FILED
COURT OF APPEALS
DIVISION II

2017 AUG 11 AM 10: 39

STATE OF WASHINGTON

BY_____
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

v.

CHARLES PASCHAL,

Petitioner.

PERSONAL RESTRAINT PETITION AND OPENING BRIEF

CLARK COUNTY SUPERIOR COURT NO. 13-1-00502-6

Charles Paschal
Pro se Petitioner

STAFFORD CREEK CORR. CENTER
191 CONSTANTINE WAY
ABERDEEN, WASHINGTON, 98520

TABLE OF CONTENTS

A. STATUS OF PETITIONER 1

B. GROUNDS FOR RELIEF 2

C. STATEMENT OF THE CASE 2

D. SUMMARY OF ARGUMENT.....4

E. ARGUMENT.....5

Petitioner's Conviction Was A Direct Result of Insufficient Evidence, as Violative of the Due Process Clause, As guaranteed by the Fourteenth Amendment to the U.S. Constitution.....5

a. Standard of Review.....5

b. Assault One - Intent.....5

F. CONCLUSION.....10

TABLE OF AUTHORITIES

Washington Court of Appeals

Cases: Page:

State v. Aumick, 73 Wash.App. 375, 869 P.2d 421 (1994)...6

State v. Brown, 94 Wash.App. 327, 972 P.2d 112 (1999).....9

State v. Hope, 50 Wash.App. 277, 748 P.2d 268 (1988).....6

State v. Lawson, 185 Wash.App. 349, 340 P.3d 979 (2014).....5

State v. Woo Won Choi, 55 Wash.App. 895, 781 P.2d 505 (1990).....10

Washington Supreme Court

State v. Green, 94 Wash.2d 216, 616 P.2d 628 (1980).....5

State v. Jackson, 137 Wash.2d 712, 976 P.2d 1229 (1999).....9

State v. O'Neal, 159 Wash.2d 500, 150 P.3d 1121 (2007).....5

State v. Peterson, 133 Wash.2d 885, 948 P.2d 381 (1997).....passim

State v. Wilson, 125 Wash.2d 212, 883 P.2d 320 (1994).....passim

U.S. Supreme Court

Jackson v. Virginia, 443 U.S. 307, 61 L.Ed.2d 560, 99 S.Ct. 2781 (1979).....passim

OTHER RULES AND CONSTITUTIONAL PROVISIONS

Wash. Pattern Jury Instructions, 11 Wash. Pract.- Criminal 28.03 (2008).....6

A. STATUS OF PETITIONER

Petitioner Charles Paschal is currently serving a sentence of 360 months confinement after trial by jury to assault one, [under collateral attack], two counts of assault two, and unlawful imprisonment,[2] all under Clark-County Superior Court number 13-1-00502-6. See Appendix-A, [Judgment and Sentence].

These charges arose from a single incident. Paschal direct appealed the above convictions to Division II, of the Washington Court of Appeals. The appellate court held the trial court improperly admitted prior domestic-violence evidence under ER 404(b), that it was harmless as to one count.

Division II further held that the sentencing court erred when imposing discretionary legal financial obligations without making an individualized inquiry into Paschal's ability to pay.

Mr. Paschal has been in custody on this matter for over four years, and he timely files his first, personal-restraint petition, [PRP] collaterally attacking his assault-one conviction.

[2] The jury acquitted Paschal of the attempted murder count-and Division Two overturned his rape conviction on sufficiency of evidence grounds.

B. GROUNDS FOR RELIEF

Mr. Paschal's restraint is unlawful because his judgment violates the U.S. Constitution. RAP 16.4(c)(2). Specifically, the State failed to prove the essential elements of assault one beyond a reasonable doubt, as violative of the Due Process Clause. Because Paschal's petition is either timely, consolidated, or otherwise based on sufficiency of evidence, his petition is exempt from the one year time limitations per RCW-10.73.090. RCW 10.73.100(4).

C. STATEMENT OF THE CASE

Mr. Paschal and Katherine Martin had two children together. RP 236. They lived and worked together but their relationship fell on lower ground. RP 237-238, 245.

The couple had agreed to resume living together, and went to IKEA for furnishings for petitioner to set-up a barbershop in the garage. RP 245, 694. He worked assembling the items while Martin and the children made and ate dinner. RP 245-246, 693-695. The children watched a movie and the parents argued. RP 171-172, 695.

At some point in the evening, Martin turned the argument physical by slapping Paschal in the face. Martin was warned not to do it again. RP 705. When Martin-

was pushed away by Paschal, she made an attempt to slap him again, and Paschal slapped [2] Martin five times in the face. RP 706-707. They argued more, and she left the house. RP 709-11. The drunken Martin injured herself on several occasions when she climbed over fences to the neighboring yards, and eventually made it to a neighbor's house. RP 266-275. Martin asked the neighbor to call police. Mr. Paschal went to his oldest childs' mother's house to drop her off there, and then returned to the house and was arrested. RP 483, 717, 720-721. When he saw the police at the house, he said he wanted to report an assault. RP 484, 722.

The State charged Paschal with attempted murder one, assault one, rape one, two counts of assault two, and unlawful imprisonment. Each charge included aggravating circumstances of domestic violence with minor children within sight or sound. [3] CP 9-13.

Mr. Paschal admitted he struck Martin five times. RP 706-707, 731. He also admitted that at one point, as Martin attempted to leave, he blocked the door. RP-707, 709. However, Martin claimed that Paschal ripped off her clothing, raped her, drug her throughout the house, held her prisoner, strangled her, all while continuing to beat her for hours. RP 249-260-294, 402.

[2] The charges were trumped to two counts of "witness-tampering" but later dismissed. RP 676.
[3] The couple's six-year old daughter confirmed that the aggravating circumstances were unjustified. RP 307.

Deputy Kennison told the jury Martin told him the petitioner tried to force his penis into her mouth, and that her face was swollen and consistent with what she described. RP 167-168. Lead Detective Luvera also described Martin's injuries, and said that in her experience and training, what Martin reported was consistent with her injuries. RP 320-341. Further, Sgt. Martin claimed that it was the worst domestic violence he had ever seen. RP 449.

The trial court gave a standard reasonable doubt instruction which included: "A reasonable doubt is one for which a reason exists..." CP 75. The charge of assault one under collateral attack, in count II, alleges that Paschal committed the offense "with intent to inflict great bodily harm," and that he assaulted Martin "by any force or means likely to produce great bodily harm." CP 10.

D. SUMMARY OF ARGUMENT

Insufficient evidence supports petitioner's conviction for assault one because the State failed to prove beyond a reasonable doubt that he intended to cause great bodily harm to Martin by slapping [2] Martin five times in the face.

---

[2] The State's evidence was that Paschal hit Martin with a "closed fist" five times in her face.

E. ARGUMENT

1. Petitioner's Conviction Was a Direct Result of Insufficient Evidence, As violative of the Due Process Clause, as guaranteed by the Fourteenth Amendment to the United States Constitution. See - Jackson v. Virginia, 443 U.S. 307, 61 L.Ed.2d 560, 99- S.Ct. 2781 (1979).

a. STANDARD OF REVIEW

When an appellate court reviews a sufficiency challenge to an assault conviction, the court determines whether, "after viewing the evidence most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson, Id. at 319; State v. Green, 94 Wash.2d 216, 221-22, 616 P.2d 628 (1980).

"A sufficiency challenge admits the truth of the State's evidence and accepts the reasonable inferences to be made from it." State v. O'Neal, 159 Wash.2d 500, 505, 150 P.3d 1121 (2007); State v. Lawson, 185 Wash.App. 349, 354, 340 P.3d 979 (2014), cert. denied, 136 S.Ct. 1177 (2016).

b. ASSAULT ONE - INTENT

Mr. Paschal first argues that the prosecution failed to present evidence that he intended to inflict great bodily harm as the record lacks evidence of assault in the first degree.

"Intent" is present when a person 'acts with the objective or purpose to accomplish a result which constitutes a crime.'" RCW 9A.08.010. The Washington Pattern Jury Instructions states that a person commits the crime of assault one, with intent to inflict great bodily harm, when he or she assaults another and inflicts 'great bodily harm.' 11 Wash. Practice, Criminal 28.03-(2008) (WPIC).

"Great bodily harm" is defined as bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement or which causes a significant permanent loss or impairment of the function of any bodily part or organ. RCW 9A.04.110-(4)(c).

On the other hand, "assault" is not defined in the criminal code. Hence, our Courts have turned to the common law for its definition. See State v. Aumick, 73 Wash.App. 375, 382, 869 P.2d 421 (1994); State v.-Hope, 50 Wash.App. 277, 282, 748 P.2d 268, rev. denied, 110 Wash.2d 1019 (1988).

Specific intent cannot be presumed, but it can e inferred as a logical probability from all the facts and circumstances. See State v. Wilson, 125 Wash.2d 212, 217, 883 P.2d 320 (1994).

RCW 10.99.020(5), which defines domestic violence-

as used in the State's special allegation; provides that first degree assault is a crime of domestic violence "when committed by one family or household member against another," among other things.

Here, Paschal argues that he struck Martin in the face five times after she slapped him, and after he warned her not to assault him again. Viewing in the light most favorable to the State, even assuming that petitioner used five "closed fist" punches rather than five slaps to Martin's face, the injuries to Martin's face did not result in great bodily injury as defined in RCW 9A.04.-110(4)(c).

For instance, in relying on State v. Peterson, 133-Wash.2d 885, 948 P.2d 381 (1997), an assault one case, Peterson and the victim [9] spent the day together drinking alcohol, and driving around looking for a place to target-shoot. Being unsuccessful in that effort, Peterson drove to the shores of Banks Lake. While the victim had been sitting on a protruding rock overlooking the lake, Peterson approached the victim from behind and pushed her off the rock into water that was two feet deep. Peterson then walked out into the water where the victim had landed, grabbed her by the neck, and head, and held her head under the water. The victim flailed her arms in an attempt to get free. At one point, her head emerged above the water and she screamed "I can't-

[9] Julie (Thompson) Mathews

swim!"

Shortly thereafter, Peterson left her head under water continuously for 10 to 15 seconds until he finally released, and she scrambled up to the bank to the car.

While under water, the victim did not know if she was going to drown or survive. She felt the burning of water in her nose, and her lungs. She was terrorized.

Peterson pursued the victim to the car, where, while she cowered on the ground, the Defendant beat her with his fists and kicked her until he was ordered to stop by witnesses who had arrived in response to the victims' screams. 133 Wash.2d at 886-87.

Finally, at the close of the evidence, Peterson's counsel argued that the State had failed to show "grievous bodily harm," an element of first degree assault. Id. The State conceded, and the trial court found that Peterson's actions were not likely to, nor had they in fact, caused "grievous bodily injury." Id.

In the instant case, Paschal inflicted minor injuries to Martin, when he, as the State's theory, struck the victim five times with his "closed fist." Viewing the evidence in the light most favorable to the State, the minor injuries do not rise to "grievous bodily harm" to support the assault one conviction. Cf. Peterson, 133 Wash.2d at 887.

In conclusion, if a person, with criminal negligence,-

causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering, he or she is guilty of assault three. See- RCW 9A.36.031. If the person merely assaults another, as in the instant case, without intending to inflict great bodily harm, without recklessly inflicting substantial bodily harm, and without, through criminal negligence, causing bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering, he or she is guilty of assault- four. See RCW 9A.36.041(1).

Paschal hammers home that the State simply did not present any evidence that Martin's assault resulted in bodily harm that was greater then transient physical pain or minor temporary marks. See also State v. Brown, 94 Wash.App. 327, 338, 972 P.2d 112 (1999), (the Legislature has provided that a person is guilty of assault one with intent to inflict great bodily harm, assaults another and inflicts great bodily harm).

Where the Legislature uses certain language in one instance, and different language in another, there is a [different] intent." State v. Jackson, 137 Wash.2d 712, 724, 976 P.2d 1229 (1999), (quoting, United States- Parcel Serv., Inc. v. Dep't. of Revenue, 102 Wash.2d 355, 362, 689 P.2d 186 (1984)).

Here, the alleged victim slapped Paschal

and after receiving warnings, attempted to slap him again. Martin's actions escalated tensions, and under these circumstances, it cannot be said that the petitioner was angry and out of control before he struck Martin with what the State claims five "closed fist punches." Cf. State v. Woo Won Choi, 55 Wash.App. 895, 906, 781 P.2d 505 (1989), rev. denied, 114 Wash.2d 1002 (1990), (evidence of "intent" is to be gathered from all the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship, and any previous threats); State v. Wilson, 125 Wash.2d 212, 217, 883 P.2d 320 (1994).

Since intent cannot be inferred "as a logical probability from all the facts and circumstances" of the instant case, and given the extent and nature of Martin's minor injuries, Mr. Paschal respectfully request that his assault one conviction be vacated, and remanded for resentencing.

F. CONCLUSION

Based on the foregoing, Mr. Charles Paschal respectfully request that this Court grant his petition, vacate his conviction, and remand consistent with it's opinion.

DATED: _____ 2017

/s/Charles Paschal

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY_____
DEPUTY

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

In re Personal Restraint Petition of: CHARLES PASCHAL, Petitioner.	Case No. [Pending] PERSONAL RESTRAINT PETITION

If there is not enough room on this form, use other pages and write "See Attached." Fill out this entire form before you sign this form in front of a notary public (free in the law library).

A. STATUS OF PETITIONER

I, CHARLES EDWARD PASCHAL, located at STAFFORD-CREEK
(*Full name and current address*)
CORRECTIONS CTR., 191 CONSTANTINE WAY, ABERDEEN, WA., 98520

apply for relief from confinement. I am now in custody serving a sentence on conviction of a crime. I am now in custody because of a *Judgment and Sentence.*

1. The court in which I was sentenced is: CLARK COUNTY SUPERIOR.

2. I was convicted of the crime(s) of: Assl. 1°; Please see Opening Brief

3. I was sentenced after (*check one*) Trial X Plea of Guilty ____ on _____.
(*Date of sentence*)

4. The Judge who imposed sentence was Hon. Susan Clark.

5. My lawyer at trial court was Gregg Schile
(*Name and address if known*)

6. I did __X__ did not ____ appeal from the decision of the trial court. If I did appeal, I appealed to: Division II, COA.

_____.

(*Name of court or courts to which appeal took place*)

7. My lawyer for my appeal was: JODI R. BACKLUND.

(*Name and address if known or write "none"*)

The decision of the appellate court was ____ was not __X__ published. (If the answer is that it *was* published, and I have this information) the decision is published in _____

_____.

8. Since my conviction I have ____ have not __X__ asked a court for some relief from my sentence other than I have already written above. (If the answer is "I have asked a court", the court I asked was _____. Relief was denied on

(*Name of court*)

_____.

(*Date of Decision or, if more than one, all dates*)

(If you have answered in question 8 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was _____

(*Name and address if known*)

_____.

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: _____

First collateral attack

_____

_____.

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each separately, in the same was as the first one. The attached sheets should be numbered "First Ground", "Second Ground", Third Ground", etc.). I claim that I have 2+ reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

_____ Ground
(First, Second, etc.)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): insufficient evidence assault one

2. The following facts are important when considering my case. (After each fact statement put the name of the person or person who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) superficial injuries

3. The following reported court decisions (indicate citations) in cases similar to mine show the error I believed happened in my case: Jackson v. Virginia

4. The following statutes and constitutional provisions should be considered by the court: U.S.Const. Amend. XIV; inter alia

5. This petition is the best way I know to get the relief I want, and no other way will work as well because:
exhausted first direct appeal

C. STATEMENT OF FINANCES:

I cannot afford to pay the $250 filing fee or cannot afford to pay an attorney to help me fill out this form. I have attached a certified copy of my prison finance statement (trust account).

1. I do x do not ____ ask the court to file this without making me pay the $250 filing fee because I am so poor and cannot pay the fee.
2. I have $ 0 in my prison or institution account. (Attach ***certified*** six month statement of inmate trust account, available from inmate accounting.)
3. I do ____ do not x ask the court to appoint a lawyer for me.
4. I am ____ am not x employed. My salary or wages amount to $_____ a month. My employer is:

_____.
(Name and address of employer)

5. During the past 12 months I did ____ did not x get any money from a business, profession or other form of self-employment. (If I did, I got a total of $ _____.
6. During the past 12 months I:

   Did ___ did not x receive any rent payments. If so, the total I received was $_____.

   Did ___ did not x receive any interest. If so, the total I received was $_____.

   Did ___ did not x receive any dividends. If so, the total I received was $_____.

   Did x did not ___ receive any other money. If so, the total I received was $ $47 .

   Did ___ did not x have any cash except as noted in (C)(2) above. If I do, the total cash I have is: $

   Did ___ did not x have savings or checking account. If so, total in all accounts is $_____.

   Did ___ did not x own stocks, bonds, or notes. If so, their total value is $_____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family own.

Items *Value*

N/A

8. I am ___ am not x married. If I am, my wife or husband's name and address is:

_____

_____

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
Shante Hayes	Companion	35
DeAngelo Paschal	Brother	39

10. All the bills I owe are listed here:

Name & Address of creditor	Amount
Legal Financial Obligations:	approx. $12,000.00

D. REQUEST FOR RELIEF:

I want this court to:

____Vacate my conviction and give me a new trial.

X__ Vacate my conviction and dismiss the criminal charges against me without a new trial.

X__ Order a RAP 16.12 Superior Court evidentiary hearing to determine the merits of each one of my claims to include any evidence not presented in the criminal trial.

X__ Other: consolidate PRP with appeal

(*Please specify*)

E. OATH OF PETITIONER

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAY'S HARBOR)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents and I affirm the contents of this petition are true and correct under penalty of perjury of the laws of the State of Washington.

(Sign before a Notary) Charles Paschal

(Print Name) **CHARLES PASCHAL**

DOC # 374765, UNIT H2-A-20
STAFFORD CREEK CORRECTION CENTER
191 CONSTANTINE WY
ABERDEEN WA 98520

SUBSCRIBED AND SWORN to before me this 8th day of **August**, 2017.

Notary Public
State of Washington
BARBARA A. ST. LOUIS
MY COMMISSION EXPIRES
JUNE 4, 2020

Barbara A St Louis
Notary Public in and for the State of Washington
Residing at Gray's Harbor

Charles Paschal
In re

PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD : 12/31/2016 TO 06/30/2017

DOC# : 0000374765 NAME : PASCHAL CHARLES ADMIT DATE : 08/22/2014
DOB : 10/09/1979 ADMIT TIME : 14:29

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
55.87	11.17	19.00	3.80

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTION CENTER
CERTIFIED BY: [signature]

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FOR DEFINED PERIOD : 12/31/2016 TO 06/30/2017

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STAFFORD CREEK CORRECTION CENTER
CERTIFIED BY: _____