

**ORIGINAL**

No. 34755-5  
~~34666-4~~

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED  
COURT OF APPEALS  
06/MAR/12 PM 1:51  
STATE OF WASHINGTON  
CLERK OF COURT

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IN RE THE PERSONAL RESTRAINT  
OF  
JERALD WAYNE DAVENPORT, JR.,  
Petitioner.

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PERSONAL RESTRAINT PETITION

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Sheryl Gordon McCloud  
1301 Fifth Ave., Ste. 3401  
Seattle, WA 98101-2605  
(206) 224-8777  
Attorney for Petitioner  
Jerald Wayne Davenport, Jr.

### **A. STATUS OF PETITIONER**

I, Jerald Wayne Davenport, Jr., DOC #: 708898, Florence Correctional Center, P.O. Box 6900, Florence, Arizona 85232, apply for relief from my conviction and sentence. Upon remand from the Washington Supreme Court, the Court of Appeals, Division II, affirmed my conviction of one count of robbery in the first degree (Count I) and reversed and dismissed with prejudice the other conviction of robbery in the first degree (Count II). The mandate issued February 13, 2006. I am currently incarcerated at Florence Correctional Center in Arizona pursuant to that sentence.

1. The court in which I was sentenced is Clark County Superior Court, No. 00-1-02097-0.

2. I was found guilty and convicted, following a bench trial, of two counts of robbery in the first degree in violation of RCW 9A56.190 and 9A.56.200(1)(b).

3. The Judgment was entered on July 5, 2002. The judge who imposed the sentence was Clark County Superior Court Judge Roger Bennett. I was found to be a persistent offender under the Persistent Offender Accountability Act (POAA) and sentenced to life without the possibility of parole on both counts.

4. My lawyer in the Superior Court was Susan L. Clark, WSBA No. 17476.

5. I did appeal the decision of the trial court. I appealed to Division II, Washington Court of Appeals in Case No. 29072-3-II. My attorney on appeal was Robert A. Lewis. The convictions were affirmed in an unpublished opinion of the Court of Appeals, filed on April 11, 2004. State v. Davenport, 121 Wn. App. 1041, 2004 Wash. App. LEXIS 1659 (2004).

6. I filed a timely Petition for Review with the Washington Supreme Court in Case No. 75515-9. My attorney on appeal was Robert A. Lewis, and then David Schultz. On May 3, 2005, the Petition for Review was granted and the case was remanded to the Court of Appeals, Division II, for reconsideration in light of State v. Tvedt, 153 Wn.2d 705, 107 P.3d 728 (2005). State v. Davenport, 154 Wn.2d 1001, 110 P.3d 753 (2005).

7. The Court of Appeals, Division II, affirmed my conviction on Count I (first degree robbery of Janna Wiseman) and reversed and dismissed with prejudice Count II (first degree robbery of Ricki Singleton) in an unpublished opinion dated June 28, 2005. State v. Davenport, \_\_ Wn. App. \_\_, 2005 Wash. App. LEXIS 1550 (2005).

8. The mandate issued February 13, 2006. As of the date of this PRP, no new Judgment and Sentence has been entered.

10. This is the first time I have filed a personal restraint petition.

#### **B. GROUNDS FOR RELIEF**

I have the following reasons for this Court to grant me relief from the sentence described in Part A.

##### **First Ground**

The Superior Court's reliance upon a prior Oregon conviction to elevate Mr. Davenport's current Washington conviction to a "third strike" under the Persistent Offender Accountability Act ("POAA") was impermissible for two reasons:

(a) the Oregon robbery statute lacks three elements of second-degree robbery in Washington – a completed crime, ownership, and a taking from the person or presence of the victim – so that prior out-of-state conviction cannot be counted as a "strike"; and

(b) the prior conviction involved a "comparability" determination rather than just a decision about whether the prior

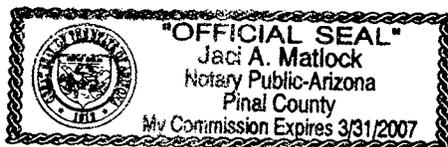


SUBSCRIBED AND SWORN TO before me this 28 day  
of March, 2006.

Jaci A Matlock  
Print Name: Jaci A. Matlock

NOTARY PUBLIC in and for the  
State of Arizona, residing at:

Florence



My commission expires: 3 31 07

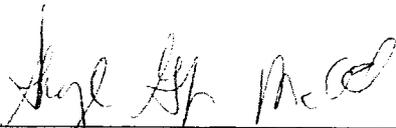
CERTIFICATE OF SERVICE

I certify that on the 11<sup>th</sup> day of April, 2006, a true and correct copy of the foregoing Personal Restraint Petition was served upon the following individuals by depositing same in the U.S. Mail, first-class, postage prepaid:

Clark County Prosecutor  
Appellate Unit  
Attn: Mark Beam  
Clark County Courthouse  
P.O. Box 5000  
Vancouver, WA 98666-5000

Jerald Wayne Davenport, Jr.  
DOC No. 708898  
Florence Correctional Center  
P.O. Box 6900  
Florence, AZ 85232

FILED  
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STATE OF WASHINGTON  
BY \_\_\_\_\_

  
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Sheryl Gordon McCloud