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Court of Appeals
Division II
State of Washington
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL)	NO. 49894-4-11
RESTRAINT PETITION OF)	
)	SUPPLEMENTAL BRIEF
RAYMOND WILLIAMS JR.)	IN RESPONSE TO
)	PRP

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Jeffery D. Lippert and Joseph Jackson, Deputy Prosecuting Attorneys, and files its supplemental brief as directed by the Court in response to Petitioner's Personal Restraint Petition (PRP) (Cause No. 49894-4-II).

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

In 1997, Petitioner Williams was tried as an adult following a decline hearing in Thurston County. Petitioner's Appendix F to Response Brief. Williams waived his right to be tried as a juvenile, and the juvenile court entered a brief finding of facts at the conclusion of the hearing. See Petitioner's Appendix H. Under the policy of the Thurston County Clerk's Office, and in compliance with RCW 36.23.070, audio recordings of juvenile hearings are eligible for

destruction after six years, therefore whatever records of Williams' decline hearing did exist became eligible for destruction in 2003, and are now unavailable.

However, Christen Peters, an attorney who was part of Thurston County's Juvenile Team in 1997 and who worked on Williams' prosecution has stated that it was standard practice for courts to consider the best interest of the defendant, and intelligent waiver in the course of a decline hearing. See Appendix A to Respondents Brief, Declaration of Christen Peters.

In the 1997 case, Williams was convicted of burglarizing a home, and two counts of theft of a firearm – Strike 1. Petitioner's Appendix F.

Following his incarceration for the 1997 burglary, Williams was again convicted of First Degree Burglary in King County in 2004 – Strike 2. Petitioner's Appendix F.

In 2008, the Petitioner was again convicted, this time for Second Degree Assault – Strike 3. This conviction resulted in the petitioner's persistent offender sentence finalized on October 15, 2008. Petitioner's Appendix A.

II. ARGUMENT

The Court requested supplemental briefing on the issue of whether Williams can collaterally attack his 2008 sentence as a persistent offender. The answer to that question is no, he cannot because his petition was not brought within one year of any of his sentences, much less the 1997 sentence which is the basis this petition. Therefore, his claim is barred under RCW 10.73.090.

Williams has the burden of showing that an exception to the one year limitation is applicable under RCW 10.73.100 (providing six grounds by which the one year time limit may be bypassed). *In re Mullholland*, 161 Wn.2d 322, 332, 166 P.3d 677 (2007) Williams has provided no evidence or arguments demonstrating an exception to the one year limitation applies. He simply asserts without any evidence that his waiver of his right to be tried as a juvenile was not made intelligently, yet he provides no evidence for this assertion.

As pointed out in the State's brief, there is ample evidence showing Williams knowingly and intelligently waived his right to be tried as a juvenile. Despite most of the records of his case being lawfully destroyed, the trial court judge's order survived and shows the judge considered the appropriate legal standard and facts bearing on

Williams' waiver and found it to be valid. Additional evidence from a reliable Thurston County DPA supports the validity of William's waiver at trial in 1997. Without presenting any evidence showing the trial court's ruling was an abuse of discretion, the defendant does not meet his burden to show an exception to the one-year bar on PRPs.

If this Court grants Petitioner's request, it would allow the petitioner to bootstrap the lawful destruction of the records in his case into an argument to set aside Petitioner's 1997 sentence. The ramifications of such a ruling would be far reaching. Such a ruling would allow every convicted felon to collaterally attack almost any aspect of their case based on mere assertions after the records were destroyed pursuant to statute.

Appellant did not appeal his 1997 conviction on the basis of an invalid waiver. He did not raise this issue during the trial or sentencing phase of his 2004 trial. Only now, nine years after his third violent felony conviction and resulting persistent offender sentence, does he raise an issue regarding the validity of his first conviction 20 years ago.

It is well settled that a personal restraint petition is an extraordinary measure, even if brought in a timely fashion, *In re Pers.*

Restraint of Mines, 190 Wn. App. 554, 562, 364 P,3d 121 (2015) (“Relief by way of a collateral challenge to a judgment and sentence is extraordinary.”) The Petitioner has not produced any evidence which would warrant the Court considering this extraordinary measure. Allowing a PRP under these circumstances would thwart well established rules and disregard the practical constraints of a functioning legal system, and reward Williams for failing to challenge the 1997 conviction at a time when the Court could properly review the trial court’s actions.

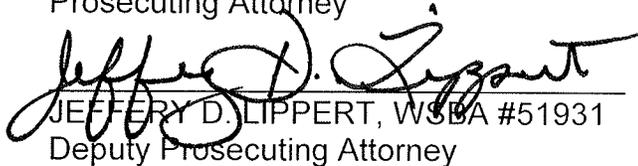
The question before this court is whether Williams is able to meet his required burden of proof. It is undisputed that Williams filed his petition seven years after the RCW 10.73.090 deadline. There is no evidence to warrant an exception to the one year bar.

III. CONCLUSION

For these reasons, the State asks that this court deny Williams’ Personal Restraint Petition.

RESPECTFULLY SUBMITTED this 21st day of November, 2017.

JON TUNHEIM
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CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Supplemental Brief in Response to Personal Restraint Petition on the date below as follows:

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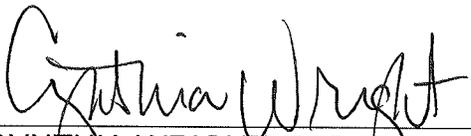
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of November, 2017, at Olympia,

Washington.



CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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