

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JAN 15 AM 11:01

IN THE COURT OF APPEALS
STATE OF WASHINGTON
Division One

Personal Restraint Petition of
Mansour Heidari

No. 63040-7-1

**PETITIONER'S REPLY
BRIEF RAP 16.10(a)(2)**

A. PARTIES/RELIEF

1.1 COMES NOW the Petitioner, **Mansour Heidari**, appearing pro se and submits his reply brief in rebuttal to the Prosecutors answer to his CrR 7.8(a) and (b) motion that was transferred to the Court of Appeals from the superior court Mr. **Heidari** asks the court to remand the matter back to the Superior Court for a determination on the merits.

B. ISSUES PRESENTED

1. Whether the Court of Appeals should reject the transfer of Mr. **Heidari's** CrR 7.8 motion and remand to the Superior Court which does have jurisdiction to hear both claims raised?
2. In the alternative, whether this court should consider Mr. **Heidari's** "erroneous crime date" claim under sufficiency of the evidence? Where the evidence adduced at trial does not support the crime date listed on the Judgment and Sentence which is an element of the crime?

3. Whether Mr. **Heidari**'s challenge to the erroneous crime date should be construed as a challenge to the facial validity of the judgment and sentence?

C. SUMMARY OF PROCEEDING

2.1 Mr. **Heidari** initially filed his post-conviction motion in the Superior Court of King County. The first issue was brought under CrR 7.8(a), because it appeared best treated as a clerical error and because the one year time bar, RCW 10.73.090, does not apply. Mr. **Heidari** argued then, as he does now, that the crime date listed on the judgment and sentence is incorrect. The second issue concerns count IV and challenges the sufficiency of the evidence. Challenges to the sufficiency of the evidence are exempt per RCW 10.73.100(4). Both issues fall squarely under the superior court's jurisdiction, are clear, unequivocal and *dead bang winners!* The Superior court is also in the best position to decide the matters presented. Nevertheless, the superior court transferred his pleading to the Court of Appeals as a PRP.

2.2 After its transfer, Mr. **Heidari** filed an objection and moved the Court of Appeals to return his pleading to the Superior Court. As part of its review, Mr. **Heidari** asks the court to address his objection to the transfer.

2.3 In any event, the Prosecutor now claims Mr. **Heidari**'s PRP is a mixed petition and must be dismissed. The Respondent raises the argument that the "incorrect crime date" does not render the judgment and sentence invalid on its face.

2.4 In rebuttal, Mr. **Heidari** claims: (1) he should not be punished for submitting his complaint to the superior court, where it was subsequently transferred to this court, labeled a PRP that gave birth to the respondent's

defense that the PRP was a mixed petition; (2) if the court accepts transfer of Mr. **Heidari's** CrR 7.8 motion: he amends his "erroneous crime date" challenge to that of insufficiency of the evidence, where the "date of the crime" is an element of the crime charged. See WPIC 44.11. The evidence then is insufficient to sustain a conviction beyond a crime date of June 14, 1997 and the higher seriousness level that comes with a later crime date, and, (3) this court should consider the "erroneous crime date" as a challenge that the judgment and sentence is invalid on its face. Thus, the original issue of an "erroneous crime date" submitted under CrR 7.8(a) and now transferred as a PRP, is presented under two theories: *insufficiency of the evidence* and *facial invalidity*. Under either theory, **Mr. Heidari's** PRP is not time barred.

C. ARGUMENT

3.1 GROUND ONE

DUE PROCESS AND FAIR PLAY MUST COMPEL THIS COURT TO RETURN THE MATTER TO THE KING COUNTY SUPERIOR COURT, WHERE THE ONE YEAR TIME BAR AND THE MIXED PETITION DOCTRINES DO NOT APPLY UNDER CrR 7.8(a) & (b).

3.2 Mr. **Heidari** has filed an objection to the transfer of his post conviction CrR 7.8 motion to this court. His objection should be granted. Why? Because it would be fundamentally unfair for this court to dismiss Mr. **Hedari's** PRP (CrR 7.8 motion) as a mixed petition knowing that the Washington Court rule CrR 7.8(a) permits hearing the issue of an "erroneous crime date", and that changing the date of the crime on the judgment and sentence is clerical in nature and falls squarely under CrR 7.8(a). *State v. Casarez*, 64 Wn.App. 910, 915 (Div III, 1992) ("Here, it is apparent from the trial record that the dates in the judgment are in error".)

4.1 Had Judge Rogers addressed the issue of the wrong crime date on the judgment and sentence, the outcome is near certain. The victim and other witnesses unequivocally testified that the accusation of child rape happened before the school year was finished in June 1997. The seriousness level of the crime changed effective July 1, 1997. Laws of 1997, Vol 2, Ch 340, §1. Changing the crime date yields a sentence of 146 instead of 162 months. The superior court abused its discretion by transferring **Heidari**'s CrR 7.8 motion to the Court of appeals.

4.2 **GROUND TWO**

WHERE TESTIMONY PROVED THE CRIME OCCURRED BEFORE JUNE 15, 1997, AS A MATTER OF LAW, THE EVIDENCE WAS INSUFFICIENT TO SUPPORT USING A CRIME DATE OUT TO 1998.

4.3 Because the superior has transferred Mr. **Heidari**'s motion to the Court of Appeals and because the respondent argues that **Mr. Heidari's** PRP is now a mixed petition, Petitioner amends the claim of an "erroneous crime date" for consideration as insufficiency of the evidence which is exempt under RCW 10.73.100(4). That is, the "evidence introduced at trial was insufficient to support the to convict instruction of a crime beyond June 15, 1997. The claimed error is now exempt under RCW 10.73.100(4).

4.4 Addressing the element of the crime date, the evidence at trial only supports a date on or before June 15, 1997, the conviction and corresponding crime date range out to 1998 is insufficient on the element of the crime date. The statement of facts submitted in Mr. **Heidari's** motion to the superior court and the attached exhibits are undisputed and do not "legally support a judgment of guilty" of the crime after June 15, 1997. *State v. Feigang*, 115 Wn.App. 496, 501 (2002). Though Mr. **Heidari's**

claimed error was best considered under CrR 7.8(a), the standard is now—after renaming it a PRP—that of insufficient of the evidence.

5.1 Because there are no disputed facts, this court should grant relief and hold that the state failed to prove the crime date (range) that was after June 15, 1997, and remand to the superior court for resentencing under the lower seriousness level XI and impose a sentence of 142 months.

5.2 GROUND THREE

IN THE ALTERNATIVE, THIS COURT SHOULD REVIEW THE CLAIMED ERRONEOUS CRIME DATE AS A CHALLENGE THAT THE JUDGMENT AND SENTENCE IS *INVALID ON ITS FACE*.

5.3 **Facts.** The facts are undisputed. The victim traveled to Iran at the end of May or the start of June in 1997, the school year ended on June 14, 1997. See RP 330 and Ex. 3. The victim unequivocally testified that her allegation of rape happened before she traveled to Iran and before the school year ended in June of 1997. The Legislature amended the statute in 1997 that changed the seriousness level from a XI to an XII. Clearly, the conviction must be for a period of time between 1996 and June 15, 1997.

5.4 **Legal invalidity.** This court has four documents to review that support Mr. Heidari's "invalid on its face" claim: First, the judgment & sentence shows the date of the crime as a range, this by itself is *prima facie* evidence of error. Second, the Laws of 1997, manifest an amendment to the seriousness level that took place at a period within the crime range date. Laws of 1997, Vol 2, Ch 340, §1 Third, the charging document mirrors the same date listed on the judgment and sentence, giving the appearance that the crime dated listed on the judgment and

sentence date was a mere rubber stamp of the charging document. And fourth, Washington law, RCW 9.94A.530(2), provides that “[i]n determining any sentence, the trial court may rely on no more information than is admitted ... acknowledged, or proved in a trial or at the time of sentencing.” Using a crime date beyond that proven at trial violates the statute and supports review of the record. As a result, sentencing Mr. **Heidari** under an amended statute that did not exist at the time of the crime exceeded the court’s authority. See *PRP of Goodwin*, 146 Wn. 2d 861, 869 (2002) (miscalculated offender score). It is therefore appropriate for this court to look at the trial record to establish the actual date of the crime. *Id.* The State Supreme Court in *Stoudmire* and *Thompson* held that documents signed as part of a plea agreement may be considered in determining facial invalidity when those documents are relevant in assessing the validity of the judgment and sentence.¹ Here, the seriousness level XII did not exist at the time the crime was committed. See *PRP of Hinton*, 152 Wn.2d 853 (2004).² It is certainly reasonable for this court to review the victim’s testimony to establish the truth —did the victim’s testimony prove a crime date on or before June 15, 1997, if so then Mr. **Heidari**’s judgment and sentence is invalid on its face.

D. CONCLUSION

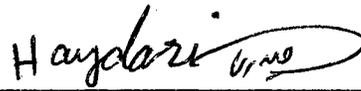
6.1 Both issues before this court are dead bang winners. The testimony at trial proved the crime of rape took place took place before June 15, 1997 before the seriousness level changed for the crime. Whether viewed under insufficiency of

¹ *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353 (2000) and *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 718 (2000).

² See also, *State v. West*, 154 Wn. 2d 204 (2005); *Pers. Restraint of Lachapelle*, 153 Wn.2d 1 (2004)

the evidence or facial invalidity, Mr. **Heidari's** PRP is not time barred. Concerning count IV, the record is also is undisputed, the evidence was insufficient to prove the element of "touching". Therefore this court should grant PRP and remand this matter to the superior court for resentencing.

Respectfully submitted this 11 day of June 2009.



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In re Personal Restraint
PP Petition of

Cause 63040-7-1

Mansour Heidari

DECLARATION OF MAILING

v.

I, Mansour Heidari, do declare that I am a prisoner at the Monroe Correctional Complex, that on _____, I deposited the foregoing or copy thereof, of the following documents:

1. Petitioner's Reply Brief , RAP 16.10(a)(2)

2. Declaration of Mailing

By delivering to prison authorities for deposit in the internal mail system of the Monroe Correction Complex and made arrangements for postage (prefranked envelope or disbursement voucher authorizing same) for deposit in the United States Mail addressed to:

And addressed to:

The Court of Appeal, Divsion 1

One Union Squer
600 University Street

Seattle, WA 98101-4170

I declare under penalty of perjury under the laws of the State of Washington the foregoing is true and correct. 28 U.S.C. §1746 Unsworn declarations under penalty of perjury.

June 11, 2009

DATE

Mansour Heidari

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64 APP
115 APP

146 Wn.2d
141 " "
152 " "
154 " "
153 "

Schedule							
Times	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7:30 - 10:30	Open Access	Open Access	Priority Access	Open Access	Priority Access	Open Access	Priority Access
12:30 - 3:30	Open Access	Open Access	Open Access		Open Access		Open Access
5:50 - 8:30			Open Access	Open Access	Open Access	Open Access	Closed for Cleaning
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