

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

IN RE THE PERSONAL)
RESTRAINT PETITION OF:)
)
)
MARVIS J. KNIGHT)
) NO. 49521-0-II
) RESPONSE TO
) PERSONAL RESTRAINT
) 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

Marvis J. Knight is currently in the custody of the Washington Department of Corrections (DOC), serving a sentence of life without the possibility of parole. He was sentenced on April 18, 2000, following a jury trial in which he was found guilty of two counts of second degree assault and two counts of felony harassment. See Appendix 1, Judgment and Sentence, Thurston County Cause No. 99-1-00929-4.¹

¹ Knight has designated his appendices with letters. The State will use numbers for its appendices.

The State has no information to indicate that the waiver of the filing fee pursuant to RCW 4.24.430 is improper.

II. STATEMENT OF PROCEEDINGS

In this collateral attack, Knight is seeking to reverse his conviction in Thurston County Cause No. 95-1-00199-1. The judgment and sentence was entered on April 3, 1995, sentencing him to 38 months in prison following his plea of guilty to one count of attempted manslaughter in the first degree. Appendix B to Petition. He brought this matter as a CrR 7.8 Motion to Vacate Sentence in Superior Court, which transferred it, over Knight's objection, to this court as a personal restraint petition (PRP).

Knight was charged with one count of first degree assault on February 6, 1995. Appendix 2 at 1. While a jury panel waited to begin voir dire, the State amended the information to charge one count of attempted first degree manslaughter. Appendix 2 at 2. Knight entered an *Alford*² plea to that charge. Appendix A to Petition at 56; Appendix C to Petition. It was an exhaustively negotiated resolution. Appendix A to Petition at 34-41.

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

Knight has long since served his sentence in 95-1-00199-1. He does not owe any legal financial obligations (LFOs). Appendix 3. There was no direct appeal. In a motion dated December 8, 2003, Knight brought a CrR 7.8 motion in Superior Court seeking to withdraw his guilty plea. Appendix 4. In an order entered on January 9, 2004, the Superior Court denied the motion. Appendix 5. No appeal was filed.

Knight now brings this untimely PRP in an effort to reverse the conviction for attempted manslaughter and withdraw his guilty plea. He claims per se prejudice because, since there is no such crime as attempted manslaughter, his plea was constitutionally invalid. Petition at 9-10.

III. RESPONSE TO ISSUES RAISED

A. A PRP is different from an appeal.

A personal restraint petition is not an appeal. It is a collateral challenge to a judgment and sentence, and relief granted in a collateral attack is extraordinary. In re Pers. Restraint of Coats, 173 Wn.2d 123, 132, 267 P.3d (2011). A PRP filed within one year after the judgment and sentence becomes final may raise any grounds for

relief, but the petitioner bears a higher burden than on a direct appeal.

Id. A petitioner must demonstrate by a preponderance of the evidence that he or she has suffered a constitutional violation which caused actual and substantial prejudice, or that there occurred a nonconstitutional error that inherently resulted in a complete miscarriage of justice. Id.; In re Pers. Restraint of Brett, 142 Wn.2d 868, 874, 16 P.3d 601 (2001).

A manifest constitutional error may be raised for the first time on appeal. RAP 2.5(a)(3). It may also be raised for the first time in a personal restraint petition, which is a civil action. In re Pers. Restraint of Ticeson, 159 Wn. App. 374, 383, 246 P.3d 550 (2011). However, a personal restraint petitioner does not have the presumption of prejudice, and must demonstrate that the constitutional error had “identifiable and practical consequences” on the trial. Id. If he cannot do so, a failure to raise the issue below constitutes a waiver. Id.

On direct appeal, the burden is on the State to establish beyond a reasonable doubt that any error of constitutional dimensions is harmless. . . . On collateral review, we shift the burden to the petitioner to establish that the error was not harmless.

In re Pers. Restraint of Hagler, 97 Wn.2d 818, 825-26, 650 P.2d 1103

(1982).

B. This PRP 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) 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).

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).

1. This Judgment and Sentence is not facially invalid.

A facially invalid judgment and sentence is not subject to the one year time bar. RCW 10.73.090(1). A judgment is not facially invalid unless it exceeds the statutory authority of the sentencing court. "Not every error will make a judgment facially invalid." In re the

Pers. Restraint of Toledo-Sotelo, 176 Wn.2d 759, 767, 297 P.3d 51 (2013). Knight maintains that the judgement and sentence is facially invalid because the court had no authority to accept a plea to, or impose a sentence for, a crime which does not exist. Petition at 9.

There is some authority for Knight's argument. In Coats, the court noted that it has found facial invalidity where the defendant was convicted of a nonexistent crime. Coats, 173 Wn.2d at 135. The Court of Appeals has held that there is no such crime as attempted manslaughter. State v. Red, 105 Wn. App. 62, 66, 18 P.3d 615 (2001), *review denied*, 145 Wn.2d 1036, 43 P.3d 20 (2002). However, the appellate courts are willing to uphold a plea to a nonexistent crime under some circumstances, and those circumstances are not apparent from the face of the judgment and sentence.

In State v. Majors, 24 Wn. App. 481, 603 P.2d 1273 (1979), the defendant was charged with first degree murder. He pled guilty to a reduced charge of second degree murder and to a charge that he was a habitual criminal. His sentence was life in prison. Id. at 482. He appealed on the grounds that the habitual criminal information was

defective in that some convictions which formed the basis of the habitual criminal allegation actually occurred after the murder, in effect meaning that it was impossible for him to be a habitual offender at the time of the murder. Id. While acknowledging that a guilty plea did not preclude the appeal, the analysis is different when the plea results from a plea bargain. Id. at 483. The Court of Appeals said:

A guilty plea entered to a crime or crimes carrying a lesser penalty than the crime originally charged, as the result of a plea bargain, precludes review of the sufficiency of the information *or the existence of the crime charged*. The defendant bargained for the sentence imposed, not the crime, to avoid the risk of a heavier penalty.

Id., emphasis added. The court further cited to People v. Foster, 19 N.Y.2d 150, 154, 225 N.E.2d 200, 278 N.Y.S.2d 603 (1967) for this language:

While there may be question whether a plea to attempted manslaughter is technically and logically consistent, such a plea should be sustained on the ground that it was sought by the defendant and freely taken as part of a bargain which was struck for the defendant's benefit.

Majors, 24 Wn. App. at 483.

The Supreme Court affirmed. State v. Majors, 94 Wn.2d 354, 616 P.2d 1237 (1980). That court found it significant that Majors was

represented by counsel during all stages of plea bargaining and that he was aware of the consequences. “In effect, the petitioner bargained for a sentence by accepting a habitual criminal status.” *Id.* at 358. The court further quoted Keto v. United States, 189 F.2d 247, 251 (8th Cir. 1951) for the following:

It would create an intolerable situation if defendants, after conviction, could defer their attacks upon indictments or informations until witnesses had disappeared, statutes of limitation had run, and those charged with the duty of prosecution had died, been replaced, or had lost interest in the cases.

Majors, 94 Wn.2d at 358-59.

From these authorities, it appears that even if the crime to which the defendant plead guilty is technically nonexistent, the appellate courts will nevertheless affirm a conviction where the defendant has negotiated for that result. Here it is clear that Knight's attorney negotiated tenaciously for the offer of attempted manslaughter. Appendix A to Petition at 34-41. Knight got a very good deal. He faced a recommendation of 38 months, even as an exceptional sentence upward, rather than the 93 to 123 months he was facing if convicted at trial of the original charge. Appendix A to Petition at 35. His attorney persuaded the prosecutor to recommend

38 months rather than the 48 months originally offered. Appendix A to Petition at 36. Knight said that he understood the negotiations and wanted to take the offer. Appendix A to Petition at 41-42. Under the holding of Majors, Knight should be held to his bargain.

In other circumstances, the courts have distinguished Majors. In State v. DeRosia, 124 Wn. App. 138, 100 P.3d 331 (2004), the defendant entered an *Alford* plea to second degree felony murder predicated on second degree assault of a child, as charged. The State made no concessions, promises, or reduction of the charge or sentence recommendation in exchange for his guilty plea. Id. at 141-42. While the case was on appeal, the Supreme Court decided In re Pers. Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), holding that an assault cannot be the predicate for a second degree felony murder charge. DeRosia, 124 Wn. App. at 142. DeRosia had pled to a nonexistent crime.

The court in DeRosia held that Majors did not apply because there was no plea bargain. DeRosia had pled as charged without any promises or concessions from the State. "It was not a 'negotiated plea bargain' in any meaningful sense." Id. at 145. In addition, the

court said that Majors is limited to “circumstances where the factual basis for the guilty plea . . . supports more severe charges.” Id. at 145-46. That did not apply to DeRosia. Id. at 146. The court in DeRosia further discussed the Supreme Court opinion in Majors that the defective information was a “technical defect” because the defendant had originally faced charges with much more severe penalties. DeRosia, 124 Wn. App. at 147. The Andress decision rendered the second degree felony murder charge more than a technical defect. DeRosia, 124 Wn. App. at 147.

Knight cites to State v. Dunbar, 117 Wn.2d 587, 817 P.2d 1360 (1991). In that case, the defendant was charged with attempted first degree murder by two alternative means, one of which was creating a grave risk of death by extreme indifference. Id. at 588. The trial court granted the defendant’s motion to dismiss. That dismissal was upheld on appeal because a crime which does not require an intent cannot be the basis for an attempt to commit that crime. Id. at 594-95. The differences between Dunbar and this case, of course, are that Dunbar did not negotiate for that charge and moved to dismiss in the trial court. Knight not only agreed to plead to attempted

manslaughter, he made no effort to challenge the plea on the grounds of a nonexistent crime for twenty years.

The willingness of the court to hold a defendant to a negotiated plea even though the crime to which he plead is technically a nonexistent one means that facial invalidity does not result merely from the fact of a judgment. It may or may not be error, depending on the circumstances of the manner in which the plea was reached. But facial invalidity means that the document itself evidences the invalidity, although the court has also looked to charging documents, verdicts, plea statements, and statements of the defendant on plea of guilty. Coats, 173 Wn.2d at 140. Here, the Statement of Defendant on Plea of Guilty, Appendix C to Petition, does not help Knight, and the transcript of the sentencing hearing, Appendix A to Petition, which he asks this court to consider, amply demonstrates that his plea to attempted manslaughter was vigorously negotiated. It also resulted in a very good outcome for Knight.

The bottom line is that because the judgment and sentence is not facially invalid, Knight cannot avoid the one-year time limit of RCW 10.73.090 and his petition is time-barred.

C. Knight has suffered no prejudice from his conviction for a technically nonexistent crime.

If the judgment and sentence is facially valid, a time-barred petition will be dismissed even if the petitioner demonstrates prejudice. Toledo-Sotelo, 176 Wn.2d at 769-70. Likewise, even if this PRP were not time-barred, Knight could not prevail because he cannot demonstrate any prejudice from this conviction. As noted above, he is serving a life sentence without the possibility of parole because he has been convicted of three most serious offenses pursuant to RCW 9.94A.570 and RCW 9.94A.030(38). Attempted manslaughter is not a most serious offense. RCW 9.94A.030(33). Manslaughter in the first degree is a class A felony. RCW 9A.32.060. A criminal solicitation or criminal conspiracy to commit a class A felony is a most serious offense, but an attempt to so do is not. RCW 9.94A.030(33)(a).

Knight was convicted of two counts of second degree assault in Cause No. 99-1-00929-4. Appendix 1 at 1. Second degree assault is a most serious offense. RCW 9.94A.030(33)(b). He had one prior conviction for second degree assault. Appendix 1 at 2. His prior

criminal history also included second degree robbery, which is also a most serious offense. Appendix 1 at 2; RCW 9.94A.030(33)(o). Even if his conviction for attempted manslaughter were to be reversed, he would still be in prison for life.

The attempted manslaughter conviction had no effect whatsoever on his current situation. It added one point to his offender score at the time he was sentenced as a persistent offender. At that time his score was 14 for the second degree assault charges and 10 for the felony harassment charges. Appendix 1 at 2. The standard range tops out at an offender score of nine. RCW 9.94A.510. In any event, the standard range was irrelevant because he was sentenced as a persistent offender. One less point in his offender score would have made no difference.

As a result of his conviction for attempted manslaughter Knight served 38 months less any good time he earned. It is apparent from his criminal history that he was out of prison and able to commit second degree robbery in 1997 and second degree possession of stolen property in 1999 before committing the two second degree assaults and two felony harassments that resulted in his life sentence.

He has suffered no prejudice from a conviction for attempted manslaughter.

IV. CONCLUSION

This PRP is time-barred, but even if it were not, Knight has failed to show prejudice. For both of these reasons the State respectfully asks this court to deny and dismiss this PRP.

RESPECTFULLY SUBMITTED this 13^m day of January, 2017.

JON TUNHEIM
Prosecuting Attorney



CAROL LA VERNE, WSBA #19229
Deputy Prosecuting Attorney

APPENDIX 1

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

FILED
 SUPERIOR COURT
 THURSTON COUNTY WASH.

STATE OF WASHINGTON, Plaintiff,
 vs.
 MARVIS J. KNIGHT,
 Defendant.
 SID: WA14370751
 DOB: 02/06/1978

APR 18 10:34
 No. 99-1-929-4

JUDGMENT AND SENTENCE (JS)
Persistent Offender

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecutor were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on ~~April 1, 2000~~ **MARCH 2, 2000**
 (Date)
 by plea jury-verdict bench trial of:

CRIME	RCW	DATE
I. ASSAULT IN THE SECOND DEGREE	9A.36.021	4/14/99
III. FELONY HARRASSMENT	9A.46.020	4/14/99
IV. ASSAULT IN THE SECOND DEGREE	9A.36.021	4/14/99
VI. FELONY HARRASSMENT	9A.46.020	4/14/99

as charged in the First Amended Information.

- A special verdict/finding for use of **firearm** was returned on Count(s) _____, RCW 9.94A.125, .310
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____, RCW 9.94A.125, .310
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____, RCW 9.94A.127
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A. ____.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): **99-1-591-4**

PCN:

W.S.P. IDENT.



005835861

JNS

00-9-10490-4

VJM
 P+6

2.2 CRIMINAL HISTORY (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult. Juv.	TYPE OF CRIME
1 AT. MANSLAUGHTER 1°	4/8/95	THURSTON, WA	1/25/95	A	V
2 ROBBERY 2°	10/24/97	THURSTON, WA	8/15/97	A	V
3 PSP 2°	11/15/99	PIERCE, WA	10/14/99	A	NV
4 TMVWOP	6/22/90	PIERCE, WA	8/21/90	J	NV
5 RES. BURGL.	11/25/91	THURSTON, WA	11/25/91	J	NV
6 THEFT 2°	6/30/92	" "	5/20/92	J	NV
7 RES. BURGL.	6/30/92	" "	5/20/92	J	NV
8 ASSAULT 2°	6/30/92	" "	5/25/92	J	V
9 ESCAPE 2°	11/2/93	" "	8/12/93	J	NV

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 SENTENCING DATA:

	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM
I.	14	IV	63-84 mo.	PERSISTANT OFF	LIFE 1/2 PAROLE	LIFE
III.	10	III	51-60 mo.	N/A	51-60 mo.	5 yrs
IV.	14	IV	63-84 mo.	PERS. OFFENDER	LIFE 1/2 PAROLE	LIFE
VI.	10	III	51-60 mo.	N/A	51-60 mo.	5 yrs

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: N/A

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [] The Court DISMISSES Counts _____ [X] The defendant is found NOT GUILTY of Counts II, V, VII, VIII

IV. SENTENCE AND ORDER

IT IS HEREBY ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

Table with columns for category (e.g., JASS CODE, RTN/RJN, PCV, CRC, PUB, WFR, FCM/MTH, CDF/LDI/PCD, NTF/SAD/SDI, CLF, EXT), amount, description, and RCW reference. Includes entries for Restitution, Victim assessment, Court costs, and various fees.

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing: [] shall be set by the prosecutor [] is scheduled for _____

[] RESTITUTION. Schedule attached, Appendix 4.1.

[] Restitution ordered above shall be paid jointly and severally with: _____ (Victim name) (Amount-\$)

RJN

[] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless specifically set forth here: Not less than \$ _____ per month commencing _____. RCW 9.94A.145

In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant shall not have contact with LACRENA JORDAN 7/4/81 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for (10) TEN years (not to exceed the maximum statutory sentence).

Domestic Violence Protection Order or Antiharassment Order attached as Appendix 4.3.

4.4 OTHER: _____

4.5 CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER. The defendant was found to be a Persistent Offender.

The court finds Counts I and IV is a most serious offense and that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

The court finds Count _____ is a crime listed in RCW 9.94A.030(27)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was sixteen years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was eighteen years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(27)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(27)(b)(i).

Those prior convictions are listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030, RCW 9.94A.120

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

Life without possibility of early release	on Counts	<u>I and IV</u>
<u>Sixty (60)</u>	months on Count	<u>III</u>
<u>Sixty (60)</u>	months on Count	<u>VI</u>
_____	months on Count	_____

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

4.6 OTHER: Should A obtain release, Community placement is ORDERED on Counts III and VI for 12 mo. A shall abide by Rules of Supervision, have no law violations, have no contact w/ LACRESHA JORDAN.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.8 **BAIL EXONERATION:** Any bail previously posted in this cause is hereby exonerated and shall be returned to the person who poseted it.

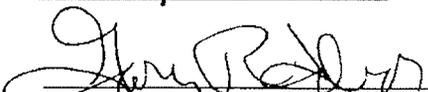
DONE in Open Court and in the presence of the defendant this date: April 13, 2000



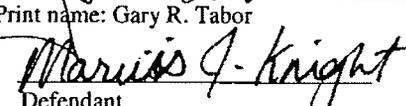
 Deputy Prosecuting Attorney
 WSBA # 19788
 Print name: Jon Tunheim



 Attorney for Defendant
 WSBA # 6604
 Print name: Robert G. Grey



 JUDGE Print name: Gary R. Tabor



 Defendant
 Print name: MARVIS J. KNIGHT

Translator signature/Print name: _____
 I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 99-1-929-4

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA14370751

Date of Birth: 02/06/1978

FBI No. 181503XA9

Local ID No. C0090941

PCN No.

W.S.P. IDENT

Other _____



006836861

Alias name, SSN, DOB: _____

Race:

- Asian/Pacific Islander
- Black/African-American
- Caucasian
- Native American
- Other: _____

- Ethnicity: Hispanic Non-Hispanic
- Sex: Male Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

and signature thereto. Clerk of the Court: Ann Robinson, Deputy Clerk. Dated: 4-18-2002

DEFENDANT'S SIGNATURE:

Morris J. Knight

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



1
2
3 **SUPERIOR COURT OF WASHINGTON**
4 **THURSTON COUNTY**

5 STATE OF WASHINGTON,

Plaintiff,

No. 99-1-591-4

6
7 vs.

WARRANT OF COMMITMENT

8 MARVIS J. KNIGHT,

Defendant

9
10 DOB: 2/6/78
SID: WA14370751
BOOKING # C0096941

SEX: MALE
RACE: BLACK

11 **THE STATE OF WASHINGTON TO:**

12 The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

13 The defendant herein has been convicted in the Superior Court of the State of Washington for the crime(s) of:

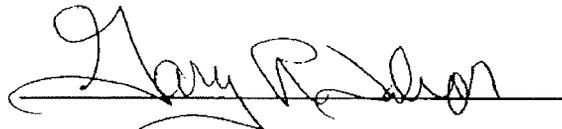
14 and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and
15 Sentence.

16 **YOU, THE SHERIFF, ARE COMMANDED** to take and deliver the defendant to the proper officers of
17 the Department of Corrections; and

18 **YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE**
COMMANDED to receive the defendant for classification, confinement and placement as ordered in the
19 Judgment and Sentence.

20 DATED: April 13, 2000

By direction of the Honorable:

21 
22

23 BETTY J. GOULD, CLERK

24 By: SUE ROBINSON, Deputy
25 Deputy Clerk

WARRANT OF COMMITMENT

1
2
3
4
5 **IN THE SUPERIOR COURT OF WASHINGTON**
6 **IN AND FOR THURSTON COUNTY**

NO. 99-1-00929-4

7 STATE OF WASHINGTON,

Plaintiff,

8 vs.

ORDER AMENDING
JUDGMENT AND SENTENCE

9 MARVIS J. KNIGHT,

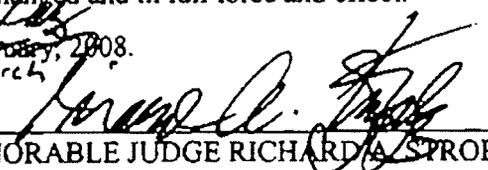
10 Defendant.

11 Having considered this matter pursuant to the request of the above-named Defendant and his
12 attorney, Robert Jimerson, and having also considered the views of the Plaintiff, State of Washington, as
13 represented by and through James C. Powers, Deputy Prosecuting Attorney for Thurston County, the
14 Court orders as follows:

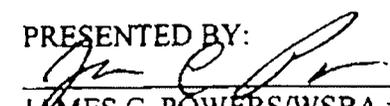
15 IT IS ORDERED THAT the Judgment and Sentence entered herein on the 18th day of April,
16 2000, as to the above-named defendant is hereby AMENDED in the following respect only. The two
17 convictions for Felony Harassment, Counts III and VI, and the sentences imposed for those two counts
18 are vacated in order to preserve the defendant's right against double jeopardy. However, the convictions
19 for two counts of assault in the second degree, Counts I and IV, and the sentences imposed for those two
20 counts shall remain as originally imposed.

21 IT IS FURTHER ORDERED THAT all other aspects and provisions of the defendant's
22 Judgment and Sentence herein remain unchanged and in full force and effect.

23 DATED this 14th day of ~~February~~ ^{March}, 2008.

24 
HONORABLE JUDGE RICHARD A. STROPHY

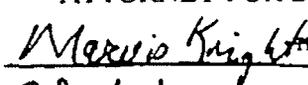
25 PRESENTED BY:

26 
JAMES C. POWERS/WSBA #12791
DEPUTY PROSECUTING ATTY

APPROVED AS TO FORM:


ROBERT JIMERSON/WSBA 26363
ATTORNEY FOR DEFENDANT.

ORDER AMENDING
JUDGMENT AND SENTENCE


Defendant

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 734-335

0-000000028

S C A N N E D

APPENDIX 2

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

STATE OF WASHINGTON, '95 FEB -6) 11:26
INFORMATION
Plaintiff,)
BETTY) NO.
vs.)
BY _____) DEPT. 95 1 00199 1
MARVIS J. KNIGHT)
DOB: 2/6/78)
BM;5'8";170#;BRN;BLK)
Defendant.) JAMES C. POWERS
Deputy Prosecuting Attorney

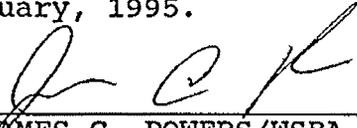
Booking No.

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant(s) with the following crime(s):

ASSAULT IN THE FIRST DEGREE, RCW 9A.36.011(1)(a)

In that the defendant, MARVIS J. KNIGHT, in the County of Thurston, State of Washington, on or about the 25th day of January, 1995, with intent to inflict great bodily harm upon the person of Shaun Alderson, did assault such person with a firearm.

DATED this 6th day of February, 1995.



JAMES C. POWERS/WSBA #12791
Deputy Prosecuting Attorney

BERNARDEAN BROADOUS
Prosecuting Attorney
2000 Lakeridge Drive SW
Olympia, WA 98502

THURSTON COUNTY 1000011200325101000029144

FILED
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

95 APR -3 PM 2: 19

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 MARVIS J. KNIGHT,)
 DOB: 2/6/78)
)
 Defendant(s).)

NO. 95-1-1995
RETTY J. GOULD, CLERK
FIRST AMENDED
INFORMATION DEPUTY
JAMES C. POWERS
Deputy Prosecuting Attorney

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

ATTEMPTED MANSLAUGHTER IN THE FIRST DEGREE, RCW 9A.28.020 and RCW 9A.32.060:

That the defendant, MARVIS J. KNIGHT, in the County of Thurston, State of Washington, on or about the 25th day of January, 1995, took a substantial step toward recklessly causing the death of another person, to-wit: Shaun Alderson.

DATED this 3rd day of April, 1995.



JAMES C. POWERS, #12791
Deputy Prosecuting Attorney

BERNARDEAN BROADOUS
Thurston County Prosecuting Attorney
2000 Lakeridge Dr., S.W.
Olympia, Washington 98502

FIRST AMENDED
INFORMATION - 1

THURSTON COUNTY CLERK'S OFFICE

APPENDIX 3

CASE#: 95-1-00199-1 CRIM JUDGMENT# YES
 TITLE: STATE VS MARVIS J KNIGHT
 FILED: 02/06/1995 APPEAL FROM LOWER COURT? NO
 RESOLUTION: GP DATE: 04/03/1995 GUILTY PLEA
 COMPLETION: JODF DATE: 04/03/1995 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: CMPL DATE: 12/30/1999 COMPLETED/RE-COMPLETED
 CONSOLIDATED:
 NOTE1: *AFPRJ MCPHEE 3/31/95
 NOTE2:

144

-----PARTIES-----

CONN	LAST NAME,	FIRST MI	TITLE	LITIGANTS	ARRAIGNED
PLA01	STATE OF WASHINGTON				
DEF01	KNIGHT, MARVIS	JOJUAN			

-----ATTORNEYS-----

CONN	LAST NAME,	FIRST MI	TITLE	LITIGANTS	DATE
ATP01	POWERS, JAMES C.				
ATD01	FERRELL, MICHAEL	EUGENE			
ATD02	WAGNER, FORREST	LEE			

-----SENTENCE-CHARGE-----

DEF01 KNIGHT, MARVIS JOJUAN

DEF. RESOLUTION CODE: GP DATE: 04/03/1995 GUILTY PLEA
 DISP. JUDGE: BERSCHAUER
 SENTENCE DATE: 04/03/1995 SENTENCED BY: JUDGE BERSCHAUER
 SENTENCING DEFERRED: NO APPEALED TO: DATE APPEALED:
 PRISON SERVED..... X : FINE.....\$
 PRISON SUSPENDED..... : RESTITUTION.....\$
 JAIL SERVED..... : COURT COSTS.....\$
 JAIL SUSPENDED..... : ATTORNEY FEES.....\$
 PROB/COMM. SUPERVISION.....
 DUE DATE: PAID:

-----SENTENCE DESCRIPTION-----

*02-10-99 ORDER ON NONCOMPLIANCE - 30 DAYS CONFINEMENT
 *01-12-00 ORDER ON NONCOMPLIANCE - 40 DAYS CONFINEMENT

-----CHARGE INFORMATION-----

RS	CNT	RCW/CODE	DESCRIPTION	INFO/VIOL. DATE	---PCN---
			ORIGINAL	02/06/1995	
	1	9A.36.011	ASSAULT 1ST DEGREE	01/25/1995	
			FIRST AMENDED INFORMATION	04/03/1995	
6	1	9A.32.060	MANSLAUGHTER 1ST DEGREE	01/25/1995	
		9A.28.020	CRIMINAL ATTEMPT		
	901	NOTEPCN	ADDITIONAL ARREST/FINGERPRINT PCN		3493571

THURCOU0010000112003251010100029001

APPENDIX 4

SUPERIOR COURT OF WASHINGTON
COUNTY OF: THURSTON

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

STATE OF WASHINGTON,
Plaintiff
v.
MARVIS J. KNIGHT
Defendant

NO. 95-1-00199-03 DEC -8 A11:51
MOTION OF WITHDRAWAL
OF GUILTY PLEA
(CrR 7.8, 4.2)
BETTY J. GORDON CLERK
BY PM KA
DEPUTY

I. IDENTITY

MARVIS J. KNIGHT, Pro Se, moves the court to grant the relief sought in part 3.

2. GROUNDS

The authority for the court to grant this motion is contained within Criminal Rule 7.8 of the Washington Court Rules and supported by the attached Affidavit in Support of Motion to Withdraw Guilty plea.

3. RELIEF SOUGHT

The defendant, MARVIS J. KNIGHT, pro se, asks the court to grant the defendant to withdraw his plea of guilty entered on 3rd day of APRIL, 1995, in THURSTON County Superior Court, OLYMPIA, Washington, and enter a plea of not guilty.

Dated: 12.3.03

Signature _____

Presented by:

MARVIS J. KNIGHT #734648
Printed Name/DOC #
WASHINGTON STATE PENITENARY
1313 NORTH 13th Avenue
Address
Walla Walla, Wa. 98362
City/State/Zip

SUPERIOR COURT OF WASHINGTON
COUNTY OF: THURSTON

STATE OF WASHINGTON, Plaintiff)	NO. <u>95-1-00199-1</u>
)	AFFIDAVIT IN SUPPORT OF
v.)	MOTION TO WITHDRAWAL OF
)	GUILTY PLEA.
<u>MARVIS J. KNIGHT</u> Defendant)	CrR 7.8, CrR 4.2
)	

I. IDENTITY

MARVIS J. KNIGHT, Pro Se, affirms under the penalty of perjury:

1) That I am acting Pro Se and make this affidavit in support of my motion to withdrawal my Guilty Plea entered into the record on 3rd day of APRIL, 1995, in THURSTON County Superior Court in front of the honorable Judge DANIEL BERSCHAUER.

2). The defendant plead guilty on 3rd day of APRIL, 1995, to the charges of ATTEMPTED MANSLAUGHTER IN THE FIRST DEGREE.

3). The defendant now claims that a manifest injustice occurred, STATE v. TAYLOR, 83 Wn.2d. 594, 521 P.2d 699. The specific claims the defendant makes at this time are SEE ATTACHED SHEET

4). At the time of acceptance of the plea agreement, the defendant was questioned by the court as to whether or not understood the effect of the guilty plea and whether or not they had the consultation of counsel. The defendant now submits to the court that he did not fully understand the consequences of the plea because of _____

Page 1 of 2

SEE ATTACHED SHEET

5). The defendant (did not/did) admit to the committing the acts as charged. He now makes the following statement in support this argument

SEE ATTACHED SHEET

6). The events detailed by the defendant cannot be used because of

SEE ATTACHED SHEET

7). The statement of the defendant cannot be used to support the charges of

SEE ATTACHED SHEET

because of

8). The defendant, MARVIS J. KNIGHT should be permitted to withdraw his plea of guilty since there existed only an ambiguous expression of qualified guilt coupled with a statement of facts.

9). His colloquy with the court shows that the defendant was in fact declaring his innocence despite his formalistic recitations of guilt. Under these circumstances, he should be allowed to withdraw his plea and interpose a plea of not guilty.

Date: _____

Signature

MARVIS J. KNIGHT # 734648

Printed Name/DOC #
WASHINGTON STATE PENITENARY
1313 NORTH 13th AVENUE

Address

WALLA WALLA, WASH. 98362

Cause No. 95-1-00199-1

The necessary factual basis for the plea was not adequately established in the record.

State V. Anya-Contreras, No. 48095-2-I

The purpose behind the factual basis requirement is to protect a defendant who is in the position of pleading guilty with an understanding of the nature of the charge but without realizing that his or her conduct does not actually fall within the charge.

In re Personal Restraint of Keene, 95 Wn. 2d 203, 209, 622 P.2d 360 (1980). The material facts underlying the elements of the charged offense must all be included State V. Zumwalt, 79 Wn. App. 124, 132, 901 P.2d 319 (1995).

Marvis J. Knight contends that the factual basis for accepting his guilty plea was insufficient because his Attempt toward recklessly causing the death of another person in the charged offense was not established in the record at the time of the plea hearing. In the portion of the plea statement reserved for the defendant's statements, Marvis J. Knight admitted:

I have reviewed the police reports,

Statements and evidence in this case I believe if this case proceeds to trial, there is a high probability a Judge or Jury would find me guilty of Attempted Manslaughter in the first degree.

Marvis J. Knight's admissions in his plea statement, by themselves, clearly do not provide the necessary factual basis for the charged offense. Nothing in the statement itself establishes that Marvis J. Knight was legally accountable for the conduct on January 25th, 1995

Respectfully Submitted

MARVIS J. KNIGHT # 734648
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, Washington 98362

No. 98-1-60199-1

ATTACH
EXHIBITS

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON**

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 Marvis J. Knight,)
)
 Defendant.)

NO. 95-1-00199-1

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY (FELONY)

1. My true name is Marvis J. Knight
2. My age is 17 D.O.B. Feb 6 1978
3. I went through the 9th 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 Michael E. Ferrall
 - (b) I am charged with the crime(s) of Attempted Manslaughter 1st

The elements of the crime(s) are Defendant, in Thurston
County, WA on January 25, 1995 took a
substantial step toward recklessly causing
the death of another person.

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 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. These witnesses can be 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 a maximum sentence of ~~20~~ 5 years imprisonment and a \$ ~~20,000~~ 1,000 fine. The standard sentence range is from 23.25 months to 30.75 months confinement, based on the prosecuting attorney's understanding of my criminal history;

MEF
MJK

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty;

(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. 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;

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100 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, impose restrictions on my activities, and order me to perform community service;

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

38 months, \$110 court cost, \$100 crime
victim assessment, restitution, if any
+ exceptional sentence of 38 months,
Defense stipulates to an exceptional
months

(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) 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; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(i) I am being sentenced for two or more 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.]

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(k) 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 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.]

(l) 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.]

(m) If this 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.]

(n) 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;

(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 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 within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. [If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.]

7. I plead Guilty to the crime(s) of Attempted Manslaughter 1°

as charged in the 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 in 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

I have reviewed the police reports, statements and evidence in this case. I believe if this case proceeds to trial, there is a high probability a Judge or Jury would find me guilty of Attempted Manslaughter 1°

12. My lawyer has explained to me, and we have 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.

ADDRESS:

Merius Knight
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature]
Prosecuting Attorney / 2791

Michael E. Farrell
Defendant's Lawyer 16172
Page 3 of 4

The foregoing statement as 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 box]:

AB (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 consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED THIS 3 day of April, 19 95.

J. J. J.
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 _____, 19 _____.

Interpreter

FILED
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
THURSTON COUNTY, WASH.

STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIS J. KNIGHT,

Defendant.

SEX: MALE RACE: BLACK
DATE OF BIRTH: 2-6-78
SID NO.: _____
BOOKING NO.: 049027

COPIES 3 NO. P 9:52-31-199-1

JUDGMENT AND SENTENCE
WARRANT OF COMMITMENT
(PRISON)

BY [Signature] DEPUTY

1. FINDINGS

1.1 The above-named defendant was found guilty on April 3, 1995 by (plea)(jury verdict)(bench trial) of the following crimes:

- Count I: ATTEMPTED MANSLAUGHTER IN THE FIRST DEGREE
(Count-Charge-Date of Offense)
- Date of Offense: January 25, 1995
(Count-Charge-Date of Offense)
- _____
(Count-Charge-Date of Offense)
- _____
(Count-Charge-Date of Offense)

1.2 () The Court DISMISSED Count(s) _____

1.3 () A special verdict/finding of sexual motivation was returned on Count(s) _____

1.4 () A special verdict/finding for use of deadly weapon was returned on Count(s) _____

1.5 A sentencing hearing in this case was held on April 3, 1995
Present were: the above-named defendant, Michael Powell, Attorney for Defendant,
and James C. Powers, Deputy Prosecuting Attorney for Thurston County.

1.6 () Other current convictions listed under different cause numbers used in calculating the offender score are: _____

1.7 () Current offenses encompassing the same criminal conduct and counting as one crime in determining the score are (RCW 9.94A.400(1)):

1.8 () CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
<u>None</u>				

() Additional criminal history is attached in Appendix 1.8

JUDGMENT AND SENTENCE
WARRANT OF COMMITMENT
JDSWC (12/94) - 1

JASS

4.4.95

DEFENDANT NAME: MARVIS J. KNIGHT
CAUSE NUMBER: 15-1-199-1

- (ii) The defendant shall work at Department of Corrections--approved education, employment and/or community service.
- (iii) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.
- (iv) If in community custody, the defendant shall not unlawfully possess controlled substances.
- (v) The defendant shall pay supervision fees as determined by the Department of Corrections.

The defendant shall comply with the following special conditions:

- () Defendant shall remain within, or outside of, a specified geographical boundary:

- () Defendant shall not have direct or indirect contact with the victim or specified class of individuals:

- () Defendant shall participate in crime-related treatment or counseling services as follows:

- () Defendant shall not consume alcohol.
- () Defendant's location and living arrangement, if a sex offender, shall be subject to the prior approval of the Department of Corrections.
- () Defendant shall comply with crime-related prohibitions as follows:

3.3 (V) FINANCIAL OBLIGATIONS. The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court ORDERS that the defendant pay the following amounts to the Clerk of this court:

(X) Restitution (according to an order to be filed at a later date) (to the following persons in the following amounts):
Defendant shall be financially responsible for the cost of repair or replacement for damage to a vehicle which occurred in the course of this offense

() Restitution shall be paid jointly and severally with:

Name	Cause Number
_____	_____
_____	_____

- () \$ _____ Court costs;
- (X) \$ 100.00 Victim assessment
- () \$ _____ Fees for court-appointed attorney;
- () \$ _____ Fine
- () \$ _____ Thurston County Interlocal Drug Fund
- () \$ _____ Other costs for:

Payments shall be made through the Clerk of the Thurston County Superior Court in accordance with the following terms:

- () Not less than _____ per month commencing on _____
- (X) According to a schedule established by the defendant's Community Corrections Officer.

1
2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
3 IN AND FOR THE COUNTY OF THURSTON

4 STATE OF WASHINGTON,)
5 Plaintiff,) NO. 95-1-199-1
6 vs.) APPENDIX 2.3 TO JUDGMENT
7 MARVIS J. KNIGHT,) AND SENTENCE: FINDINGS OF
8 Defendant.) FACT AND CONCLUSIONS OF LAW
) RE EXCEPTIONAL SENTENCE

9 A sentencing hearing was held in the above cause before the
10 Honorable Daniel J. Berschauer. Present were: Deputy
11 Prosecuting Attorney James C. Powers, the defendant, and his
12 attorney, Michael Ferrell. The defendant was sentenced to
13 38 months in prison for the offense of Attempted
14 Manslaughter in the First Degree. The presumptive sentence range
15 for that offense is 23.25 months to 30.75 months and so this is
16 an exceptional sentence. The Court set forth the following as
17 the basis for this exceptional sentence.

18 FINDINGS OF FACT

19 1. Immediately prior to the commission of this offense, the
20 defendant flashed at the victim a gang sign for a Crip street
21 gang.

22 2. The victim, who is a member of a separate street gang,
23 flashed back at the defendant the hand signs for his gang.

24 3. This exchange of hand signs caused the defendant to
25 point a firearm at the victim and to fire several shots.

26 4. The defense joins the state in stipulating that there is
27 sufficient evidence to support the Court's Findings of Fact Nos.
28 1-3 above and joins in stipulating to the existence of an

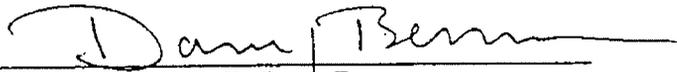
1
2 aggravating circumstance in this case sufficient to constitute a
3 substantial and compelling basis for the exceptional sentence
4 imposed by the court. This stipulation is made so that the
5 defendant may take advantage of a plea bargain reducing the
6 charge from Assault in the First Degree to Attempted Manslaughter
7 in the First Degree and reducing the presumptive sentence range
8 from 93 to 123 months to 23.25 to 30.75 months.

9 Based on the above Findings of Fact, the Court makes the
10 following:

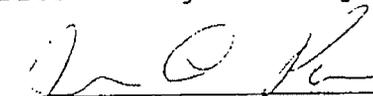
11 CONCLUSIONS OF LAW

12 The defendant's gang motivation for the commission of this
13 offense constitutes an aggravating circumstance which is a
14 substantial and compelling reason justifying the imposition of an
15 exceptional sentence of 38 months in prison.

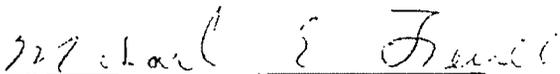
16 DATED this 3 day of April, 1995.

17 
18 J U D G E

19 PRESENTED BY:
20 BERNARDEAN BROADOUS
21 Prosecuting Attorney

22 
23 JAMES C. POWERS/WSBA #12791
24 Deputy Prosecuting Attorney

APPROVED AS TO FORM AND
TERMS STIPULATED TO:

25 
26 MICHAEL FERRELL/WSBA #16172
27 Attorney for Defendant

APPENDIX 5

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'04 JAN -9 P2:14

BETTY J. GOULD CLERK

BY _____
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

NO. 95-1-199-1

STATE OF WASHINGTON,

Plaintiff,

vs.

ORDER DENYING MOTION FOR
WITHDRAWAL OF GUILTY PLEA

MARVIS J. KNIGHT,

Defendant.

THIS MATTER having come on before the above-entitled court upon the motion of the defendant, Marvis J. Knight, to withdraw his plea of guilty, entered in the above cause on April 3, 1995, and the court having considered the bases cited by the defendant in support of the motion, and having considered the written response submitted by the Plaintiff, State of Washington, hereby

ORDERS that the defendant's motion is denied for the following reasons:

*The defendant's motion is time-barred by RCW 10-73.090.
Even if the motion was not time-barred, it fails to allege facts which could provide a basis for the relief requested in the defendant's motion.*

DATED this 9th day of ~~December~~ ^{January 2004}, 2003.

Cromeroy

JUDGE

PRESENTED BY:

[Signature]

James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

SCANNED SCANNED

CORRECTED CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Response to Personal Restraint Petition, on all parties or their counsel of record on the date below as follows:

Electronically transmitted:

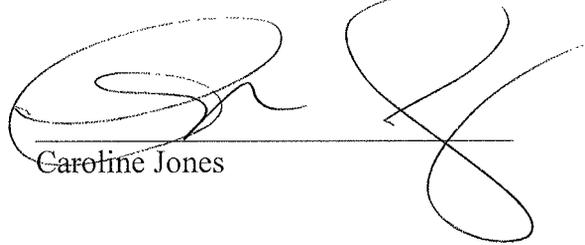
TO: DEREK M. BYRNE, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

--AND VIA US MAIL--

MARVIS J. KNIGHT, #734648
CLALLAM BAY COR CENTER
1830 EAGLE CREST WY
CLALLAM BAY, WA 98326

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

Dated this 13 day of January, 2017, at Olympia, Washington.



Caroline Jones

THURSTON COUNTY PROSECUTOR

January 13, 2017 - 7:41 AM

Transmittal Letter

Document Uploaded: 2-prp2-495210-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 49521-0

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: Respondent's

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:

Certificate of Service attached

Sender Name: Caroline Jones - Email: jonescm@co.thurston.wa.us