

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

IN RE THE PERSONAL)	NO. 45426-2-II
RESTRAINT PETITION OF)	RESPONSE TO
)	PERSONAL RESTRAINT
MICHAEL WHEELER)	PETITION

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Carol La Verne, Deputy Prosecuting Attorney, and files its response to petitioner's personal restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

Michael Wheeler was convicted of one count of failing to register as a sex offender. See Judgment and Sentence attached to his personal restraint petition (PRP). He has long since served his term of incarceration and is no longer under the supervision of the Department of Corrections. See Appendix A. He may still owe legal financial obligations, and he has the stigma of a conviction. In re Pers. Restraint of Martinez, 171 Wn.2d 354, 363-64, 256 P.3d 277 (2011).

II. STATEMENT OF PROCEEDINGS

On April 4, 2000, Wheeler entered an *Alford*¹ plea of guilty to one count of failure to register as a sex offender. Appendix B, Statement of Defendant on Plea of Guilty. He was sentenced on June 13, 2000. Attachment to PRP. He had a prior conviction for statutory rape in the third degree on September 3, 1985, to which he also had pled guilty. Appendix C, Judgment and Sentence. *Id.* He did not appeal.

On August 15, 2013, Wheeler filed a motion pursuant to CrR 7.8 in Thurston County Superior Court to vacate his conviction and to be relieved of the duty to register as a sex offender. The court found it to be time barred under RCW 10.73.090 and untimely under CrR 7.8(c)(2), and transferred it to this court for consideration as a PRP.

III. RESPONSE TO ISSUES RAISED

A. This petition is time barred.

RCW 10.73.090(1) provides that no collateral attack on a conviction may be brought more than one year after the judgment becomes final, providing that the judgment is valid on its face and rendered by a court of competent jurisdiction. RCW 10.73.090(3)

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)

defines "final":

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

The time bar is mandatory, unless one of the exceptions in RCW 10.73.100 applies. In re Pers. Restraint of Bonds, 165 Wn.2d 135, 140, 196 P.3d 672 (2008). It applies to motions brought pursuant to CrR 7.8. State v. Gudgel, 170 Wn.2d 656, 658, 244 P.3d 938 (2010); CrR 7.8(b).

RCW 10.73.100 provides a list of six exceptions to the one-year time limit.

(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 1, 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

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

This list is both exclusive and mandatory. State v. Wade, 133 Wn. App. 855, 870, 138 P.3d 168 (2006).

Wheeler does not address the time bar issue. His judgment and sentence was final on the date it was entered, June 13, 2000, and his CrR 7.8 motion was not filed until August 15, 2013, more than thirteen years later. He does not claim that his judgment and sentence is facially invalid or that the court which entered it was without jurisdiction. Nor does he claim any of the exceptions of RCW 10.73.100. His argument relies entirely State v. Taylor, 162 Wn. App. 791, 259 P.3d 289 (2011)

In Taylor, the defendant had been convicted of third degree

statutory rape in 1988. In 2009, he was found guilty after a bench trial of failing to register as a sex offender. Taylor, 162 Wn. App. at 793-94. He appealed that conviction. The Court of Appeals found that the crime of third degree statutory rape no longer existed and that the statute requiring registration of sex offenders did not come into existence until the statute under which Taylor was convicted had been repealed. Therefore, he was not required to register as a sex offender, because the prior statutory rape did not fall within the definition of a sex offense. Id. at 801.

Wheeler argues that his case is indistinguishable from Taylor, and thus his conviction for failing to register must be vacated. However, his case is distinguishable in at least two respects.

Taylor timely appealed a conviction following trial. Wheeler brings a collateral attack thirteen years after his judgment and sentence became final. The time bar of RCW 10.73.090(1) is the equivalent of a statute of limitation. Shumway v. Payne, 136 Wn.2d 383, 397-98, 964 P.2d 349 (1998). Courts may waive limitation periods contained in court rules, but not those contained in statutes. State v. Robinson, 104 Wn. App. 657, 665, 17 P.3d 653 (2001).

None of the exceptions to the one-year limit contained in RCW 10.73.100 apply to Wheeler's situation. There is no newly discovered evidence. The statute that he was convicted of violating is not unconstitutional. While the provision that required an offender to send written notice of change of residence address was held unconstitutionally vague, State v. Jenkins, 100 Wn. App. 85, 995 P.2d 1268, *review denied*, 141 Wn.2d 1011, 10 P.3d 1072 (2000), the statute in general has survived repeated constitutional challenges. See Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997), *cert. denied* 118 S. Ct. 1191, 523 U.S. 1007, 140 L. Ed. 2d 321 (1997); State v. Watson, 160 Wn.2d 1, 154 P.3d 909 (2007); State v. Ward, 123 Wn.2d 488, 869 P.2d 1062 (1994).

Nor is there anything to indicate that the statute is unconstitutional as applied to Wheeler's conduct. He entered an *Alford* plea without specifying his conduct when he pled guilty. Appendix B at 3. There is no double jeopardy issue, the sentence imposed was not in excess of the court's jurisdiction, and there was no significant change in the law after his conviction.

In Taylor, the defendant was charged with failing to register

after having been previously convicted of a sex offense, and that sex offense was a third degree statutory rape conviction. His conviction was reversed because third degree statutory rape did not constitute a sex offense. In other words, the State could not prove all of the essential elements of the offense. But Taylor went to trial, and even if, instead of a timely appeal, he had brought a collateral attack after the one year-limit, he would have met the exception of RCW 10.73.100(4)—“The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction.” Wheeler pled guilty, which will be discussed in greater detail below, and cannot take advantage of that exception to the time bar.

A PRP is “an extraordinary remedy” and will be granted only in very narrow circumstances. In re Pers. Restraint of Toledo-Sotello, 176 Wn.2d 759, 761, 297 P.3d 51 (2013). “The time limit on RCW 10.73.090 encourages prompt collateral attacks and controls the flow of postconviction collateral relief petitions.” In re Pers. Restraint of Becker, 96 Wn. App. 902, 905, 982 P.2d 639 (1999). Claims that would be successful on direct appeal or in a timely collateral attack may well be barred if brought beyond the time bar.

The one-year time bar in RCW 10.73.090 presupposes

that some, if not many, meritorious claims will be barred from consideration when petitioners fail to raise the claims in a timely manner. Thus, in the vast majority of cases, the interests of finality and efficiency that justify the one-year time bar will prevail over a petitioner's interest in having his meritorious claim heard. The exceptions listed in RCW 10.73.090 and RCW 10.73.100 represent the only situations in which the legislature has deemed that finality and efficiency must yield to the interests that weigh in favor of considering an untimely claim on its merits.

....

Moreover, to open the door to claims that do not fall within one of the enumerated exceptions in RCW 10.73.090 or RCW 10.73.100 would require us to ignore the interests of finality in situations where the legislature intended finality to carry the day.

In re Pers. Restraint of Coats, 173 Wn.2d 123, 169-70, 267 P.3d 324 (2011), J. Stephens concurring.

This petition should be denied because it is time-barred.

B. A plea of guilty waives most challenges to the conviction, including insufficiency of the evidence.

Wheeler pled guilty to the crime of failing to register as a sex offender. A voluntary plea of guilty to a criminal charge is a confession of guilt and is equivalent to a conviction. It has the same effect in law as a verdict of guilty, and nothing remains to be done except impose sentence. A guilty plea waives all defenses other than

that the charging document fails to state a crime. A guilty plea waives the right to trial and all of the rights associated with a trial. Woods v. Rhay, 68 Wn.2d 601, 605-06, 414 P.2d 601 (1966).

A valid plea of guilty waives all claims of constitutional violations occurring before the plea except any related to the circumstances of the plea or the State's power to prosecute regardless of factual guilt. In re Pers. Restraint of Reise, 146 Wn. App. 772, 782, 192 P.3d 949 (2008). A guilty plea admits factual and legal guilt and provides a sufficient, independent basis for the conviction and sentence. Id. A defendant who pled guilty cannot claim that evidence which could have been presented at a trial that never happened would have been constitutionally insufficient. Id. A plea of guilty specifically waives the presumption of innocence, the right to remain silent, the right to require the State to prove the charges beyond a reasonable doubt, the right to cross-examine the State's witnesses, and the right to present defense witnesses. Id. at 783. A defendant who pleads guilty assumes the risk that the State's witnesses will fail to appear at trial, move away, or die, that a new and exculpatory witness may come forward, or new laboratory tests may

be favorable to the defense. Id. Therefore, by pleading guilty, the defendant “renders irrelevant the question of whether the State could have *proved* guilt.” Generally speaking, a guilty plea bars a collateral attack based on newly discovered evidence. Id. at 783-84, emphasis in original.

An *Alford* plea has the same effect as a general plea. In re Pers. Restraint of Mayer, 128 Wn. App. 694, 706, 117 P.3d 353 (2005).

As noted above, had Wheeler been found guilty following a trial, as Taylor was, and timely appealed, he likely would have prevailed. Similarly, even an untimely PRP could be reviewed under RCW 10.73.100(4), had he been found guilty following a trial. Wheeler offers no argument other than that he is in the same position as Taylor, but he is not. He has no procedural basis upon which to vacate his judgment and sentence.

C. Wheeler may be eligible to be relieved of the duty to register as a sex offender.

In his CrR 7.8 motion, Wheeler asked to be relieved of the duty to register as a sex offender. He may be eligible to do so; on the basis of the record in this PRP that is not clear. Third degree

statutory rape was a class C felony. Appendix C at 2; RCW 9A.20.021(1)(c). RCW 9A.44.140(1)(c) sets forth the conditions for being relieved of the duty to register following conviction of a class C felony. He can bring a petition in the Superior Court which would not, of course, be time barred since it is not a collateral attack, but a CrR 7.8 motion is not the vehicle in which to do so.

IV. CONCLUSION

This PRP is time barred. Wheeler's collateral attack is also foreclosed because he pled guilty to the crime he now challenges. The State respectfully asks this court to deny his PRP.

RESPECTFULLY SUBMITTED this 12th day of May, 2014.

JON TUNHEIM
Prosecuting Attorney



CAROL LA VERNE, WSBA#19229
Deputy Prosecuting Attorney

APPENDIX A

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.
03 DEC 17 AM 9:55
BETTY J. GOULD, CLERK
BY 3
DEPUTY



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

REPORT TO: The Honorable Presiding Judge
Thurston County Superior Court
OFFENDER NAME: WHEELER, Michael Alan
AKA:
CRIME: Failure To Register
SENTENCE: Monetary
MAILING ADDRESS: Present Address
1036 South Cassault
Tacoma, Washington 98465

99-1-2013-1
COURT- SPECIAL
5990 SUPERVISION CLOSURE

DATE: 10-08-03
DOC NUMBER: 256589
DOB: 05-05-48
COUNTY CAUSE #: 99-1-02013-1
DATE OF SENTENCE: 06-13-00
DATE OF RELEASE:
TERMINATION DATE: 10-08-03
STATUS: Closed
CLASSIFICATION: OMB

Per RCW 9.94A, the offender does not meet the criteria for continued supervision by the Department of Corrections. Therefore, we have closed supervision interest in this cause.

The following information reflects the offender's compliance with the indicated Court ordered requirements.

If the Court schedules a hearing in this matter, a Community Corrections Officer will not be present for the hearing.

I. FINANCIAL	Amount Ordered	Amount Paid	Date of Last Payment	Amount Owed
Court Costs	210.00			
Victim Compensation	500.00			
Restitution				
Fine				
Attorney Fees	150.00			
Other				
Interest				250.88
Total	860.00	600.00	08-20-03	510.88

DOC initiated Wage Garnishment, Notice of Payroll Deduction or Order to Withhold and Deliver: (Y/N) NO

Comments: The Department of Corrections will cease sending financial billing statements to the above listed offender for any outstanding legal financial obligations effective 01/01/04. Effective January 2004, offender contact information will be provided to the Office of the Administrator for the Courts and the County Clerk of jurisdiction for purposes of billing, monitoring and collection of Legal Financial Obligations and Restitution.

The Department of Corrections will provide a separate notification to the County Clerk of jurisdiction regarding the above listed offender when the county is prepared to assume collection of Legal Financial Obligations per local agreements.

II. COMMUNITY SERVICE HOURS

1. Number of Hours Ordered
2. Satisfactory Completion Date
Date of Last Contribution
3. Number of Hours Completed

Comments: The Department of Corrections will no longer be providing industrial insurance coverage through the Department of Labor and Industries at the community service work site for the above listed offender.

III. WARRANT STATUS

An active bench warrant exists. It is requested the Court quash the warrant due to case closure.

IV. COMMENTS

Supervision Fees Owing: \$-0- to the Department Of Corrections.

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 based on the information available to me contained in the Judgement & Sentence and Department of Corrections file material as of the date this report is submitted.

Submitted By:

Anthony T. Shaver 10/09/03
Anthony Shaver, CCO III DATE
Community Corrections Officer/Records Staff
Vancouver-OMMU
9101-B NE Highway 99
Vancouver, Washington 98665
Telephone (360) 571 - 4350

AS:ks

Distribution: ORIGINAL: Court

COPY:

- Prosecuting Attorney
- DOC HQ Attention OAA Help Desk-5990 mail stop 41126
(for HQ delivery to the County Clerks Office via DOC Imaging Unit)
- Central File/Field File

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.

APPENDIX B

PRE-SENTENCE REPORT REQUIRED

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

FILED
SUPERIOR COURT
THURSTON COUNTY WA

2000 APR -4 AM 9:49

HEATH J. GOULD, CLERK
BY _____

THE STATE OF WASHINGTON,)
)
Plaintiff,)
)
v. MICHAEL WHEELER)
Defendant.)

No. 99-1-2013-1

STATEMENT OF
DEFENDANT ON
PLEA OF GUILTY

NEWTON/ALFORD
PLEA
DOCKET # 74

1. My true name is MICHAEL ALAN WHEELER

2. My age is 51

3. I went through the 12TH grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is ROBERT G. GIELY

(b) I am charged with the crime(s) of:

FAILURE TO REGISTER AS A SEX-OFFENDER

The elements of the crime(s) are: _____

_____, as set forth in the State's information, which is incorporated herein by this reference.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during the trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me and made to appear at no expense to me;
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries the maximum sentence 5 years imprisonment and a \$ 10,000.00 fine. The standard sentence range is from 0 months to 12 months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes my prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase, and community placement may be required if a department of corrections, prison sentence results and I am convicted of a community placement offence, as explained in the SRA score sheet which is incorporated herein by this reference (see paragraph "k" below). Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, and even though a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, community placement, impose restrictions on my activities, and order me to perform community service, and impose crime related prohibitions.

(f) The prosecuting attorney will make the following recommendation to the judge:

- 1) 30 DAYS IN CUSTODY - WORK-RELEASE - CREDIT-FOR-TIME-SERVED
- 2) * L.D. FEES & ASSESSMENTS
- 3) 12 MONTHS COMMUNITY SUPERVISION
- 4) COMPLIANCE WITH ALL REGISTRATION REQUIREMENTS

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(i) The crime(s) of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(a)(ii). *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(j) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(k) A term or terms of confinement totaling more than one year shall be served in the department of corrections. In addition to confinement in prison (the department of corrections or in the county jail):

DOES NOT APPLY

(i) **Prison:** The judge will sentence me to the custody of the department of corrections as follows: When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, or a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(ii) **Jail:** On all sentences of confinement for one year or less, the court may impose up to one year of community supervision. An offender shall be on community supervision as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community supervision shall toll. *(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)*

(1) The judge may sentence me as a first time offender, instead of giving a sentence within the standard range, if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement, twenty-four months

JUDGE

of community supervision, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. ~~(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

(m) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. ~~(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

(n) ~~If the crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

(o) ~~If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

(p) ~~Because this crime involves kidnaping of a minor child that is not a relative, or a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.~~

~~If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.~~

~~If I change my residence within a county, I must send written notice of my change of residence to the sheriff at least 14 days before moving and must register again with the sheriff within 24 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of residence to the sheriff of my new county at least 14 days before moving, register with that sheriff within 24 hours of moving and I must give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must also send written notice within 10 days of moving to the county sheriff with whom I last registered in Washington State. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)~~

(q) This offense is a most serious offense as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses ~~(or at least one prior conviction for a most serious offense in the case of a current conviction for certain sex offenders)~~, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. ~~(If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)~~

(r) I understand that I may not possess, own or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. (PURSUANT TO RCW 9.41.047(1), THE JUDGE SHALL READ THIS SECTION TO THE DEFENDANT IN OPEN COURT IF THE DEFENDANT IS PLEADING GUILTY TO A FELONY OR ANY OF THE FOLLOWING CRIMES WHEN COMMITTED BY ONE FAMILY OR HOUSEHOLD MEMBER AGAINST ANOTHER: ASSAULT IN THE FOURTH DEGREE, COERCION, STALKING, RECKLESS ENDANGERMENT, CRIMINAL TRESPASS IN THE FIRST DEGREE, OR VIOLATION OF THE PROVISIONS OF A PROTECTION ORDER OR NO-CONTACT ORDER RESTRAINING THE PERSON OR EXCLUDING THE PERSON FROM A RESIDENCE (RCW 25.50.060, 26.50.070, 26.50.130, OR 10.99.040)). THE CLERK SHALL FORWARD A COPY OF THE DEFENDANTS DRIVER'S LICENSE, IDENTICARD, OR COMPARABLE IDENTIFICATION TO THE DEPARTMENT OF LICENSING ALONG WITH THE DATE OF CONVICTION.)

7. I plead **GUILTY** to the crime(s) of: FAILURE TO REGISTER AS A SEX-OFFENDER

as charged in the STATE'S information. I have received a copy of that information.

- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me, or to any other person, to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth on this statement.
- 11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This

is my statement: THIS IS A NEWTON/ALIBI PLEA - I HAVE REVIEWED THE EVIDENCE IN THIS CASE WITH MY ATTORNEY & I BELIEVE I WOULD BE CONVICTED AT TRIAL. I AM MAINTAINING MY INNOCENCE - (I DID NOT KNOW I WAS REQUIRED TO REGISTER) BUT ENTERING THIS PLEA TO TAKE ADVANTAGE OF A FAVORABLE PLEA AGREEMENT. I UNDERSTAND THE COURT WILL

FIND ME GUILTY

12. My lawyer has explained to me, and we fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

x Michael A Wheeler
Defendant MICHAEL ALAN WHEELER

DEFENDANT'S ADDRESS:

1022 EAST 4TH AVE
TACOMA WA 98404
15417 WASHINGTON ST.
56mmr, WA. 98390

I have read and discussed this statement with the defendant and I believe that the defendant is competent and fully understands this statement, and makes this plea freely, knowingly, and voluntarily.

Christie A Peterson
Deputy Prosecuting Attorney, WSBA# 19783
JAN PETERSON

Robert G. Gray
Defendant's Lawyer, WSBA# 6204
ROBERT G. GRAY

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check the appropriate item):

- (a) the defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- * (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.**

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 4TH day of APRIL, 2000

Christie Pomerooy
CHRISTINE POMEROOY, JUDGE

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this _____ day of _____

Interpreter

**Verification by Interpreter: If a defendant is not fluent in the English language, a person the court has determined has fluency in the defendant's language shall certify that the above written statement of defendant upon plea of guilty has been translated orally or in writing and that the defendant has acknowledged that he or she understands the translation.

APPENDIX C

SEP 9 1985

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

THE STATE OF WASHINGTON

BOOK 85 PAGE 1555

Plaintiff,

vs.

MICHAEL ALAN WHEELER

Defendant.

NO. 85-1-00863-6

FILED

JUDGMENT AND SENTENCE

IN COUNTY CLERK'S OFFICE

SID NO. WA1147434

A.M. SEP 8 1985 P.M.

white; male; 5/5/48

PIERCE COUNTY, WASHINGTON
BRIAN SONNTAG, County Clerk

This court having conducted a sentencing hearing pursuant to RCW 9.94A.110 on

August 30, 1985

upon defendant's conviction(s) of the crime(s) forth below, and the court having heard from the parties and considered the presentence reports and the records and files herein, and otherwise being fully advised, now makes the following findings:

1. PARTIES PRESENT: Present at the sentencing hearing were the defendant, the defendant's attorney, MICHAEL JOHNSON, Deputy Prosecuting Attorney, BARBARA L. COREY-BOULET

2. CURRENT OFFENSE(S): The defendant has been convicted of the following current offense(s) upon a plea of guilty/conviction by the court on the 8th day of July, 1985

- Count I Crime: STATUTORY RAPE IN THE THIRD DEGREE
RCW: 9A.44.090 Crime Code:
Date of Crime: between May 14, 1985 and May 15, 1985
Incident Number: 85-135562
Special Finding:
- Count Crime:
RCW:
Date of Crime:
Incident Number:
Special Finding:
- Count Crime:
RCW:
Date of Crime:
Incident Number:
Special Finding:

[] Additional current offenses attached as Appendix A.

This court has jurisdiction of the defendant and the subject matter. It is ADJUDGED that the defendant is guilty of the current offenses set forth above.

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The following group(s) of current offenses encompassed the same criminal conduct and should be counted as one crime in determining the offender score (RCW 9.94A.400 (1)):

The following counts in the _____ information are hereby dismissed:

3. CRIMINAL HISTORY: This Court finds that the defendant has the following criminal history used in calculating the offender score pursuant to RCW 9.94A.360:

Sentencing Date	Crime	Adult/Juvenile	Crime Date	Crime Type
6/22/77	UPCS	adult	1977	nonviolent
1/9/78	Rob 1	adult	1977	violent

The defendant's criminal history is attached in Appendix B and incorporated by reference into this Judgment and Sentence.

SENTENCE DATA:

Count	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
Count 1	1	III	3 - 8 MONTHS 4 - 12 MONTHS	5 YEARS
Count 2				
Count 3				

Presumptive data score sheet(s) is attached as Appendix C and is incorporated by reference into this judgment.

SENTENCE ALTERNATIVE FINDINGS:

[] A. FIRST TIME OFFENSE: The defendant qualifies as a first-time offender pursuant to RCW 9.94A.120 (5). The first-time offender waiver is/is not used in this sentence.

[] B. EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify a sentence above/below the standard range for count(s) _____. Findings of Fact and Conclusions of Law pursuant to RCW 9.94A.120 (3) and Stipulations as to real and material facts, if any, are attached as Appendix D.

[] C. SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE: The defendant has been convicted of a felony sexual offense as specified in RCW 9.94A.120 (7) (a) and is eligible for use of the special sexual offender sentencing alternative. The defendant and the community will/will not benefit from use of the alternative.

[] D. SEXUAL OFFENDER TREATMENT PROGRAM: The defendant has been convicted of a felony sexual offense, does not qualify for the special sexual offender sentencing alternative, and is to be sentenced to a term of confinement of more than one year but less than six years. The defendant shall/shall not be ordered committed for evaluation for treatment pursuant to RCW 9.94A.120 (7) (b).

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E. RESTITUTION: Based on information concerning restitution attached in Appendix E, the defendant is responsible for payment of restitution:

For offenses adjudicated herein pursuant to RCW 9.94A.140 (1).

For offenses which were not prosecuted and for which the defendant agreed to make restitution in a plea agreement, which is attached to Appendix E.

To be set by later order of court. *for counseling costs for victim's treatment, if any.*

6. MONETARY PAYMENTS JUDGMENT AND SENTENCE: The defendant is ADJUDGED to be responsible for making monetary payments as stated below, within ten years, under the supervision of the Department of Corrections. The defendant is ORDERED to make the following monetary payments:

A. COSTS: Court costs in the amount of

\$ _____
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B. VICTIM ASSESSMENT: Penalty assessment pursuant to RCW 7.68.035:

\$ ~~7000~~ 7000

C. RESTITUTION: Restitution payments to: (subject to modification based on failure of co-defendants to pay):

\$ _____

\$ _____

\$ _____

\$ _____

Restitution information attached in Appendix E -- total amount ordered:

\$ _____

D. RECOUPMENT: Recoupment for defense attorney's fees of

\$ 200.00

E. FINE: A monetary fine in the amount of

\$ _____

F. DRUG ENFORCEMENT FUND: Reimbursement in the amount of

\$ _____

G. OTHER: Other costs in the amount of

\$ 15.00 per

for costs of community supervision

T \$ _____

The above payments shall be made to the Pierce County Superior Court Clerk, 110 County-City Building, Tacoma Washington 98402, and the Clerk of the Court shall credit monetary payments to the above obligations in the above listed order according to the rules of the clerk and according to the following terms:

Terms to be set by defendant's Community Correction Officer.

Provided that no forfeiture proceedings are pending at the date of this order, bail or bond is exonerated.

(SENTENCE ONE YEAR OR LESS)

7. DETERMINATE JUDGMENT AND SENTENCE: The Court having determined that no legal cause exists to show why a further judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED the defendant serve the determinate sentence and abide by the conditions set forth below:

XI A. CONFINEMENT: The defendant is sentenced to a term of total confinement in the Pierce County Jail for Four days/months on Count I, _____ days/months on Count II, _____ days/months on Count III; with credit for 116 days/months time served prior to this date, to commence May 16, 1985. The terms of this sentence are concurrent. To be released today

XI B. ALTERNATE CONVERSION:
() a. _____ days/months of total confinement are hereby converted to _____ days/months of partial confinement to be served subject to the rules and regulations of the Pierce County Jail
XI b. Four days of total confinement are hereby converted to 32 hours of community service to be completed as follows: to be completed by counseling and service at VA Hospital, VA Alcohol Treatment Program
() c. The defendant is eligible for an alternative sentence to total confinement pursuant to RCW 9A.04.380 but alternatives were not utilized because: _____

XI C. COMMUNITY SUPERVISION: Twelve months in community supervision by the Department of Corrections, to commence on release from jail. The defendant shall report by on release to the Community Corrections Office. The defendant shall comply with all rules, regulations and requirements of the Community Corrections Officer, including fees for supervision, RCW 9.94A.120 (1).

XI D. OTHER CONDITIONS: Complete VA Alcohol Treatment Program or equivalent

() Additional crime-related conditions of sentence are attached in Appendix E.

Violations of the conditions or requirements of this sentence are punishable by up to 60 days of confinement each violation. (RCW 9.94A.200 (2)).

The following appendices are attached to this Judgment and Sentence and are incorporated by this reference:

- () Appendix A, Current Offenses
- () Appendix B, Additional Current History
- () Appendix C, Sentence Scoring Worksheet(s)
- () Appendix D, Exceptional Sentence
- () Appendix E, Restitution

DONE IN OPEN COURT this 30th day of August, 19 85

FILED
IN COUNTY CLERKS OFFICE DONALD H THOMPSON JUDGE

Presented by Barbara L Corey-Boulet
Deputy Prosecuting Attorney
BARBARA L COREY-BOULET

A.M. SEP - 3 1985 P.M.
PIERCE COUNTY, WASHINGTON
BRIAN SONNTAG County Clerk
DEPUTY

Approved as to form:
Michael R Johnson
Attorney for the Defendant.
MICHAEL R JOHNSON

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FINGERPRINTS

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Fingerprint(s) of: MICHAEL ALAN WHEELER

Attested by: William Z. Remsdell
CLERK

By: _____ Date Aug. 30, 1998
DEPUTY CLERK

CERTIFICATE

I, TED RUTT,
Clerk of this court, certify that the above is a true
copy of the Judgment and Sentence in this action
on record in my office.

Dated: APR 28 1998

TED RUTT
Clerk

By: [Signature]
Deputy Clerk

OFFENDER IDENTIFICATION

State I.D. Number WA1147434

Date of Birth 5/5/48

Sex male

Race white

STATE OF WASHINGTON

Plaintiff,

vs.

MICHAEL ALAN WHEELER

Defendant.

NO. 85-1-00863-6

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Department of Corrections
- 3) Other - Custody
- 4) Western State Hospital (Sexual Offender)

FILED
 IN COUNTY CLERKS OFFICE
 SEP - 3 1985
 P.M.
 PIERCE COUNTY WASHINGTON
 BRIAN SOMMATA County Clerk
 DEPUTY

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence Order Modifying/Revoking Probation/Community Supervision, a full true and correct copy of which is attached hereto.

- 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officer of the Department of Corrections; and
 YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).
- 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above and 4 below).
- 4. The defendant is committed for up to thirty (30) days evaluation at Western State Hospital to determine amenability to sexual offender treatment.

YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officer of the State pending delivery to the proper officers of the Secretary of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

By direction of the Honorable

Dated: August 30, 1985

Donald H. Thompson
DONALD H. THOMPSON Judge

Brian Sommata
Clerk

By: [Signature]
Deputy Clerk

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3)

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CERTIFICATE OF SERVICE

I certify that I served a copy of the Response to Personal Restraint Petition on the date below as follows:

Electronically filed at Division II

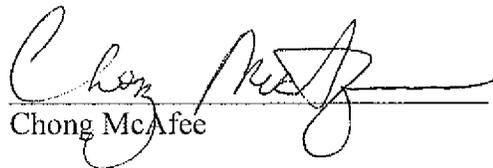
TO: DAVID C. PONZOHA, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

--AND--

MICHAEL E. SCHWARTZ, ATTORNEY FOR APPELLANT
MSCHWARTZ@CALLATG.COM

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

Dated this 12th day of May, 2014, at Olympia, Washington.


Chong McAfee

THURSTON COUNTY PROSECUTOR

May 12, 2014 - 2:20 PM

Transmittal Letter

Document Uploaded: prp2-454262-Response.pdf

Case Name: State v. Michael Wheeler

Court of Appeals Case Number: 45426-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion:

Answer/Reply to Motion:

Brief:

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes:

Hearing Date(s):

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other:

Comments:

No Comments were entered.

Sender Name: Chong H McAfee - Email: mcafeec@co.thurston.wa.us

A copy of this document has been emailed to the following addresses:

mschwartz@callatg.com