

NO. 36377-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

DEAN ALAN ROYER,

Appellant.

07 SEP 21 PM 12:09  
STATE OF WASHINGTON  
BY ALISE ELLNER  
DEPUTY

11  
Court of Appeals  
Pierce County

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Frederick Fleming, Judge

BRIEF OF APPELLANT

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PM 7-20-07

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A. ASSIGNMENTS OF ERROR

1. Mr. Royer's motion to modify his sentence under CrR 7.8(b) was not time barred because the trial court exceeded its jurisdiction in imposing a life sentence without the possibility of parole.

2. Mr. Royer's POAA sentence is invalid as a matter of law because it is not supported by two prior valid convictions.

3. Mr. Royer's 1990 plea was facially invalid because it failed to state a crime.

4. Mr. Royer's 1990 plea violated the constitutional guarantee that all pleas be knowing, voluntary and intelligent because it failed to state crime or to apprise Mr. Royer of the nature of the crime and of the law in relation to the facts.

5. The trial court abused its discretion by ruling that Mr. Royer's motion to vacate his sentence was time barred.

6. Counsel was ineffective for failing to challenge the use of a facially invalid plea at the POAA sentencing hearing.

Issues Pertaining to Assignment of Error

1. Was Mr. Royer's motion to modify his sentence under CrR 7.8(b) time barred where the trial court exceeded its jurisdiction in imposing a life sentence without the possibility of parole?

2. Did the trial court in Mr. Royer's three strikes case impermissibly rely on a facially invalid 1990 plea to impose a life sentence without the possibility of parole?

3. Was Mr. Royer's 1990 plea facially invalid because it failed to state a crime?

4. Did Mr. Royer's 1990 plea violate the constitutional guarantee that all pleas must be knowing, voluntary and intelligent because it failed to apprise Mr. Royer of the nature of the crime and of the law in relation to the facts and failed to state a crime?

5. Did the trial court abuse its discretion by denying Mr. Royer's motion to vacate his sentence as time barred?

6. Was Counsel ineffective for failing to challenge the use of a facially invalid plea at the POAA sentencing hearing?.

B. STATEMENT OF THE CASE

1. Procedural Facts

Mr. Royer was sentenced to life in prison without the possibility of parole under Pierce County Superior Court cause number 95-1-01997-0. CP Supp CP (Judgment and Sentence 1-22-96). The trial court imposed this sentence in reliance on a 1990 plea to the crime of robbery in the second degree committed in 1987. CP 48-65. The plea form however did not contain the elements of the crime of robbery and did not state a crime. CP 48. Additionally, because the defendant used an Alford plea, there was also no factual basis to support or discuss the missing elements. CP 50.

On 12-27-06 and again on 3-30-07 Mr. Royer moved to modify his three strikes sentence under CrR 7.8(b) based on the facial invalidity of the prior plea. CP 2-30, 36-65. The trial court denied Mr. Royer's motion stating that it was time barred under RCW 10.73.090. CP 99-100. This timely appeal follows. CP 101-103.

C. ARGUMENTS

1. MR. ROYER'S CrR 7.8 MOTION FOR RELIEF FROM JUDGMENT IS NOT TIME BARRED UNDR RCW 10.73.090 or CrR 7.8.

Citing to CrR 7.8(b) Mr. Royer moved to modify his three strikes sentence imposed under Pierce County Superior Court cause number 95-1-01997-0 based on that sentencing court's reliance on an unconstitutional prior plea accepted in Pierce County Superior Court cause number 88-1-002837. The motion was denied as time barred. The trial court did not address the merits of the motion. CP 99-100.

Mr. Royer now appeals from the denial of his CrR 7.8 motion for re-sentencing. The denial of the motion is appealable as matter of right because Mr. Royer argued for vacation of his sentence and re-sentencing. State v. Larranaga, 126 Wn. App. 505, 508, 108 P.3d 833 (2005). RAP 2.2 provides that an aggrieved party may appeal as a matter of right a denial of

a motion to vacate a judgment as well as a denial of a motion to amend a judgment, thus Mr. Royer's motion could fit within either category. State v. Larranaga, 126 Wn. App. 505, 108 P.3d 833 (2005).

The Court of Appeals reviews a trial court's decision on a CrR 7.8 motion for abuse of discretion. In re Pers. Restraint of Cadwallader, 155 Wn.2d 867, 879-80, 123 P.3d 456 (2005), citing, State v. Hardesty, 129 Wn.2d 303, 317, 915 P.2d 1080 (1996). A court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

CrR 7.8 allows the trial court to vacate or amend a final judgment on certain grounds, including:

- (4) The judgment is void; or**
- (5) Any other reason justifying relief from the operation of the judgment[]**

(Emphasis added) Id. Mr. Royer's motion falls under either CrR 7.8(b)(4) or (5) neither of which are time barred under the one year limit on collateral attacks. CrR 7.8.

A CrR 7.8(b) motion is generally subject to the time limitations set out in RCW 10.73.090 which limit collateral attack to a period of one year from entry of the final order. In re Pers. Restraint of Greening, 141 Wn.2d

687, 697, 9 P.3d 206 (2000). However RCW 10.73.100 enumerates exceptions to the one-year time limit, which apply in the instant case.<sup>1</sup>

RCW 10.70.100 provides:

The time limit specified in *RCW 10.73.090* does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under *Amendment V of the United States Constitution* or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) **The sentence imposed was in excess of the court's jurisdiction; or . . .**

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<sup>1</sup> When Mr. Royer pleaded guilty in 1990, he was not advised of the time limits of RCW 10.73.090. The time limit of RCW 10.73.090(1) is conditioned on compliance with RCW 10.73.110, requiring notice of its terms. Golden, 112 Wn. App. at 78, citing, In re Pers. Restraint of Vega, 118 Wn.2d 449, 451, 823 P.2d 1111 (1992). The Court in Vega held that when notice is required by statute, the failure to comply creates an exemption to the time restriction, and a petition for collateral review must be treated as timely. RCW 10.73.110 unambiguously imposes the duty that the court shall advise the defendant at the time judgment and sentence is pronounced in a criminal case of the time limit specified in RCW 10.73.090. The rule of statutory interpretation is that "shall" is imperative. State v. Krall, 125 Wn.2d 146, 149, 881 P.2d 1040 (1994).

(Emphasis added).

RCW 10.73.090(1) does not apply to a plea that is invalid on its face. State v. Goodwin, 146 Wn.2d 861, 865-66, 50 P.3d 618 (2002); State v. Golden, 112 Wn. App. 68, 47 P.3d 587 (2002). In Goodwin, the state appropriately conceded that Goodwin had a right to challenge his sentence despite the one-year bar of RCW 10.73.090 because his judgment and sentence appeared invalid on its face. Id. In Golden, the Court held that the challenge to a facially invalid plea was not time barred because the trial court exceeded its jurisdiction by accepting a facially invalid plea from a 10 year old. Golden, 112 Wn. App at 76.

Under RCW 10.73.090, "valid on its face" refers to "documents signed as part of a plea agreement". In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000) (judgment and sentence invalid on face where plea included two priors that exceeded the statute of limitations). "[I]nvalid on its face' means that the judgment's infirmities are evident without further elaboration." State v. Golden, 112 Wn. App. at 77, citing and quoting, Stoudmire, 141 Wn.2d at 353.

In Royer's case, the plea was invalid on its face because as in Stoudmire, Golden and Goodwin, the trial exceeded its jurisdiction by relying on a document that purported to be a plea to robbery but that in fact was legally insufficient on its face to be a plea to any crime.

Mr. Royer's affidavit in support of his motion and his plea clearly established that his POAA sentence was illegal and that the sentencing court exceeded its jurisdiction in imposing the sentence. State v. Holley, 75 Wn. App. 191, 876 P.2d 973 (1994), rev. denied, 133 Wn.2d 1032, 950 P.2d 476 (1998) (standard of proof in motions to vacate sentence by preponderance of evidence).

The court's denial of Mr. Royer's motion was an abuse of discretion because the motion was not time barred under CrR 7.8 and RCW 10.73.090. Under Stoudmire, Goodwin, RCW 10.73.100 and CrR 7.8(5) the motion was not time barred. For this reason, this Court should address and rule on the merits of Mr. Royer's appeal.

2. A PLEA THAT IS INVALID ON ITS FACE  
MAY NOT BE USED TO SUPPORT A  
SENTENCE OF LIFE IN PRISON  
WITHOUT THE POSSIBILITY OF  
PAROLE UNDER THE POAA.

Mr. Royer was sentenced under the Persistent Offender Accountability Act ("POAA"), which is part of the SRA and is subject to its procedures. State v. Manussier, 129 Wn.2d 652, 682, 921 P.2d 473 (1996), 129 Wn.2d at 682; State v. Cruz, 91 Wn. App. 389, 400, 959 P.2d 670 (1998), rev'd on other grounds, 139 Wn.2d 186, 985 P.2d 384 (1999). Under the SRA, **only** convictions that are valid on their face are included

in criminal history. Stoudmire, 141 Wn.2d at 353, citing, State v. Ammons, 105 Wn.2d 175, 188, 713 P.2d 719, cert. denied, 479 U.S. 930, 93 L. Ed. 2d 351, 107 S. Ct. 398 (1986).

When there is clear evidence that the plea was constitutionally invalid on the face of the plea agreement, it may not be included in criminal history. State v. Ammons, 105 Wn.2d at 188; Cruz, 91 Wn. App. at 400. Mr. Royer met this burden by establishing that he did not plead guilty to a crime under the Revised Code of Washington.

Appellate courts conduct de novo review of a sentencing court's decision to consider a prior conviction as a strike. State v. Thiefault, 160 Wn.2d 409, 414, 158 P.3d 580 (2007).

To prove the validity of a prior conviction in a POAA sentencing the state bears the burden of establishing the validity of the prior conviction by a preponderance of evidence. State v. Vickers, 148 Wn.2d 91, 120, 59 P.3d 58 (2002), citing, State v. Ford, 137 Wn.2d 472, 480, 973 P.2d 452 (1999); State v. Manussier, 129 Wn.2d at 682.

Under RCW 10.73.090 "valid on its face," includes both constitutional defects and any judgment and sentence or plea that "evidences the invalidity without further elaboration." Goodwin, 146 Wn.2d at 866. Invalid:

"on its face" has been interpreted to include the documents signed as part of a plea agreement, and thus we considered the plea agreements in each of those cases when assessing whether the judgments and sentences were valid on their face for purposes of *RCW 10.73.090(1)*. *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000); *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000).

Goodwin, 146 Wn.2d at 866, n. 2. Mr. Royer's plea is "constitutionally invalid on its face" because it manifests infirmities of a constitutional magnitude: it is not a plea to a known crime. Ammons, 105 Wn.2d at 188.

In Goodwin, the defendant pleaded guilty and the trial court impermissibly calculated Goodwin's offender score using his juvenile convictions. Based on the miscalculation of Goodwin's criminal history his judgment and sentence was invalid on its face and his petition was not time barred even though he filed it over one year after the judgment was final. Goodwin, 146 Wn.2d at 866-67. Goodwin's POAA sentence was reversed because it improperly relied on invalid juvenile convictions in support of the POAA sentence. Goodwin, 146 Wn.2d at 867.

In In re Pers. Restraint of Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980), the defendant pleaded guilty to first degree armed robbery while armed with a deadly weapon, and his sentence included a deadly weapon enhancement. After the defendant's sentencing, the Supreme Court held in

another case that the deadly weapon enhancement was not applicable in the same circumstances. The Court in Carle accordingly held that the trial court had imposed an erroneous sentence. "[W]hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered." Carle, 93 Wn.2d at 33 (emphasis omitted) (quoting McNutt v. Delmore, 47 Wn.2d 563, 565, 288 P.2d 848 (1955), overruled in part on other grounds by State v. Sampson, 82 Wn.2d 663, 513 P.2d 60 (1973)).

In In re Pers. Restraint of Johnson, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997). The Supreme Court held that "[a] sentencing court acts without statutory authority . . . when it imposes a sentence based on a miscalculated offender score." *Id.* The Court further held that a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice. Johnson, 131 Wn.2d at 569. Johnson involved a miscalculation due to the sentencing court erroneously counting two prior convictions separately.

In Royer's case the trial court exceeded its jurisdiction by relying on a facially invalid plea to impose a life sentence without the possibility of parole. While the state needed only to establish by a preponderance the existence of the priors, it could not do so because one of the pleas was facially invalid. Goodwin, *supra*. Mr. Royer's acceptance of his POAA

sentence could not constitute a waiver of his fundamental rights when the basis of the sentence was erroneous as a matter of law. Goodwin, 146 Wn.2d at 875.

[A] court is not bound by an erroneous concession related to a matter of law. *State v. Knighten*, 109 Wn.2d 896, 902, 748 P.2d 1118 (1988). Our approach also accords with RCW 9.94A.530(2) (formerly RCW 9.94A.370, recodified, Laws of 2001, ch. 10, § 6), which provides that "[i]n determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing."

Goodwin, 146 Wn.2d at 875.

Mr. Royer attempted to plead guilty to robbery in the second degree however the guilty plea did not define a crime, rather under the "elements" section, the following language appeared:

On or about April 24, 1987, in Pierce Co., WA, the defendant did unlawfully and feloniously take personal property from the person or in the presence of another against their will.

CP 48. These elements do not constitute a crime in the State of Washington. Revised Code of Washington. Because Mr. Royer did not plead guilty to a "strike" offense or to any crime, the court erroneously used the invalid plea to impose a life sentence without the possibility of parole. The sentence must be reversed.

3. MR. ROYER'S PLEA WAS INVALID UNDER THE WASHINGTON STATE CONSTITUTION, THE UNITED STATES CONSTITUTION AND UNDER CRIMINAL RULE 4.2.

Under due process provisions in the Washington Constitution, Article 1, Section 3, and under the United States Constitution, Fourteenth Amendment, guilty pleas must be voluntary to be valid. Wood v. Morris, 87 Wn.2d 501, 506, 554 P.2d 1032 (1976); McCarthy v. United States, 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).<sup>2</sup> One purpose of both the Fed. R. Crim.P. 11 and CrR 4.2 is to fulfill these constitutional imperatives. In re Matter of Keene, 95 Wn.2d 203, 206, 622 P.2d 360 (1980).

A plea violates due process if the plea is not made knowingly, intelligently and voluntarily. Boykin v. Alabama, 395 U.S. 238, 242-44, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); State v. Hochhalter, 131 Wn. App. 506, 524, 128 P.3d 104 (2006). guilty plea cannot be knowing and intelligent when the defendant is not informed of the elements of the crime and the conduct that supports each element. Bousley v. United States, 523 U.S. 614, 618, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998); In re Pers. Restraint of Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983), aff'd, 108

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<sup>2</sup> Cited with approval by dissent in State v. Easterlin, 159 Wn.2d 203, 149 P.3d 306 (2006)

Wn.2d 579, 741 P.2d 983 (1987); see also McCarthy v. United States, 394 U.S. at 466 (guilty plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts").

Probably the most important requirement of *Boykin* is that the defendant receive "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process". In particular, this requires that the defendant be aware of the basic elements of the offense charged. See *Henderson v. Morgan*, supra at 646-47; *In re Keene*, supra at 208-09; *State v. Holsworth*, supra at 153 n.3..

(Internal citations omitted) State v. Chervenell, 99 Wn.2d 309, 318, 662 P.2d 839 (1983). In addition to receiving "[r]eal notice of the nature of the charges, for a plea to be constitutionally valid, the defendant must understand the "law *in relation to the facts.*" (Italics in Chervenell) Chervenell, 99 Wn.2d at 318-19, quoting, McCarthy v. United States, 394 U.S. at 466.

Mr. Royer's plea was facially invalid when accepted by the trial court because it did not state or define a crime and therefore its use in a later POAA sentencing was also invalid. Goodwin, 146 Wn.2d at 875-76.

In Royer's case, the plea simply failed to state a crime. The elements section listed several elements, but they did not state any crime. Moreover, because Mr. Royer pleaded guilty using a "Newton" plea, there was also no factual basis for any crime. Specifically the plea form did not

define a robbery or a theft; it merely stated that Mr. Royer unlawfully and feloniously took personal property from a person against the person's will. CP 48. There was no allegation that force or a threat of force was used and there was no allegation of a value of the property or that Mr. Royer intended to permanently deprive the owner of the property.

RCW 9A.56.190 defines robbery as follows:

A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

Id. Taking property by force or threatened force are essential elements of robbery that were not alleged or set forth in Mr. Royer's plea. Mr. Royer's plea to robbery was not voluntary because he was not made aware of the elements of the crime of robbery and because he did not plead to an identifiable crime. The plea was therefore facially invalid.

In In re Taylor, 31 Wn. App. 254, 640 P.2d 737 (1982), the Court of Appeals deemed the plea involuntary where the record of plea hearing failed to provide any factual basis upon which the judge could rely other

than a statement made by defendant in his own words which failed to set out the elements of the crime to which he pleaded guilty.

In State v. R.L.D., is 132 Wn. App. 699, 133 P.3d 505 (2006), this Court reversed the trial court for accepting a plea that was based on an insufficient factual basis. The facts supported an attempt to steal but not an actual taking. State v. R.L.D., is 132 Wn. App. at 706.

In Royer's case, as in Taylor, and R.L.D. the plea document was constitutionally invalid because the plea did not state a crime and also failed to provide a factual basis for the crime charged. The plea could not satisfy due process because pleading to an unidentifiable crime cannot be knowing, voluntary and intelligent and it is not possible to understand the law in relation to the facts when the plea does not state a crime. State v. Hilyard, 39 Wn. App. 723, 727, 695 P.2d 596 (1985), citing, Henderson v. Morgan, 426 U.S. 637, 645-47, 49 L. Ed. 2d 108, 96 S. Ct. 2253 (1976).

Ultimately, the trial court on the POAA sentencing abused its discretion by refusing to grant a hearing on the merits of the motion where Mr. Royer established by a preponderance of evidence that a plea used in his POAA sentence was facially invalid. The remedy is to vacate the POAA sentence, vacate the invalid plea and dismiss the charges associated with the invalid plea. Goodwin, *supra*; State v. R.L.D., 132 Wn. App. at 707-08.

4. COUNSEL WAS INEFFECTIVE DURING THE POAA SENTENCING HEARING FOR FAILING TO CHALLENGE THE USE OF A PRIOR FACIALLY INVALID PLEA TO SUPPORT A SENTENCE OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE.

Mr. Royer's attorney was ineffective for failing to object to the sentencing court's use of a facially invalid plea to support a three strikes sentence of life in prison without the possibility of parole.

To prevail on his claim of ineffective assistance of counsel, Mr. Royer must overcome the presumption of effective representation and demonstrate (1) that his lawyers' performance in not objecting to the facially invalid plea as a valid prior strike was so deficient that he was deprived "counsel" for Sixth Amendment purposes and (2) that there is a reasonable probability that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996); see also State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

To determine whether Mr. Royer's attorney was deficient under the first prong of the Strickland test, the Court must ask whether there was any reason not to challenge a facially invalid plea. In re Pers. Restraint of

Lavery, 154 Wn.2d 249, 258, 111 P.3d 837 (2005). In Lavery, the Court reviewed a 1991 foreign conviction and concluded that it was “neither factually nor legally comparable to Washington's second degree robbery and therefore not a strike under the POAA.”. Lavery, 154 Wn.2d at 258. In Royer’s case, review of the prior plea reveals that it is facially invalid because it fails to state a crime to which Mr. Royer could have pleaded. Counsel’s performance was deficient for failing to challenge the plea.

In State v. Thieffault, 160 Wn.2d 409, 158 P.2d 580 (2007) the Court conducted a Strickland analysis and also determined that the defendant satisfied the first prong of the Strickland test where his Montana conviction was neither legally nor factually similar to a Washington conviction. Therein, Thieffault's attorney did not object to the superior court's comparability analysis. Thieffault, 160 Wn. 2d at 417.

As in Lavery and Thieffault, Royer establishes the first prong of the Strickland test where his attorney failed to object to the facially invalid plea.

In Thieffault, counsel’s performance was prejudicial under the second prong of Strickland. Thieffault, 160 Wn. 2d at 417. Therein the Court held that counsel’s failure to challenge the comparability analysis of a foreign conviction in a POAA proceeding was prejudicial because “it [][was] equally as likely that” the state would not be able to provide

documentation indicating facts sufficient to find the Montana and Washington crimes comparable, thus the superior court could not have deemed the Montana conviction a 'strike' for purposes of the POAA. The Court in Thiefault remanded his sentence to conduct a factual comparability analysis of the Montana conviction.<sup>3</sup>

Mr. Royer also meets the second "prejudicial" prong of the Strickland test because the failure to challenge the invalid plea resulted in Mr. Royer receiving an illegal sentence of life in prison without the possibility of parole. If counsel had challenged the invalid plea Mr. Royer would not have been sentenced to life in prison without the possibility of parole. The remedy is to vacate the POAA sentence and remand for a standard range sentence.

D. CONCLUSION

Mr. Royer requests this court vacate his POAA sentence and remand for a standard range sentence without reliance on the invalid plea and vacate the plea and dismiss the underlying charge with prejudice.

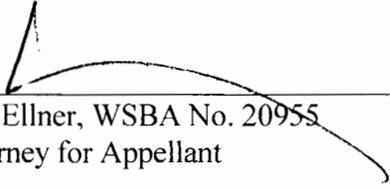
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<sup>3</sup> <sup>4</sup> Remand for resentencing with the inclusion of the Montana offense is the appropriate remedy where, as in this case, the trial counsel fails to object to the State's evidence of a prior conviction. See, e.g., *State v. Ford*, 137 Wn.2d 472, 485-86, 973 P.2d 452 (1999) ("Accordingly, where, as here, the defendant fails to specifically put the court on notice as to any apparent defects, remand for an evidentiary hearing to allow the State to prove the classification of the disputed convictions is appropriate."). In Royer's case, the plea is facially invalid therefore the remedy should be

DATED this 18<sup>th</sup> day of September, 2007.

Respectfully submitted

LAW OFFICES OF LISE ELLNER



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Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County prosecutor's office 930 Tacoma Ave. S. Rm. 946, Tacoma, WA 98402 and Dean Royer DOC# 913359 Washington State Penitentiary 1313 N. 13<sup>th</sup> Ave. Walla Walla, WA 99362 a true copy of the document to which this certificate is affixed, on September 18, 2007. Service was made by depositing in the mails of the United States of America, properly stamped and addressed. \_\_\_\_\_  
Signature

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out right vacation of the illegal sentence.