

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

In re the Personal Restraint Petition of DANIEL MOODY, Petitioner.	NO. 527006 REPLY IN SUPPORT OF PRP
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I. INTRODUCTION

Daniel Moody filed a PRP seeking to withdraw his guilty plea either because he was affirmatively misled at the time of his plea or because he was not offered an opportunity to withdraw his plea when his sentence was amended without notice to him. In response, the State argues that because Mr. Moody has not presented information beyond the face of the relevant documents, his claim must fail. In this reply, Mr. Moody submits a declaration addressing the State's supposed missing evidence. Because the record before this Court establishes that Mr. Moody was misled regarding the 'agreed' community custody term and because he was not given an opportunity to withdraw his plea when that error was corrected after his sentencing, he is entitled to relief.

1 II. ARGUMENT

2 Mr. Moody seeks to withdraw his guilty plea.

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4 It is now clear that when Mr. Moody's sentence was amended that he
5 was not present, did not have notice, and was not told that he could withdraw
6 his plea rather than correct the error in the judgment. Mr. Moody's
7 declaration, which is entirely consistent with the documents, states:
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10 3. Apparently, after I was sentenced this problem was discovered and
11 my Judgment and Sentence was amended so that the combined terms
12 were within the total sentence allowed under law. I was not given
13 notice that my sentence would be amended. I was not offered an
14 opportunity to withdraw my plea. I was not provided a copy and told I
15 had the right to appeal within 30 days of the amendment to my
16 judgment. If I had been given notice and told that I could withdraw my
17 guilty plea due to the mutual mistake, I would have done so.

18 Moody was entitled to make a choice. *State v. Miller*, 110 Wash. 2d 528, 536,
19 756 P.2d 122, 127 (1988), *overruled on other grounds by State v. Barber*, 170
20 Wash. 2d 854, 248 P.3d 494 (2011). The State does not argue otherwise in its
21 response, only that Moody had failed to show that he had not been told of his
22 right to withdraw the plea during some off-the-record proceeding or
23 communication. The State did not present any information suggesting that
24 Moody had been so advised or even that he received notice of the amendment
25 to his judgment. In any event, it is now undisputed that Moody was unaware
26 and that he would have chosen to withdraw his plea if given the choice. The
27 failure to allow him to make a choice makes this petition meritorious.
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1 Because this framing of Moody's claim is meritorious, this Court does
2 not need to reach his alternative claim. However, his declaration provides
3 both subjective and objective support for his claim that he would not have
4 pleaded guilty if given accurate advice about the direct consequences of his
5 guilty plea. As the State acknowledges, at least a portion of Moody's guilty
6 plea was based on fiction. And, his plea was further based on an agreement
7 that violated the law, although he was not told the agreement was illegal.
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11 Moody states:

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13 2. When I pleaded guilty, I agreed to recommend a 3-year term of
14 community custody in addition to the recommended terms of
15 incarceration. I was not told and did not understand that the combined
16 terms of incarceration and community custody could not exceed the
17 maximum punishment for the crimes.

18 He later adds:

19 4. Likewise, I would never have pleaded guilty in the first place if I had
20 been given accurate advice about the direct consequences of my plea.

21 Finally, although this Court need not reach the same criminal conduct
22 issue if it allows Moody to withdraw his plea, it is clear that Moody did not
23 agree that that his convictions were not same criminal conduct:
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25 5. When I pleaded guilty, I did not agree that the crimes I pleaded
26 guilty to were all different criminal conduct. I did not agree because no
27 one explained the concept of "same criminal conduct" to me. I could not
28 agree to something that no one explained.
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1 III. CONCLUSION

2 Both the documents and Moody's declaration provide what is now an
3 undisputed record which merits relief. Mr. Moody was misadvised about the
4 direct consequences of his guilty plea and when that error was corrected in
5 the judgment he had not been given notice; was not present; and was not
6 given the option of withdrawing his plea. Mr. Moody makes it clear what his
7 choice would have been and is now. He respectfully requests that the this
8 Court grant his petition and remand this case so that he can exercise that
9 choice and withdraw his guilty plea.
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14 DATED this 11th day of April 2019.

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16 Respectfully Submitted:

17 /s/Jeffrey Erwin Ellis
18 Jeffrey E. Ellis, WSBA #17139
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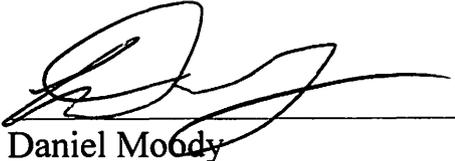
DECLARATION OF DANIEL MOODY

I, Daniel Moody, declare:

1. I am the Petitioner in this matter.
2. When I pleaded guilty, I agreed to recommend a 3-year term of community custody in addition to the recommended terms of incarceration. I was not told and did not understand that the combined terms of incarceration and community custody could not exceed the maximum punishment for the crimes.
3. Apparently, after I was sentenced this problem was discovered and my Judgment and Sentence was amended so that the combined terms were within the total sentence allowed under law. I was not given notice that my sentence would be amended. I was not offered an opportunity to withdraw my plea. I was not provided a copy and told I had the right to appeal within 30 days of the amendment to my judgment. If I had been given notice and told that I could withdraw my guilty plea due to the mutual mistake, I would have done so.
4. Likewise, I would never have pleaded guilty in the first place if I had been given accurate advice about the direct consequences of my plea.
5. When I pleaded guilty, I did not agree that the crimes I pleaded guilty to were all different criminal conduct. I did not agree because no one explained the concept of "same criminal conduct" to me. I could not agree to something that no one explained.

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

4-5-19, Monroe, WA
Date and Place


Daniel Moody

ALSEPT & ELLIS

April 11, 2019 - 9:51 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
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Appellate Court Case Title: Personal Restraint Petition of Daniel Scott Moody, Jr.
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