

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION Two

37573-7-II  
CON SOL w/ 39362-0-II (PRP)

In the Matter of the Application:

For Release From Personal Restraint:

Of:

No. ~~36215-7-II~~

Personal Restraint Petition

Pursuant to (RAP 16.3)

Kevin Joseph Smith

Petitioner

**39362-0**

STATE OF WASHINGTON  
COURT OF APPEALS  
CLERK  
JUN 11 1:22  
BY: [Signature]

If there is not enough room on this form, use the back of these pages, or other paper. Fill out all of this form and other papers you are attaching before you sign this form in front of a Notary.

A. Status of Petitioner

I, Kevin Joseph Smith #1747352 cedar Hall Bl  
Washington Corrections Center  
PO Box 900  
Skellton Washington 98584

(Full name and address)

Apply for relief from confinement. I am  am not  now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order. Bail Jumping

PETITIONER MAY FILE THE PETITION WITHOUT PAYMENT OF

[Signature]  
COURT CLERK 6/10/09

**(Identify type of order)**

1. The Court in which I was sentenced is: KITSAP County

2. I was convicted of the crime(s) of: Bail Jumping  
(Failure to appear)

3. I was sentenced after trial  after plea of guilty  on 8-11, 2008  
(Date of sentence) (Year)

4. The judge who imposed the sentence was Toni Sheldon  
(Name of trial Court Judge)

5. My lawyer at trial court was: Tom Ohmstead

6. I did  did not  appeal from the decision of the trial court (if the answer is that I did), I appealed to: DIVISION TWO

(Name of court or courts to which appeal was taken)

7. My lawyer on appeal was: ERIC TONG

(Name, and address if known, if none than write "none")

8. The decision of the appellate court was  was not  published. If the answer is that it was published, and I have this information, the decision is published in:

HAS NOT BEEN DECIDED AS OF YET  
(Volume number, Washington Appellate Reports or)

(Washington reports and page number)

9. Since my conviction I have  have not  asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked)

The Court I asked was: DIVISION TWO # 38013-7-II

(Name of court or courts in which relief was sought)

Relief was denied  granted  Dismissed as moot

August 25, 2008 By Commissioner Schmidt

(Date of decision, if more than one, dates of all decisions)

10. (If I have answered in question 6 that I have asked for relief), the name of my lawyer in the proceedings mentioned in question 6 was:

Pro Se

(Name and address if known; if none, write "none")

11. If the answers to the above question do not really tell about the proceedings and the court, judges and attorneys involved in your case, tell about it here:

I was never served with the Respondant's Motion to Dismiss, BECAUSE I would have filed a motion to object because I was only attacking the on court date before Judge Spearman for violation of CR 11 when I objected to the substitute Judge, and his losing his Authority for not following the mandatory language of the court rule "shall", and I showed him case No 36858-7-4 and he said that's a different matter, I'll let the higher court rule on it again.

**B. Grounds for Relief**

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", and "Third Ground". Ect.) , I claim that I have (number) 3 reason(s) for this court to grant me relief from the conviction described in part A.

First Ground

(First, Second, ect.)

1. I should be given a new trial or released from confinement because [Here state legal reasons why you think that there was some sort of error made in your case which gives you right to a new trial or release from confinement]:

grounds  
1

That on 1-28-08 under cause no. 07-1-01010- when the state filed their first amended information to add count two of Bail Jumping I objected to Judge Roof being my trial Judge because Judge Hartman pre-assigned himself as my trial Judge on Oct 1 2007, and the amended information should have been filed before Judge Hartman. I objected stating CrR 6.1, Judge Roof noted Judge Hartman made rulings on trial motions and set my trial for March 23, 2008 without first making a ruling on CrR 6.1 or arraignment as to both count 1 and count 2 of the first amended information. And set a status hearing for Feb 21, 2008. This is in violation of Criminal Court Rules 4.1(B) and 6.1 in violation of mandatory language of "shall"

2. The following facts are important when considering my case [After each fact statement, put the name of the person or persons who know the facts and will support your statement of the fact. If the fact is already in the record of your case, indicate that also.]:

grounds  
2

That on 2-22-09 I was brought before Judge Olsen for my status hearing and I again objected under CrR 6.1 for substitute Judge Judge Olsen said she runs her court like this, "first" she will let the state talk, then she will talk, then Mr Smith you may talk, so I waited until it was my turn to talk that I again objected to Judge Olsen being my trial Judge because Judge Hartman pre assigned himself as trial Judge on Oct 1-2007 and that this hearing should be before him not Judge Olsen that's when Judge Olsen denied my objection as being late and untimely. I also objected to being brought before the court a day later than I was previously set for. This again violated CrR 4.1(B) will of the mandatory language of "shall"

grounds  
3

3. The following reported court decisions [include citations if possible] in cases similar to mine show the error I believe happened in my case [if none are known, state "None known"]:

That on March 23 - 2008 I went before Judge Spearman on Motion for change of Venue that on March 20, 2008 I was before Judge Olson under Cause No 08-1-05288. who pre-assigned herself as my trial Judge and who we put the Motion before but Judge Olson transferred it to Judge Spearman I objected under CrR 6.11, and the State objected to my objection stating I can't object because I have an attorney, but the court already permitted me to speak that stop me when I chose to object under CrR 6.11, the court and state violated CrR 4.1(B) 6.11

4. The following statutes and constitutional provisions should be considered by the court [if none are known, state "None Known"]:

right to Due process under Article 1, section 3 of the Washington Constitution and the Fourteenth Amendment of the United States Constitution, precludes states from depriving any person of life, liberty, or property without due process of law

5. The petition is the best way to get the relief I want and no other way will work as well because: it deals with only three court days

and two court rules 4.1(B) 6.11 CrR. and the Washington Constitution Article 1 section 3 and the Fourteenth Amendment of the United States Constitution, and according to Sorreson v. Dahlen of mandatory language of the word "shall" operates to create a duty on the court, and when the court refuses to follow the mandatory language it loses its authority.

**Statement of Finances**

If you cannot afford to pay the filling fee, or cannot afford to pay an attorney to help you fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do  do not  ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have \$ 0 in my prison, or institution account.

3. I do  do not  ask the court to appoint a lawyer for me because I am so Poor I cannot afford to pay a lawyer.

4. I am  am not  employed. My salary or wages amount to \$ 324 Hr. \$55.00

A month. My employer is:

John Thompson Law Library Supervisor  
Washington Corrections Center  
P.O. Box 900  
Belton Washington 98584  
(Name and address)

5. During the past 12 Months I did  did not  get any money from a business, profession, or other form of self-employment. If I did, it was:

(Kind of self-employment)

The total income I got was \$ 0.

6. During the past 12 months, I:

DID	DID NOT		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Get any rent payment. If so, the total amount I got was	\$ <u>0</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Get any interest. If so, the total amount I got was	\$ <u>0</u>

7. During the past 12 months, I:

**DID**      **DID NOT**

[ ]        Have any cash except as said in answer  
2. If so, the amount of cash I have is \$ 0

[ ]        Have any savings accounts or checking  
Accounts. If so the amount in all is \$ 0

[ ]        Own Stocks, Bonds, or Notes. If so,  
there total value is \$ 0

8. List all Real Estate and other property and things of value, which belong to you or in which you have an interest. Do not list household furniture, furnishings, and clothing which you or your family need.

Item: NONE Value: \$ 0

Item: " Value: \$ 0

Item: " Value: \$ 0

Item: " Value: \$ 0

9. I am  am not [ ] married. If I am married, my spouses name and address is:

Christine Heidi Whitfield Smith

90 Beverly Drive N.W.

Belfair Washington 98528

10. All of the persons who need me to support them are listed here:

Name	Address	Age	Relationship
<u>wife</u>		<u>28</u>	<u>wife</u>

All the bills I owe are listed here:

Creditor	Address	Amount
HARRY OH	90 Beverly Drive	\$ 300. <sup>00</sup>
		\$
		\$
		\$
		\$
		\$

**C. Request for Relief**

I want this court to:

Vacate my conviction and grant me a new trial.

Vacate my conviction and dismiss the criminal charges against me without a new trial. *with prejudice.*

Other

[Specify]: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

D. Oath of Petitioner

THE STATE OF WASHINGTON )

) SS

COUNTY OF MASON )

After being first duly sworn, on oath, I dispose and say, That I am the petitioner, that I have read the petition. I know its contents, and believe that the petition is true.

June 1, 2009

Date

[Signature]

Signature of petitioner

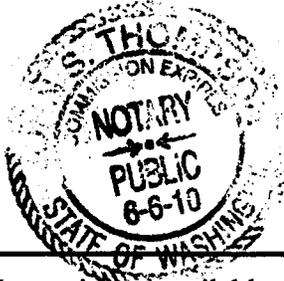
SUBSCRIBED AND SWORN to me this 1 day of June, 2009.

[Signature]

NOTARY PUBLIC in and for the state of Washington

Residing at Shelton

My commission expires: 6/6/10



If a Notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary:

\_\_\_\_\_

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

(City and State)

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Print Name