

FILED
COURT OF APPEALS
DIVISION II

2019 NOV 18 PM 1:16

STATE OF WASHINGTON

BY _____
DEPUTY

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

In Re the PRP of:
Finos Fox
Petitioner.

Case No. 52392-2-II

[Pierce County No. 12-1-02627-2]
PETITIONER'S REPLY TO
THE STATE'S RESPONSE TO
PERSONAL RESTRAINT PETITION

I, Finos Fox, come to this Court to reply to the State's Response.

ARGUMENT

POINT ONE

At the very heart of this action: I was not facing 3 strikes, as was erroneously argued in bad faith by the prosecutor, when I sat down to the negotiating table to make a plea bargain for the Assault 1° with which I was charged and for which I am currently incarcerated unjustly. My out of state conviction of ILLEGAL USE OF A WEAPON, for which I was duly convicted in the great state of Louisiana, is not considered a strike in the state in which it originated, and neither could the charge it would be converted into in the State of Washington be considered a strike, given that it is nonviolent and therefore wouldn't meet the most basic criterion. In the State of Washington

it would be considered a felony. However, not a striking felony. Therefore, I was misrepresented by my public defender and the Prosecutor bargained in bad faith, nullifying and invalidating the plea agreement I signed, making my current incarceration unlawful and unjust.

Beyond that, the prosecutor failed to properly argue a method of interpreting Louisiana State law in such a way as to make my Louisiana charge compatible with a Washington State charge, which should be required given the separate sovereignties of these two states and the seriousness of the State's claim that it was a strike. This should have been required if they ever even had planned to use the charge against me as a strike.

POINT TWO

The original charged crime of Assault 1° did not have a factual basis so they could not charge me with it and no evidence shows four separate Assault 3°s. I was not charged with possession of weapon or given a weapon enhancement. My sentence range was 33-43 months but they adjusted the sentence upward to 5 years and they could not do that. Additionally, for the Assault 3°s they put 3 more Assault 3°s on me that did not happen. If you look at my Judgment and Sentence you will see that they all have the same dates and same incident numbers. My public defender did not let me read what I was signing so I feel that he used my mental health condition against me. If I would have read the papers that I was signing then I know that the Prosecuting Attorney could not do what they did, having convicted me for the same thing multiple times. So, this is why I am asking this Court to show me some relief by reducing the Assault 3°s down to one and by bringing me back to court for resentencing. Under the Washington Constitution, they cannot punish you multiple times for the same offence; that violates double jeopardy.

POINT THREE

Look at line 15 of the State's Response, it states in the commission thereof the defendant or an accomplice was armed with a deadly weapon. Yet, a weapon was never found. This means that the original charge did not fit the facts uncovered in the police investigation.

On line 17 of the State's Response, Detective Merod states that the defendant denied knowing Melissa Dobson. To the contrary, however, I never denied knowing Melissa Dobson. Furthermore, I never denied being at the scene of the crime.

On line 21 of the State's Response, one of the witnesses, Melissa Dobson's brother, provided the Pierce County Sheriff with a statement regarding observations including the fight between the defendant and the victim. This statement included the presence of an unidentified black male that never came forward and was never fully identified. This witness described the knife as having a 6 to 7 inch blade. In the initial investigation a weapon was never discovered. The Petitioner argues unequivocally that the weapon wasn't discovered because there was no weapon.

On line 1 of the State's Response, a search of the defendant's aunt's residence by the Pierce County Sheriff failed to reveal the knife the Pierce County Sheriff's Office was looking for as directed by Melissa Dobson's brother. That is because that witness was lying about having ever seen a knife.

With so many intractable inaccuracies and discrepancies in the investigation which reveal that the charging criteria for Assault 1^o were never met, I argue that I should never have been facing the charge in the first place and that the prosecutor was, again, dealing with me in bad faith when he coerced me into signing the plea agreement currently holding me in

prison. That makes the agreement void, requiring this Court to immediately remand me back into the custody of Pierce County so that I can be recharged with a crime that corresponds to the facts of their investigation.

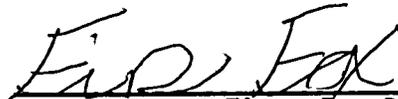
POINT FOUR

If this Court finds any defects in this pro se Petitioner's PRP, please grant me the opportunity to rectify those defects through amendment before making a dispositive ruling.

CONCLUSION

For the foregoing reasons, I humbly request this Court to grant the requested relief in my Petition.

DATED this 14th day of November, 2019.



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CERTIFICATE OF SERVICE

I, Finos Fox, hereby certify that on the below date I caused to be mailed (1) PETITIONERS REPLY TO THE STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION using the USPS to the following:

Washington State Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, WA, 98402-4454

Michelle Myer
Pierce County Prosecutor
930 Tacoma Ave. South, Room 946
Tacoma, WA 98402-2102

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

DATED this 14th day of November 2019.

Finos Fox

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