

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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

*AP*  
DEPUTY

STATE OF WASHINGTON,  
Respondent,

v.

THOMAS C. READE  
Appellant.

No. 49656-9-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I have received and reviewed the opening brief prepared by my attorney. I received the verbatim report of proceedings on June 30, 2017. Summarized below are the additional grounds for review that are not addressed in the opening brief filed by my attorney. I understand that the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Please note that the VRP record dated April 26, 2005, indicates Superior Court Cause No. 05-1-01468. However, that Cause No. was not charged until August 3, 2005. The correct Cause No. for the VRP of April 26, 2005, is 04-1-02172-7, which is followed by sentencing in that Cause No. on May 17, 2005.

ADDITIONAL GROUNDS CAUSE NO. 04-1-02172-7

1. I was denied my right to the effective assistance of counsel at the time of plea negotiations and sentencing.
2. Because I was not informed of the elements of the charge against me I was unable to knowingly agree to the facts which renders my guilty plea involuntary.

P/M: 7/28/17

3. Because I did not stipulate to comparability and the State failed to prove such, my California conviction should not have been included in my offender score.
4. Because I was given incorrect advice about my offender score, my plea was involuntary.

I was not informed that Washington law required comparability of my California conviction in either of two distinct ways.

First, comparability was a statutory requirement in order for me to have an obligation to register.

Former RCW 9.94A.130 states:

A person who knowingly fails to comply with any of the requirements of this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex-offense as defined in subsection 10(a) of this section or a federal or **out-of-state conviction for an offense that under the laws of this state** would be a felony sex-offense as defined in subsection (10)(a) of this section.

RCW 9.94A.130(11)(a).

Second, comparability was required in order for the California offense to be included in my offender score. I understand that the California offense is not itself included in my offender score, but instead, the Washington counterpart is included after comparability is established. But even the Washington counterpart that I was alleged to be guilty of was not identified in the record - which further demonstrates that I could not have knowingly, intelligently, or voluntarily entered into this plea. Since I did not give affirmative acknowledgment at the time of plea or sentencing, and the State failed to prove comparability, my offender score was incorrect.

The appellant understands that this court will only review facts in the

record, however, it is permissible for this court to perform the legal comparability analysis of California Penal Code 261.5(c).

If counsel entirely fails to subject the prosecutions case to a "meaningful adversarial testing," counsels failure is complete. **Bell v. Cone**, 535 U.S. 685, (2002). The proceedings in this case would have been no different if I had not been represented by defense counsel and the prosecutor had instead been my attorney. The State charged me and I was lead into a plea agreement where I stipulated to the element central to the entire prosecution - without ever being informed of what would be required for the state to secure a conviction.

It would have taken my attorney less than five minutes to google California Penal Code 261.5(c) and determine that it was not legally comparable to a Washington sex-offense. I under stand that this court is unable to perform the factual comparability analysis, but I was denied the opportunity to stay these proceedings in order to file a pro se PRP in which I had intended to present certified documents related to the facts stipulated to at the time of plea and sentencing in California, which shows that the out-of-state offense fails the factual analysis.

Our courts have long held that safeguards are required at the time of sentencing when including a foreign offense in a defendants offender score. If safeguards exist **after** my guilt has been determined, what level of protection do I deserve when the issue is guilt verses innocence?

I rely on the VRP, Statement of Defendant on Plea of Guilty, and the following cases to substantiate his above argument: **State v. Ford**, 137 Wn.2d

472, 973 P.2d 452 (1999) (affirmative acknowledgment required); *State v. Howe*, \_\_\_ Wash.App. \_\_\_, 212 P.3d 565 (Div. 2, 2009), *State v. Werneth*, \_\_\_ Wash.App. \_\_\_, 197 P.3d 1195 (Div. 3, 2008) (comparability to Washington sex-offense necessary to sustain conviction for failure to register); *Boykin v. Alabama*, 395 U.S. 238 (1969) (a defendant must possess an understanding of the law in relation to the facts); *Hill v. Lockhart*, 474 U.S. 52 (1985) (in order to satisfy the prejudice requirement of IAC set forth in *Strickland*, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have instead insisted upon going to trial).

The proceedings in this case set the stage for me to be prosecuted and convicted **five time** for failure to register as a sex-offender. My attorney's failure to inform me of the laws relevant to my case has created a circumstance where I am registering as a sex-offender even today, when under the current version of RCW 9.94A.130 registration is **still not** required because California does not require registration for Unlawful Intercourse with a Minor.

I have spent years separated from my family, incurred many thousands of dollars in legal financial obligations, and been subjected to the adverse social standing of being a "sex-offender." During the time that I have spent incarcerated for failure to register as a sex-offender, I have been the ultimate pariah. I've been assaulted (punched, slapped, spit upon), and have had my personal property stolen on numerous occasions.

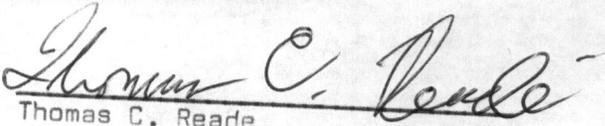
I implore this court to allow me to withdraw my plea or vacate this

conviction. In the alternative, I ask this court to please refer this matter to the trial court for findings of fact, where if it is determined that my California offense is not legally or factually comparable to a Washington offense, that all four of these convictions be vacated with prejudice.

ADDITIONAL GROUNDS IN THE REMAINING CAUSE'S

I was never required to register under Washington law. Had a comparability analysis been performed in the 2004 case, there would have been no judgment and sentence ordering me to register, and I would never have been charged with these three subsequent convictions. I am actually innocent of the 2005, 2006, and 2008 convictions for failure to register as a sex-offender. These convictions should be vacated and dismissed with prejudice.

DATED this 27th day of July, 2017.

  
Thomas C. Reade