

ORIGINAL

No. 34521-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

07/20/12 PM 1:15

SIGN
BY



State v. Walter Barbree

IN RE PERSONAL RESTRAINT
OF
WALTER JESSE BARBEE

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable James B. Sawyer II, Judge
Cause No. 02-1-00232-3

BRIEF OF RESPONDENT

Reply to PIP

MONTY D. COBB
Deputy Prosecuting Attorney
Attorney for Respondent
WSBA # 23575

Mason County Prosecutor's Office
521 N. Fourth Street
P.O. Box 639
Shelton, WA 98584
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TABLE OF CONTENTS

A. PETITIONER’S ASSIGNMENT OF ERROR.....	1
B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR.....	1
C. STATEMENT OF THE CASE.....	1
D. ARGUMENT	3
1. BARBEE'S PERSONAL RESTRAINT PETITION IS TIME-BARRED.	
2. BARBEE CANNOT SHOW THAT ENFORCEMENT OF HIS PLEA AND SENTENCE WOULD CONSTITUTE A MANIFEST INJUSTICE	
E. CONCLUSION.....	7

TABLE OF AUTHORITIES

CASES

Washington State

American Continental Insurance Co. v. Steen, 151 Wn.2d 512, 91 P.3d 864 (2004).....5
In Re Carlstad, 150 Wn.2d 583, 80 P.3d 587 (2003).....5
State v. Conley, 121 Wn.App. 280, 87 P.3d 1221 (2004) 7-9

RCW

10.73.090..... 1, 3-5
10.73.100.....4

Court Rule

RAP 10.32
RAP 16.44

Other

Webster’s Desk Dictionary
Random House 2003 edition6

A. PETITIONER'S ASSIGNMENT OF ERROR

- 1.) Mr. Barbee is entitled to his choice of remedy because he was misinformed about the penalties for the crime.
- 2.) This Petition is not barred by RCW 10.73.090.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- 1.) Whether the petition is time-barred.
- 2.) Whether Barbee has met his burden of showing that a manifest injustice would occur if he is not allowed to withdraw his plea.

C. STATEMENT OF THE CASE

Walter Jesse Barbee III entered a plea of guilty to Murder in the First Degree, with a firearm enhancement, during the course of trial. Counts II through V were dismissed as part of the plea agreement.

The trial court reviewed the plea statement with Barbee who entered a plea of guilty. Barbee declined to write his own statement of facts in support of the plea on the plea form, instead Barbee allowed the trial judge to review the records and to consider the trial testimony as taken prior to entry of the plea. See Statement on Plea and RP 1335. There was no discussion on the record at the time of plea regarding the availability of earned early release credit for the mandatory minimum 20 years on the murder charge.

At sentencing on June 12, 2003, Barbee was sentenced to 304 months plus an additional 60 months for the firearm enhancement. Following imposition of sentence. No appeal was taken.

According to Department of Corrections records, Barbee was admitted into the correctional system on June 13, 2003. He was provided documentation of his calculated early release date on October 13, 2003. See Appendix A.

Barbee's concurrent motion for late filing of direct appeal and a personal restraint petition were filed late March 2006.

Barbee's statement of facts includes significant argument which is not appropriately included in a factual recitation and with that objection, the State has not acceded to Barbee's statement of facts as allowed by RAP 10.3. For example:

Contrary to Barbee's statement of facts, there is nothing in the record that Barbee's attorney told Barbee he could earn 15% good time on the murder sentence.

Contrary to Barbee's statement of facts, Barbee entered a plea of guilty, not an *Alford* or *Newton* plea.

D. ARGUMENT

1. BARBEE'S PERSONAL RESTRAINT PETITION IS TIME-BARRED

Barbee's case was final June 13, 2003, when the judgment was filed with the clerk of court (no direct appeal was taken). RCW 10.73.090 addresses the time for filing collateral attacks to include personal restraint petitions, and states in pertinent part:

- (1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.
- (2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition...
- (3) For purposes of this section, a judgment becomes final on the last of the following dates:
 - (a) The date it is filed with the clerk of the trial court;
 - (b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction;...

There is no question nor argument that the sentencing court was a court of competent jurisdiction. The judgment and sentence is valid on its

face. There is no dispute that Barbee is under restraint as defined in RAP 16.4 as a result of the underlying criminal case.

The one-year time bar is mandatory unless an exception to the one-year period is met under RCW 10.73.100. RCW 10.73.100 sets forth the grounds upon which the one-year time limit is not applicable. This petition is based solely upon a claim of “newly discovered evidence”, RCW 10.73.100(1).

For the exception to apply to claims based on “newly discovered evidence”, the petitioner must have “acted with reasonable diligence in discovering the evidence and filing the petition”. RCW 10.73.100(1).

Barbee acknowledges that this petition is filed outside of the one year window and was indeed filed over one year after Barbee was advised of his early release date by DOC. (Petitioner’s Brief at 12). Therefore, for this petition to be timely, Petitioner must demonstrate that his petition falls into one of the exceptions to the one-year time-bar.

Barbee first argues that his motion to file a late direct appeal satisfies RCW 10.73.090(3)(b). That however ignores the clear language of the statute requiring a “timely direct appeal.” This statute is clear and unambiguous on its face and therefore not subject to additional interpretation. As the Washington Supreme Court has said:

We are not to search for an ambiguity by imagining a variety of alternative interpretations.

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omitted. Petitioner admits his attempt at a direct appeal was late.

Barbee's argument that his PRP is timely under RCW 10.73.090(3)(b)

must fail under the clear language of the statute.

Barbee next asserts that the principle of equitable tolling applies.

The State Supreme Court has declined to rule on whether equitable tolling

even applies in such circumstances. "This court has yet to decide if

equitable tolling is available in criminal cases." *In re Carlstad* 150 Wn.2d

583, 593, 80 P.3d 587 (2003). Even if equitable tolling did apply:

Equitable tolling is generally used only sparingly, when the plaintiff exercises diligence and there is evidence of bad faith, deception, or false assurances by the defendant.

Carlstad at 593. Again, Petitioner cannot demonstrate the requisite

diligence. BARbee's declaration indicates he found out about the early

release date (ERD) late in 2004¹, sends a number of letters to his former

defense counsel over the next year with no response, retains current

counsel in sometime in 2005, doesn't advise current counsel of his concerns regarding his ERD until October 2005 and this petition is filed in March 2006. Petitioner gives no explanation for the delay in seeking outside counsel—or assistance from either the trial court or this Court—for over a year, nor does he give any explanation for not raising the ERD issue with his current counsel until October 2005.

Petitioner likewise cannot show any evidence of bad faith or deception. He asserts he pled under false assurances regarding the availability of earned early release credit yet his trial counsel's declaration does not state with any degree of certainty that he advised the Petitioner one way or the other regarding the availability of earned early release credit prior to entry of the plea. Yet, compare this equivocal statement with the common definition of "assurance": "a positive declaration intended to give confidence; a promise or pledge." Webster's Desk Dictionary (Random House 1993). Taking trial counsel's declaration as written, there is no proof of any "assurance" made at or prior to the time of plea that Barbee could earn early release credit on the mandatory minimum sentence.

¹ Which conflicts with information from DOC which provided Barbee with an ERD in October 2003.

While the State asserts that equitable tolling is not available in these circumstances, even under the requirements above, Petitioner is not entitled to the application of the principle and his petition is time-barred.

Should this Court find Barbee's petition is timely filed, the State argues as follows:

2. BARBEE CANNOT SHOW THAT ENFORCEMENT OF HIS PLEA AND SENTENCE WOULD CONSTITUTE A MANIFEST INJUSTICE

Barbee cites to *State v. Conley*, 121 Wn.App 280, 87 P.3d 1221 (2004) and indeed his circumstance is in some respects indistinguishable from that case.

Both Conley and Barbee entered pleas of guilty² to offenses which required minimum sentences during which no earned early release was available. *Conley* at 285 and Statement on Plea, page 5, paragraph x as attached to Petitioner's Brief. Both defendants claim they were misinformed as to a direct consequence of the plea—the unavailability of

² Barbee now asserts, as "proof" of his equivocal plea and thus the importance of the favorable sentence, that his plea was an *Alford* (or *Newton*) plea. There is absolutely no evidence in the record, written or recorded, that this was an *Alford* plea. Such assertion is also flatly inconsistent with Barbee's statement at this sentencing, RP 1364-5, and trial counsel's statement at sentencing, RP 1362.

earned early release during the period of the mandatory minimum sentence. Here however, the facts between the two cases diverge.

The trial court in *Conley* struck out the language in the plea form advising of the mandatory minimum sentence. *Conley* at 285-286. The same language was properly filled out, and initialed by Barbee, on Barbee's plea form and reflects the mandatory "20 years of total confinement. The law does not allow any reduction of this sentence." Statement on Plea, page 5, paragraph x.

In *Conley*, trial counsel affirmatively stated that he advised Conley that he would have available the potential for earned early release during the period of the mandatory minimum sentence. *Conley* at 285. The declaration by Barbee's trial counsel is equivocal at best.

With those very significant differences in place, the similarities resume. Both Conley and Barbee pled with prosecutor recommendations of low-end standard range sentences. In both cases, the low-end standard range exceeded the mandatory minimum sentences: 102 month recommendation / 5 year mandatory minimum in Conley's case; 261 month recommendation / 20 year minimum in Barbee's case.

Both Conley and Barbee also received breaks on the number of charges or enhancements they would have been at risk of being convicted of by pleading. Conley avoided an additional firearm enhancement.

Conley at 287. Barbee had Counts II – V dismissed and those were all additional felonies. RP 1336-1337. Conley saved a potential additional five years. Barbee’s offender score would have potentially gone up to 6 with a standard range of 312-418 months—Barbee saved a minimum of 51 months.³

As the *Conley* court noted: “Generally a defendant's (or his trial counsel's) self-serving statement is insufficient alone to sustain the burden of proof as to prejudice. The statement must be corroborated independently by objective evidence, if possible.” *Conley* at 287, internal citations omitted. Based on the facts before it, the *Conley* court found Conley’s assertion that he would not have pled if he had been properly informed regarding the earned early release to be unreasonable. Likewise, Barbee’s assertion that he would not have pled if he had known about the earned early release credits is unsupported by any objective evidence. It is also unreasonable given the fact that, by pleading, Barbee saved himself the exposure to a *minimum* of 51 additional months (see above) while his current complaint would only save him—if earned to DOC satisfaction—36 months (240 months time 15%).

The *Conley* court found Conley’s assertions of prejudice too tenuous and denied his petition. Given the similarities in the two facts of

³ Calculation based on 2 points for Count III (a violent offense) and a point for each of

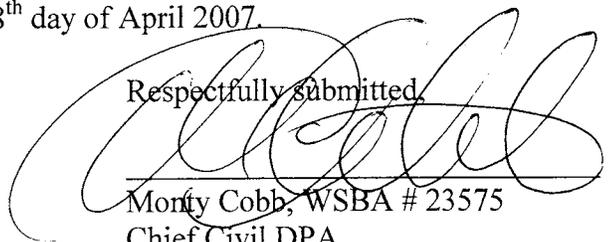
these two cases, and the differences which make Barbee's arguments even less compelling, the result should be the same. This Court should decline to find that Barbee has met his burden as well and affirm the sentence.

E. CONCLUSION

Based on the foregoing, the personal restraint petition should be dismissed as time-barred but should the court consider the petition, the requested relief should be denied as Barbee has not met his burden of proof.

DATED this 18th day of April 2007.

Respectfully submitted,



Monty Cobb, WSBA # 23575
Chief Civil DPA
Attorney for Respondent

Counts IV and V resulting in an offender score of 6 under the SRA.

Appendix A

TO

STATE'S REPSONSE

Court of Appeals, Division II
No. 34521-8-II

IN RE PERSONAL RESTRAINT
OF
WALTER JESSSE BARBEE

Mason County No. 02-1-00232-3



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
CLALLAM BAY CORRECTIONS CENTER
1830 Eagle Crest Way • Clallam Bay, Washington 98326-9723
Phone (360)963-2000
FAX Number (360)963-3390

SUPERINTENDENT'S COMPLEX

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 04-18-07
TO: Monty Cobb
Mason Co. Pros.
FROM: Carla King (360) 963-3362
CBCC

NUMBER OF PAGES: 4 (including this page)

ADDITIONAL INFORMATION:

Facility Plan for Walter Barbee DOC# 753733
dated 10/13/03. Offender was present at this
meeting and given paperwork with his
ERD of 12/13/31.



Offender Information					
Offender Name (last, first, middle initial, suffix): Barbee, Walter J.				DOC Number: 753733	Offender Status: Active Inmate
DOB: 10/11/77	Time Start: 06/12/03	(P)ERD: 12/13/31	Maximum Exp Date: 11/22/2032	Mandatory Exp. Date: 07/24/27	Current Custody: Close
LSI-R Score:31	RMI Level: RMA	SMIO: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	RMIT Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	CommCustody/Placement Yes <input checked="" type="checkbox"/> NO <input type="checkbox"/>	Community Custody Range: From: 24 To: 48
ISRB: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	SRA 10-day Release Status: Eligible	End of Sentence Review Screening Completed: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Special Sentence Alternative: None	
Detainer / Warrant: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If "Yes", please list: 06/17/03 MI YAKIMA SO MISD #WSP279821/DWLS 3RD			

Purpose of Report		
Purpose of Report:	<input checked="" type="checkbox"/> Intake (P) Facility Plan	<input type="checkbox"/> HCSC
<input type="checkbox"/> Board Report	<input type="checkbox"/> Scan Only	<input type="checkbox"/> Override
<input type="checkbox"/> Plan Change (P) Review	<input type="checkbox"/> Extraordinary Medical Placement	<input type="checkbox"/> Map
<input checked="" type="checkbox"/> Time Exceeds 6 years	<input type="checkbox"/> Other (Specify):	
Prepared By: K. Grubb CCIII <i>KGrubb</i>	Referral Location: CBCC/C	Date: 10-13-03

Offender Community Support	
Anticipated Release Address: Inmate Barbee has not developed a release plan at this time. Phone Number:	Residence Sponsor: Relationship to Offender:
Additional Individuals in the Home	
Name: (last, first, MI)	Adult / Minor Relationship to Offender:
Has the sponsor or others residing in the home been a victim of the offender? Yes <input type="checkbox"/> No <input type="checkbox"/>	

Programs	
Basic Skills	Narrative: Inmate Barbee does not have a verified GED. A referral to Basic Skills has been made. He is expected to complete DOC education requirements.
Job/Work	Narrative: Inmate Barbee does not have a work program. He is expected to obtain a work program and receive average or better work performance evaluation reports.
Offender Change	Narrative: Inmate Barbee has not completed any offender change programs. He is expected to enroll and complete offender change programs as directed by the FRMT and his behavior.

Offender DOC # 753733	Offender Name: Barbee, Walter J.
Don 20-402 (Rev. 03/04/03)	1 of 3

Vocational	Narrative: Inmate Barbee has not participated in any state funded vocational training during his incarceration. He is expected to develop a vocational plan to address his release needs.
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Additional Offender Classification Expectations

Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		

Targeted Custody/Placement

Target Date	Targeted Custody	Targeted Placement (if applicable)	Inmate Preferred Location:	Comments
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		

Current Classification Action

Counselor Comments and Recommendations:
 Inmate Barbee was admitted to the system on 06/12/03. He received close custody at his ICD dated 07/09/03. Per policy inmate Barbee must remain at close custody for the first four years of his sentence. Inmate Barbee is serving an OAA sentence with community custody requirements. Inmate Barbee arrived at CBCC on 07/16/03 from WCC for a facility assignment. He has a current custody score of 59, equating to minimum custody. There are no negative impacts to the score to report this review period. There are separate concerns listed. There are no facility prohibitions listed. I recommend that inmate Barbee maintain close custody (MUR), retain CBCC.

Counselor: K. Grubb Date:

Offender DOC # 753733	Offender Name: Barbee, Walter J.
Don 20-402 (Rev. 03/04/03)	2 of 3

Facility Risk Management Team

CONCUR

DO NOT CONCUR

Comments and Recommendations:

The FRMT met with Inmate Barbee on 10/13/03. Inmate Barbee is expected to complete Basic Skills classes and earn his GED. He is expected to obtain a work program and earn average or better performance evaluations. He is expected to enroll and complete offender change programs.

- 1. Maintain close custody (MUR).
- 2. Retain CBCC.

FRMT Chair: CUS J. Boe

J. Boe

Date:

10/22/03

Date:

Offender Comments:

Inmate Barbee requests a hardship transfer to MCC due to his mother's medical condition.

Reviewer

CONCUR

DO NOT CONCUR

Comments and Recommendations:

Reviewer/Chair:

S. Dummel, CPM

11/24/03

Date:

Superintendent/Designee

CONCUR

DO NOT CONCUR

Comments/Decisions:

Superintendent/Designee:

John Aldana

11/25/03

Date:

Headquarters Decisions:

Date:

DISTRIBUTION:

Upon Completion of Headquarters Action, Return to:

Offender DOC # 753733	Offender Name: Barbee, Walter J.
Don 20-402 (Rev. 03/04/03)	3 of 3

07 APR 20 11:14 AM
STATE OF WASHINGTON
BY _____

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

IN RE PERSONAL RESTRAINT,)
)
 OF) No. 34521-8-II
)
 WALTER JESSE BARBEE) DECLARATION OF
) FILING/MAILING
) PROOF OF SERVICE
 _____)

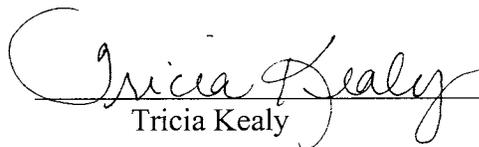
I, TRICIA KEALY, declare and state as follows:

On April 18, 2007, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached (BRIEF OF RESPONDENT), to:

David B. Zuckerman
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104

I, Tricia Kealy, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 18th day of April, 2007, at Shelton, Washington.


Tricia Kealy

Mason County Prosecutor's Office
521 N. Fourth Street, P.O. Box 639
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(360) 427-9670 ext. 417
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COPY

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CLERK OF COURT OF APPEALS DIV II
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Barbee cites to *State v. Conley*, 121 Wn.App 280, 87 P.3d 1221 (2004) and indeed his circumstance is in some respects indistinguishable from that case.

Both Conley and Barbee entered pleas of guilty² to offenses which required minimum sentences during which no earned early release was available. *Conley* at 285 and Statement on Plea, page 5, paragraph x as attached to Petitioner's Brief. Both defendants claim they were misinformed as to a direct consequence of the plea—the unavailability of

² Barbee now asserts, as "proof" of his equivocal plea and thus the importance of the favorable sentence, that his plea was an *Alford* (or *Newton*) plea. There is absolutely no evidence in the record, written or recorded, that this was an *Alford* plea. Such assertion is also flatly inconsistent with Barbee's statement at this sentencing, RP 1364-5, and trial counsel's statement at sentencing, RP 1362.

earned early release during the period of the mandatory minimum sentence. Here however, the facts between the two cases diverge.

The trial court in *Conley* struck out the language in the plea form advising of the mandatory minimum sentence. *Conley* at 285-286. The same language was properly filled out, and initialed by Barbee, on Barbee's plea form and reflects the mandatory "20 years of total confinement. The law does not allow any reduction of this sentence." Statement on Plea, page 5, paragraph x.

In *Conley*, trial counsel affirmatively stated that he advised Conley that he would have available the potential for earned early release during the period of the mandatory minimum sentence. *Conley* at 285. The declaration by Barbee's trial counsel is equivocal at best.

With those very significant differences in place, the similarities resume. Both Conley and Barbee pled with prosecutor recommendations of low-end standard range sentences. In both cases, the low-end standard range exceeded the mandatory minimum sentences: 102 month recommendation / 5 year mandatory minimum in Conley's case; 261 month recommendation / 20 year minimum in Barbee's case.

Both Conley and Barbee also received breaks on the number of charges or enhancements they would have been at risk of being convicted of by pleading. Conley avoided an additional firearm enhancement.

Conley at 287. Barbee had Counts II – V dismissed and those were all additional felonies. RP 1336-1337. Conley saved a potential additional five years. Barbee’s offender score would have potentially gone up to 6 with a standard range of 312-418 months—Barbee saved a minimum of 51 months.³

As the *Conley* court noted: “Generally a defendant's (or his trial counsel's) self-serving statement is insufficient alone to sustain the burden of proof as to prejudice. The statement must be corroborated independently by objective evidence, if possible.” *Conley* at 287, internal citations omitted. Based on the facts before it, the *Conley* court found Conley’s assertion that he would not have pled if he had been properly informed regarding the earned early release to be unreasonable. Likewise, Barbee’s assertion that he would not have pled if he had known about the earned early release credits is unsupported by any objective evidence. It is also unreasonable given the fact that, by pleading, Barbee saved himself the exposure to a *minimum* of 51 additional months (see above) while his current complaint would only save him—if earned to DOC satisfaction—36 months (240 months time 15%).

The *Conley* court found Conley’s assertions of prejudice too tenuous and denied his petition. Given the similarities in the two facts of

³ Calculation based on 2 points for Count III (a violent offense) and a point for each of

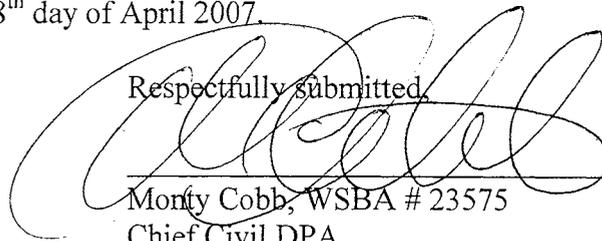
these two cases, and the differences which make Barbee's arguments even less compelling, the result should be the same. This Court should decline to find that Barbee has met his burden as well and affirm the sentence.

E. CONCLUSION

Based on the foregoing, the personal restraint petition should be dismissed as time-barred but should the court consider the petition, the requested relief should be denied as Barbee has not met his burden of proof.

DATED this 18th day of April 2007.

Respectfully submitted,



Monty Cobb, WSBA # 23575
Chief Civil DPA
Attorney for Respondent

Counts IV and V resulting in an offender score of 6 under the SRA.

Appendix A

TO

STATE'S REPSONSE

Court of Appeals, Division II
No. 34521-8-II

IN RE PERSONAL RESTRAINT
OF
WALTER JESSE BARBEE

Mason County No. 02-1-00232-3



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
CLALLAM BAY CORRECTIONS CENTER
1830 Eagle Crest Way • Clallam Bay, Washington 98326-9723
Phone (360)963-2000
FAX Number (360)963-3390

SUPERINTENDENT'S COMPLEX

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 04-18-07
TO: Monty Cobb
Mason Co. Pros.
FROM: Carla King (360) 963-3362
CBCC

NUMBER OF PAGES: 4 (including this page)

ADDITIONAL INFORMATION:

Facility Plan for Walter Barbee DOC # 753733
dated 10/13/03. Offender was present at this
meeting and given paperwork with his
ERD of 12/13/31.



Offender Information					
Offender Name (last, first, middle initial, suffix): Barbee, Walter J.				DOC Number: 753733	Offender Status: Active Inmate
DOB: 10/11/77	Time Start: 06/12/03	(P)ERD: 12/13/31	Maximum Exp Date: 11/22/2032	Mandatory Exp. Date: 07/24/27	Current Custody: Close
LSI-R Score:31	RMI Level: RMA	SMIO: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	RMIT Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	CommCustody/Placement Yes <input checked="" type="checkbox"/> NO <input type="checkbox"/>	Community Custody Range: From: 24 To: 48
ISRB: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	SRA 10-day Release Status: Eligible	End of Sentence Review Screening Completed: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Special Sentence Alternative: None	
Detainer / Warrant: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If "Yes", please list: 06/17/03 MI YAKIMA SO MISD #WSP279821/DWLS 3RD			

Purpose of Report			
Purpose of Report:		<input checked="" type="checkbox"/> Intake (P) Facility Plan	<input type="checkbox"/> HCSC
<input type="checkbox"/> Board Report		<input type="checkbox"/> Scan Only	<input type="checkbox"/> Override
<input type="checkbox"/> Plan Change (P) Review		<input type="checkbox"/> Extraordinary Medical Placement	<input type="checkbox"/> Map
<input checked="" type="checkbox"/> Time Exceeds 6 years		<input type="checkbox"/> Other (Specify):	
Prepared By: K. Grubb CCIII <i>K. Grubb</i>		Referral Location: CBCC/C	Date: 10-13-03

Offender Community Support	
Anticipated Release Address: Inmate Barbee has not developed a release plan at this time. Phone Number:	Residence Sponsor: Relationship to Offender:
Additional Individuals in the Home	
Name: (last, first, MI)	Adult / Minor Relationship to Offender:
Has the sponsor or others residing in the home been a victim of the offender? Yes <input type="checkbox"/> No <input type="checkbox"/>	

Programs	
Basic Skills	Narrative: Inmate Barbee does not have a verified GED. A referral to Basic Skills has been made. He is expected to complete DOC education requirements.
Job/Work	Narrative: Inmate Barbee does not have a work program. He is expected to obtain a work program and receive average or better work performance evaluation reports.
Offender Change	Narrative: Inmate Barbee has not completed any offender change programs. He is expected to enroll and complete offender change programs as directed by the FRMT and his behavior.

Offender DOC # 753733	Offender Name: Barbee, Walter J.
Don 20-402 (Rev. 03/04/03) 1 of 3	

Vocational	Narrative: Inmate Barbee has not participated in any state funded vocational training during his incarceration. He is expected to develop a vocational plan to address his release needs.
------------	--

Additional Offender Classification Expectations		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		
Expectations: Select one:	Frequency: Select one:	Due Date:
Narrative:		

Targeted Custody/Placement				
Target Date	Targeted Custody	Targeted Placement (if applicable)	Inmate Preferred Location:	Comments
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		
	Select one:	Select one:		

Current Classification Action
<p>Counselor Comments and Recommendations: Inmate Barbee was admitted to the system on 06/12/03. He received close custody at his ICD dated 07/09/03. Per policy inmate Barbee must remain at close custody for the first four years of his sentence. Inmate Barbee is serving an OAA sentence with community custody requirements. Inmate Barbee arrived at CBCC on 07/16/03 from WCC for a facility assignment. He has a current custody score of 59, equating to minimum custody. There are no negative impacts to the score to report this review period. There are separatee concerns listed. There are no facility prohibitions listed. I recommend that inmate Barbee maintain close custody (MUR), retain CBCC.</p> <p>Counselor: K. Grubb Date:</p>

Offender DOC # 753733	Offender Name: Barbee, Walter J.
Don 20-402 (Rev. 03/04/03)	2 of 3

Facility Risk Management Team

CONCUR

DO NOT CONCUR

Comments and Recommendations:

The FRMT met with Inmate Barbee on 10/13/03. Inmate Barbee is expected to complete Basic Skills classes and earn his GED. He is expected to obtain a work program and earn average or better performance evaluations. He is expected to enroll and complete offender change programs.

- 1. Maintain close custody (MUR).
- 2. Retain CBCC.

FRMT Chair: CUS J. Boe

Jim Boe

Date:

10/22/03

Date:

Offender Comments:

Inmate Barbee requests a hardship transfer to MCC due to his mother's medical condition.

Reviewer

CONCUR

DO NOT CONCUR

Comments and Recommendations:

Reviewer/Chair:

S. Dummel, CPM

11/24/03

Date:

Superintendent/Designee

CONCUR

DO NOT CONCUR

Comments/Decisions:

Superintendent/Designee:

John Aldana

11/25/03

Date:

Headquarters Decisions:

Date:

DISTRIBUTION:

Upon Completion of Headquarters Action, Return to:

Offender DOC #

753733

Offender Name:

Barbee, Walter J.

Don 20-402 (Rev. 03/04/03)

3 of 3

OK

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

IN RE PERSONAL RESTRAINT,)	
)	No. 34521-8-II
OF)	
)	DECLARATION OF
WALTER JESSE BARBEE)	FILING/MAILING
)	PROOF OF SERVICE
_____)	

I, TRICIA KEALY, declare and state as follows:

On April 18, 2007, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached (BRIEF OF RESPONDENT) to

David B. Zuckerman
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104

RECEIVED
APR 19 2007

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

I, Tricia Kealy, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 18th day of April, 2007, at Shelton, Washington.

Tricia Kealy
Tricia Kealy

Mason County Prosecutor's Office
521 N. Fourth Street, P.O. Box 639
Shelton, WA 98584
(360) 427-9670 ext. 417
(360) 427-7754 FAX