

NO. 49105-2-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

FERNANDO JACA-ORTIZ,

Appellant.

RESPONSE TO PERSONAL RESTRAINT PETITION

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I. ANSWER TO PETITION

The petitioner's conviction is lawful, and his petition should be dismissed.

II. AUTHORITY FOR RESTRAINT OF PETITIONER

The petitioner is being restrained pursuant to the judgment and sentence entered on May 3, 2016, in Cowlitz County Superior Court Cause No. 14-1-01251-6.

III. STATEMENT OF THE CASE

Jaca-Ortiz was found guilty after jury trial of one count of Assault in the first degree and one count of Assault in the second degree. CP 46. The Cowlitz County Superior Court imposed a sentence of 154 months on the first-degree assault and 26 months of the second-degree assault, concurrent, with a 24- and 12-month deadly weapon enhancement, respectively. Jaca-Ortiz filed a direct appeal on October 21, 2016, and this PRP was consolidated with that appeal.

IV. ARGUMENT

A petitioner may request relief through a personal restraint petition when he is under unlawful restraint. RAP 16.4(a)–(c). Our Supreme Court has limited collateral relief available through a PRP “because it undermines the principles of finality of litigation, degrades the prominence of trial, and sometimes deprives society of the right to punish admitted offenders.” *In*

re Pers. Restraint of Davis, 152 Wn.2d 647, 670, 101 P.3d 1 (2004) (quoting *In re Pers. Restraint of St. Pierre*, 118 Wn.2d 321, 329, 823 P.2d 492 (1992)).

To obtain relief, a personal restraint petitioner must prove either (1) a constitutional error that results in actual and substantial prejudice or (2) a non-constitutional error that “constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” *Davis*, 152 Wn.2d at 672, 101 P.3d 1 (quoting *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990)). The petitioner must prove any such error by a preponderance of the evidence. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). A petitioner must present evidence showing his factual allegations are based on more than mere speculation, conjecture, or inadmissible hearsay. *In re Pers. Restraint of Rice*, 118 Wash.2d 876, 886, 828 P.2d 1086 (1992). Bald assertions and conclusory allegations are insufficient. *Id.* Even if a petitioner shows a constitutional error, he must then meet the burden of showing actual prejudice. If he fails to do so, the petition must be dismissed. *Hews v. Evans*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). In this case, Jaca-Ortiz fails to show any constitutional error, and also fails to show actual prejudice.

First, in his PRP, Jaca-Ortiz simply makes conclusory allegations that his right to present a defense was violated and that he received

ineffective assistance of counsel. These allegations are unsupported by facts or citations to the record. Therefore, his petition must be dismissed.

Additionally, as argued in the State's response to Jaca-Ortiz's direct appeal, the trial court did not err in refusing to give the self-defense instruction. Jaca-Ortiz testified that Misael Ledesma hit Juan Ledesma and Juvento Manzano Quiroz with the car jack, and Jaca-Ortiz then ran back to his truck and left the scene. RP 348-350. He further testified that he did not assault or hit anyone on that day in Cowlitz County. RP 355; RP 356. A person cannot deny striking someone and then claim that he struck them in self-defense. The trial court properly refused to give a self-defense instruction.

V. CONCLUSION

The petitioner has failed to meet his burden for a PRP. For the reasons stated above, the personal restraint petition should be denied.

Respectfully submitted this 5th day of ^{June} ~~May~~, 2017.

RYAN JURVAKAINEN
Prosecuting Attorney

By:



Aila R. Wallace, WSBA #46898
Deputy Prosecuting Attorney
Representing Respondent

CERTIFICATE OF SERVICE

Michelle Sasser, I certify that I sent to the COA Division II portal a true and correct copy of the Response to Personal Restraint Petition and sent a true and correct copy to the Appellant via US mail to:

FERNANDO JACA-ORTIZ
DOC # 390750
STAFFORD CREEK CORRECTION CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on June 10th, 2017.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

June 06, 2017 - 4:10 PM

Transmittal Information

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