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STATE OF WASHINGTON

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

Jason De La Cruz Petitioner, vs. STATE OF WASHINGTON Respondent.	Case No.: 09-1-02999-9 / 45656-7-II MOTION TO MODIFY OR CORRECT JUDGMENT AND SENTENCE (CrR 7.8)

I. MOTION

1.1 Comes now Jason De La Cruz, petitioner, pro se, in the above-entitled matter, and moves this Court to modify or correct his judgment and sentence.

1.2 The defendant appeared originally before Judge Flemming on the 4th day of October, 2010 for [✓] trial / [ ] sentencing.

1.3 The State was represented by, Dione Hauger, of the Pierce County Prosecutors Office.

1.4 The defendant was represented by William Ferell.

1.5 The case was decided by ☐ (*a guilty plea*) ☑ (*or trial*) and Plaintiff/Petitioner received a sentence of 300 months in prison.

II. GROUNDS

2.1 In accordance with CrR 7.8 of the Superior Court Rules of Criminal Procedure, and the court imposed sentence.

The Defendant only seeks modification and/or correction of sentence, not retrial.

2.2 An error in the trial court happened when:

☐ A sentence was given which is ambiguous with respect to time, and manner in which to be served; *See* In Re Costello, 131 Wn.App. 828, 129 P.3d 827 (2006);

☑ An incorrect offenders score and/or offender seriousness level was used to calculate Petitioners sentence;

☐ The sentencing Judge was not clear in pronouncement about whether the sentence would run concurrent or consecutive, U.S. Preston, 643 F.2d 1285 (1983); in accordance with RCW 9.94A.400; U.S. Nass, 755 F.2d. 1133, 1136 (5th Cir. 1985);

☐ A sentence was given which is not within the sentencing guidelines as stated by the U.S. Supreme Court and various lower courts in, Apprendi v. New Jersey, 530 U.S. 466, 490.; Blakely v. Washington (02-1632) 111 Wash.App 851, 47 P.3d 149.; State v. Evans No. 74851-9 (Wash 06/16/2005)

☐ Other: _____

☐ Other _____

Additional Grounds: During sentencing state failed to prove I had previously been convicted of a serious crime in order to enhance my unlawful possession of firearm 2° to (1°) first degree. Out-of-state comparability analysis was not used.

From a due process stand point the adversarial testing process requires the state to prove every element of the crime beyond a reasonable doubt; it follows that defense counsel has a basic duty to protect the defendants due process interests by challenging the states failure to prove an essential element of the charged crime. U.S.C.A Const. Amends. 6,14

6Th Amendment Sentencing Guidelines

The constitution protects criminal defendants against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

An error is manifest if it has practical and identifiable consequences in the trial of the case for the purpose of determining whether an appellate court will examine an alleged constitutional error for the first time on appeal.

Where a defendants criminal history includes out-of-state convictions, The sentencing Reform Act requires these convictions be classified according to the comparable offense definitions and sentences provided by Washington law, and trial court must compare the elements of a comparable Washington Crime.

A challenge to the classification of out-of-state convictions like other sentencing errors resulting in unlawful sentences may be raised for the first time on appeal.

A person is guilty of (UPOF 1°) if the person owns has in his possession or control any firearm after having been convicted in this state or elsewhere of any serious offense.

9.41.040 Unlawful Possession of firearm 1°

Grounds: State of Washington V. Jason A Wilson NO. 83797-0
170 Wn. 2d 682 State V. Wilson (Wash 2010)
Error in Sentencing defendant based erroneously scored prior conviction was a legal error, and thus defendant was entitled to be resentenced. RCW 9.94A.525(4)
State V. McCorkle (Wash 1999) 137 Wn. 2d 490
State rules and regulations say that, we have further held that the state must prove by a preponderance of the evedince the comparability of the defendants out-of state convictions.
State V. Olsen 175 Wn. App. 269, (Wash. App Div 2 2013)
Courts employ a two-part test to determine the comparability of a foreign offense to Washington offense to increase an offender score: (1) courts determine whether the elements of the foreign offense are substantially similar to the elements of the Washington offense; And (2) if the foreign offense elements are broader than Washington elements, precluding legal comparability courts determine whether the offense is factually comparable that is, whether conduct underlying the foreign offense would have violated the comparable Washington Statue.
State V. Larkins 147 Wn. App. 858 199 P.3d 441
Held that defendants Ohio burglary conviction did not equate to a conviction for a crime equivalent under Washington Law for purposes of calculating his offender score under Sentencing Reform Act. (SRA)
State V. Thomas 135 Wn. App. 474 (Wash. App. Div. 1 2006) 144 P.3d 1178
State V. Rowland 149 Wn. App. 496 (Wash. App. Div. 1 2009) 204 P.3d 953
Under the two (above) cases relief was sought and granted due to the challenging of prior out-of-state burglary convictions, and it not being comparable to Washington statue.

Relief Requested: I seek relief and ask this court to sentence me to unlawfull possession of firearm 2°, not under 1°. Also to correct my offender score, so as to not affect due process rights.

I, Jason De la Cruz, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. (RCW 9A.72.085)

Dated this 8th day of September, 2014

Signature

Jason De la Cruz

Printed Name