthold about being ready. He hadn't followed up on any of my requests.

The A.V.'s medical records and her Dr.'s delayed testimony are another of my contentions about suppression and delay. Exculpatory stuff was refused, delayed, ignored, and downplayed and minimized time after time, and that's a fact. The malicious manipulation of the record, what was entered and what wasn't, is evidence enough, at least to me, of misconduct and malfeasance of several offices.

6. Perpetuating Constitutional Errors...

...is unlawful, to say the least. And then to lie about it to cover it up is reprehensible.

According to Revelation 21:8, there's going to be some very important people burn for a long, long time.

I'm sincerely hoping and praying you're not one of them.

March 23, 2017

Alfred Earle Brown

Please take careful notice of enclosed documents.

You're relieving the state of its burden of proving that you're guilty beyond a reasonable doubt at a trial, and you're giving up the right to appeal. Do you understand that?

MR. BROWN: Yes, I do.

THE COURT: Has anybody made any threats to you or promises to get you to plead guilty to this charge?

MR. BROWN: Permission to speak freely, your Honor.

THE COURT: I asked you a question. You can answer it how you choose.

MR. BROWN: The nature of the charge itself, the first charge itself was extremely threatening. Throughout this procedure I've been under duress to make this decision. However, it is a conscious decision, and I believe it to be the best decision under ~~advisement~~ abandonment of traitorous counsel.

THE COURT: In fact, you're entering this plea freely and voluntarily? NO! I just said it 5 lines ago!

MR. BROWN: Yes. (Lie)

THE COURT: Okay. You understand that -- I've already gone through those rights.

There is a standard range for these offenses, and I'll get to that portion, which is 17 to 22 months as to each count and 12 months of community custody. The recommendation from the prosecuting attorney is going to be

MR. BROWN: Yes.

THE COURT: Because of the nature of the offense being denominated as a domestic violence offense, the court could order you to undergo a domestic violence assessment and counseling. You understand that?

MR. BROWN: Yes.

THE COURT: As part of your community custody.

MR. BROWN: Yes. (There is no community custody)

THE COURT: To the charge, then, of third degree assault and felony harassment of another alleged to have occurred on August 1st of 2014, how do you plead to those charges, guilty or not guilty?

MR. BROWN: Guilty by an Alford plea.

THE COURT: It's guilty or not guilty. Is it guilty or not guilty? (asked & answered.)

MR. BROWN: Guilty.

THE COURT: This is an Alford plea. I understand that you are pleading guilty not because you believe you are guilty but because you believe if the matter were to proceed to trial there's a substantial likelihood that you would be convicted, and you wish to take advantage of the reduction of charges offered by the state?

MR. BROWN: Yes, sir, preponderance of the evidence. (circumstancial)

Jg. Michael McCarthy

THE COURT: The preponderance of the evidence doesn't actually apply in this particular instance. You understand that you're pleading guilty not because you believe you are guilty but you're pleading guilty because you believe if the matter were to proceed to trial there's a substantial likelihood you would be convicted, and you wish to take advantage of the plea agreement offered by the prosecutor; is that the situation?

Then what does?

MR. BROWN: Yes.

THE COURT: Okay. Exhibit No. 1 will be admitted and attached as an attachment to the Statement of Defendant on Plea of Guilty.

All right. I've read the report of Sergeant Russell. I also recall the testimony of Sergeant Steadman from earlier today. I do believe if this matter were to proceed to trial that there's a substantial likelihood Mr. Brown would be convicted. Consequently, I will accept his proffered guilty plea to the charges of third degree assault and felony harassment.

Lies!

Lies!

Are we proceeding to sentencing at this time?

MS. WRIGHT: Not today, your Honor.

THE COURT: Okay. There's an agreement about when it will take place?

MS. WRIGHT: We hadn't discussed it. I think some afternoon three weeks or so would give the family sufficient

Exibit A

STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

August 25, 2016

Alfred Brown #801659
CRCC MSC-DA31
PO Box 769
Connell, WA 99326

Dear Mr. Brown,

We are in receipt of your letter postmarked August 17, 2016. As of July 1, 2011, the Sentencing Guidelines Commission (Commission) was eliminated as an independent agency and moved under the Office of Financial Management. Also on that date, the Caseload Forecast Council assumed responsibility of the adult felony and juvenile disposition databases. The Commission no longer receives court case documents from the superior courts.

Regards,

Keri-Anne Jetzer
Staff Support, Sentencing Guidelines Commission

Exibit B

STATE OF WASHINGTON

CASELOAD FORECAST COUNCIL

PO Box 40962• Olympia, WA 98504-0962
(360) 664-9380 • FAX (360) 586-2799

August 10, 2016

Alfred Brown
801659 DA312U
Coyote Ridge Correction Center
PO Box 769
Connell, WA 99326

c/c. Elaine Deschamps, Executive Director, Caseload Forecast Council.

Re: Yakima Superior #14-1-01191-7. Jg. Bartheld.

Dear Mr. Brown:

We received your letter mailed 08/01/2016, which contains some questions. Here are my notes:

1. Effectively July 1, 2011, Caseload Forecast Council assumed responsibility for the adult felony and juvenile disposition databases, the annual sentencing statistical summaries, and the sentencing manuals. The Caseload Forecast Council is charged with collecting the data on adult and juvenile sentencing. We are unable to give legal advice regarding sentencing. We encourage you to contact the Washington State Bar Association at 800-945-9722 to gain a referral to legal counsel or a legal association that might be able to answer your question.
2. Attached is a copy of Felony Judgement and Sentence of cause 14-1-01191-7. On page 2, under 2.6. Exceptional Reason, there is a checked checkbox saying "The defendant and state stipulate that justice is best served by imposition of an exceptional sentence above the standard range of 17-22 for Count 1 and 2. The defendant and State stipulate that this sentence is not subject to appeal."

3 Exibit C

5. **RIGHTS**: I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify myself and the right to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

(6.) **IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:**

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	5	17-22 Months	n/a	12 months	5yrs/$10,000
2	5	17-22 Months	n/a	12 months	5yrs/$10,000

* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude.

(b) ☒ The terms of confinement for Counts One & Two are presumed to be served **concurrently**, unless the court finds that an exceptional sentence is appropriate.

☐ **EXCEPT FOR THE ENHANCEMENTS ON COUNTS ONE**, which must be served **consecutively** to any other portions of my sentence.

☐ The terms of confinement for Counts _____ are presumed to be served **consecutively.**

Petition Sentencing Judge for Concurrency

Client Copy

11 Exibit D

~~RCW 74.08.290.~~

~~t. WORK ETHIC CAMP: The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense.~~

Defense Counsel

Paul Kelley

11. **PLEA OF GUILTY:** I plead guilty to Counts One & Two as charged in the ☐ Information ☐ Amended Information. I have received a copy of it:

a. I make this plea freely and voluntarily. D.C. said trial would be "Suicide". (P.K.

b. No one has threatened harm of any kind to me or to any other person to cause me to make this plea. L.W.O.P. is a threat.

"All on you" (Abandonmen

c. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

12. **MY STATEMENT:** The judge has asked me to state, in my own words, what I did that makes me guilty of this crime. This is my statement: ~~***In Yakima County, Washington***~~...

* ↓ ↓ ↓ *

* ***Alford Plea***: *I do not admit to the facts or charge as alleged, but I change my plea to take advantage of the plea agreement for the State's amended charges and recommendation stated in Paragraph 7 of this plea statement. I change my plea with the understanding that if the case proceeded to trial on the original charge, there is a reasonable chance that I would be found guilty of the charges, a third strike. Therefore, I do not want to proceed to trial and change my plea.*

One or the other

* → ☐ I wish to plead guilty to take advantage of the plea agreement. Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea. NO!

13. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Defendant _____ Date _____

Client Copy

138 Wash.2d 298
Supreme Court of Washington,
En Banc.

In re the Personal Restraint Petition
of Lawrence BREEDLOVE Petitioner.

No. 66425-1.
|
Argued Dec. 8, 1998.
|
Decided June 24, 1999.

After his conviction for second-degree murder was reversed and matter was remanded for retrial, 79 Wash.App. 101, 900 P.2d 586, defendant entered guilty plea in which he stipulated to exceptional sentence. Defendant subsequently filed personal restraint petition challenging sentence, and the Chief Judge of the Court of Appeals dismissed petition. After granting motion for discretionary review, the Supreme Court, Guy, C.J., held that: (1) a defendant's stipulation to an exceptional sentence as part of a plea agreement is a substantial and compelling reason which may justify such a sentence under Sentencing Reform Act (SRA); (2) court imposing such a sentence has statutory duty to make findings of fact and conclusions of law showing that such a sentence is consistent with purposes of SRA; (3) failure of trial court to make such findings required remand; and (4) defendant had waived right to challenge sentence by appeal or collateral attack.

Affirmed, personal restraint petition dismissed, and remanded.

Alexander, J., concurred and filed opinion.

Sanders, J., dissented and filed opinion.

West Headnotes (25)

[1] **Habeas Corpus**
Judgment, Sentence, or Order

Imposition of a sentence which is not authorized by Sentencing Reform Act (SRA) is a fundamental defect which may justify collateral relief. West's RCWA 9.94A.010 et seq.

2 Cases that cite this headnote

[2] **Habeas Corpus**
Deprivation of Fundamental or Constitutional Rights;Miscarriage of Justice

When a request for collateral relief is based on a constitutional challenge, petitioner is required to show actual and substantial prejudice as a result of the alleged constitutional violation.

7 Cases that cite this headnote

[3] **Habeas Corpus**
Deprivation of Fundamental or Constitutional Rights;Miscarriage of Justice

When request for collateral relief is based on a nonconstitutional challenge, required preliminary showing is stricter than the "actual prejudice" standard, and claimed error must constitute a fundamental defect which inherently results in a complete miscarriage of justice.

7 Cases that cite this headnote

[4] **Sentencing and Punishment**
Authority to Impose

Sentencing and Punishment
Departures

Trial court has authority under Sentencing Reform Act (SRA) to impose sentences which are beyond the standard range, up to the maximum permitted, and then to order that the sentences be served consecutively. West's RCWA 9.94A.010 et seq.

Cases that cite this headnote

[5] **Sentencing and Punishment**
Grounds for Departure

Where sentence is outside standard range set by Legislature, court must find a substantial and compelling reason to justify exceptional sentence, even if it is statutorily authorized.

4 Cases that cite this headnote

[6] **Sentencing and Punishment**
Grounds for Departure

If trial court relies on a reason which is not substantial and compelling, and which is not consistent with purposes of Sentencing Reform Act (SRA), as basis for imposing sentence outside the standard sentencing range, the sentence is unlawful. West's RCWA 9.94A.010 et seq.

1 Cases that cite this headnote

[7] **Criminal Law**
Extent of Punishment

Whether a reason given by a trial court justifies an exceptional sentence under Sentencing Reform Act (SRA) is a question of law. West's RCWA 9.94A.390(1, 2).

1 Cases that cite this headnote

[8] **Sentencing and Punishment**
Bargain, Agreement, Consent, or Waiver

Defendant's stipulation to an exceptional sentence as part of a plea agreement is a substantial and compelling reason which may justify such a sentence under Sentencing Reform Act. West's RCWA 9.94A.390(1, 2).

3 Cases that cite this headnote

[9] **Courts**
Decisions of Courts of Other State

Minnesota cases on sentencing are persuasive authority in Washington.

1 Cases that cite this headnote

[10] **Sentencing and Punishment**
Discretion of Court

Sentencing Reform Act (SRA) creates a method for determining the standard range within which a particular sentence generally must fall, but also provides for the limited exercise of judicial discretion to impose a sentence outside that range. West's RCWA 9.94A.390, 9.94A.400.

Cases that cite this headnote

[11] **Sentencing and Punishment**
Bargain, Agreement, Consent, or Waiver

Sentencing Reform Act (SRA) governs plea agreements, and specifically authorizes agreements which recommend sentences outside the standard sentencing range. West's RCWA 9.94A.080-9.94A.103.

1 Cases that cite this headnote

[12] **Criminal Law**
Representations, Promises, or Coercion; Plea Bargaining

There is a strong public interest in enforcing terms of plea agreements which are voluntarily and intelligently made.

7 Cases that cite this headnote

[13] **Criminal Law**
Representations, Promises, or Coercion; Plea Bargaining

Between the parties, plea agreements are regarded and interpreted as contracts, and both parties are bound by the terms of a valid agreement. How about an invalid one?

4 Cases that cite this headnote

[14] **Criminal Law**
Representations, Promises, or Coercion; Plea Bargaining

Trial court is not bound to accept plea agreement negotiated by the State and a defendant unless it first determines that the agreement is consistent with the interests of justice and with the prosecuting standards set

forth in Sentencing Reform Act (SRA). West's RCWA 9.94A.090(1).

Cases that cite this headnote

[15] **Sentencing and Punishment**
Bargain, Agreement, Consent, or Waiver

Trial court is not bound by any recommendation as to sentencing which is contained in a plea agreement, but must independently determine that the sentence imposed is appropriate, and where that sentence falls above or below presumptive standard range, reason for deviating must be a substantial and compelling reason, in light of the purposes of Sentencing Reform Act (SRA). West's RCWA 9.94A.090(2).

4 Cases that cite this headnote

[16] **Sentencing and Punishment**
Bargain, Agreement, Consent, or Waiver

Where parties agree that an exceptional sentence is justified, purposes of Sentencing Reform Act (SRA) are generally served by accepting the agreement as a substantial and compelling reason for imposing an exceptional sentence. West's RCWA 9.94A.010(1, 2, 4, 6), 9.94A.390(1, 2).

8 Cases that cite this headnote

[17] **Criminal Law**
Voluntary Character

Involuntary

Plea agreements which are intelligently and voluntarily made, with an understanding of the consequences, are accepted, encouraged, and enforced.

7 Cases that cite this headnote

[18] **Sentencing and Punishment**
Necessity

Where trial court has approved a plea agreement as being consistent with the interests of justice and in conformance with prosecuting standards, trial court may additionally approve the plea agreement's stipulation to an exceptional sentence above or below the standard range if the trial court finds that the sentence is consistent with the purposes of Sentencing Reform Act (SRA). West's RCWA 9.94A.090(1), 9.94A.390.

12 Cases that cite this headnote

[19] **Sentencing and Punishment**
Necessity

Fact that a stipulation in plea agreement may provide a substantial and compelling reason justifying an exceptional sentence does not relieve sentencing court of its duty under Sentencing Reform Act (SRA) to enter findings of fact and conclusions of law which explain the reasons for the sentence. West's RCWA 9.94A.120(3).

11 Cases that cite this headnote

[20] **Criminal Law**
Sentence

Trial court's failure to enter findings of fact and conclusions of law, as required under Sentencing Reform Act (SRA), in connection with its imposition of exceptional sentence, which had been stipulated to as part of plea agreement, required remand for entry of findings. West's RCWA 9.94A.120(3).

13 Cases that cite this headnote

[21] **Criminal Law**
Sentence

Remedy for trial court's failure to issue findings of fact and conclusions of law in connection with imposition of exceptional sentence, as required by Sentencing Reform Act (SRA), is ordinarily remand for entry of the findings. West's RCWA 9.94A.120(3).

6 Cases that cite this headnote

[22] **Habeas Corpus**
Procedural Errors

Failure to enter findings in connection with imposition of exceptional sentence,

in the apartment were awakened by and witnessed the attack. When the two youths attempted to go for help, Breedlove threatened one of them with a knife and forced him to stay in the room with Mr. Atkins. With the knife in his hand, Breedlove chased the other teenager briefly but abandoned the chase and returned to continue his attack on Mr. Atkins.

Breedlove was charged with first degree murder. In February 1993, a jury found Breedlove guilty of the lesser included crime of murder in the second degree.

The evidence presented at the sentencing hearing showed that at the time Breedlove murdered Mr. Atkins he was serving a life sentence for murder and robbery in Oklahoma. He had escaped from confinement in Oklahoma a few weeks before Mr. Atkins was killed. The trial court sentenced Breedlove to 260 months, the high end of the standard sentencing range, and ordered the sentence be served consecutively with the Oklahoma sentence. I've never murdered anyone!

On appeal, the Court of Appeals reversed the conviction, holding that the trial court erred when it denied Breedlove's request to represent himself pro se. *State v. Breedlove*, 79 Wash.App. 101, 900 P.2d 586 (1995). The Court of Appeals then remanded for a new trial.

Before the second trial, the State offered to settle the criminal action. Breedlove, acting pro se but with standby counsel available, agreed. Under the terms of the settlement, Breedlove agreed to plead guilty to reduced charges of (1) first degree manslaughter for the death of Atkins; (2) unlawful imprisonment of the teenager he forced to stay during the killing of Atkins; and (3) third degree assault of the second teen who escaped when **421 he chased her. As part of the plea agreement, Breedlove stipulated to an exceptional sentence. Breedlove's Stipulation to Exceptional Sentence provides, in pertinent part:

> 5. The defendant is willing to stipulate to an exceptional *302 sentence consisting of the statutory maximum sentences for each count, and that the sentences shall run consecutively, for a total sentence of twenty years.
>
> 6. The basis for the exceptional sentence is that it is part of the settlement of this case, and that the defendant, by stipulating to this sentence is thereby avoiding the substantial risk of conviction and a sentence to a greater term of confinement.
>
> 7. The defendant acknowledges that an agreement to an exceptional sentence is not one of the enumerated illustrative bases for an exceptional sentence as found in *RCW* 9.94A.390. However, the defendant acknowledges that under *In re Barr*, 102 Wash.2d 265, 684 P.2d 712 (1984), and *State v. Hilyard*, 63 Wash.App. 413, 819 P.2d 809 (1991), he may settle his case under certain terms and conditions, including a stipulated exceptional sentence, provided this is acceptable to the Court; even if the facts and standard sentence associated with the amended charges would not ordinarily be the same as what is being agreed to in his case.
>
> 8. The defendant is willing to enter into the stipulated sentencing agreement described herein in part because he believes and understands that a twenty year sentence would be the maximum allowable sentence under law. The State of Washington likewise acknowledges and agrees that a twenty year sentence would be the maximum allowable sentence under law for the offenses
>
> ....

Clerk's Papers at 53.

At the hearing on the entry of plea and sentencing, Breedlove stated that he had a two-year college degree in sociology and psychology and that he additionally had received paralegal certification from the State of Oklahoma. The sentencing court explained to Breedlove that it was the court's understanding

> that you are stipulating, in other words, agreeing to that maximum sentence and that the Court has a legal basis to impose the maximum sentence, and that you won't get to turn around and challenge the basis for that exceptional sentence?

I am not a College grad, nor do I have Para-legal training

Resp't Br. app. C at 10. I am not a paralegal!

*303 Mr. Breedlove responded:

> Yes, Your Honor, the 10 year maximum, 5 year maximum, and the 5 year maximum is consecutive.
>
> THE COURT: Which adds up to 20.

THE DEFENDANT: Yes.

Resp't Br. app. C at 10.

The sentencing judge indicated that he had read the trial transcript of two of the witnesses, that he had read the original affidavit of probable cause in accepting the plea, and that he believed the 20-year sentence was appropriate "from what I know about the circumstances, and at this point I know a substantial amount about the circumstances." Resp't Br. app. C at 27. The sentencing judge then followed the stipulation of the parties and, on September 5, 1996, sentenced Breedlove to the maximum sentence on each charge and ordered that the sentences be served consecutively. On the sentencing form, in place of findings of fact and conclusions of law explaining the basis for the exceptional sentence, the sentencing order states, "See stipulated agreement." Clerk's Papers at 57. No formal findings of fact and conclusions of law were entered.

Breedlove did not appeal the exceptional sentence. Instead, on September 5, 1997, he filed a personal restraint petition in the Court of Appeals, stating:

> This case involves ... a plea to an exceptional sentence without knowledge that the sentence imposed was an exceptional sentence as the sentences were imposed consecutively which exceeded the standard range without the judges [sic] advice that he would be imposing the exceptional sentence[.]

Personal Restraint Pet. at 2, *In re Breedlove,* No. 22399-6-II (Wash.Ct.App. Sept. 5, 1997).

The Chief Judge of the Court of Appeals dismissed the petition, and Breedlove filed a ****422** motion for discretionary ***304** review. This court granted review and appointed counsel to represent Breedlove in this court.

ISSUE

As part of a plea agreement, may a criminal defendant stipulate to the imposition of an exceptional sentence?

DISCUSSION

In this court, Breedlove does not challenge the validity of his plea and does not seek to withdraw his plea. He does not argue that his stipulation to the exceptional sentence was made without an understanding of its terms or consequences, and he does not argue that it was involuntarily made. Instead, Breedlove argues that an exceptional sentence which is based solely on the stipulation of the parties is not statutorily authorized.

[1] [2] [3] Imposition of a sentence which is not authorized by the SRA is a fundamental defect which may justify collateral relief.[1] *In re Personal Restraint of Fleming,* 129 Wash.2d 529, 533, 919 P.2d 66 (1996); *In re Personal Restraint of Moore,* 116 Wash.2d 30, 33, 803 P.2d 300 (1991) (a sentence imposed pursuant to a plea bargain must be statutorily authorized; a defendant cannot agree to be punished more than the Legislature has allowed for); *In re Personal Restraint of Carle,* 93 Wash.2d 31, 33, 604 P.2d 1293 (1980) (enhanced sentence for first degree robbery was not authorized under the statute).

[4] The SRA authorizes the sentence imposed in this ***305** case. Breedlove was sentenced to the maximum terms permitted by statute. *See* RCW 9A.20.021 (setting maximum sentences); former RCW 9A.32.060 (first degree manslaughter)[2]; RCW 9A.40.040 (unlawful imprisonment); RCW 9A.36.031(1)(d) (third-degree assault). Although the maximum terms are beyond the standard sentence range, they are within the sentencing power of the trial court. Additionally, a trial court has statutory authority to impose sentences which are beyond the standard range, up to the maximum permitted, and then to order that the sentences be served consecutively. *State v. Smith,* 123 Wash.2d 51, 57-58, 864 P.2d 1371 (1993); *State v. Flake,* 76 Wash.App. 174, 182-83, 883 P.2d 341 (1994).

[5] [6] However, even though the sentence may be statutorily authorized, when a trial court imposes a sentence which is outside the standard range set by the Legislature, the court must find a substantial and compelling reason to justify the exceptional sentence. RCW 9.94A.120(2). *State v. Grewe,* 117 Wash.2d 211, 214, 813 P.2d 1238 (1991); *State v. Smith,* 82 Wash.App. 153, 160-61, 916 P.2d 960 (1996). If the trial court relies

on a reason which is not substantial and compelling and which is not consistent with the purposes of the SRA, the sentence is unlawful. *See In re Personal Restraint of Vandervlugt,* 120 Wash.2d 427, 434, 842 P.2d 950 (1992) (vacating an exceptional sentence which was based on an unauthorized factor).

[7] Whether a reason given by a trial court justifies an exceptional sentence is a question of law. *State v. Gaines,* 122 Wash.2d 502, 509, 859 P.2d 36 (1993); *State v. Allert,* 117 Wash.2d 156, 163, 815 P.2d 752 (1991). RCW 9.94A.390(1), (2) sets forth a list of nonexclusive and illustrative mitigating and aggravating factors that may be relied on to justify an exceptional sentence. A ****423** stipulation to the sentence as part of a plea agreement is not one of the factors listed.

[8] ***306** The question before us, then, is whether a stipulation to an exceptional sentence, made as part of a plea agreement, is a substantial and compelling reason under the SRA.

The statute does not narrowly define "substantial and compelling reason" but, instead, requires that the trial court find "considering the purpose of [the SRA], that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.120(2). The purposes of the SRA are to:

> (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
>
> (2) Promote respect for the law by providing punishment which is just;
>
> (3) Be commensurate with the punishment imposed on others committing similar offenses;
>
> (4) Protect the public;
>
> (5) Offer the offender an opportunity to improve him or herself; and
>
> (6) Make frugal use of the state's resources.

RCW 9.94A.010.

Agreement of the parties is a reason which is frequently cited by trial courts to justify exceptional sentences, either above or below the presumptive sentencing range. [3] Although we have not had occasion to consider the issue, the Court of Appeals has twice addressed the validity of exceptional sentences imposed pursuant to agreement of the parties. In *State v. Cooper,* 63 Wash.App. 8, 816 P.2d 734 (1991), the ***307** Court of Appeals held that the defendant, by stipulating to an exceptional sentence, had either waived his right to challenge it or was barred, under the invited error doctrine, from claiming the sentence was unlawful. In *State v. Hilyard,* 63 Wash.App. 413, 819 P.2d 809 (1991), the Court of Appeals held that a stipulation to an exceptional sentence, made as part of a plea agreement, is an adequate reason for imposing an exceptional sentence. The Court of Appeals recognized the contractual nature of a plea agreement and held that the defendant, like the State, must be bound by a valid plea agreement which is accepted by the trial court. *Hilyard,* 63 Wash.App. at 420, 819 P.2d 809. The *Hilyard* Court also held that by entering into the stipulation, the defendant had waived his right to challenge the sentence.

[9] Similarly, the Supreme Court of Minnesota has recently held that a criminal defendant may, in a negotiated plea agreement, stipulate to the imposition of a sentence outside the presumptive standard range. *State v. Givens,* 544 N.W.2d 774, 777 (Minn.1996). *See also State v. Sims,* 553 N.W.2d 58 (Minn.Ct.App.1996). Minnesota cases on sentencing are persuasive authority in Washington. *State v. Nordby,* 106 Wash.2d 514, 521 n. 5, 723 P.2d 1117 (1986) (Utter, J., dissenting) (Minnesota decisions on what factors are sufficiently "substantial and compelling" to justify an exceptional sentence provide especially persuasive authority for Washington courts); ****424** *State v. Herzog,* 69 Wash.App. 521, 526-27, 849 P.2d 1235 (1993). [4]

In *Givens,* the Minnesota court treated the stipulation on ***308** sentencing as a waiver of the defendant's right to be sentenced under the sentencing guidelines and explained its holding as follows:

> Since 1980, defendants in Minnesota have benefitted from the protection of the guidelines' regulation of sentencing discretion. The guidelines exist to maintain the presence of rationality in sentencing decisions. To the extent that they restrict the discretion of the sentencing judge, the guidelines offer a measure of evenhandedness and predictability to defendants. Their purpose is to ensure that defendants will not be

Public Defender = Poorboy injustice!

sentenced based upon inappropriate grounds such as race, gender or social or economic status. 2121

However, it has long been settled law that courts will honor a defendant's lawful, "intentional relinquishment or abandonment of a known right or privilege." Currently, we allow defendants to waive a variety of their rights, including their *Miranda* rights [*Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 10 A.L.R.3d 974, 16 L.Ed.2d 694 (1966)], their right to a jury trial, and their right to be present at trial. We see no reason not to allow a defendant to agree to a departure as part of a plea bargain with the prosecutor. Accordingly, today we hold that defendants may relinquish their right to be sentenced under the guidelines.

544 N.W.2d at 777 (citations omitted).

[10] Like the Minnesota sentencing law, Washington's SRA creates a method for determining the standard range within which a particular sentence generally must fall, but also provides for the limited exercise of judicial discretion to impose a sentence outside that range. RCW 9.94A.390, .400. *See generally* D AVID BOERNER, SENTENCING IN WASHINGTON 9-1 to 9-73 (1985).

[11] The SRA also governs plea agreements in Washington. RCW 9.94A.080-.103; ***309** *State v. Wakefield*, 130 Wash.2d 464, 471, 925 P.2d 183 (1996). The statute specifically authorizes agreements which recommend sentences outside the standard sentencing range. RCW 9.94A.080(3). *See also State v. Lee*, 132 Wash.2d 498, 506, 939 P.2d 1223 (1997).

[12] **[13]** This state recognizes a strong public interest in enforcing the terms of plea agreements which are voluntarily and intelligently made. *State v. Perkins*, 108 Wash.2d 212, 216, 737 P.2d 250 (1987). Between the parties, they are regarded and interpreted as contracts and both parties are bound by the terms of a valid plea agreement. *State v. Talley*, 134 Wash.2d 176, 182, 949 P.2d 358 (1998); *Wakefield*, 130 Wash.2d at 480, 925 P.2d 183 (Sanders, J., concurring in part, dissenting in part).

[14] **[15]** The trial court, however, is not bound to accept an agreement negotiated by the State and a defendant unless it first determines that the agreement "is consistent with the interests of justice and with the prosecuting standards" set forth in the SRA. RCW 9.94A.090(1). Furthermore, a trial court is not bound by any recommendation as to sentencing which is contained in a plea agreement. RCW 9.94A.090(2). The sentencing judge must independently determine that the sentence imposed is appropriate. Where that sentence falls above or below the presumptive standard range, the reason for deviating from the presumptive range must be a "substantial and compelling" reason, in light of the purposes of the SRA.

[16] Where the parties agree that an exceptional sentence is justified, the purposes of the SRA are generally served by accepting the agreement as a substantial and compelling reason for imposing an exceptional sentence. Those purposes often will include: ****425** ensuring that the punishment for the criminal offense is proportionate to the seriousness of the offense and the offender's criminal history; promoting respect for the law by providing punishment which is just; protecting the public; or making frugal use of the State's resources. RCW 9.94A.010(1), (2),(4), (6). In the case before us, Breedlove agreed to accept the 20-year sentence imposed by the trial court in order to avoid a "substantial ***310** risk of conviction and a sentence to a greater term of confinement." Clerk's Papers at 53. The parties appear to have recognized the fairness of the sentence in light of the crime and Breedlove's criminal history. Furthermore, the trial court determined that the 20-year sentence was appropriate, considering the circumstances of the crime. Additionally, Breedlove was concerned about the possibility that a potential murder conviction would result in a "most serious offense" classification for purposes of the "three strikes" law. Entering into the stipulated sentence on the reduced charges alleviated this concern while providing a just punishment. Avoiding a second murder trial had the added benefit of making frugal use of State resources.

How much does it cost to keep me here ten years?

[17] Plea agreements which are intelligently and voluntarily made, with an understanding of the consequences, are accepted, encouraged and enforced in Washington. *See Perkins*, 108 Wash.2d at 216, 737 P.2d 250; *Talley*, 134 Wash.2d at 183, 949 P.2d 358; *Lee*, 132 Wash.2d at 505-06, 939 P.2d 1223. Through the trial judge, who has knowledge of the facts of the criminal incident and of the negotiating parties, the law provides protection to the defendant and to the public to ensure that a plea agreement is consistent with the interests of justice, RCW 9.94A.090, and the goals of the SRA.

[18] We hold that where, as here, a trial court has approved a plea agreement as being consistent with the interests of justice and in conformance with this state's prosecuting standards, the trial court may additionally approve the plea agreement's stipulation to an exceptional sentence above or below the standard range if the trial court finds that the sentence is consistent with the purposes of the SRA.

[19] The fact that a stipulation may be a substantial and compelling reason justifying an exceptional sentence does not relieve the sentencing court of its duty to enter findings of fact and conclusions of law which explain the reasons for the sentence.

RCW 9.94A.120(3) provides in pertinent part:

> Whenever a sentence outside the standard range is imposed, ***311** the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

Written findings ensure that the reasons for exceptional sentences are articulated, thus informing the defendant, appellate courts, the Sentencing Guidelines Commission, and the public of the reasons for deviating from the standard range. RCW 9.94A.105. *See* BOERNER, *supra,* at 9-2 to 9-5.

[20] **[21]** **[22]** The remedy for a trial court's failure to issue findings of fact and conclusions of law is ordinarily remand for entry of the findings, and we remand here for that purpose. *State v. Head,* 136 Wash.2d 619, 624, 964 P.2d 1187 (1998); *Templeton v. Hurtado,* 92 Wash.App. 847, 965 P.2d 1131 (1998). The failure to enter findings does not justify vacation of the sentence in a personal restraint proceeding unless it is a fundamental defect which results in a complete miscarriage of justice. *See In re Personal Restraint of Cook,* 114 Wash.2d 802, 812, 792 P.2d 506 (1990). There is no miscarriage of justice where the sentence imposed is the precise sentence requested by the defendant.

Further, by knowingly, intelligently and voluntarily agreeing to the exceptional sentence and by signing the sentencing order, Breedlove waived his right to appellate review of the exceptional sentence. *Perkins,* 108 Wash.2d 212, 737 P.2d 250 (a criminal defendant may, as part of plea agreement, waive constitutional and statutory rights, including rights under the SRA and the right to appeal); *State v. Mollichi,* 132 Wash.2d 80, 89 n. 4, 936 P.2d 408 (1997) (criminal defendants may, expressly or impliedly, waive constitutional rights to counsel, to speedy public trial, to jury trial, to be free from self-incrimination, or to be tried in the county where the crime was committed, and ****426** may waive statutory rights, such as the right to have restitution determined within the statutory time limit); *Cooper,* 63 Wash.App. at 13-14, 816 P.2d 734.

All I ever requested was a new attorney!

[23] The testimony and evidence before the sentencing judge was that Breedlove had completed two years of college. He also is a certified paralegal and has represented ***312** himself in civil cases in federal court. He understood the charges against him, the standard sentence range and the maximum sentence. His responses to the court's questions demonstrate he understood that the consequences of his plea agreement included the imposition of a maximum sentence on each charge and that the maximum sentences would run consecutively for a total of 20 years. It also appears that Breedlove understood the alternative to the plea agreement was retrial on the murder charge. He indicated that he understood the possibility that he would be convicted a second time on that charge and that his sentence was likely to be longer than 20 years. He also was concerned that a conviction for murder (but not manslaughter) would constitute a conviction for a "most serious offense" under RCW 9.94A.030(23) and he was concerned that such a conviction would be a strike under Washington's "three strikes" law. He also indicated to the sentencing judge that he understood and agreed that he would not be able to challenge the basis for the imposition of the exceptional sentence. He was not facing L.W.O.P. in WA St.

His stipulation to the sentence was intelligent, voluntary and made with an understanding of its consequences and constitutes a valid waiver of his right to challenge, by appeal or personal restraint petition, the sentence he requested.

[24] **[25]** We additionally note that the doctrine of invited error " 'prohibits a party from setting up an error at trial and then complaining of it on appeal.' " *Wakefield,* 130 Wash.2d at 475, 925 P.2d 183 (quoting *State v. Pam,* 101 Wash.2d 507, 511, 680 P.2d 762 (1984)), *overruled on other grounds by State v. Olson,* 126 Wash.2d 315, 893 P.2d 629 (1995). The doctrine has been considered in cases in which defendants were sentenced pursuant

to plea bargains and later challenged their sentences on appeal. *Wakefield,* 130 Wash.2d at 475, 925 P.2d 183 (the doctrine did not apply where a trial judge went beyond the defendant's request that the court participate in plea negotiations); *Cooper,* 63 Wash.App. at 14, 816 P.2d 734 (defendant's statement on plea of guilty that he agreed sentences should be ***313** served consecutively was invited error). *See also Smith,* 82 Wash.App. at 162-63, 916 P.2d 960 (defendant could not challenge trial court's finding of deliberate cruelty where defense counsel had conceded deliberate cruelty existed).

In this case Breedlove agreed to the imposition of a particular sentence in exchange for reduced charges and a presumably shorter sentence. He agreed, in writing and orally in open court, that the stipulation, itself, justified the exceptional sentence in his case. He signed the sentencing order, which contained the abbreviated reason for the exceptional sentence, rather than findings of fact.

I did not

He invited any error in the trial court's failure to make specific findings on the sentence and may not now complain that the failure was error.

Breedlove additionally argues in his opening brief in this court that the trial court should have been collaterally estopped from imposing an exceptional sentence on remand for a new trial. This issue was not raised at the time of sentencing, in the personal restraint petition or the motion for discretionary review, and it was not accepted for review. We decline to consider it but note that the cases cited by Breedlove on this issue do not support his position.

Affirmed; the personal restraint petition is dismissed. However, we remand to the sentencing court for the entry of findings of fact and conclusions of law supporting the exceptional sentence.

Remanded.

SMITH, JOHNSON, MADSEN, JJ., and DOLLIVER, J.P.T., concur.

ALEXANDER, J. (concurring).

I agree with the dissent that a stipulation to an exceptional sentence is not a substantial and compelling reason justifying imposition of a sentence outside the standard range. While the State and a defendant may ****427** certainly stipulate to facts that may support the finding of a reason for an exceptional sentence, the parties cannot by their stipulation bind the sentencing judge to make such a finding.

***314** I nevertheless agree with the majority that we should affirm the sentence imposed here on Breedlove. I reach this conclusion because Breedlove waived his right to appellate review of the sentence by requesting the sentence that was imposed. As the majority notes, the record clearly establishes that Breedlove acted intelligently, voluntarily, and knowingly when he agreed to have the sentencing court sentence him to a term of 20 years. For that reason, he may not now be heard to quarrel with the sentencing court's embracing of a result he invited.

I did NOT request 10 years

I did, however, request new counsel... ...seven times.

DURHAM, C.J., and TALMADGE, J., concur.

SANDERS, J. (dissenting).

Breedlove's exceptional sentence was based on a single "finding" of the trial court: "See stipulated agreement." Clerk's Papers (CP) at 57. Breedlove's stipulation states that he is stipulating to the sentence to avoid substantial risk of conviction and sentence to a greater term of confinement. CP at 53 (Def.'s Stipulation to Exceptional Sentence (Sept. 5, 1996) at 2, ¶ 6). The issue is therefore, whether this finding and stipulation are sufficient to comply with the Sentencing Reform Act of 1981(SRA) which requires a substantial and compelling reason to exceed the sentencing range the legislature has determined to be the presumptive standard.

A plea bargain to a sentence not in compliance with the law will not be enforced. *In re Personal Restraint of Moore,* 116 Wash.2d 30, 38, 803 P.2d 300 (1991) (sentence imposed pursuant to plea bargain must be statutorily authorized; defendant cannot agree to be punished more than the legislature has allowed); *State v. Miller,* 110 Wash.2d 528, 538, 756 P.2d 122 (1988) (Durham, J., concurring in result) ("There simply is no credible legal argument that can be made for the proposition that a court [ ] may exceed its statutory sentencing authority in order to enforce the terms of a plea agreement.") (citation omitted); *In re Personal Restraint of Gardner,* 94 Wash.2d 504, 507, 617 P.2d 1001 (1980) (plea agreement cannot exceed statutory authority ***315** given to court). The fact

that the defendant had two years of college and paralegal training (Majority at 421) does not change the statutory sentencing requirement. [1]

The SRA sets out the standard sentencing range. It prohibits a sentence outside that range except where the trial court "finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.120(2).

In most cases the SRA contemplates imposition of the standard range sentence, as that range is "a legislative determination of the applicable punishment range for the crime as ordinarily committed." *State v. Parker,* 132 Wash.2d 182, 186-87, 937 P.2d 575 (1997).

Clearly, if the judge imposed an exceptional sentence solely on the basis of this plea agreement, it would be invalid. *In re Personal Restraint of Moore,* 116 Wash.2d at 38, 803 P.2d 300. This being the case, it must follow "substantial and compelling reasons" justifying imposition of an exceptional sentence cannot include the plea agreement itself. The reasoning of the majority is therefore circular when it holds "[w]here the parties agree that an exceptional sentence is justified, the purposes of the SRA are generally served by accepting the agreement as a substantial and compelling reason for imposing an exceptional sentence." Majority at 424.

Circular Reasoning

**428 The majority speculates as to other reasons that may have been in the minds of the parties or the court at the time that this plea agreement was made. Majority at 425 ("The parties *appear* to have recognized the fairness of the sentence in light of the crime and Breedlove's criminal history. Furthermore, the trial court determined that the 20-year *316 sentence was appropriate, considering the circumstances of the crime.") (emphasis added). However, the actual findings of the trial court provide no basis for the exceptional sentence other than the stipulation, which is as inadequate to meet the statutory standard as is the plea agreement of which it is a part. As a matter of preestablished law, a stipulation to an exceptional sentence cannot be a compelling and substantial reason justifying the exceptional sentence.

The majority notes the prosecutor's right under the SRA to recommend a sentence outside the guideline. Majority at 424 (citing RCW 9.94A.080(3); *State v. Lee,* 132 Wash.2d 498, 506, 939 P.2d 1223 (1997)). [2] However, this simply reflects a right of the prosecutor, not an obligation of the court.

The majority relies upon three cases to support its holding, none from this court, and, in the end, none satisfying.

State v. Cooper, 63 Wash.App. 8, 13, 816 P.2d 734 (1991): Unlike the case at bar, the trial judge entered specific conclusions of law supporting his decision to impose an exceptional sentence. Thus *Cooper* is inapposite.

State v. Hilyard, 63 Wash.App. 413, 417, 819 P.2d 809 (1991): The trial court entered a written conclusion " 'that an exceptional sentence is justified on *the facts* and also due to the stipulation of parties in plea negotiations per RCW 9.94A.080,' " (quoting trial court's conclusions of law) (emphasis added). Affirming, the Court of Appeals simply quotes the statutory language of RCW 9.94A.080(3) *317 that an exceptional sentence may be part of the plea agreement. *Hilyard,* 63 Wash.App. at 418, 819 P.2d 809. Unconsidered is the legal question before this court: Is a stipulation by itself a substantial and compelling reason to go beyond the SRA? NO.

Finally, the majority relies on *State v. Givens,* 544 N.W.2d 774 (Minn.1996). There the Minnesota court noted that the exceptional sentence could be affirmed on the grounds that the victim was particularly vulnerable due to age, a specific factor authorizing an exceptional sentence under the Minnesota statute, and a finding made by the Minnesota trial court judge. *Givens,* 544 N.W.2d at 775-76. The court did however opine a criminal defendant could make a knowing, intelligent, and voluntary waiver of his statutory sentencing rights. *Id.* at 777. But in our state it is settled that even a knowing, intelligent, and voluntary waiver of a defendant's statutory sentencing rights will not authorize the sentencing court to depart from the statute. *In re Personal Restraint of Moore,* 116 Wash.2d at 38, 803 P.2d 300; *In re Personal Restraint of Gardner,* 94 Wash.2d at 507, 617 P.2d 1001.

As our majority concludes a stipulation equates to a substantial and compelling reason for imposing an exceptional sentence, Majority at 424, it is interesting to note the Minnesota court held "an attempt 'by the parties to limit sentence duration does not create a "substantial and compelling circumstance" which may be relied upon as justifying a departure from the Guidelines.' " *Givens,* 544 N.W.2d at 777 (quoting *State v. Garcia,* 302 N.W.2d

643, 647, *overruled on other grounds by Givens*, 544 N.W.2d at 777 n. 4).[3]

****429** The majority fails to credit the distinction between the rights of the parties to a plea agreement to contract as they see fit and the obligations placed by statute upon the trial ***318** court to impose a sentence which conforms to legal standards. Here the trial court set a sentence outside the statutory guidelines based solely on the plea agreement. The SRA's requirement that a judge set a sentence outside its guidelines only for substantial and compelling reasons is not satisfied by a plea agreement. Rather, such a sentence may be imposed only upon a finding of the trial court judge that such reasons do exist and the exceptional sentence is imposed based on criteria set forth in the SRA.[4]

The remedy is not new findings to justify an erroneous result, but lawful imposition of sentence based upon the findings actually made.

Evidentiary Hearing & Real Facts

All Citations

138 Wash.2d 298, 979 P.2d 417

Footnotes

1 When a request for collateral relief is based on a constitutional challenge, the petitioner is required to show actual and substantial prejudice as a result of the alleged violation. *In re Personal Restraint of Cook,* 114 Wash.2d 802, 809, 792 P.2d 506 (1990); *In re Personal Restraint of Haverty,* 101 Wash.2d 498, 504, 681 P.2d 835 (1984). When, as in this case, the collateral relief is based on a nonconstitutional challenge, the required preliminary showing is stricter than the "actual prejudice" standard. The claimed error must constitute "a fundamental defect which inherently results in a complete miscarriage of justice." *In re Cook,* 114 Wash.2d at 811, 812, 792 P.2d 506. *See also In re Personal Restraint of Fleming,* 129 Wash.2d 529, 534, 919 P.2d 66 (1996).

2 At the time Breedlove was sentenced, first degree manslaughter was classified as a class B felony. Former RCW 9A.32.060(2). The maximum sentence for a class B felony is 10 years. RCW 9A.20.021(1)(b). In 1997, the crime was reclassified as a class A felony. Laws of 1997, ch. 365, § 5. The maximum sentence for a class A felony is 20 years. RCW 9A.20.021(1)(a).

3 Washington's Hard Time for Armed Crime Act requires that judicial records be kept of all sentences for certain violent or armed offenses. Laws of 1995, ch. 129, § 6, codified at RCW 9.94A.105. The Sentencing Guidelines Commission is charged with recording and comparing these sentences. The Commission's first report on judicial sentencing practices summarizes adult felony sentences imposed during the fiscal year 1996. The total number of adult felony sentences in this state for that period is 21,421. Of that number, 19,682, or 91.9 percent, were within the standard sentence range; 2.3 percent were above the standard range; and 5.8 percent were below the standard range (these included defendants receiving mitigated sentences as well as those sentenced under first-time offender waivers or under the special sex offender sentencing alternative). SENTENCING GUIDELINES COMM'N, STATE OF WASHINGTON, ADULT FELONY SENTENCING I-15 (1996). nt by the defendant to the exceptional sentence was the reason most frequently given to justify an exceptional sentence. Agreement by the parties was cited as justification for sentences below the standard range in 78 of 229 cases (more than twice the number than the next frequently cited reason). SENTENCING GUIDELINES COMM'N , *supra,* at I-28 to I-29. Agreement was cited 174 times (again, more than twice the number of the next frequently cited reason-victim vulnerability at 71 times) in the 406 aggravated sentences. SENTENCING GUIDELINES COMM'N, *supra,* at I-30 to I-31.

4 Minnesota, like Washington, requires a sentencing judge to impose a presumptive, or standard range, sentence "unless the individual case involves substantial and compelling circumstances." Minn.Stat. Ann. § 244 app. at 529 (West 1992). When an exceptional sentence is imposed in Minnesota, the sentencing judge "must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence." Minn.Stat. Ann. § 244 app. at 530 (West 1992).

1 The majority notes that Breedlove proceeded pro se "but with standby counsel available." Majority at 420. At the session where the court accepted Breedlove's stipulation to the exceptional sentence, Breedlove was in custody and his standby counsel was not present. State's Resp. to Personal Restraint Pet.App. C at 2 (Pierce County No. 92-1-03059-6, Report of Proceedings (Sept. 5, 1996)). As the record shows, the only legal advice Breedlove received in preparing his plea came from the prosecuting attorney. *Id.* at 3. At one point, albeit not with regard to the stipulation, Breedlove even mentioned he was acting "on advice of Counsel," referring to the prosecutor. *Id.* at 27.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Alfred Earle Brown Appelant/Petitioner	Case No.: 34203-4-III Motion to Modify (Supplemental)

1. Identity of Moving Party

I, Alfred Earle Brown, Appellant to Yakima Superior Court case # 14-1-01191-7 do hereby supplement the original Motion to Modify on the grounds of additional information and arguments pertinent to the case.

2. Statement of Relief Sought

I seek fair and reasonable sentencing. My current sentence is 3 to 4 times longer than what SRA deems appropriate, and there is no (adaquate) justification.

grossly
I have been oversentenced, and no specific finding of facts have been filed. The boilerplate summary statements on p.2 of the J&S do not fulfill statutes.

I seek Direct Sentence Appeal with Assigned Appellate Counsel. I am not an attorney, and I resent having to act like one. I'm not much of an actor, either.

3. Facts Relevant to Motion

I did not assault my mother. She told the neighbors I did because she provoked me to threaten her, and because I was drunk, actually believed it. (BAC .419)

Commissioner Monica Wasson is not a judge, and she made several mistakes in her ruling, not the least of which was believing Prosecution and their falsified reports.

I was coerced into a bad plea bargain on threat of Life Without Parole. My Statement of Additional Grounds spells out most of it, but words fail to express my duress.

4. Grounds for Relief and Argument

WA St. Adult Sentencing Guidelines Manual, from the Caseload Forecast Council cites
→ St. v Friedlund, 182 Wn. 2d 388 (2015)(9/16/14) in stating that "Written findings are mandatory when an exceptional sentence is imposed; 9-0" on page 16. Mandatory.

WA Superior Court Criminal Rules (CrR) 6.1(d) states "In giving the decision, the facts found and the conclusions of law shall be separately stated." Separately stated.

1981 Wash. Laws, ch. 137 § 12(3) states that "The written findings must then be sent to the WA St. Sentencing Guidelines Commission along with the trial court's Judgement & Sentence." This was not done. (See enclosed exibits A & B)

→ 136 Wn. 2d 619 St v Head (10/8/98) states that "...prejudice resulting from the lack of written findings and conclusions... ultimately entered have been tailored to meet issues raised on appeal." Too late.

RCW 9.94A.535 (1) Mitigating Circumstances

(a) "To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident."

The Alleged Victim's drug & alcohol use and abuse (in violation of her Pain Contract with her doctors) significantly contributed to my relapse, subsequently causing DOC Community Custody violations, thereby adding to my stress levels of caring for her and our home, maintaining our property, and running back and forth to town to attend their (DOC's) asinine CJC meetings three times a week, thereby wasting time that could have been used to catch up and make her happy.

When she threatened to send me back to prison, I threatned her right back.

(c) "The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which signific-

antly affected his or her conduct."

I'd already been to prison three times. Every time I'd come home, more of my stuff was missing. Tools, shop equipment, vehicles, music equipment, books, clothes, and even pets. Girlfriend's, too.

I love my mother with all my heart, but that old woman's stewardship of our assets leaves a lot to be desired, and her disrespectful treatment of my friends, especially girlfriends, when I'm not there really hurts. I always come home to a monumental mess, and a long list of stuff to catch up on. She is incapable of maintaining our home on her own, and the substitutes she hires steal my stuff. Prison is killing me.

When she threatned to send me back to prison, I threatned her right back.

(g) "The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly ex-

cessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010."

One hundred and twenty months is ridiculously too long for a self-inflicted split lip. And, I successfully taped up her lower lip so it healed correctly. It was her own stubborn pride against going to the hospital that allowed the upper lip to heal crooked.

Even if the allegations of assault were true, my standard range would be 22-29 months, and even if that were doubled, it's still only half of what they gave me. My sentence is 3-4 times what it should be. Clearly excessive.

(j) "The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse."

I estimate the Alleged Victim has mismanaged, lost, or allowed to be stolen nearly ten thousand dollars ($10,000^{00}$) worth of my stuff. Some of it I can't even put a monetary value on, because of sentimental value and irreplaceability.* Tools inherited from my grandfather, for example. He was a machinist, and he taught me many things. * irreplaceability

I cannot work without tools. But that suits her just fine, since she needs me single and living right there with her, dependent on her every beck and call.

When she threatned me with prison, I threatned her right back.

(2)(a) "The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act."

I did not "stipulate" to anything, and I stated that at sentencing, Feb. 4, 2016.

I was coerced and extorted into taking a horrible deal under threat and duress of the prospective certainty (not even a fair-odds gamble) of losing a trial represented by a maliciously incompetent and traiterous public defender, and being sentenced with Life Without Parole... for a self-inflicted split lip... Life Without Parole.

And as I recall, that Plea Agreement said nothing about stipulating to justice being best served.

No Mitigating Circumstances were taken into consideration; only alleged and fabricated Aggravating Circumstances, mostly provided by Hearsay "Witnesses".

9.94A.010 (1) "Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history."

My criminal history consists of DUIs and culpable accidents. I do not have a history of malicious intent or violence.

The seriousness of the offense consists of violating Community Custody by getting drunk and saying stupid things.

(2) "Promote respect for the law by providing punishment which is just."

Yeah. Right. (Maybe, if you fix this...)

(3) "Be commensurate with the punishment imposed on others committing similar offenses."

One of the men in jail I met in 2015 got into a fight with his wife, blacked her eye, bloodied her nose, split her lip, and then burned her with a cigarette; a 1st degree Assault offense. His offender score was 9+, off the chart.

He took a deal for 60 months; half of what I was forced to sign for.

Another man I met in jail in 2015, "Li'l Mumbles," as a gang member of the Sureños, broke into a rival gang member's home, shot him once in both legs with a pistol, whipped him about the head with the pistol, and then robbed him of his drugs, cash, and weapons.

"Li'l Mumbles" also took a deal for 60 months; half of what I was forced to sign for. I hear he's getting out soon.

(6) "Make frugal use of the state's and local governments' resources."

I don't know exactly how much it costs to keep me here, nor how much has already been spent getting me here, but I'm pretty confident in saying that it's a whole lot more than a bus ticket as far away from this state as possible would be. <u>As far away as possible</u>...

(7) "Reduce the risk of reoffending by offenders in the community."

Recidivism: What causes it? We all have opinions to answer that one, so I'll try to apply a more reputable opinion than my own. Former New York St. Chief Judge Sol Wachtler, in his book "After the Madness", has this to say about that:

"... prisons can be responsible for lowering an inmate's self-esteem to the point where not only does rehabilitation become impossible, but anti-social behavior becomes inevitable." And:

"When a guard abuses or brutalizes a prisoner you can be certain that when the prisoner is released he will be more antisocial and dangerous than when he was sent away. It is a simple but accurate equation: Violence begets violence."

He also says that "There is something ~~called~~ in the law known as "judicial notice"; when a fact is well known and beyond doubt, a judge can take "judicial notice" of the fact without requiring exacting proof."

My contention at this point is that you need to take judicial notice of the fact that I was

over-sentenced, and now deserve relief. By resolving this at this level, you preserve what justice and punishment is appropriate according to the RCWs cited previously, and save the State's resources from further process, as well as the Federal system.

One last thought/question: Why isn't 3rd° Assault included in RCW 9A.46.060? Seemingly everything else under the sun is included, to apparently run concurrent. Certainly every other degree of Assault is included in Harassment; why not 9A.36.031(F)?

I'm not asking for any conviction to be overturned. I'm only asking for fair and reasonable sentencing according to statute. IE: To run concurrent.

Submitted this 25th day of January, 2017.

Alfred Earle Brown

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Alfred Earle Brown
Appelant/Petitioner

Case No.: 34203-4
Motion to Modify Ruling

1. Identity of Moving Party

I, Alfred Earle Brown, Appelant to Yakima Superior Court case #14-1-01191-7, do hereby object to Commissioner Monica Wasson's ruling granting appelate counsel's Anders Motion, effectively dismissing Direct Appeal and denying new counsel.

2. Statement of Relief Sought

Commissioner Wasson's ruling, filed Dec. 29, 2016, should be modified to provide new appelate counsel, and to continue Direct

(Sentence)
Appeal. I ask for a new attorney to review the issues I have presented in court, and for those issues to be ruled upon by actual Judges of pertinent law.

3. Facts Relevant to Motion

Feb. 4, 2014, I was in prison at WSP-MSU. Com. Wasson's first sentence is erroneous.

I've never yet filed PRP relative to this case. A few days before filing Notice of Appeal, I unknowingly filed what amounted to a 7.8 Motion, and Yakima Superior transferred it to you as a PRP, without my consent. Com. Wasson's second sentence is erroneous.

I do not object to Andrea Burkhart's withdrawal. If she is not motivated, or somehow limited in capacity to see the meritorious legitimacy of my issues, so be it.

I do not object to severing the PRP. Had I had effective counsel in Yakima, it

would not be an issue at present. The crookedness of that court should be evident in this. They tried a cover-up.

They're still trying to cover up by filing Motion to Dismiss. They don't want the higher courts to recognize what they've done to me and my family. I am the victim.

"On or about 8/8/14," I was in jail on a Community Custody violation. This is documented by Yakima Co. Jail records, the Community Justice Center Chemical Dependency Treatment group (Spectrum Health Services) records, and can also be verified by CCO Meshel Bradley. Com. Wasson's ruling citing the Declaration of Probable Cause on p. 3 is erroneous, as is Yakima Co. Prosecution.

The Alleged Victim's multiple statements to police changed every time she gave one. The Declaration of Probable Cause is not based in reality, but in the imagination of an aging woman with Alzheimer's and alcohol & drug problems. My reluctance to force my mother to testify against me

in trial was yet another underlying Reason in my decision to take a bad deal.

I would have LOVED to get a fair trial.

Aug. 1, 2014, my poor & puzzled mother tried carrying a half-case of applesauce cans downstairs to our basement storage. I was out back, changing water. I came in to find her crying and bleeding at the bottom of the stairs, with scattered cans all around her, and her cane off to the side. I carried her up to her bed, and tried to tape up her lip. She was very embarrassed/ashamed, since this was not the first time she'd fallen, and adamant that I not call an ambulance nor take her to the hospital. I finally convinced her to go five days later, but the lip had set. It was already healing crooked.

Two and a half weeks later, she got angry at me for drinking, a violation of my Community Custody, and threatened to turn me in to my CCO, Meshel Bradley. My sister had been suggesting to her about

how to "get rid of him", since she wanted the whole inheritance, house & land.

Am I guilty of making threats? Yes, in my state of intoxication, I said some pretty stupid things. (BAC .419)

Am I guilty of striking and choking my own mother? Absolutely not. Never. The evidence is circumstancial.

4. Grounds for Relief and Argument

Constitutional issues are admissable upon review. "Adverse results of a 3.5 hearing" are irrelevant. Perpetuating constitutional error is illegal, and amounts to gross miscarriage of justice; Injustice.

If the case had proceeded to trial on the original charges, there was a certainty I would have been found guilty of a third and fourth strike because the public defender, Paul Kelley, is a traitorous truck. Had I been able to post bail and prepare my own defense, I would have gone to trial.

I believe the proper term is extortion. There is no way on God's green earth that I would ever willingly plead guilty to something I did not do. The honest response should be "it is a conscious decision, and I believe it to be the best decision under malicious incompetence of counsel." RP at 62

Police reports reflect the availability of circumstancial evidence, the unreliable and not credible testimony of one alleged victim, and hearsay witnesses. ✡ By Biblical standards, there was no case.

Commissioner Wasson's ruling concerning exceptional sentence report to the Guideline Commission is completely erroneous, and I've enclosed a letter from Keri-Anne Jetzer to prove it. Boilerplate language begging the question on p. 2 of my J&S and quoted on p. 6 of Com. Wasson's ruling does not fullfil the CrR 7.2(d) Statute. Allusions are not facts.

The Same Criminal Conduct element depends on which version of the Alleged

Victim's testimony you care to read. Up until she had been coached and persuaded about what to say by the victim's advocate, Kim Foley, (prosecutor Brooke Wright's cousin) there was no mention of being choked.

Whatever the unsubstanciated allegations may be, even by seriousness level ~~IV~~ guidelines my range was only 22-29 months, and it is improper to sentence for something unconvicted. I was not convicted of choking anyone. I was convicted of one attack "temporally" indistict and involving the same intent. Same Criminal Conduct applies.

After review of the ruling, I have identified no meritorious reasoning. I'm not asking for the reversal of conviction. I'm asking for the sentences to be run concurrent.

All things considered, it's not too much to ask.

Submitted this 12th day of Jan., 2017

Alfred Earle Brown

"Unconvicted Conduct"

✳

1. 1997 Wash. App. St. v Welinski, Footnote 5
2. St. v Gardner 94 Wn. 2d 504 (1980)
3. 2005 US Dist. Allman v. United States 11/30/2005
4. 976 F. 2d 1502 US v Silverman 2/12/92 Ftnt 2
5. 970 F. 2d 1490 US v. Davern 7/21/92 Ftnt 5
6. 651 F. 3d 1094 Hernandez-Cruz v. Holder 5/3/2011
7. → 39 Fed. Appx. 558 US v. Holmes 4/3/2002
8. 147 L. Ed. 2d 435 Apprendi v. New Jersey (2000)
9. 311 F. 3d 1133 US v. Ochoa 10/7/2002
10. 300 F. 3d 1069 US v. Culps 6/13/2001
11. 643 F. 3d 235 US v. Locke 1/19/2011
12. 434 F. 3d 959 US v. Hawk 6/6/2005
13. 324 F. 3d 550 US v. Randle 1/13/2003
14. 149 F. 3d 717 US v. Bacallao 6/10/1998
15. 1 F. 3d 457 US v. Dawson 11/10/1992
16. 231 F. 3d 492 US v. Scheele 8/2/2000
17. → 941 F. 2d 745 US v. Lira-Barraza 2/21/1991
18. 628 F. 3d 284 US v. McCarty 12/2/2010

"some evidentiary basis beyond mere allegation"

No criminal history of Malicious Intent.

Previous "strikes" = Culpable Accidents.

✡

Num. 35:30	Matt 18:16	I Tim. 5:19
Deut. 17:6	John 8:17	Heb. 10:28
Deut. 19:15	II Cor. 13:1	Acts 5:29

WA St. Court of Appeals III

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON, Respondent, v. Alfred Earle Brown Appellant.	No. 14-1-01191-7/342034-III STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Alfred Brown, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

~~Additional Ground 1~~

Table of Contents

~~If there are any additional grounds~~, a brief summary is attached to this statement.

Date: (2nd Draft) Signature: Al E. Brown

Statement of Additional Grounds

Appellate counsel has briefly touched on five potential assignments of error in her Motion for Withdrawal. I will try to support those, and pick up where she left off, having a few more in mind to present. I will try to be brief.

1. Involuntary waiver of Miranda rights

When Deputy Steadman read me my rights, I was really drunk. A PBT showed .419 BAC. He cuffed me and put me in his vehicle, and after several minutes inside the Catron's home, he took me to the hospital. During transport, he became verbally abusive, accusing me of assaulting my mother. At one point, he yelled at me, "Why don't you just man-up and admit it!"... which offended me, and I told him he needed to apologize. Even at this point, I thought I was being arrested only for DOC violation. I tried

to explain what I knew, and what Mom had told me about falling down the stairs two and a half weeks previous, but then he accused me of lying. I had been out back changing the water, and came in to find her face down on the basement landing with cans of applesauce scattered around her. I did not actually see her fall. I was not drunk the night she fell, but eighteen days later when arrested I was, and Dep. Steadman was very provacative and did not believe me about what had happened. I did not realize I was arrested for assault until the next day in court at Preliminary. At least he had the decency to be honest at the 3.5 hearing eighteen months later about no marks or bruises on my hands. They were clean and unmarked because I did not assault my mother, but no one believes me.

p.16 ↓
Q&C #1 An "intelligent" waiver is impossible at .419 BAC.

2. Involuntary guilty plea (Alford) Ex. B, D

Words are inadaquate to fully describe the extreme duress I suffered in jail: Nine months in a tank ran by Sureños where I feared for my life every day, and the next nine in near isolation, Knowing I faced life without parole. I faced the crisis of my life, and nobody was

going to help, and nobody cared. Paul Kelley,* the public defender, ignored and refused my Requests for exculpatory investigation, and even told me several times that he didn't care as long as he went home every night. He said investigation was a waste of time, and that there wasn't a chance in a million of aquittal. I was desperate; more desperate than I'd ever been for a reasonable solution; even if it was a compromise. And so I made a Hobson's choice to take an Alford plea, and I lied about it being "freely and voluntarily". RP 62: 3, 5, 18, 19, 13 I ~~feelly~~ felt I had no choice. Exibit B, & D

3. Ineffective assistance of counsel (Ex. C)

I signed over fifteen continuances, hoping* he would pick up the ball and at least act like a defense attorney instead of MVP for prosecution. The idea of going to trial with him scared the holy bejesus out of me. I tried to fire him seven times: Three letters to his boss, a letter to the court, a letter to Jg. Bartheld, & two verbal requests in person to Mr. Kelley himself to step aside and appoint new counsel. I begged him to withdraw, but as usual, he refused. He refused to file a Knapstad motion, ~~he refused to take case #15-1-00339-4 to trial,~~

thereby denying me right to trial; then, when Jg. Barthold made prejudicial comments about "intimidation" in reference to this dismissed case, he refused to object. He ignored my requests to object to Arraignment Error (9/2/14) until the very day of trial (1/25/16) when he then eagerly came to prosecution's ~~rescu~~ rescue in trying to figure out exactly when it became pertinent. He ignored my requests for Discovery for over a year, until four days before trial, and after I'd signed for it, commented on it, cross-referenced contradictions and inconsistencies in the alleged victim's testimony and then gave it back to him to prepare for trial, he ignored it, saying again that it was a "waste of time to prepare for trial." Now he refuses to give it back to me, saying the prosecutor won't let him. He also failed to object to their last-minute changes to sections 2.2 and 2.6 in the judgement and sentence concerning same criminal conduct and sentence appeal. To me, this pretty much proves his complicity with prosecution for my conviction. No defense attorney worth two red pennies would allow their client to be tricked into such last minute deviation from Specific Performance. He was more con-

Ex. C

Ex. A

Ex. A

cerned about his promotion to director of the department of assigned counsel than his clients. "Defense counsel has a duty of loyalty to a defendant. Thus, the right to effective assistance of counsel includes the right to conflict-free counsel." (In RE PRP of Maribel Gomez 180 Wn 2d 337; 3/12/13) Nothing was ever "conflict-free" with Mr. Kelley. He argued with me about everything. Within the first three months of arrest, I had given him multiple requests for defensive investigation, and outlines
Ex.C of specific things to find out about, like the "Lost Car" incident, when a deputy came out to the house to find the alleged victim's car 8/17/14, the day before she called 911. Why didn't she report assault to him? (Because that's not what happened to her.) I asked Mr. Kelley to get her medical records very early in proceedings, due to her being an extreme fall risk, on a pain contract with her dr. due to an alcohol problem, and because she has a history of falling. (like off the back porch in the summer of '13.) Mr. Kelley ignored me. By mid-October of '15, I had asked him four times for Discovery. In re PRP of M. Gomez, headnotes also state that "Defense Counsel has a duty to make reasonable investigations." By the time Mr. Kelley finally got around to ob-

taining alleged victim's medical records, and finding/interviewing the deputy from the "Lost Car" incident, it was late 2015/early 2016, and too late to prepare for trial even if he had been so inclined. A continuance was rejected by Jg. Barthold in Jan. of '16 for the simple fact that the case had already dragged out eighteen months. He had stated (Kelley) ~~that he~~ back in August of '15 that he would be ready by mid-September, but that was either a lie or a cruel joke, because here it was late January of '16 and he still wasn't ready. I knew he wasn't, simply by his failure to recall critically pertinent details of the case. He told me the morning of Jan. 25, 2016 that it would be "suicide" to go to trial, because the state thought they had such a strong case. (Based on one incredible, unreliable alleged victim, circumstancial evidence, and hearsay witnesses.) Understanding now his relationship with prosecution as their MVP, I know why. I faced Hobson's choice, with a Manifest Injustice about to take place, and there wasn't anything I

could do about it. "An involuntary guilty plea and denial of effective counsel during the plea process may constitute a Manifest Injustice." St. v Taylor 83 Wn2d @ p. 594 (1974) & St. v Sangtachan Fong 3/21/16 "Manifest Injustice: (1) Ineffective Counsel (2) Plea not ratified (3) Involuntary plea, or (4) Agreement not Kept by prosecution."

4. Hearsay testimony at sentencing

It may be legal, but I believe it to be highly unethical and unprofessional. My rotten sister and an ex-girlfriend from 35 years ago had no business whatsoever "testifying" to anything. They know nothing about what actually happened, because they weren't there to see it. Their "testimony" was so very inappropriate. Marilyn's primary motivation in this is undoubtedly getting her sticky meathooks on the estate inheritence, and whatever's left of my stuff. She's a greedy, gold-digging perra, and had no business potentially influencing Jg. Barthelds impartiality at sentencing...

5. Judicial prejudice and biased statements ... which apparently indeed was

compromised by something or someone, as indicated by such statements as, "I hope your mother's (failing mental faculties) let her be lucky enough to forget about you," and, "You severed (filial) relationship." Ha! All I ever did was try to take care of her as best I could. I was so flustered and upset by his remarks and the hear-say "witnesses" being there, I signed that Judgement and Sentence in a fog of frustration and anxiety. Mr. Kelley basically just stood there nodding his head like he had orchestrated it all, and was enjoying getting the credit.

6. Judge's affirmation of appeal eligibility

Jg. Barthold was reviewing the J&S, trying to tell me what was on it, but I was so upset and fogged-out I wasn't really hearing what he was saying, until he got to the part about sentence appeal. I perked up a bit and asked him to repeat that part, and he went so far as to read CrR 7.2 right out of the book verbatim, and assured me that while I could not appeal the verdict, indeed I absolutely

could appeal sentencing. I contend that he supercedes whatever sneeky tricks the prosecutor slipped in section 2.6.

7. Prosecutorial misconduct in Specific Performance

Nowhere in the Plea Agreement does it preclude sentence appeal. Page 3, sec. 5(f) states that I gave up "the right to appeal a finding of guilt," and p. 5, sec. 8 states that "if the court imposes an exceptional sentence after a hearing, (I) can appeal the Sentence." I signed that plea. Paul Kelley signed that plea. And Ms. Brooke Wright, #41217 signed that plea, but she did not abide by it. She violated Specific Performance. My contention is the last sentence of the checked/x-ed box paragraph of sec. 2.6 on p. 2 of the J&S, concerning sentence appeal; and, the first √-ed/x-ed box paragraph of section 2.2 of that same page. Section 4.A.2 is also misappropriate. I was so distraught and traumatized by the aforementioned abuse of Due Process and the "presumed innocent until proven guilty" facade that I didn't catch it at the time, and I sincerely doubt Mr.

Ex. E p. 3

Ex. E p. 5

Ex. J

Ex. J

Kelley actually wanted me to.

8. Prosecutorial misconduct in Brady violations

Discovery, medical records, witness statements, the deputy from the "lost car" incident, etc ad nauseum. It was like pulling hen's teeth, trying to get any of the information necessary to make any educated decisions or strategies. The Saturday before the Monday I was scheduled for trial, Mr. Kelley surprised me mid-morning with the news that he had just that morning received a copy of the recorded interview with the Catrons, Dave & JoLou. Two days before trial was to start, we were apparently supposed to prepare defense for the state's two primary witnesses! (Who didn't really see or know anything either, but still, it's the principle...) It was absolutely ridiculous how long I languished in jail waiting for so little Discovery information for so little defensive effect. Medical records were incomplete, history of falls and A.V.'s fall ~~history~~ risk status records were incomplete, and no effort whatsoever was put into finding out about A.V.'s fall off the back porch in '13, or her fall into

the bathtub in 2010, while drunk and loaded on pain killers, the day after she got home from hip replacement surgery. No effort whatsoever. If not quite blatant suppression enough for Brady status, certainly severe enough for Unreasonable Discovery Delay and Hobson's choice. Mr. Kelley finally gave me a copy of redacted Discovery and transcripts of A.V.'s recorded statements to him only four days before trial was scheduled in Jan. of '16. I had been asking for these documents for months, literally up to a year previous. I signed the requested protective order, and took the documents back to my jail cell according to YCDOC Inmate Manual page 12 of 25. (see p. 4, sec. 3 of this document, & Exib. A.) Now they are refusing to return it to me, which is, in my best estimation, evidence suppression post facto. I include Mr. Kelley in this estimation, because he is quite obviously conspiring with the state, which is conflict of interest.

9. Exceptional sentence w/out report to SGC. Ex. F, p. 9

Currently I am playing mail tag with the Sentencing Guidelines Commission, trying to find out for sure if the sentencing court complied with RCW 9.94A.535 and CrR 7.2(d). To the best of my knowledge to date, they

have not. Every attempt to answer my question so far has involved focusing back on the J&S, Ex. K
Ex. F, p. 11 which is circular logic, like begging the question. In re of PRP Breedlove 138 Wn 2d 298 — 12/8/98 "Even though the sentence may be statutorily authorized, when a trial court imposes a sentence which is outside the standard range set by the legislature, the court must find
Ex. F, p. 11 a substantial and compelling reason to justify Ex. E, the exceptional sentence. If the trial court relies p. 5 on a reason which is not substancial and compelling and which is not consistent with the purposes of the SRA of 1981, the sentence is unlawful." And, it's pretty clear in 9.94A.535 where it says "Whenever. . ." Not just Trial, but "Whenever," which would include a Plea. Unlike Breedlove, I have no paralegal training, I didn't stab or kill anyone, and I did not ask for four times the reasonable sentence. ~~The~~ Ex. F, p. 10 ~~SDPG I did sign states~~ The last part of the last sentence of CrR 7.2(d) states, "the court's written findings of fact and conclusions of law shall also be supplied to the Commission." I'd really like to see that. Ex. F I don't believe they can honestly justify it. p. 9, *

10. Same criminal conduct; concurrency

Original charges of Assault II fell

into the 22-29 month range, and so, with the reduced, amended charges, I expected a plea bargain of somewhere between 30 to 60 months. It was only reasonable to assume that the amended charges would be compensated by an exceptional sentence comparable to the original charges. Prosecution's first offer was 15 years. And so I signed a few more continuances and waited in jail several more months until James Haggarty and Dan Fessler both retired, and Joe Brusick and Paul Kelley took their places. I soon realized Mr. Kelley was more interested in promoting his carreer than defending me. Prosecution wasn't budging, and laughed at my counter-offers. Mr. Kelley told me they wanted me locked up long enough to let my poor and puzzled mother pass on by natural causes. I find such a sentiment reprehensible beyond comprehension, and to state it out loud to defense counsel to pass along to a defendant morbidly unprofessional. What a horrible thing to say!

The Second Amended Information (final?) Ex. H alleges both counts 1 and 2 occurred

on the same date, at the same time, in the same place, as part of the same incident and criminal intent, therefore logically and legally making them same criminal conduct and warranting the corresponding sentences being served concurrently, not consecutively. ~~The Plea~~ My contention is that sections 2.2, 2.6, and 4.A.2 were slipped in on the J & S undetected by me, and uncontested by Mr. Kelley. The Plea Agreement does not stipulate these. Actually, the SDPG states on p. 3, sec. 6(b) that "the terms of confinement for Counts One & Two are presumed to be served concurrently." Same "criminal intent", same "victim", same date, same cause number, same case. Same criminal conduct warrants concurrency. 2006 WaApp LEXIS 632 Imam Addlehe Jara. Unlike Jara, I am not arguing Offender Score, but the terms of confinement. The point of all this is that even though each case is different and must be examined individually, we still have Case Law, by which all cases are compared to be consistent with Legislatures' intent when they ruled on SRA in 1981. IE: Ten years

Ex. B, p.64

Ex. J

Ex. E, p.3

Ex. H

Ex. B, p

is too much time, even if her split lip was not accidentally self-inflicted. Four times too much time. Which is why I want this mess remanded for re-sentencing to run concurrent, at least. That's really all I am asking.

Ex. F, p. 12

11. Cumulative Error - ~~Ex. I~~

Well, I see my list has changed a bit from the one I had in mid-October of '15, ~~Ex. I~~ and shortened a little. (See Exib. I) But in principle, the reasoning is the same; there were so many sloppy, lackadaisical elements to getting a proper defense together, and so many malicious fabrications and machinations by the state, that anything less than at least looking at Cumulative Error doctrine would be uncivilized. I've targeted five potential assignments of error in addition to the five that Appellate Counselor Ms. Andrea ~~Burke~~ Burkhart brought to attention, and I've done my level best to substantiate them all. I do hereby propose they all be examined cumulatively as well as individually in light of the Cumulative Error doctrine, and not of "most favorable to the state".

STATEMENT OF FINANCES

I, Alfred Earle Brown, certify that I cannot afford to pay the $250 filing fee normally required to file a Motion/Petition for Discretionary Review.

1. I request that the filing fee be waived and that I be allowed to file Pet. for Discretionary Rev. 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 $ Ø 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 $ Ø.
5. In the past 12 months (I did) X ~~(did not)~~ ~~X~~ receive any interest, dividends, rental payments, or other money. The total amount of such money I received was $_____. The total amount of cash I have other than otherwise indicated above is $ Ø.

See Attached Statement

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
(for example: an automobile, make, model, and year; the present value, $3,000.00; still owe $500.00).		
None	N/A	N/A

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

   N/A

   _____

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

Apparently, DOC needs me for job security.

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

WA St. thinks I owe them thousands.

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

10. I have a spendable balance of $ Ø 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 23rd day of March, 2017.

AL E. Brown
PETITIONER

PLRA IN FORMA PAUPERIS STATUS REPORT FOR DEFINED PERIOD 08/31/2016 TO 02/28/2017

DOC# :	0000801659	NAME : BROWN ALFRED		ADMIT DATE :	02/17/2016
DOB :	04/05/1965			ADMIT TIME :	11:54

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
9.71	1.94	3.88	0.78

DECLARATION OF MAILING

GR 3.1

I, Alfred Brown on the below date, placed in the U.S. Mail, postage prepaid, three envelope(s) addressed to the below listed individual(s):

WA St. Crt. of Appeals
500 N. Cedar St.
Spokane, WA 99201-1905

WA St. Supreme Court
415 S.W. 12th Ave
PO Box 40929
Olympia, WA 98504-0929

Yakima Co. Prosecutor
Yakima Co. Courthouse
128 N. 2nd St.
Yakima, WA 98901

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

1. Motion for Discretionary Review
2. Petition for Discretionary Review (with exibits)
3. Motion to Modify Ruling
4. Motion to Modify (Supplemental)
5. Statement of Finances
6. Statement of Additional Grounds

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

DATED this 23rd day of March, 2017, at Connell WA.

Signature Al E. Brown