RECEIVED
SEP 18 2017
Washington State
Supreme Court

94994-8

SUPREME COURT
IN AND FOR THE STATE OF WASHINGTON

| | |
|---|---|
| STATE OF WASHINGTON,<br>Respondent,<br><br>v.<br><br>Vichai Saly<br>Petitioner. | No. 94-1-4921-8<br><br>Petitioner's Personal<br>Restraint Petition (PRP) |

## Grounds for Relief

i. Did the State violate his right, by not conducting a Dillenburg Hearing pertaining to the amended charges?

The petitioner's date of birth is February 1st, 1997. [see J&S Pg.1] On January 13th, 1995, Mr. Saly entered into an Alford Plea and was sentenced by the Honorable Judge Vicki L. Hogan to 43 months to the Assault in the Second Degree to run concurrent with the Taking a Motor Vehicle Without Permission.

On 12-02-1994, the petitioner was originally charged with Assault in the First Degree, RCW 9A36.011(1)(9). This was the charge that subjected the petitioner into automatic decline, RCW 13.04.030(1)(c)(v)(a).

Once the State amends the charges, to charges not considered automatically declined on, the petitioner was supposed to be transferred to Juvenile Court for further proceedings. Did the

State violate his right by not conducting a Dillenburg hearing pertaining to the amended charges?

1. Status of Petitioner

The petitioner, Vichai Saly is currently incarcerated at Stafford Creek Correction Center, located at 191 Constantine Way, Aberdeen, WA, on an unrelated conviction to this instant Personal Restraint Petition, under Cause #94-1-4921-8.

This is the petitioner's first request for relief from "Restraint," that petitioner was improperly declined and tried as an adult for the crimes of three counts of Assault in the Second Degree, RCW 9A.36.021,(1)(c) and One Count of Taking Motor Vehicle Without Permission, RCW 9A.56.070(1).

Mr. Saly is under a "Restraint" because the improper decline of the conviction is being used as Offender Score giving Mr. Saly a total of 432 months; which is an improper calculation of his Offender Score. The petitioner was sentenced in Pierce County after a plea of guilty to the amended charges on 1-3-95. The sentencing Judge who imposed the sentence was the Honorable Judge Vicki L. Hogan. A copy of the petitioners's judgment and sentence is attached as Appendix A (Judgment & Sentence). The petitioner's lawyer at sentencing was John Hickman, also present was the Deputy Prosecuting Attorney John M. Nees, and Douglas J. Hill.

This is the first time petitioner has requested any relief from this court pertaining to this instant Cause Number, other than I have already written above.

2. **Grounds For Relief**

i. Did the State violate his right, by not conducting a Dillenburg Hearing pertaining to the amended charges?

A. RCW 13.04.030(1)(c)(v)(a) and RCW 13.40.110(1),(2) apply to the petitioner? Both apply here?

B. Did petitioner's trial counsel provide ineffective

assistance by failing to move to transfer to Juvenile Court?

ii. Other remedies are inadequate, do the facts, this is the first time petitioner has raised this issue.

iii. Is this petitioner's restraint unlawful for one or more reasons specified in RAP Rule 16.4(c)(1), RAP Rule 16.4(c)(4)?
A. Does RCW 13.04.030(1)(c)(v)(a) and RCW 13.04.030(1) apply to the petitioner? Both apply here!

RCW 13.04.030(1)(e)(v)(a) states; Juvenile Court-Exclusive Original Jurisdiction-Exceptions.

(1) Except as provided in this section, the Juvenile Courts in this state shall have exclusive original jurisdiction over all proceedings:

(e) Relating to juvenile's alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.030 through 13.40.230, unless:

(v) A serious violent offense as defined in RCW 9.94A.030. (see Appendix B ).

if a juvenile was 16 or 17 years old when the offense was committed and the alleged offense is a serious violent offense, the adult automatically has exclusive authority over the case. RCW 13.04.030(1)(e)(v)(a). Such charges are called Automatic Decline Offenses, State v. Knippling, 166 Wn.2d 93, 101 206 p.3d 332 (2009). The petitioner was initially charged with the Automatic Decline Offense; Assault in the First Degree RCW 9A.36.011(1)(a). (See Pierce County Superior Court Criminal Case 94-1-04-921-8 Appendix A ).

but once the State amended the charges so that the petitioner was no longer charged with the Serious Violent Offenses, the Adult Criminal Court no longer had exclusive authority. See RCW 13.04.030(1). At that point, the Juvenile Court was required to hold a decline hearing, at which it could have ordered the case transferred for adult criminal prosecution,

if decline would be in the best interest of the juvenile or the public. RCW 13.40.110(1). (See Appendix C ).

However, neither situation occurred. The parties did not hold a decline hearing. Instead, the adult Court continued to sentence the petitioner. The Court erred in doing so without a waiver or decline hearing.

B. Did petitioner's trial counsel provide ineffective assistance by failing to move to transfer to Juvenile Court?

Both the 6th amendment to the United States Constitution and Article 1, Section 22 of the Washington State Constitution guarantee a defendant the right to effective assistance of counsel in criminal procedings, Strickland v. Washington, 46 U.S. 668, 684-86, 104 S.Ct. 2052, 80 L.ed 2d 674 (1984), State v. Hendrickson, 129 Wn.2d 67, 77, 917 p.2d 563 (1996). To succeed on a claim of ineffective assistance of counsel, a petitioner must satisfy a two-part test, State v. Thomas, 109 Wn.2d 222. 225-26, 743 p.2d (1987). First counsel's conduct must have fallen below an objective standard of reasonableness. Second, there must be a reasonable probability that this deficiency was prejudicial. A showing of prejudice under this test is sufficient to satisfy the actual and substantial prejudice necessary grant relief in a PRP, In Re Pers. Of Crace, 174 Wn.2d 835, 847, 280 p.3d 1102 (2012); Monshcke, 160 Wn.App. 479 480, 251 p.3d 884 (2010).

The petitioner contends that he was prejudiced by this deficient performance, because he was deprived of the opportunity to be sentenced in Juvenile Court.

Once the State amended the charges against the petitioner, his trial counsel should have moved for the case to be transferred to the Juvenile Court for a decline hearing. Therefore counsel's failure to do so prejudiced the petitioner and constituted ineffective assistance of counsel.

ii. Other remedies are inadequate, do to the facts, this is the first time petitioner has raised this issue.

iii. Is the petitioner's restraint unlawful for one or more reasons specified in RAP Rule 16.4(c)(1), and RAP Rule 16.4(c)(4)?

RAP Rule 16.4(c)(1); states, Personal Restraint must be unlawful for one or more of the following reason; (1) the decision in a civil or criminal proceeding was entered without jurisdiction over person of the petitioner or the subject matter; or

There is no questioning that the adult criminal Court lacked jurisdiction and lacked subject matter over the petitioner's prosecution for the amended charges Assault in the Second Degree and taking a Motor Vehicle Without Permission.

It is axiomatic that a party may challenge a Court's subject matter jurisdiction at anytime, including for the first time on appeal or through a collateral attack RAP 2.5(a)(3); RAP 16.4(c)(1); Matheson v. City of Hoquiam, 170 Wn.App 811 (2012), The Washington Supreme Court explained over 50 years ago, if a court lacks jurisdiction; "any judgment entered is void ab initio and is in legal effect, no judgment at all."Wesley v. Schneckloth, 55 Wn.2d at 83-94. A petitioner who can demonstrate the Court of conviction lacked jurisdiction to convict him has identified a "<u>fundamental defect</u>" entitling him to relief in a Personal Restraint Petition. Jurisdiction is essential to due process. State v. LG Elec., Inc., 185 Wn.App 394, 410, 341 p.3d 346 (2015) aff.d, 186 Wn.2d 169 375 p.3d 1035 (2016).

RAP Rule 16.4(c)(4), states-Personal Restraint Petition-Grounds for Remedy

(c) Unlawful Nature of restraint. The restraint must be unlawful for one or more of the following reason; (4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the State or local government , and sufficient

reasons exist to require retroactive application of the changed legal standard, or

Since the adult Court lacked jurisdiction, do to the absence of a juvenile court decline hearing, where charges against juvenile were reduced and amended, the Court should have remanded the case to Juvenile Court for a decline hearing. Dillenburg v. Maxwell, 70 Wn.2d 331, 413 p.2d 940 (1966), modified on rehearing, 70 Wn.2d 331, 422 p.2d 783 (1967) (court must hold a retroactive decline hearing when a juvenile is tried in adult court without a decline hearing).

3. Statement of Finances

Please see (Motion, Declaration and order to Proceed In Forma Pauperis) (Appendix O )

4. Request For Relief

The petitioner humbly requests (1) A new trial (2) To receive a retroactive decline hearing.

5. Oath

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 believe the petition is true.

Respectfully Submitted this 12th day of September, 2017

Vichai Saly 732654
H1B 132
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Notary:

The above named affiant was subscribed and sworn before me this _____ day of _____, 2017.

_____)_____

In and for the State of
Washington
County of Grays Harbor
Commission expires:
_____

# APPENDIX (A)

Judgment & Sentence

19 1251 1794

FILED
CRIMINAL DIV. 2
IN OPEN COURT
JAN 13 1995
TOM RUTT Clerk
By _____
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>vs.<br>VICHAI SALY,<br>Defendant.<br>DOB: 2/1/78<br>SID NO.: WA15863558<br>LOCAL ID: | CAUSE NO. 94-1-04921-8<br>JUDGMENT AND SENTENCE<br>(FELONY) |

732654
2-21-95

JAN 13 1995

## I. HEARING

1.1 A sentencing hearing in this case was held on 4/13/95.

1.2 The defendant, the defendant's lawyer, JOHN HICKMAN, and the deputy prosecuting attorney, John M. Nees for DOUGLAS J. HILL, were present.

## II. FINDINGS

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

2.1 CURRENT OFFENSES(S): The defendant was found guilty on January ____, 1995 by

[X] plea [ ] jury-verdict [ ] bench trial of:

Count No.: I
Crime: ASSAULT IN THE SECOND DEGREE, Charge Code: (E28)
RCW: 9A.36.021(1)(c)
Date of Crime: 12/2/94
Incident No.: TPD 94 336 0783

Count No.: II
Crime: ASSAULT IN THE SECOND DEGREE, Charge Code: (E28)
RCW: 9A.36.021(1)(c)
Date of Crime: 12/2/94
Incident No.: SAME



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

94-1-04921-8

Count No.: III
Crime: ASSAULT IN THE SECOND DEGREE, Charge Code: (E28)
RCW: 9A.36.021(1)(c)
Date of Crime: 12/2/94
Incident No.: SAME

Count No.: IV
Crime: TAKING A MOTOR VEHICLE WITHOUT PERMISSION, Charge Code: (HHH3)
RCW: 9A.56.070(1)
Date of Crime: 8/19/94
Incident No.: TPD 94 231 0082

[ ] Additional current offenses are attached in Appendix 2.1.
[ ] A special verdict/finding for use of deadly weapon was returned on Count(s).
[ ] A special verdict/finding of sexual motivation was returned on Count(s).
[ ] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

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

2.2 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 |
|---|---|---|---|---|
| TMVWP | 5/28/92 | JUVI | 4/27/92 | |
| TMVWP | 8/6/92 | JUVI | 7/14/92 | |
| VUCSA | 1/5/93 | JUVI | 1/5/93 | |
| VUCSA | 11/17/93 | JUVI | 11/17/93 | |

[ ] Additional criminal history is attached in Appendix 2.2.



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

[ ] Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

| | Offender Score | Seriousness Level | Range Months | Maximum Years |
|---|---|---|---|---|
| Count No. I: | 7 | IV | 43-57 mos | 10yrs/$20,000 |
| Count No. II: | 7 | IV | 43-57 mos | 10yrs/$20,000 |
| Count No. III: | 7 | IV | 43-57 mos | 10yrs/$20,000 |
| Count No. IV: | 5 | I | 4-12 mos | 5yrs/$10,000 |

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

[ ] Substantial and compelling reasons exist which justify a sentence [ ] above [ ] below the standard range for Count(s)___. Findings of fact and conclusions of law are attached in Appendix 2.4.

2.5 RESTITUTION:

[ ] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
[ ] Restitution should be ordered. A hearing is set for _____.
[ ] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.

2.6 ABILITY TO PAY LEGAL 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 specifically finds that the defendant has the ability to pay:

[ ] no legal financial obligations.
[✓] the following legal financial obligations:

[✓] crime victim's compensation fees.
[✓] court costs (filing fee, jury demand fee, witness costs,



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

sheriff services fees, etc.)
[ ] county or interlocal drug funds.
[ ] court appointed attorney's fees and cost of defense.
[ ] fines.
[ ] other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

2.7 SPECIAL FINDINGS PURSUANT TO RCW 9.94A.120:

[ ] The defendant is a first time offender (RCW 9.94A.030(20)) who shall be sentenced under the waiver of the presumptive sentence range pursuant to RCW 9.94A.120(5).
[ ] The defendant is a sex offender who is eligible for the special sentencing alternative under RCW 9.94A.120(7)(a). The court has determined, pursuant to RCW 9.94A.120(7)(a)(ii), that the special sex offender sentencing alternative is appropriate.

## 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.

## IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

$_____, Restitution to:

_____

_____

_____



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

94-1-04921-8

$ 110, Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

$ 100, Victim assessment;

$ _____, Fine; [ ] VUCSA additional fine waived due to indigency (RCW 69.50.430);

$ _____, Fees for court appointed attorney;

$ _____, Washington State Patrol Crime Lab costs;

$ _____, Drug enforcement fund of _____;

$ _____, Other costs for: _____;

$ 210, TOTAL legal financial obligations [ ] including restitution [ ] not including restitution.

Payments shall not be less than $ _____ per month. Payments shall commence on As set by DOC.

[ ] Restitution ordered above shall be paid jointly and severally with:

| Name | Cause Number |
|---|---|
| | |
| | |

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 to assure payment of the above monetary obligations.

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release or by _____.

[ ] Bond is hereby exonerated.



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

94-1-04921-8

4.2 CONFINEMENT OVER ONE YEAR: The court imposes the following sentence:

(a) CONFINEMENT: Defendant is sentenced to following term of total confinement in the custody of the Department of Corrections commencing IMMEDIATELY.

43 months on Count No. I [✓] concurrent [ ] consecutive
43 months on Count No. II [✓] concurrent [ ] consecutive
43 months on Count No. III [✓] concurrent [ ] consecutive
9 months on Count No. IV [✓] concurrent [ ] consecutive

[✓] Actual number of days of total confinement ordered is: 1305

[ ] This sentence shall be [ ] ~~concurrent~~ [ ] consecutive with the sentence in _____;

[✓] Credit is given for 42 days served;

(b) [✓] COMMUNITY PLACEMENT (RCW ~~9.94A.120(8)(b)~~). The defendant is sentenced to community placement for [✓] one year [ ] two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer. The terms of community placement shall include the following conditions:

(i) The defendant shall report to and be available for contact with the assigned community corrections officer as directed.
(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) The defendant shall not unlawfully possess controlled substances while in community custody.
(v) The defendant shall pay supervision fees as determined by the Department of Corrections.

[ ] OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS:

_____



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

FILED
CRIMINAL Div. 2
IN OPEN COURT
JAN 13 1995
94-1-04921-8
TED AUTT, Clerk
By DEPUTY

(c) [NO] HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)

(d) [✓] DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754)

[ ] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: 1/13/95

JUDGE
VICKI L. HOGAN

Presented by:

Deputy Prosecuting Attorney
WSB # 21322

Approved as to form:

Lawyer for Defendant
WSB # 8274



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

# FINGERPRINTS

Right Hand
Fingerprint(s) of: VICHAI SALY, Cause #94-1-04921-8

Attested by: Ted Rutt CLERK

By: DEPUTY CLERK ~~Valerie Meade~~ Valerie Meade Date: ~~1/13/95~~ 1/13/95

CERTIFICATE

I, TED RUTT
Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: JAN 1 3 1995

TED RUTT
CLERK

By: Sandy Gyppa
DEPUTY CLERK

OFFENDER IDENTIFICATION

State I.D. #WA15863558

Date of Birth 2/1/78

Sex MALE

Race ASIAN

ORI _____

OCA _____

OIN _____

DOA _____

FINGERPRINTS

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

FILED
CRIMINAL DIV. 2
IN OPEN COURT
JAN 13 1995
TED RUTT Clerk
By DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>vs.<br>VICHAI SALY,<br>Defendant. | CAUSE NO. 94-1-04921-8<br>ORDER FOR BLOOD SAMPLE DRAW FOR DNA IDENTIFICATION ANALYSIS<br>JAN 13 1995 |

On the motion of the State of Washington, represented by Pierce County Deputy Prosecuting Attorney DOUGLAS J. HILL, the Court order the defendant VICHAI SALY, who is represented by counsel JOHN HICKMAN, to submit to a blood draw to be used for DNA identification analysis.

Pursuant to SSB No. 6729, defendant, having been convicted after July 1, 1990, of:

TYPE OF OFFENSE

[ ] A felony sex offense as defined by RCW 9.94A.030(29)(a),

and/or

[✓] A violent offense as defined by RCW 9.94A.030(35)(a), shall:



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

94-1-04921-8
CRIMINAL DIV.
IN OPEN COURT
JAN 13 1995
TED RUTT, Clerk
By [signature] DEPUTY

PLACE TO BE TESTED

[ ] (Out-of-Custody) report immediately to the Pierce County Jail for a blood sample draw; or

[✓] (In-Custody) submit to the blood sample draw by the Department of Corrections.

[ ] (In-Custody) one year or less and submit to blood sample draw by the Pierce County Jail.

DONE IN OPEN COURT this 13 day of JAN, 1995.

[signature]
JUDGE VICKI L. HOGAN

Presented by:

[signature] 2/3/95
DOUGLAS J. HILL
Deputy Prosecuting Attorney

Approved as to Form:

[signature]
JOHN HICKMAN
Attorney for Defendant

mj

STATE OF WASHINGTON, County of Pierce
ss: I, Ted Rutt, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this 13 day of January 1995
TED RUTT, Clerk
By Sandy [signature] Deputy



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

1995 1251 1792

2-21-95 732654

FILED
CRIMINAL DIV. 2
IN OPEN COURT
JAN 13 1995
TED RUTT, Clerk
By _____
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>vs.<br>VICHAI SALY,<br>Defendant. | CAUSE NO. 94-1-04921-8<br>WARRANT OF COMMITMENT<br>1) [ ] County Jail<br>2) [✓] Dept. of Corrections<br>3) [ ] Other - Custody |

JAN 13 1995

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[✓] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

94-1-04921-8

FILED
CRIMINAL DIV. 2
IN OPEN COURT
JAN 13 1995
TED RUTT, Clerk
By _____ DEPUTY

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 1/13/95

By direction of the Honorable
Vicki L. Hogan
JUDGE VICKI L. HOGAN

TED RUTT, CLERK
By: Sandy Dyppa
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF
Date JAN 13 1995 By Sandy Dyppa Deputy

STATE OF WASHINGTON, County of Pierce ss: I, Ted Rutt, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this 13 day of January, 1995.

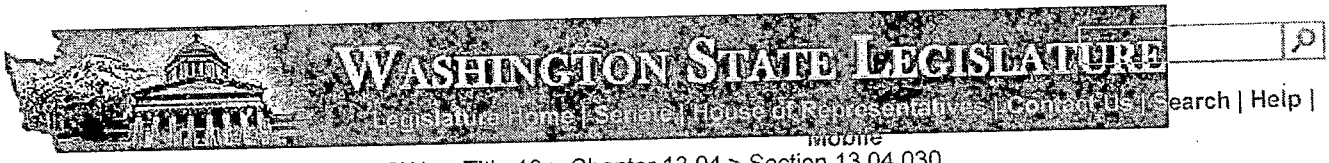
TED RUTT, Clerk
By: Sandy Dyppa Deputy



Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171

# APPENDIX (B)

RCW 13.04.030 —

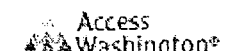



Inside the Legislature

- Find Your Legislator
- Visiting the Legislature
- Agendas, Schedules and Calendars
- Bill Information
- Laws and Agency Rules
- Legislative Committees
- Legislative Agencies
- Legislative Information Center
- E-mail Notifications
- Civic Education
- History of the State Legislature

Outside the Legislature

- Congress - the Other Washington
- TVW
- Washington Courts
- OFM Fiscal Note Website



RCWs > Title 13 > Chapter 13.04 > Section 13.04.030

13.04.021 << 13.04.030 >> 13.04.033

# RCW 13.04.030
# Juvenile court — Exclusive original jurisdiction — Exceptions.

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age. If such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters. The jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of *RCW 13.40.110(1) or (e)(i) of this subsection. Courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in **RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent

(v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

[2009 c 526 § 1; 2009 c 454 § 1. Prior: 2005 c 290 § 1; 2005 c 238 § 1; 2000 c 135 § 2; prior: 1997 c 386 § 17; 1997 c 341 § 3; 1997 c 338 § 7; prior: 1995 c 312 § 39; 1995 c 311 § 15; 1994 sp.s. c 7 § 519; 1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

## Notes:

**Reviser's note:** *(1) RCW 13.40.110 was amended by 2009 c 454 § 3, changing subsection (1) to subsections (1) and (2).

**(2) RCW 13.04.0301 was decodified September 2003.

(3) This section was amended by 2009 c 454 § 1 and by 2009 c 526 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application -- 1997 c 386:** See note following RCW 13.50.010.

**Finding -- Intent -- 1997 c 341:** "The legislature finds that a swift and certain response to a juvenile who begins engaging in acts of delinquency may prevent the offender from becoming a chronic or more serious offender. However, given pressing demands to address serious offenders, the system does not always respond to minor offenders expeditiously and effectively. Consequently, this act is adopted to implement an experiment to determine whether granting courts of limited jurisdiction concurrent jurisdiction over certain juvenile offenses will improve the system's effectiveness in curbing delinquency. The legislature may ascertain whether this approach might be successful on a larger scale by conducting an experiment with local governments, which are the laboratories of democracy." [1997 c 341 § 1.]

**Finding -- Evaluation -- Report -- 1997 c 338:** See note following RCW 13.40.0357.

**Severability -- Effective dates -- 1997 c 338:** See notes following RCW 5.60.060.

**Short title -- 1995 c 312:** See note following RCW 13.32A.010.

**Application of 1994 sp.s. c 7 amendments:** "Provisions governing exceptions to juvenile court jurisdiction in the amendments to RCW 13.04.030 contained in section 519, chapter 7, Laws of 1994 sp. sess. shall apply to serious violent and violent offenses committed on or after June 13, 1994. The criminal history which may result in loss of juvenile court jurisdiction upon the alleged commission of a serious violent or violent offense may have been acquired on, before, or after June 13, 1994." [1994 sp.s. c 7 § 540.]

**Finding -- Intent -- Severability -- Effective dates -- Contingent expiration date -- 1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Savings -- 1988 c 14:** "Any court validation of a voluntary consent to relinquishment or adoption of an Indian child which was obtained in a juvenile court or superior court pursuant to chapter 26.33 RCW after July 25, 1987, and before June 9, 1988, shall be valid and effective in all respects." [1988 c 14 § 2.]

**Severability -- 1987 c 170:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application

# APPENDIX (C)

RCW 13.40.110 —

(2) If notice is by summons, the clerk of the court shall issue a summons directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons.

(3) A copy of the information shall be attached to each summons.

(4) The summons shall advise the parties of the right to counsel.

(5) The judge may endorse upon the summons an order directing the parents, guardian, or custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the juvenile needs to be taken into custody pursuant to RCW 13.34.050, as now or hereafter amended, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the juvenile into custody and take the juvenile to the place of detention or shelter designated by the court.

(7) Service of summons may be made under the direction of the court by any law enforcement officer or probation counselor.

(8) If the person summoned as herein provided fails without reasonable cause to appear and abide the order of the court, the person may be proceeded against as for contempt of court. [1979 c 155 § 62; 1977 ex.s. c 291 § 64.]

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.110 Hearing on question of declining jurisdiction—Held, when—Findings.** (1) The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held where:

(a) The respondent is fifteen, sixteen, or seventeen years of age and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony; or

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree.

(2) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(3) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing. [1990 c 3 § 303; 1988 c 145 § 18; 1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.120 Hearings—Time and place.** All hearings may be conducted at any time or place within the limits of the judicial district, and such cases may not be heard in conjunction with other business of any other division of the superior court. [1981 c 299 § 9; 1979 c 155 § 64; 1977 ex.s. c 291 § 66.]

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.125 Deferred adjudication.** (1) Upon motion at least fourteen days before commencement of trial, the juvenile court has the power, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, to continue the case for a period not to exceed one year from the date of entry of the plea or finding of guilt. The court may continue the case for an additional one-year period for good cause.

(2) Any juvenile granted a deferral of adjudication under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate. Payment of restitution, as provided in RCW 13.40.190 shall also be a condition of community supervision under this section.

(3) Upon full compliance with such conditions of supervision, the court shall dismiss the case with prejudice.

(4) If the juvenile fails to comply with the terms of supervision, the court shall enter an order of adjudication and proceed to disposition. The juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. The state shall bear the burden to prove by a preponderance of the evidence that the juvenile has failed to comply with the terms of community supervision.

(5) If the juvenile agrees to a deferral of adjudication, the juvenile shall waive all rights:

(a) To a speedy trial and disposition;

(b) To call and confront witnesses; and

(c) To a hearing on the record. The adjudicatory hearing shall be limited to a reading of the court's record.

(6) A juvenile is not eligible for a deferred adjudication if:

(a) The juvenile's current offense is a sex or violent offense;

(b) The juvenile's criminal history includes any felony;

# APPENDIX (D)

Statement of finances

## PLRA IN FORMA PAUPERIS STATUS REPORT
## FOR DEFINED PERIOD : 11/30/2016 TO 05/31/2017

| | | | | | |
|---|---|---|---|---|---|
| DOC# : | 0000732654 | NAME : | SALY VICHAI | ADMIT DATE : | 08/09/2005 |
| DOB : | 02/01/1978 | | | ADMIT TIME : | 12:00 |

| AVERAGE MONTHLY RECEIPTS | 20% OF RECEIPTS | AVERAGE SPENDABLE BALANCE | 20% OF SPENDABLE |
|---|---|---|---|
| 46.93 | 9.39 | 14.37 | 2.87 |

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTION CENTE
CERTIFIED BY: J. Lundgren

## 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 ____ 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 $_____ in my prison or institution account. (Attach ***certified*** six month statement of inmate trust account, available from inmate accounting.)
3. I do ____ do not ____ ask the court to appoint a lawyer for me.
4. I am ____ am not ____ employed. My salary or wages amount to $_____ a month. My employer is:

   (See Prison Finance Statement).
   *(Name and address of employer)*
5. During the past 12 months I did ____ did not ____ 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 ___ receive any rent payments. If so, the total I received was $_____.

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

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

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

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

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

   Did ___ did not ___ 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*

_____

_____

_____

8. I am ___ am not ___ 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 |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

10. All the bills I owe are listed here:

| Name & Address of creditor | Amount |
|---|---|
| LFO'S | |
| | |
| | |
| | |

## D. REQUEST FOR RELIEF:

I want this court to:

____Vacate my conviction and give me a new trial.

____ 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.

____ Other: _____

(*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)* _____

*(Print Name)* Vichai Saly

DOC # 732654, UNIT H-1
STAFFORD CREEK CORRECTION CENTER
191 CONSTANTINE WY
ABERDEEN WA 98520

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20___.

_____
Notary Public in and for the State of Washington
Residing at Gray's Harbor

**DECLARATION OF SERVICE BY MAIL**
**GR 3.1**

I, Vichai Saly, declare and say:

That on the _____ day of _____, 201__, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. _____:

"Personal Restraint Petition";

_____;

_____;

_____.

addressed to the following:

Washington State Supreme Court
Temple Of Justice
P.O. Box 40929
Olympia WA 98504-0929

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

DATED THIS _____ day of _____, 201__, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature

Vichai Saly
Print Name

DOC 732654 UNIT H-1B-132-Upper
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520

Cover Letter

For Brief

RECEIVED
SEP 18 2017
Washington State
Supreme Court

WASHINGTON STATE SUPREME COURT
TEMPLE OF JUSTICE
P.O. BOX 40929
Olympia, WA 98504-0929

VICHAI SALY
S.C.C.C.-H1-B-132U
191 Constantine Way
Aberdeen, WA 98520

RE: PERSONAL RESTRAINT PETITION

Dear Respected clerk,

Would you please file this instant PRP pertaining to "Violation of Juvenile Decline Hearing." I have included said Petition with Appendix A-D.

Thank you for your time and consideration to this instant matter.

TABLE OF CONTENTS

Table of Contents
Index of Authorities
Index of Appendix

1. Status of Petitioner
2. Grounds for Relief
3. Statement of Finances
4. Request for Releif
5. Oath

1. Did the State violate petitioner's right, by not conducting a Dillenburg Decline hearing pertaining to the amended charges

Does RCW 13.04.030(1)(e)(v)(a) and RCW 13.40.110(1),(2) apply to the petitioner? Both apply here?

B. Did petitioner's trial counsel provide ineffective assistance by failing to move to transfer to Juvenile Court?

ii. Other remedies are inadequate, do the facts, this is the

first time petitioner has raised this issue.

iii. Is the Petitioner's Restraint unlawful for one or more reasons specified in RAP Rule 16.4(c)(1), and RAP Rule 16.4(c)(4)?

## INDEX OF AUTHORITIES

Washington Case Laws:

Dillenburg v. Maxwell, 70 Wn.2d 331, 413 p.2d 940 (1966), modified on rehearing, 70 Wn.2d 331, 442 p.2d 783 (1967)

In re Pers. of Crace, 174 Wn.2d 835, 847, 280 p.3d 1102 (2012)

Matheson v. City Hoquiam, 170 Wn.App 811 (2012)

State v. Hendrickson, 129 Wn.2d 67, 77, 917 p.2d 563 (1996)

State v. Knippling, 166 Wn.2d 93, 101, 206 p.3d 33d (2009)

State v. LG Elecs., Inc., 185 Wn.App. 394, 416, 341 p.3d 346 (2015) aff,d, 186 Wn.2d 169, 375 p.3d 1035 (2016)

State v. Monschke, 160 Wn.App. 479. 488. 251 p.3d 884 (2010)

State v. Thomas, 109 Wn.2d 222, 225-26, 743 p.2d 816 (1987)

Wesly v. Schnekloth, 55 Wn.2d at 93-94

FEDERAL CASE LAW

Strickland v. Washington, 466 U.S. 668, 684-86, 104 S.Ct. 2052, 80 L.ed 2d 674 (1984)

REVISED CODES OF WASHINGTON:
9.94A.030

9A.46.011(1)(a)

9A.36.021(1)(c)

9A.56.070(1)
13.04.030

13.40.020
13.40.110

13.40.230

RAP RULE
2.5(a)(3)

16.4(c)(1)16.4(c)(4)

U.S. CONSTITUTION & WASHINGTON STATE CONSTITUTION
Article 1, Section 22
6th Amendment

APPENDIX

13.04.030
13.40.110
Judgment & Sentence

STATEMENT OF FINANCES

Vichai Saly # 732654
Stafford Creek Corr. Cntr.
191 Constantine Way
Aberdeen WA 98520

US POSTAGE
$02.24⁰
ComBasPrice
Mailed From 98520
09/15/2017
031A 0005181405

LEGAL MAIL

To: Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA. 98504-0929

cc2 JABARR 09/14/2017

MAIL