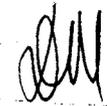


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COURT OF APPEALS

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BY 

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

ALAA FEKRY AHMED HASSAN,

Petitioner.

NO. 34875-6.

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Must the petition be dismissed where petitioner has not shown he is restrained pursuant to RAP 16.4(b) or that his restraint is unlawful pursuant to RAP 16.4(c)?

2. Must the petition be dismissed where the petitioner failed to demonstrate actual prejudice stemming from error of constitutional magnitude or a fundamental defect resulting in a complete miscarriage of justice necessary to obtain relief by way of personal restraint petition?

B. STATUS OF PETITIONER:

Because the parties presented the relevant facts and procedural posture of this case on the consolidated direct appeal, the State will only provide a brief synopsis of the

1 events leading up to the petition. On August 17, 2004, petitioner, ALAA FEKRY
2 AHMED HASSAN pleaded guilty to second degree assault under Pierce County Cause
3 No. 04-1-03172-1. CP 7-14. Immediately following the court's acceptance of
4 petitioner's plea, the court sentenced the defendant to six months incarceration, 12
5 months of community custody, and imposed \$1,110.00 in legal financial obligations. CP
6 15-25. While under community custody, petitioner was required to complete domestic
7 violence counseling. CP 15-25.

8 On October 1, 2004, defendant obtained new counsel, Mr. Michael Schwartz. CP
9 28. By June 7, 2005, petitioner had satisfied his legal financial obligations. Appendix A.
10 On October 28, 2005, the parties came before the Honorable Beverly Grant on
11 petitioner's motion to withdraw his guilty plea. IIRP 5. The court denied petitioner's
12 motion. CP 94, IIRP 59. The court concluded that the colloquy at the plea hearing was
13 clear, that not only did defendant want to return to Egypt, but he understood regardless
14 that he would be going back to Egypt. IIRP 59.

15 By December 9, 2005, petitioner had completed his anger management and
16 domestic violence counseling. Appendix B (Certificate and Order of Discharge). On
17 December 7, 2005, the court discharged petitioner from the confinement and supervision
18 of the Department of Corrections and restored petitioner's civil rights. Appendix B..

19 As a collateral consequence of petitioner's plea he is now pending deportation to
20 Egypt. On October 26, 2004, the Department of Homeland Security, Immigration &
21 Customs Enforcement removal proceedings against petitioner. (Morales Decl. ¶ 5.)
22 According to petitioner's immigration attorney, petitioner is awaiting an appeal of his
23 deportation order. (Morales Decl. ¶ 12.)

24 Petitioner now collaterally attacks his sentence, arguing that he is restrained as he
25 has suffered a disability as a result of his second degree assault conviction. He further

1 alleges that his trial counsel was ineffective for not apprising the court of petitioner's
2 alleged issue of competency, that the trial court violated due process by not determining
3 petitioners' competency before accepting his plea, that his plea was involuntary, and that
4 there was not a factual basis for his plea.

5
6 C. ARGUMENT:

7 1. THE PETITION MUST BE DISMISSED BECAUSE
8 PETITIONER IS NOT UNLAWFULLY RESTRAINED AS
9 DEFINED UNDER RAP 16.4(b).

10 Petitioner brings this personal restraint petition challenging his second degree
11 assault conviction. Under RAP 16.4, the court will "grant appropriate relief to a
12 petitioner if the petitioner is under a 'restraint' as defined in [RAP 16.4](b) and the
13 petitioner's restraint is unlawful for one or more of the reasons defined in [RAP 16.4](c)"

14 RAP 16.4(b) states that:

15 A petitioner is under a "restraint" if the petitioner has limited freedom
16 because of a court decision in a civil or criminal proceeding, the petitioner
17 is confined, the petitioner is subject to imminent confinement, or the
18 petitioner is under some other disability resulting from a judgment or
19 sentence in a criminal case.

20 In relevant part, RAP 16.4(c) states that:

21 The restraint must be unlawful for one or more of the following reasons:

22 ...

23 (2) The conviction was obtained or the sentence or the sentence or other
24 order entered in a criminal proceeding or civil proceeding instituted by the
25 state or local government was imposed or entered in violation of the
26 Constitution of the United State's or the Constitution or laws of the State
27 of Washington.

28 (3) Material facts exist which have not been previously presented and
29 heard, which in the interest of justice require vacation of the conviction,
30 sentence, or other order entered in a criminal or civil proceeding instituted
31 by the state or local government;

32 ...

1 For purposes of this statute, State law does not require the petitioner to be “in custody” to
2 be under unlawful restraint. In re Meyer, 142 Wn.2d 608, 615, 16 P.3d 563 (2001).

3 Petitioner asserts that because he is “at liberty pending an appeal from a deportation
4 order” that he is under a disability. Petition at 1. Petitioner is mistaken.

5 Petitioner has satisfied his sentencing requirements. After satisfying his sentence,
6 the trial court discharged petitioner from the confinement and supervision of the
7 Department of Corrections and restored his civil rights. Appendix B. In petitioner’s
8 direct appeal, he challenges his conviction by arguing, *inter alia*, that deportation is a
9 direct consequence of his plea and therefore his counsel’s alleged failure to apprise him of
10 this consequence rendered his counsel ineffective and his plea invalid. The claim that
11 deportation is a direct consequence of petitioner’s plea and conviction is contrary to both
12 Washington State and Federal law which establishes that deportation is a collateral
13 consequence of petitioner’s plea.¹ Because immigration consequences are collateral to a
14 guilty plea, trial counsel’s alleged failure to apprise petitioner of these consequences does
15 not constitute ineffective assistance nor render petitioner’s plea invalid. Moreover, as the
16 State counters on petitioner’s direct appeal, Ms. Krieg did advise petitioner that he would
17 be deported and petitioner’s plea form contained the requisite language related to
18 immigration consequences. CP 10, IIRP 25, 28, 43. Accordingly, petitioner is not under
19 a disability as contemplated by RAP 16.4(b).
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21
22
23

24 ¹ United States v. Amador-Leal, 276 F.3d 511 (9th Cir. 2002); State v. Jamison, 105 Wn. App. 572, 591-92,
25 20 P.3d 1010 (2001), review denied, 144 Wn.2d 1018, 32 P.3d 283 (2001)(citing In re Yim, 139 Wn.2d
581, 588, 989 P.2d 512 (1999)(citing State v. Ward, 123 Wn.2d 488, 512-13, 869 P.2d 1062 (1994)); State
v. Martinez-Lazo, 100 Wn. App. 869, 874, 999 P.2d 1275 (2000), review denied, 142 Wn.2d 1003, 11 P.3d
827 (2000).

1 Petitioner further claims this “restraint” is unlawful pursuant to RAP 16.4(c)(2) &
2 (3) because his conviction was obtained in violation of federal and state law. Petition at
3 2.

4 As discussed in the State’s Response Brief on petitioner’s direct appeal, the State
5 contests the claim that petitioner was unaware of his immigration consequences at the
6 time of his plea because his counsel did inform him that he would be deported and
7 because these consequences are listed in petitioner’s plea statement. Should this court
8 affirm petitioner’s conviction on his direct appeal, it would be peculiar for this court to
9 then find petitioner is under an “unlawful restraint” because of petitioner’s pending
10 immigration matter. Accordingly, petitioner cannot be said to be “restrained” because he
11 has served his sentence, his civil rights have been restored, and his claimed “disability” is
12 merely a collateral consequence of his guilty plea. Because petitioner has failed to
13 establish that he is under “restraint” or that this “restraint” is “unlawful”, this court should
14 deny his petition.
15

16
17 2. THE PETITION MUST BE DISMISSED BECAUSE THE
18 PETITION DOES NOT ESTABLISH ACTUAL PREJUDICE
19 STEMMING FROM ERROR OF CONSTITUTIONAL
20 MAGNITUDE OR ESTABLISH A FUNDAMENTAL DEFECT
21 WHICH INHERENTLY RESULTS IN A COMPLETE
22 MISCARRIAGE OF JUSTICE.

23 Even if the court were to review the merits of the petitioner’s claims, the petition
24 should be denied. A petitioner is entitled to full collateral review of a conviction if he
25 proves he was actually and substantially prejudiced by a violation of his constitutional
rights or by a fundamental error of law in order to obtain relief by means of a personal

1 restraint petition. In re Pirtle, 136 Wn.2d 467, 473, 965 P.2d 593 (1998); In re Cook, 114
2 Wn.2d 802, 813, 792 P.2d 506 (1990). The petitioner cannot meet this standard.

3 Personal restraint procedure has its origins in the State's habeas corpus remedy,
4 guaranteed by Article 4, section 4, of the State Constitution. Fundamental to the nature of
5 habeas corpus relief is the principle that the writ will not serve as a substitute for appeal.
6 A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute
7 for an appeal. In re Hagler, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral
8 relief undermines the principles of finality of litigation, degrades the prominence of the
9 trial, and sometimes costs society the right to punish admitted offenders. These are
10 significant costs and they require that collateral relief be limited in state as well as federal
11 courts. Id.

12 In order to prevail in a personal restraint petition, a petitioner must meet an
13 especially high standard. A petitioner asserting a constitutional violation must show
14 actual and substantial prejudice. In re Haverty, 101 Wn.2d 498, 504, 681 P.2d 835
15 (1984). The rule that constitutional errors must be shown to be harmless beyond a
16 reasonable doubt has no application in the context of personal restraint petitions. In re
17 Mercer, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987); Hagler, 97 Wn.2d at 825. Mere
18 assertions are insufficient in a collateral action to demonstrate actual prejudice.
19 Inferences, if any, must be drawn in favor of the validity of the judgment and sentence
20 and not against it. Hagler, 97 Wn.2d at 825-26. A petitioner must present evidence that
21 is more than speculation, conjecture, or inadmissible hearsay. In re Rice, 118 Wn.2d 876,
22 886, 828 P.2d 1086, cert. denied, 506 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992).

23 A petitioner relying on non-constitutional arguments must demonstrate a
24 fundamental defect, which inherently results in a complete miscarriage of justice. In re
25 Cook, 114 Wn.2d 802, 810-11, 792 P.2d 506 (1990).

1 Reviewing courts have three options in evaluating personal restraint petitions:

2 1. If a petitioner failed to meet the threshold burden of showing
3 actual prejudice arising from constitutional error or a complete
miscarriage of justice, the petition must be dismissed;

4 2. If a petitioner makes at least a prima facie showing of actual
5 prejudice, but the merits of the contentions cannot be determined solely on
6 the record, the court should remand the petition for a full hearing on the
merits or for a reference hearing pursuant to RAP 16.11(a) and RAP
16.12;

7 3. If the court is convinced a petitioner has proven actual prejudicial
8 error, the court should grant the personal restraint petition without
9 remanding the cause for further hearing.

10 In re Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

11 This petition falls well short of this demanding standard. The petitioner alleges
12 that his trial counsel was ineffective for failing to raise the issue of petitioner's alleged
13 competency before he pleaded guilty, that the trial court violated due process by failing to
14 determine petitioner's competency before accepting his plea and that there is not a factual
15 basis for his plea. As demonstrated below, petitioner fails to establish actual prejudice
16 arising from error of constitutional magnitude or a fundamental defect resulting in a
17 complete miscarriage of justice. As such, the petition must be dismissed.

18 a. Ineffective assistance

19 A defendant who raises a claim of ineffective assistance of counsel must show:
20 (1) that his or her attorney's performance was deficient, and (2) that he or she was
21 prejudiced by the deficiency. Strickland v. Washington, 466 U.S. 668, 688-89, 104 S. Ct.
22 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563
23 (1996). Under the first prong, deficient performance is not shown by matters that go to
24 trial strategy or tactics. State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994).
25 Under the second prong, the defendant must show counsel's deficient performance

1 prejudiced the defendant, i.e., that there is a reasonable probability that, but for counsel's
2 errors, the result of the trial would have been different. State v. Thomas, 109 Wn.2d 222,
3 226, 743 P.2d 816 (1987). The competency of counsel is determined from a review of the
4 entire record below. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).
5 Courts engage in a strong presumption that counsel's representation was effective.
6 McFarland, 127 Wn.2d at 335.

7 The constitutional standard for competency is whether the defendant has
8 “sufficient present ability to consult with his lawyer with a reasonable degree of rational
9 understanding” and to assist in his defense with a “rational as well as factual
10 understanding of the proceedings against him.” In re Fleming, 142 Wn.2d 853, 862,
11 (quoting Dusky v. Unites States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960)).
12 The two part test for competency in Washington is (1) whether the defendant understands
13 the nature of the charges and (2) whether the defendant is capable of assisting in his or her
14 defense. Fleming, 142 Wn.2d at 862.

15 Petitioner attempts to navigate around the fact that neither Ms. Krieg, nor the court
16 had reason to believe petitioner's competency was an issue by claiming ineffective
17 assistance of counsel. Petitioner claims that Attorney Krieg had numerous reasons to
18 doubt his competency. Petitioner offers no reason why he failed to raise the issue of
19 competency at his motion to withdraw his guilty plea. Petitioner posits the following
20 reasons Ms. Krieg should have doubted his competency: (1) His interpreter told Ms.
21 Krieg that he did not think petitioner was fit for trial and should see a psychiatrist; (2)
22 Defendant attempted suicide in jail; (3) Petitioner was dressed in a suicide smock after he
23 cut his wrist with a pencil and thus, “anyone remotely familiar with the jail's procedure
24 would know that Hassan had tried to commit suicide;” (4) Each time petitioner met with
25 Ms. Krieg he was “in a hysterical”, was “crying all the time” and was “incapable of

1 listening to Ms. Krieg;" and (5) The victim, Ms. Phelps advised the court at petitioner's
2 sentencing that she hoped petitioner could be seen by mental health professionals and
3 expressed her belief that he was "bipolar," "manic depressive," and "threatening suicide."
4 Petition at 30-31.

5 Petitioner's claims lack merit. The interpreter is not defendant's attorney nor is he
6 petitioner's mental health professional. Mr. Abou-Zaki is not in a position to assess
7 petitioner's legal capacity. Apparently, Mr. Abou-Zaki did not continue to harbor
8 thoughts of petitioner's inability to understand the proceedings against him while
9 facilitating communication at the plea hearing. At this hearing Mr. Abou-Zaki signed
10 petitioner's plea form acknowledging that he had read the form in its entirety to
11 petitioner. CP14. Mr. Abou-Zaki does not address the immigration clause contained in
12 the plea statement that he interpreted to petitioner. Though Mr. Abou-Zaki does not
13 recall if Ms. Krieg spoke with petitioner regarding immigration matters, he opines that
14 even if Ms. Krieg did speak about immigration matters, petitioner never listened to Ms.
15 Krieg and he is "100 % certain" did not did not listen and did not understand anything she
16 [Ms. Krieg] said. (Abou-Zaki Decl. ¶¶ 8, 9.)

1 Mr. Abou-Zaki's has a duty to simply facilitate communication between an
2 attorney and her client.² As Mr. Abou-Zaki transitions from this role to petitioner's
3 advocate, he should not speculate on matters to which he lacks personal knowledge. He
4 cannot speculate on how or what petitioner understood. If communication was not
5 possible between petitioner and Ms. Krieg, as Mr. Abou-Zaki suggests, Ms. Krieg would
6 not have been aware of petitioner's concern for Ms. Phelps, or of his desire not to put Ms.
7 Phelps through trial, or his desire to return to Egypt. Simply put, if communication was
8 not possible, as Mr. Abou-Zaki suggests, the plea could not have occurred.

9 A review of the record shows petitioner was competent at the time of his plea
10 hearing. At this hearing, Ms. Krieg represented to the court that she had met with
11 petitioner many times, that she had gone over the plea paperwork with him and his
12 interpreter, and that petitioner knew what rights he was giving up to enter his plea. IRP 3.
13 During the plea colloquy, petitioner told the court Ms. Krieg had reviewed the plea
14 documents with him. IRP 3. After the court advised petitioner of the elements of second
15 degree assault, petitioner stated he understood the rights he was waiving, understood the
16 implications of the classification of his crime, and understood the State's
17 recommendation. IRP 6. In his plea statement, petitioner stated that he had assaulted Ms.

18
19 ² RCW 2.43.080 requires that: "All language interpreters serving in a legal proceeding, whether or not
20 certified or qualified, shall abide by a code of ethics established by supreme court rule." GR 11.1(e)
21 provides that "Except in the interpreter's official capacity, no language interpreter shall discuss, report, or
22 comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any
23 communication that is privileged by law without the written consent of the parties to the communication, or
pursuant to court order." Mr. Abou-Zaki should refrain from discussing privileged communications
between petitioner and Attorney Krieg without written consent from petitioner or court order. See State v.
Alvaro Aquino-Cervantes, 88 Wn. App. 699, 707, 945 P.2d 767 (1997)("official capacity" exception does
not extend to confidential attorney-client communications.) Here, Mr. Abou-Zaki's affidavit is not pursuant
to "written consent of the parties" or "court order."

24 GR 11.1(b) provides the following: "A language interpreter shall interpret or translate the material
25 thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated
in the language of the speaker, giving consideration to variations in grammar and syntax for both languages
involved. A language interpreter shall use the level of communication that best conveys the meaning of the
source, and shall not interject the interpreter's personal moods or attitudes."

1 Phelps and caused significant injuries was his own. CP 13. Petitioner further
2 acknowledged that no one threatened him or make promises to him to plead guilty and
3 that he was entering his plea freely and voluntarily. IRP 6.

4 At petitioner's motion to withdraw his guilty plea, Ms. Krieg again stated that she
5 has spent a great deal of time with petitioner and that he was adamant he wanted to plead
6 guilty. IIRP 23. She further testified that after she explained the immigration
7 consequences to petitioner, he expressed his desire to return to Egypt, and he was focused
8 on getting out of jail to achieve that goal. IIRP 24, 28-29, 43. Petitioner did not express
9 any confusion over his deportation. IIRP 26. Ms. Krieg was unable to advise petitioner
10 how long and where he would remain in the United States pending his deportation. IIRP
11 28. In addition, Ms. Krieg, who formally represented inmates at Western State Hospital,
12 avers that she had no reason to doubt Ms. Hassan's competency, that he seemed to
13 understand the nature of the his charge, and was able to assist Ms. Krieg in his defense.
14 (Krieg Aff. ¶¶ 4,7, and 10.)³ Ms. Krieg evidently understood the difference between
15 petitioner's depression and his competency to stand trial.

16 Moreover, according to petitioner's friend, Mr. Gould, he allegedly advised the
17 petitioner to plea guilty to avoid detection from the INS. (Gould Decl. ¶ 6.). Mr. Gould
18 avers that petitioner took Mr. Gould's advice.⁴ (Gould Decl. ¶ 7.) Petitioner avers that he
19 took Mr. Gould's advice. (Hassan Decl. ¶ 28.) Petitioner appears to have had little
20 difficulty understanding the import of Mr. Gould's advice, was aware that deportation
21

22
23 ³ Attached as Appendix D.

24 ⁴ Under the plea agreement, petitioner could argue for a three month sentence, the low-end of his standard
25 range. RCW 9.94A.530, CP 7, 18, IRP 14. The combination of his earned early release time (up to 10
percent under RCW 9.94A.728(1)(a)) and his credit for 51 days served meant petitioner could have been
released very close to his plea date. Had the court accepted petitioner's request for three months
incarceration, petitioner may have been able to fulfill his goal of avoiding detection from the INS.

1 was an issue, and exhibited a level of competency petitioner now claims he was lacking
2 before he entered his plea.

3 In sum, this record provides a picture of petitioner as a rational being who
4 appeared to understand her legal advice and the consequences of these actions.
5 Conspicuously absent from Mr. Abou-Zaki's affidavit, is any reference to his role as
6 petitioner's interpreter while Mr. Krieg went through the plea form with petitioner or his
7 role as interpreter during the plea colloquy. The assessment of petitioner's competency is
8 most critical at the time of these events.

9 Mr. Abou-Zaki's asserts in his affidavit that Ms. Krieg may have misunderstood
10 his translation of the Arabic word for home, mistakenly believing petitioner wanted to
11 return to Egypt. (Abou-Zaki Decl. ¶ 11.) This does not explain Ms. Krieg's discussion
12 with petitioner about his desire to return to Egypt because he had no family or support in
13 the United States, and his concern about the cost of this trip and the length of time it
14 would take to be deported. IRP 13-14, IIRP 25, 28, 43.

15 Petitioner next claims that his attempt at suicide put at issue his competency.
16 However, the medical records petitioner provides for this appeal, show that petitioner
17 superficially scratched his right wrist, a wound that did not require medical aid.⁵ Two
18 days after this incident, Petitioner acknowledged that he had scratched his wrist with a
19 pencil, regretted doing so, and stated that this action was not something he had ever done
20 before or would ever repeat.⁶ According to Jose Palmas, petitioner was briefly put under
21 suicide observation after petitioner scratched his wrists, but was soon released to the
22 general population after it was determined petitioner did not represent a danger to himself

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25 ⁵ Entry of 07/02/04, 11:06, Lobsenz Decl., Appendix A at 2; Entry of 07/06/04, 18:43, Lobsenz Decl.,
Appendix B (Chronological Record of Mental Health Care) at 1.

⁶ Entry of 07/04/04, 20:37, Lobsenz Decl., Appendix B at 1

1 or others. (Palmas Aff. ¶¶ 7, 8.)⁷ Petitioner denied intent or plan to commit suicide.
2 (Palmas Aff. ¶ 7.) Jose Palmas also determined that petitioner had no competency issues.
3 (Palmas Aff.¶ 6.)⁸ Contrary to petitioner’s claims, the jail medical records do not support
4 his contention that his competency was in doubt at the time he pleaded guilty.

5 Petitioner next claims that each time he met with Ms. Krieg he was hysterical and
6 crying all the time. This is contrary to his testimony at his plea withdrawal hearing where
7 he testified that he did not have trouble understanding Ms. Krieg because his interpreter
8 was always present during their conversations. IIRP 16. According to Mr. Abou-Zaki,
9 petitioner was “incapable of listening to her.” (Abou-Zaki Decl. ¶ 8.) If Mr. Abou-Zaki
10 was unable to convey Ms. Krieg’s statements to petitioner, he should have advised Ms.
11 Krieg that communication was not possible. Likewise, Mr. Abou-Zaki should have
12 apprised Ms. Krieg or the court at petitioner’s plea hearing if petitioner’s sobbing
13 presented an obstacle to communication between the petitioner and Ms. Krieg. Even if
14 this communication problem existed, Mr. Abou-Zaki fails to articulate why he signed the
15 plea form indicating that he translated the document to petitioner and that petitioner
16 acknowledged both the translation and the subject matter of the plea. CP 14.

17 Petitioner has failed to link his attempt of “suicide”, his excessive sobbing, his
18 depression, or any of his other maladies to an inability to understand the nature of the
19 charges against him or how this behavior was an obstacle in assisting his counsel in his
20 defense. Reviewing the record of petitioner’s plea hearing, petitioner did not demonstrate
21 obvious signs of his alleged inability to understand the proceedings or the advice of his
22
23

24 ⁷ Attached as Appendix E. Petitioner was moved to a non-observation cell in 3NB, the mental health unit,
25 until space in general population (GP) was available. Entry of 07/04/04, 20:51, Id.

⁸ Lobsenz, Decl. Appendix B (Mental Health Screening Report) at 1.

1 attorney. As such, there is no supportable evidence to show that petitioner's competency
2 was an issue at the time of his plea.

3 Petitioner further claims that his wife, the victim of his assault, put everyone on
4 notice of his mental health issues during his sentencing hearing. Though Ms. Phelps told
5 the court that petitioner was violent, bipolar, manic depressive, and was threatening
6 suicide, she also referred to petitioner's behavior as a "textbook case of domestic violence
7 offenders" and she greatly feared him. IRP 10-12. Ms. Phelps even requested the court
8 consider keeping petitioner in jail until he she could get out of town. IRP 12. Petitioner's
9 alleged behaviors may show him to have mental health issues and to be a violent man but
10 standing alone, do not support his contention that he lacked the competency to understand
11 the nature of the charges against him or assist his attorney with his defense. Petitioner has
12 not demonstrated his counsel acted unreasonably by not raising petitioner's alleged issue
13 of competency.

14 Finally, in support of his claim that Ms. Krieg was ineffective, petitioner offers a
15 declaration of criminal defense attorney Lenell Nussbaum. Attorney Nussbaum opines
16 that Ms. Krieg fell below the standard of a reasonable attorney trained in criminal defense
17 by not being fully informed of the immigration consequences of petitioner's guilty plea.
18 Attorney Nussbaum offers the type of hindsight consideration courts should not indulge:

19 What decision [defense counsel] may have made if he had more
20 information at the time is exactly the sort of Monday-morning
21 quarterbacking the contemporary assessment rule forbids. It is
22 meaningless...for [defense counsel] now to claim that he would have done
23 things differently if only he had more information. With more
24 information, Benjamin Franklin might have invented television.

23 Hendricks v. Calderon, 70 F.3d 1032, 1040 (C.A. 9, 1995).

24 As the Ninth Circuit aptly stated, "[t]here are many ways to be effective, and we
25 must resile from present counsel's attempt to lure us into the hindsight miasma that the
Supreme Court has told us to avoid." Smith v. Stewart, 140 F.3d 1263, 1273 (9th Cir.

1 1998). For this reason this court should also not give any weight to attorney Nussbaum's
2 affidavit in this case. Every trial attorney is going to examine, pursue, and attack a case
3 in a different matter. Therefore, varying opinions do not shed light as to ineffectiveness;
4 but rather, other ways to be effective. It is the court's responsibility to evaluate the
5 performance of trial counsel; it is not a matter of taking a poll among criminal defense
6 attorneys. The problem with attorney affidavits as to what constitutes deficient
7 performance is that practitioners regularly do not apply the appropriate legal standard, but
8 give an opinion as to what he or she would have done differently.

9 Even if petitioner has shown that Ms. Krieg acted unreasonably, petitioner has not
10 shown he was prejudiced by any error. Petitioner received the benefit for which he
11 bargained including dismissal of two charges and a short jail sentence. Petitioner has not
12 shown that the outcome of the court's acceptance of his plea would have been different
13 had he provided his medical records to the court. Ms. Krieg advised petitioner he would
14 be deported as a consequence of his plea. Petitioner even questioned Ms. Krieg about the
15 possible cost and length of time of his pending deportation. Furthermore, petitioner
16 acknowledged during the plea colloquy that he understood the plea form that he signed,
17 the same form which contained a paragraph informing him of his immigration
18 consequences. In his declaration supporting his petition, petitioner claims that he chose to
19 remain quiet when Ms. Krieg advised the court that petitioner wanted to return to Egypt
20 because he thought the court may give him a shorter sentence. (Hassan Decl. ¶ 43.) If
21 true, petitioner's strategy at his plea and sentencing hearing indicates someone with the
22 capacity to understand the nature and consequences of his plea, not his incompetence.

23 As discussed above, petitioner provides insufficient evidence to support his claims
24 that his counsel should have raised the issue of petitioner's competency. Petitioner has
25 not met the burden of establishing ineffective assistance of counsel under either prong of

1 the Strickland test. It is clear that petitioner took the action that he thought was in his best
2 interest at that time. That he has now changed his mind about what was in his best
3 interest does not show deficient performance on the part of his attorney. Defendant's
4 claim of ineffective assistance thus fails.

5 Petitioner relies on In re Fleming, 142 Wn.2d 853, 16 P.3d 610 (2001), for his
6 argument that Ms. Krieg was ineffective for not raising the issue of incompetency prior to
7 petitioner's plea. Fleming is distinguishable. In Fleming, defense counsel was in
8 possession of Fleming's two psychological evaluations, which cast an abundance of doubt
9 over Fleming's competency to stand trial. Fleming, 142 Wn.2d 853 at 612. Apparently
10 these reports were sent only to trial counsel, who never apprised the court or anyone else
11 of Fleming's incompetency. Fleming, 142 Wn.2d at 613. The reviewing court found
12 Fleming met both prongs of Strickland. Fleming, 142 Wn.2d at 616. In determining
13 whether Fleming suffered prejudice, the reviewing court concluded that had the trial court
14 been apprised of this, the court's acceptance of the plea at that time, would likely have
15 been different. Id.

16 Here, however, there is no reason to suggest that petitioner was incompetent.
17 Unlike, the petitioner in Fleming, petitioner's jail medical records here do not support his
18 claim that he was not competent at the time of his plea.

19
20 b. Involuntary plea.

21 When collaterally attacking the validity of a guilty plea, the petitioner bears the
22 burden of demonstrating that any constitutional error was prejudicial. In re Hews, 99
23 Wn.2d 80, 89, 660 P.2d 263 (1983); In re Hagler, 97 Wn.2d 818, 826, 650 P.2d 1103
24 (1982). Before a personal restraint petition may be granted, the petitioner must prove that
25 the constitutional errors "worked to his or her actual and substantial prejudice". In re
Mercer, 108 Wn.2d 714, 721, 741 P.2d 559 (1987).

1 In general, a court shall not accept a plea of guilty, without first determining that it
2 is made “voluntarily, competently, and with an understanding of the nature of the charge
3 and the consequences of the plea.” CrR 4.2. When a defendant completes a written plea
4 statement, and admits to reading, understanding, and signing it, this creates a strong
5 presumption that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810
6 (1998), citing, State v. Perez, 33 Wn. App. 258, 261, 654 P.2d 708 (1982). Furthermore,
7 when a defendant, who has received the information, pleads guilty pursuant to a plea
8 bargain, there is a presumption that the plea is knowing, intelligent and voluntary. In re
9 Ness, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993), review denied, 123 Wn.2d 1009, 869
10 P.2d 1085 (1994). "A defendant's signature on the plea form is strong evidence of a plea's
11 voluntariness." State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). If the trial
12 court orally inquires into a matter that is on this plea statement, the presumption that the
13 defendant understands this matter becomes "well nigh irrefutable." Branch, 129 Wn.2d at
14 642 n.2; State v. Stephan, 35 Wn. App. 889, 894, 671 P.2d 780 (1983). After a defendant
15 has orally confirmed statements in this written plea form, that defendant "will not now be
16 heard to deny these facts." In re Keene, 95 Wn.2d 203, 207, 622 P.2d 13 (1981). Due to
17 the safeguards surrounding an acceptance of a guilty plea, the court should exercise great
18 caution before setting aside a guilty plea. State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d
19 699 (1974).

20 Petitioner contends that his plea was influenced by his “constantly hysterical” and
21 “actively suicidal” condition that he experienced while incarcerated. Petitioner further
22 claims he experienced a host of maladies while in jail including infection from
23 appendectomy surgery, anxiety and depression, and frequent episodes of sobbing.
24 Petitioner contends that his physical maladies and medication effected his ability to
25 understand his attorney and his decision to plead guilty. However, petitioner has not

1 provided sufficient evidence to show how his medical history interfered with his ability to
2 voluntarily plead guilty. Absent this necessary link between his claimed mental or
3 physical conditions and his capacity during his plea hearing, petitioner cannot establish
4 that his plea was involuntary. Petitioner scratched his wrist with a pencil. This hardly
5 supports his contention that he was actively suicidal. Though petitioner cried numerous
6 times throughout his term of incarceration, this fact does not support his claim that he was
7 “constantly hysterical” or that he was unable to understand the charge against him or the
8 consequences of his plea. But in his colloquy with the trial judge and in his statement on
9 plea of guilty, petitioner specifically denied that there were any threats or promises
10 forcing him to pleading guilty, and he declared he was making his plea freely and
11 voluntarily. CP 13, IRP 6.

12 When a defendant completes a plea agreement and admits in a colloquy with the
13 court that he understands it and is not under threat or promise, there is a strong
14 presumption that the plea is voluntary. State v. Smith, 134 Wn.2d 849, 852, 953 P.2d 810
15 (1998). The trial court's determination of the voluntariness of the plea following detailed
16 inquiry of the defendant on the record is "well nigh irrefutable." State v. Perez, 33 Wn.
17 App. 258, 262, 654 P.2d 708 (1982). The allegations that petitioner makes in his affidavit
18 are self-serving and not supported by his trial counsel's testimony and contrary to the
19 representations he made in submitting his plea. Considering all the circumstances, he
20 failed to show that his plea was not voluntary and the trial court did not err in denying the
21 motion to withdraw. Accordingly, petitioner has not established actual and substantial
22 prejudice to a constitutional right and his petition should be dismissed.

23
24 c. Factual basis for petitioner' plea.

25 Petitioner claims for the first time on appeal, that there is no factual basis for his
plea. Petitioner did not challenge the factual basis for his guilty plea at any stage of the

1 proceedings below. Ordinarily, appellate courts do not address issues raised for the first
2 time on appeal. RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251
3 (1995). A petitioner asserting a constitutional violation must show actual and substantial
4 prejudice. In re Haverty, 101 Wn.2d 498, 504, 681 P.2d 835 (1984). Here, petitioner's
5 claimed error is procedural, not constitutional. Although CrR 4.2(d) requires a trial court
6 to be "satisfied that there is a factual basis for the plea," the constitution does not require
7 a factual basis. In re Hews, 108 Wn.2d 579, 591-92, 741 P.2d 983 (1987). Indeed, the
8 only constitutional significance in determining whether a factual basis exists relates to
9 whether a defendant understood his plea and therefore his plea was voluntary. Hews, 108
10 Wn.2d at 592; Woody v. Morris 87 Wn.2d 501, 506-11, 554 P.2d 1032 (1976)(citing
11 Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). While a
12 judge who fails to establish the factual basis for a guilty plea on the record of the plea
13 hearing may violate obligations imposed by CrR 4.2(d), there is no constitutional
14 violation if the defendant actually possessed an understanding of the law in relation to the
15 facts such that he or she could make an informed decision regarding whether or not to
16 plead guilty. Keene, 95 Wn.2d at 209. When properly preserved for direct appeal, a
17 missing factual basis can require reversal. See State v. Zumwalt, 79 Wn. App. 124, 129-
18 32, 901 P.2d 319 (1995).

19 Petitioner attempts to navigate around the procedural bar of RAP 2.5(a) to his
20 direct appeal by collaterally attacking his conviction. In order for petitioner to prevail on
21 his non-constitutional argument, petitioner must demonstrate a fundamental defect, which
22 inherently results in a complete miscarriage of justice. In re Cook, 114 Wn.2d 802, 810-
23 11, 792 P.2d 506 (1990). Petitioner fails to meet this standard.

24 CrR 4.2(d) requires that "the court shall not enter a judgment upon a plea of guilty
25 unless it is satisfied that there is a factual basis for the plea." "This requirement protects

1 defendants who are in the position of voluntarily pleading guilty with an understanding of
2 the nature of the charge, but who do not realize that the conduct does not actually fall
3 within the charge.” In re Crabtree, 141 Wn.2d 577, 585; 9 P.3d 814 (2000)(citing State v.
4 Zumwalt, 79 Wn. App. 124, 901 P.2d 319 (1995)). The constitution does not require that
5 the defendant admit to every element of the charged crime. In re Hews, 108 Wn.2d at
6 596. An information which notifies a defendant of the nature of the crime to which he
7 pleads guilty creates a presumption that the plea was knowing, voluntary, and intelligent.
8 Id. at 596.

9 The factual basis can be established from any reliable source as long as it is made
10 part of the record at the time of the plea. State v. Arnold, 81 Wn. App. 379, 382, 914
11 P.2d 762 (1996); State v. Hilyard, 39 Wn. App. 723, 725, 695 P.2d 596 (1985)(citing
12 State v. Osborne, 102 Wn.2d 87, 95, 684 P.2d 683 (1984)). However, this duty CrR
13 4.2(d) imposes on the court should not be confused with the constitutional requirement
14 that the accused have an understanding of the nature of the charges against him. Hilyard
15 at 727. Strict adherence to the rule is therefore not necessary to the entry of a
16 constitutionally valid plea. Hilyard at 727. “In determining whether a factual basis exists
17 for a plea, the trial court need not be convinced beyond a reasonable doubt that the
18 defendant is in fact guilty.” State v. Sass, 118 Wn.2d 37, 43, 820 P.2d 505 (1991).
19 Rather, there must be sufficient evidence for a jury to conclude that the defendant is
20 guilty. Id. Besides the defendant’s written and oral admission, it is well established that
21 the prosecutor’s factual statement, contained in the certificate of probable cause, may
22 provide the factual basis for the plea of guilty, as long as the statement was before the
23 court at the time of the plea and was made part of the record at that time. Arnold, 81 Wn.
24 App. at 383. A defendant who alleges his or her plea was involuntary may present
25 extrinsic evidence to support the claim. However, the State may only rebut the claim with

1 extrinsic evidence when the defendant is raising a collateral attack. Where the defendant
2 raises the issue on direct appeal, the State may only rely upon the record of the plea
3 hearing. State v. Zumwalt, 79 Wn. App. 124, 131-32 n.7, 901 P.2d 319 (1995) (citing
4 Wood v. Morris, 87 Wn.2d 501, 506-11, 554 P.2d 1032 (1976); State v. Frederick, 100
5 Wn.2d 550, 554-55, 674 P.2d 136 (1983)).

6 Petitioner has not shown the factual basis for his plea to be inadequate. The State
7 charged petitioner, by amended information, with one count of second degree assault.
8 Petitioner's Statement of Plea of Guilty indicates he received this information. CP 13.
9 Petitioner's plea statement also indicates he was fully informed and fully understood the
10 following elements of second degree assault.

11 In Pierce County, Washington, on June 27, 2004, you unlawfully and
12 feloniously, under circumstances not amounting to assault in the first
13 degree, did intentionally assault Nancy Phelps and thereby recklessly
inflict substantial bodily harm.

14 CP 7. During the plea colloquy, the court reiterated these elements to petitioner. IRP 4.

15 Substantial bodily harm is defined by statute.

16 Substantial bodily harm means bodily injury that involves a temporary but
17 substantial disfigurement, or that causes a temporary but substantial loss
or impairment of the function of any bodily part or organ, or that causes a
fracture of any bodily part.

18 RCW 9A.04.110(4)(b).

19 Petitioner now claims for the first time on appeal, that he misunderstood the term
20 "assault" and that his plea statement fails to provide a factual basis for his intent to hurt
21 Ms. Phelps. Petition at 42-43. In his declaration, petitioner denies knowing the term
22 "assault" meant hitting Ms. Phelps. (Hassan Decl. ¶ 35.) Petitioner argues that these
23 deficiencies affected his understanding of his plea. Petition at 44.

24 Washington courts recognize three methods of committing assault: "(1) an
25 attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful

1 touching with criminal intent; and (3) putting another in apprehension of harm whether or
2 not the actor intends to inflict or is incapable of inflicting that harm.'" State v. Aumick,
3 126 Wn.2d 422, 426 n.12, 894 P.2d 1325 (1995)(quoting State v. Walden, 67 Wn. App.
4 891, 893-94, 841 P.2d 81 (1992)). In his plea statement, petitioner stated: "On 6.27.04,
5 in Pierce County, Washington, I assaulted Nancy Phelps, + [and] she had significant
6 injuries." CP 13. Petitioner acknowledged this statement as his own during the plea
7 colloquy. IRP 7. By this statement, petitioner acknowledges he inflicted significant
8 injuries to Ms. Phelps. This is far from the "yelling and screaming" he now alleges
9 constituted his criminal behavior. (Hassan Decl. ¶ 35.) Petitioner's plea statement
10 forecloses the possibility that he only attempted to harm Ms. Phelps or place her in fear
11 of such harm. Petitioner was certainly aware of the critical elements of his crime.
12 Though limited in detail, this statement is sufficient to establish a factual basis for
13 petitioner's plea.

14 Even if this court finds this statement inadequate, the State may rebut this claim
15 with extrinsic evidence. State v. Zumwalt, 79 Wn. App. 124, 131-32 n.7, 901 P.2d 319
16 (1995)(citations omitted). The sentencing hearing immediately followed petitioner's plea
17 colloquy. After the court accepted petitioner's plea, the prosecutor alerted⁹ the court to
18 the declaration of probable cause. IRP 8. The prosecutor specified that the declaration
19 "describes the assault in good detail." IRP 8. The declaration stated that the defendant
20 punched Ms. Phelps repeatedly until she called 911. CP 3. At that point, he grabbed the
21 phone from Ms. Phelps and hit her in the face until she felt her nose "pop." CP 3. The
22 police observed a pool of blood on the kitchen floor and observed blood spatter on the
23
24

25

⁹ The prosecutor stated, "I know the Court's probably read the declaration of probable cause, and that describes the assault in good detail." IRP 8. The court did not respond to this statement.

1 kitchen cabinets and around the room. CP 3. To supplement this declaration, the
2 prosecutor provided the court with photographs depicting Ms. Phelps' injuries that she
3 sustained during petitioner's vicious assault. IRP 8. The court reviewed the photographs
4 and the victim's impact statement before imposing petitioner's sentence. IRP 8. Ms.
5 Phelps provided the court with a victim impact statement where she stated petitioner
6 broke her nose. Appendix C. The court indicated it had previously read this statement.
7 IRP 10.¹⁰

8 Although it is not clear from the record whether the court read the declaration on
9 determination of probable cause before accepting petitioner's plea, this court can rely on
10 extrinsic evidence to support petitioner's plea where, as here, petitioner collaterally
11 attacks his plea. The declaration of probable cause, Ms. Phelps' written statement,
12 defendant's own statement, and the photographs provide a sufficient factual basis for
13 petitioner's plea. Therefore, the petitioner fails to demonstrate actual prejudice stemming
14 from his alleged constitutional errors or a fundamental defect resulting in a miscarriage of
15 justice. As such, this petition must be dismissed.

16
17 d. Court's failure to recognize petitioner's alleged
incompetence.

18 Petitioner asserts that the trial court's failure to order a competency evaluation and
19 conduct a competency hearing violated due process. In support of his argument,
20 petitioner points to Ms. Phelps' statements at his sentencing hearing about his bipolar and
21 manic depressive condition and his failed suicide attempt at the jail as reasons why the
22 court should have been aware of his alleged competency issues. As previously stated
23 petitioner had failed to establish a link between his alleged ailments and his ability to
24

25

¹⁰ Ms. Phelps victim impact statement was filed

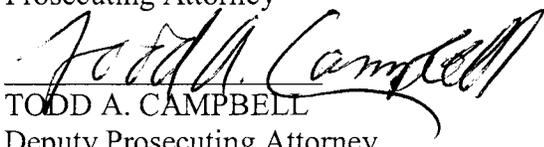
1 understand his crime and assist his attorney. Reviewing the record, it does not appear that
2 petitioner exhibited any irrational behavior in the courtroom at the time of his plea, nor
3 did petitioner present any jail reports regarding his mental health or his attempted
4 "suicide" to the trial judge. The trial court cannot be faulted for not performing a
5 competency hearing where the issue is not raised by the parties or evident from the
6 proceedings. See In re Fleming, 142 Wn.2d 853, 863-64, 16 P.3d 610 (2002).
7 Accordingly, the defendant has not established actual prejudice stemming from an error
8 of constitutional magnitude. As such, the petition must be dismissed.

9
10 D. CONCLUSIONS:

11 For the foregoing reasons, the State asks this court deny this petition.

12 DATED: July 18, 2006

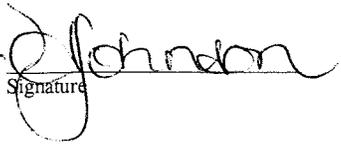
13 GERALD A. HORNE
14 Pierce County
15 Prosecuting Attorney

16 
17 TODD A. CAMPBELL
18 Deputy Prosecuting Attorney
19 WSB #21457

20 Certificate of Service:

21 The undersigned certifies that on this day she delivered by U.S. mail or
22 ABC-LMI delivery to the attorney of record for the appellant and appellant
23 c/o his or her attorney or to the attorney of record for the respondent and
24 respondent c/o his or her attorney true and correct copies of the document to
25 which this certificate is attached. This statement is certified to be true and
correct under penalty of perjury of the laws of the State of Washington. Signed
at Tacoma, Washington, on the date below.

21 7/18/06

21 
22 Signature

FILED
COURT OF APPEALS
U.S. DISTRICT COURT
TACOMA, WASHINGTON
BY _____
CLERK
JUL 18 2006
5:40 PM

APPENDIX “A”

Satisfaction of Judgment—04-1-03172-1



04-1-03172-1 23175298 STFJG 06-08-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN 07 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY  DEPUTY

IN THE SUPERIOR COURT WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

ALAA FEKRY AHMED HASSAN

Defendant.

) Case No.: 04-1-03172-1
)
) Satisfaction of Judgment 04-9-09800-0
) Legal Financial Obligation
)
)
)
)
)

Judgment Creditor: State of Washington

Acknowledges receipt of payment in satisfaction of the judgment for legal financial obligation against:

Judgment Debtor: ALAA FEKRY AHMED HASSAN

In the Amount of \$1110.00+ INTEREST.

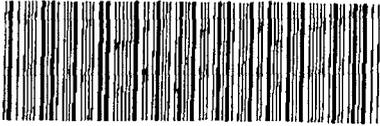
I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7 June 2005.

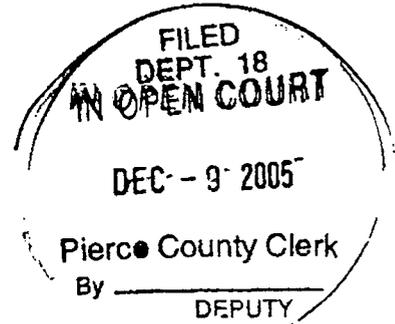
SG 
Deputy Clerk

APPENDIX "B"

Certificate and Order of Discharge



04-1-03172-1 24188322 CRORD 12-13-05



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON]	Cause No.: 04-1-03172-1 (AA)
Plaintiff]	
	v.]	CERTIFICATE AND ORDER OF
HASSAN, Alaafekry A.	Defendant]	DISCHARGE
DOC No. 873999]	
Date of birth: 06/09/65]	
Defendant's address: 1033 Sunset Blvd, NE #19]	
Renton, WA 98056]	

THIS MATTER having come on regularly before the above-entitled Court pursuant to RCW 9.94A.637, the Court having been notified by the Secretary of the Department of Corrections or his designee that the above-named defendant has completed the requirements of his/her sentence, and there appearing to be no reason why the defendant should not be discharged, and the Court having reviewed the records and file herein, and being fully advised in the premises, Now, Therefore,

IT IS HEREBY CERTIFIED that the defendant has completed the requirements of the sentence imposed and that all court-ordered monetary obligations, including any assessed interest, have been met to the Court's satisfaction.

IT IS HEREBY ORDERED that this document be considered a satisfaction of judgment and that the defendant be DISCHARGED from the confinement and supervision of the Secretary of the Department of Corrections.

IT IS FURTHER ORDERED that the defendant's civil rights lost by operation of law upon conviction be **HEREBY RESTORED**. This restoration of civil rights specifically does not include the right to ship, transport, possess, or receive firearms. Legal advice should be obtained.

DONE IN OPEN COURT this 9 day of December, 2005

HONORABLE

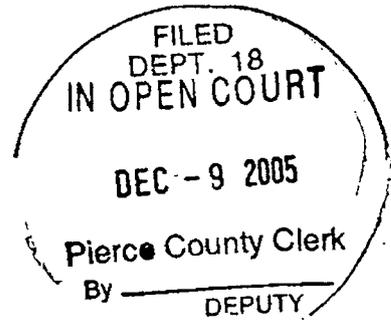
Presented by:

DEPUTY PROSECUTING ATTORNEY
hs/Modrijan/10/10/05

STEPHANIE MODRIJAN
COMMUNITY CORRECTIONS OFFICER II

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.17, and RCW 40.14.

Distribution: ORIGINAL - Court COPY - Prosecuting Attorney, Defense Attorney File, Offender



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OAA/SRA- REQUEST FOR
TERMINATION/DISCHARGE

REPORT TO: The Honorable BEVERLY G
GRANT
Pierce County Superior Court

OFFENDER NAME: HASSAN, Alaafekry A.
AKA:

CRIME: Assault 2

SENTENCE: 12 months supervision
LAST KNOWN ADDRESS: 1033 Sunset Blvd NE #19
Renton, WA, 98056

MAILING ADDRESS: 1033 Sunset Blvd NE #19
Renton, WA, 98056

DATE: 9/28/2005
DOC NUMBER: 873999

DOB: 06/09/1965
PIERCE COUNTY CAUSE #: 04-1-03172-1
(AA)
DATE OF SENTENCE: 08/17/04

TERMINATION DATE: 11/27/2005

STATUS: Active
CLASSIFICATION: RMA

I. FINANCIAL	Amount Ordered	Amount Paid	Date of Last Payment	Amount Owed
Court Costs	\$210.00			
Victim Compensation	\$500.00			
Restitution	\$0.00			
Fine	\$0.00			
Attorney Fees	\$400.00			
Other	\$0.00			
Modified	\$0.00			
Interest				\$0.00
Total	\$1,110.00	\$1,214.37	06/07/05	(\$104.37)

Comments:

Re: HASSAN, Alaafekry A.
 DOC# 873999
 9/28/2005 - 2 of 3

II. COMMUNITY SERVICE HOURS

1. Number of Hours Ordered 0
2. Satisfactory Completion Date
 Date of Last Contribution 08/17/2004
3. Number of Hours Completed 0

Comments:

TREATMENT TRACKING

Treatment	Start Date	End Date	Completion
DOMST VIOL TREATMENT	02/08/05	03/01/05	SATISFACTOR COMP
CHEM DP-INTSVE OUTPT	11/26/04	11/26/04	SATISFACTOR COMP

STIPULATED AGREEMENTS

None

SRA VIOLATIONS WITH COURT SANCTIONS

Violation Report Date	Violation Type(s) with Guilty Finding(s)	Sanction Date	Sanction to Jail?
None			

COMMUNITY CUSTODY INMATE/PRISON AND INDETERMINATE SENTENCING REVIEW BOARD VIOLATIONS

Violation Date	Conditions Violated	Hearing Group	Hearing Date	Sanctions	Days Ordered/ Suspended	Sanction Start Date
12/10/2004	Contact with class individual	01				
12/13/2004	Contact with class individual	01				
		01	12/27/2004	Confinement sanction - County jail Daily Reporting	0030 / 0000	12/16/04

Re: HASSAN, Alaafekry A.
 DOC# 873999
 9/28/2005 - 3 of 3

COURT ORDERED CONDITIONS

Order Type	Condition	Effective Date	End Date
COURT ORDR	COMPLY AFFIRM ACTS	08/17/04	
COURT ORDR	PAY SUPERVISION FEES	08/17/04	
COURT ORDR	CHANGE OF EMPLOYMENT	08/17/04	
COURT ORDR	OBEY/COMPLY DOC INST	08/17/04	
COURT ORDR	ADVSE CCO ADRESS CHG	08/17/04	
COURT ORDR	OBEY ALL LAWS	08/17/04	
COURT ORDR	DNA TESTING	08/17/04	
COURT ORDR	CCO REPORT	08/17/04	
COURT ORDR	VICTIM CONTACT	08/17/04	08/17/14 (lifted as 7/8/2005)
COURT ORDR	FIREARMS/DEADLY WEAP	08/17/04	
COURT ORDR	GEOGRAPHIC BOUNDARY	08/17/04	
COURT ORDR	DOMST VIOL TREATMENT	08/17/04	
COURT ORDR	CHEM DP-INTSVE OUTPT	08/17/04	

VI. RECOMMENDATION

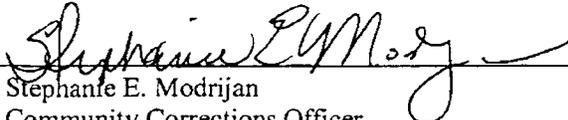
Termination

The above-named defendant has failed to comply with the conditions of supervision imposed by the Order of the Court heretofore made and entered in this case. It is respectfully requested the Court Terminate the requirement of the Department of Corrections supervision in this cause. If the Court schedules a hearing in this matter, a Community Corrections Officer will not be present for the hearing unless requested by the Court at the time the report is received.

Discharge

The above-named defendant has complied with the conditions of supervision imposed by the Order of the Court heretofore made and entered in this case. It is respectfully requested the Court Discharge the above-named defendant from supervision. If the Court schedules a hearing in this matter, a Community Corrections Officer will not be present for the hearing unless requested by the Court at the time the report is received.

I certify or declare under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct to the best of my knowledge and belief.


 Stephanie E. Modrijan
 Community Corrections Officer
 Renton Field Office
 1107 SW Grady Way Suite 101
 Renton, WA 98055
 Telephone (425) 277-7200

9/28/05
 DATE

Distribution: ORIGINAL - Court COPY - Prosecuting Attorney, File

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APPENDIX “C”

Ms. Phelp's Victim Impact Statement



04-1-03172-1 21387845 VS 07-18-04

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUL 16 2004 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY *[Signature]* DEPUTY

VICTIM IMPACT STATEMENT

State of Washington vs. ALAA FEKRY AHMED HASSAN
Superior Court Cause No. 04-1-03172-1

Please describe for the Court the impact of this crime on your life and/or the life of your family members. Special attention should be given to describing the emotional and/or financial impact resulting from this crime. This statement will be provided to the Judge, Prosecuting Attorney, Community Corrections Officer and the Defense Attorney. The original will be placed in the court file.

STATEMENT MUST BE WRITTEN IN INK ON FRONT SIDE ONLY. If needed, additional pages may be attached (please include Superior Court Cause Number on each page).

(Page 1 of 3)

Having fallen victim to physical abuse from my husband has devastated my life, and I fear that I will never fully recover from that horrifying experience.

It has been over 2 weeks since the assault, and most of my physical injuries are healing. I can now camouflage my black eyes well enough with makeup so that people don't stare at me and/or ask what happened, and my ribs no longer hurt when I breathe, but my nose still does. Now that the facial swelling has subsided I can tell that my broken nose doesn't look like it did before.

The physical part has been nothing to bear compared to the emotional pain and fear that seem to get worse instead of better. (continued)

Signature: *Nancy Caroline Phelps* Date: *7/10/2004*

Please return to: TERESA KEOGH, Victim Advocate
Room 946, 930 Tacoma Avenue South, Tacoma, WA 98402

Date 7/10/2004

Page 2 of 3 228866

Victim Impact Statement

State of Washington vs. Alaa Fekry Ahmed Hassan
Superior Court Cause No. 04-1-03172-1

The person that I loved with all my heart and trusted as my closest friend for 3½ years has now become a stranger to me.

I can't predict when a word from someone or a thought will bring me to tears. I jump at the slightest noise and am constantly looking behind my back, in fear that my husband might have escaped and come back to punish me for calling 9-1-1. I feel afraid at my work places, where I work nights as an RN in private homes.

When I can get to sleep, my sleeptime is filled with nightmares of being strangled or stabbed, stalked and killed. I picture it here in my apartment in Tacoma, but most of all on the streets of Cairo, Egypt, in my apartment in downtown Cairo and my house in Fayoum Oasis in Egypt. (I have been a resident of Egypt since 1978, and have invested my entire life's savings on my property there.)

Before the assault on 6/27/2004, my husband, Alaa, had become increasingly out of touch with reality, constantly accusing me of infidelity with everyone from my patients to the TAX accountant and the telephone solicitors. He would harass and embarrass me by telephone wherever I went, and tell others that he had "caught" me having numerous affairs.

Signed Nancy Caroline Phelps

continued next page

Date 7/10/2004
signed Nancy C. Thejas

Page 3 of 3

Victim Impact Statement

State of Washington vs. Alaa Fekry Ahmed Hassan
Superior Court Cause No. 04-1-03172-1

All of the accusations are absurd and untrue, but in Egypt could be considered valid grounds to kill a wife.

I am scheduled to go back to Cairo for 6 months starting this October, and for the first time in 26 years I fear for my safety there if Alaa is released and sent to his country.

The impact this incident has had on my parents, siblings and friends is also immeasurable. So many people have welcomed Alaa since his arrival in the U.S in May of 2003 and worked to help get him established here. They grew to love him as I did, then recognized that he has serious psychological flaws with his insane jealousy, extreme mood swings and erratic behavior. Still, no one expected him to turn to violence against me. Now everyone fears for my life.

It has been very hard for me to write this statement, because 1/2 of the person you are holding is one of the sweetest persons I have ever known. The other half is volatile, unpredictable and dangerous to himself and others. I know that I'm not the first woman he has assaulted, and I know that he could have killed me on June 27th with just one more blow to the head.

The line Alaa crossed when jealous delusions marked with angry verbal outbursts and irrational behavior turned to violent uncontrollable rage has turned my world upside-down.

APPENDIX "D"

Affidavit of Dixie Krieg

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6 IN THE SUPREME COURT
7 OF THE STATE OF WASHINGTON
8 DIVISION II

9 STATE OF WASHINGTON,

10 Respondent,

NO. 34876-6

11 v.

12 ALAA FEKRY AHMED HASSAN,

AFFIDAVIT OF DIXIE KRIEG

13
14 Appellant.

15 STATE OF WASHINGTON)

16 : ss.

17 COUNTY OF PIERCE)

18 The undersigned, being first duly sworn upon oath, deposes and says:

19 1. I am an attorney licensed to practice in the State of Washington and
20 currently employed by the Department of Assigned Counsel.

21 2. I was appointed to represent Alaa Fekry Ahmed Hassan.

22 3. For eight years I represented patients at Western State Hospital at 14-day,
23 90-day, 180-day, at 10.77 hearings and at Jury Trials. I am acutely familiar with a
24 complete range of DSM IV, Axis I, Axis II and Axis III mental disorders and what
25 constitutes incompetency under Washington law.

AFFIDAVIT OF OF DIXIE KRIEG

aff-krieg.doc
Page 1

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

1 4. During my representation of Mr. Hassan, I did not have reason to doubt his
2 competency. It was apparent, Mr. Hassan clearly understood what was happening, and our
3 conversations supported my opinion. Mr. Hassan was deeply troubled by the prospect of
4 leaving Ms. Phelps or putting her through a trial. During my discussions with Mr. Hassan,
5 he was depressed. I truly felt sorry for him.

6 5. I was aware he attempted suicide with the end of a pencil. I sought
7 assistance for him that included requesting support from a local Mosque. I spoke with
8 mental health at the jail and I was also advised a jail guard spoke Arabic and was assisting
9 Mr. Hassan with the difficulties of jail living.

10 6. I carefully examined the State's discovery with Mr. Hassan and advised Mr.
11 Hassan that he had favorable issues that could be presented at his trial. This discovery
12 included the police report, a recording of Ms. Phelps' call to the 911 operator, and
13 photographs of Ms. Phelps injuries. Ms. Phelps actively supported the prosecution of Mr.
14 Hassan and stated to me that, because of his culture, he posed a great danger to her if he
15 was released. After interviewing her, it was evident she would present as a formidable
16 witness for the prosecution at Mr. Hassan's trial.

17 7. During our discussions about his case, Mr. Hassan was able to assist me in
18 preparation of his defense.

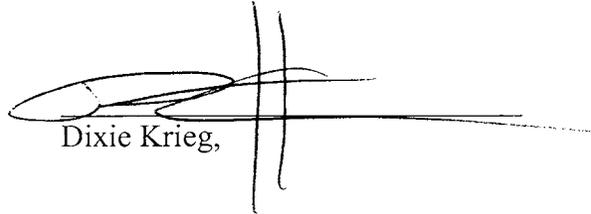
19 8. Eventually, Mr. Hassan chose to except the State's plea offer and not go to
20 trial. Mr. Hassan expressed his concern that he did not want to put his wife through his
21 trial or put her in the position of testifying against him. I attempted to negotiate a better
22 plea agreement with the State but was unsuccessful. Given Ms. Phelps' support of the
23 second degree assault charge, the State was unwilling to agree to a lesser assault offense.
24
25

1 9. During my discussions with Mr. Hassan, he expressed his concern about
2 being deported to Egypt. He was primarily concerned with the length of time the
3 deportation process would take and what it might cost him financially. I specifically
4 remember his asking me if the Government would pay the costs.

5 10. At the plea hearing, Mr. Hassan did not exhibit behavior that caused me to
6 question his competency.

7 11. Had I had any reason to question Mr. Hassan's competence during my
8 contact with Mr. Hassan, I would have alerted the court.

9 Further your affiant sayeth naught.

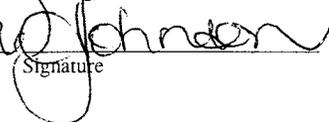
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11 
12 Dixie Krieg,

13 SUBSCRIBED AND SWORN to before me this 18th day of July, 2006.

14
15 
16 NOTARY PUBLIC, in and for the
17 State of Washington, residing
18 at Tacoma
My Commission Expires: 11-3-06

19 Certificate of Service:

20 The undersigned certifies that on this day she delivered by U.S. mail or
21 ABC-LMI delivery to the attorney of record for the appellant and appellant
22 c/o his or her attorney or to the attorney of record for the respondent and
23 respondent c/o his or her attorney true and correct copies of the document to
24 which this certificate is attached. This statement is certified to be true and
25 correct under penalty of perjury of the laws of the State of Washington. Signed
at Tacoma, Washington, on the date below.

26 7/18/06 
Date Signature

APPENDIX “E”

Affidavit of Jose Palamas

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6 IN THE COURT OF APPEALS
7 OF THE STATE OF WASHINGTON
8 DIVISION II

9 STATE OF WASHINGTON,

10 Respondent,

NO. 34875-6-II

11 v.

12 ALAA FEKRY AHMED HASSAN,

AFFIDAVIT OF JOSE PALMAS

13 Appellant.
14

15 STATE OF WASHINGTON)

16 : ss.

17 COUNTY OF PIERCE)

18 The undersigned, being first duly sworn upon oath, deposes and says:

19 1. I am a Mental Health Professional and Licensed Practical Nurse in the State
20 of Washington and currently employed by the Pierce County Detention and Corrections
21 Center, Health Services Division.

22 2. I am a Mental Health Diversion Care Manager and have been employed in
23 this capacity since 2000.

24 3. On July 2, 2004, Alaa Hassan was referred to me to assess him for being at
25 risk for self harm.

1 4. Mr. Hassan's command of the English language seemed limited. His native
2 language is Arabic. During my interview with Mr. Hassan, I used the services of an
3 interpreter through the AT & T language line.

4 5. As part of the Initial Assessment, I determined that Mr. Hassan understood
5 the charges against him and could assist his attorney with Mr. Hassan's defense.

6 6. In my Initial Assessment, dated July 2, 2004, I indicated, "No comp
7 concerns." This is my shorthand for, "No competency concerns."

8 7. In regard to Mr. Hassan's suicidality, he exhibited signs of feeling hopeless,
9 stated he has "lost everything," but denied intent or plan to commit suicide.
10

11 8. Mr. Hassan was moved to a suicide observation cell in 3NB for two days.
12 On July 4, 2004, he was cleared from suicide precautions to be housed in the general
13 population. On July 5, 2004, he was moved to 4NB, General Population.

14 9. Mr. Hassan was returned to a suicide observation cell on July 21, 2004,
15 because of reported increased anxiety and depressive symptoms. He was placed on
16 modified suicide precautions at 11:34 a.m., Later that day he was seen again and
17 determined to not be at significant risk for self-harm. At 2:07 p.m. he was transferred to
18 3NA, the mental health unit for stable clients.

19 10. On August 2, 2004, at 8:12 p.m. he was moved temporarily to 3NB16,
20 because he was having difficulties with a roommate and because he wanted to be placed in
21 a single cell. Though this is a suicide observation cell, Mr. Hassan was not housed there
22 because of being a suicide risk but probably because that was the only vacant cell.
23
24
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1 11. On August 3, 2004, at 10:22 p.m., he returned to 3NA10, in the mental
2 health unit for stable clients. He remained there until he was returned to the General
3 Population on September 13, 2004.

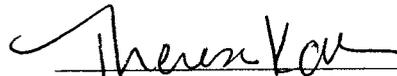
4 Further your affiant sayeth naught.

5 
6 _____
7 Jose Palmas

8 SUBSCRIBED AND SWORN to before me this 7th day of July, 2006.

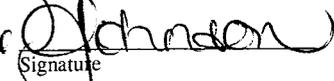


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NOTARY PUBLIC, in and for the
State of Washington, residing
at Federal Way, WA
My Commission Expires: 10-15-09

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or
ABC-LMI delivery to the attorney of record for the appellant and appellant
c/o his or her attorney or to the attorney of record for the respondent and
respondent c/o his or her attorney true and correct copies of the document to
which this certificate is attached. This statement is certified to be true and
correct under penalty of perjury of the laws of the State of Washington. Signed
at Tacoma, Washington, on the date below.

7/18/06 
Date Signature