

COA 35486-5-II

SUPERIOR CT NO. 1991-01-00416-2

**FILED**

DEC 08 2017

COURT OF APPEALS DIVISION III

OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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STATE OF WASHINGTON

Plaintiff,

v.

GEORGE D. BARTZ

Appellant.

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BRIEF OF APPELLANT

GEORGE D. BARTZ, pro se  
POB 1088  
Deer Park, WA 99006  
509-992-4430  
[bartzgeorge@yahoo.com](mailto:bartzgeorge@yahoo.com)

## TABLE OF AUTHORITIES

*State of Washington v. Homer Connell Taylor III*, No. 66965-6-I

*State v. Ollie V. Church*, No. 42337-5-II

*In re Pers Restraint of Coats*, 173 Wn.2d 123, 135, 267 P.3d 324 (2001)

*In re Pers Restraint of Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004)

RCW 10.01.040

RCW 10.73.090 (1)

## A. ASSIGNMENT OF ERROR

1. The trial court erred in entering the Order of June 16, 2017, denying defendant's Motion to Vacate Count II of the Judgment and Sentence entered on October 9, 1991 in Cause No. 91-1-00416-2.
2. The trial court erred in entering the Order of August 8, 2017, denying defendant's Motion for Reconsideration, to Vacate Count II, of Cause No. 91-1-00416-2, entered on October 9, 1991

## B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Does the trial court have the authority to separate like cases, based upon dates, for a nonexistent crime, at the time of sentencing?
2. Did the current trial court exceed its statutory authority in assigning guilt for a crime that was nonexistent at the time of the original sentencing?

## C. STATEMENT OF THE CASE

The Court of Appeals, Division I, in *State of Washington v. Homer Connell Taylor III*, No. 66965-I, ruled that because the language for the crime of Statutory Rape was repealed by the Legislature, effective July 1, 1988, that any conviction for that crime after that date was invalid,

**“Washington State Legislature repealed the language of Statutory Rape in the Session Laws of 1988.”** (Clerk's Papers, page 2)

Additionally, Division II in *State v. Church*, No. 42337-II, upheld the language of the *Taylor* decision. (Clerk's Paper, page 2)

And, **“Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid of its face.”** *In re Pers Restraint of Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004). (Clerk's Papers, page 2)

## D. ARGUMENT

Judge Plese, in her letter (Clerk's Paper, page 11-12) reasons that the legislature, in the Session Laws of 1988, implies in part that the repeal does not extinguish liability, civil or criminal, for acts occurring before July 1, 1988.

That argument fails because it assumes that the outcome of a trial, if it had been charged before July 1, 1988, would have found the defendant guilty. In fact, the legislature's intent, as written, said: "liability, civil or criminal which is already in existence..." In other words, for a conviction or charges that were in existence prior to or on July 1, 1988.

The "Savings Clause," RCW 10.01.040, in part, says: "No offense committed and no penalty or forfeiture incurred previous to the time when a statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act..." The fact that the repealing legislature did express a contrary intention by the language: "which is already in existence on July 1, 1988," validates appellant's claim because there was no conviction, or charges that might have led to a conviction, or any sanctions for the crime on July 1, 1988.

#### **E. CONCLUSION**

The Legislature, in its language, stated that any liability had to be in existence by or on July 1, 1988. No such liability was assigned by any court, thus none existed.

To argue that a crime had been committed and thus liability existed indicates that with the aid of a crystal-ball, the arguer contends the defendant would have been found guilty, period. The premise of our laws is "innocent until proven guilty." Thus the potential argument lacks credibility.

Statutory Rape was a nonexistent crime when the appellant was convicted in 1991, thus Count II must follow Count I, and be vacated.

## CERTIFICATE OF SERVICE

I certify that on the 6<sup>th</sup> day of December, I caused a true and correct copy of the Appellant Brief to be served on the following in the manner indicated:

**LAWRENCE H. HASKELL, Prosecuting Attorney**  
**ATTN: Edward D. Hay, Deputy Prosecutor**  
1100 W. Mallon  
Spokane, WA 99260

**CLERK OF THE SUPERIOR COURT**  
**ATTN: Judge Annette S. Plese**  
1116 W. Broadway Ave.  
Spokane, WA 99260-0350

**RENEE S. TOWNSLEY**  
**CLERK OF THE COURT**  
**Court of Appeals, Div III**  
500 N. Cedar St.  
Spokane, WA 99201-1905

BY: George D. Bartz  
GEORGE DEAN BARTZ, pro se  
POB 1088  
Deer Park, WA 99006  
509-904-7675  
[bartzgeorge@yahoo.com](mailto:bartzgeorge@yahoo.com)

**IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON, DIVISION III**

<b>GEORGE DEAN BARTZ,</b>	)	
	)	
<b>Appellant.</b>	)	<b>No. 354865</b>
	)	<b>STATEMENT OF ARRANGEMENTS</b>
	)	<b>[ Rule 9.2(a) ]</b>

**GEORGE DEAN BARTZ, pro se** states that no transcripts have been ordered.

All relevant information is included in the Clerk's Papers ordered on October 5, 2017.

The following issue will be presented:

Is the denial to vacate Count II contrary to the ruling in the *Taylor* decision?:

"Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face. *In re Pers. of Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004)." "A judgment is invalid on its face under RCW 10.73.090 (1), where the trial court exceeded its statutory authority in entering the judgment or sentence. *In re Pers. of Coats*, 173 Wn.2d 123, 135, 267 P.3d 324 (2011)."



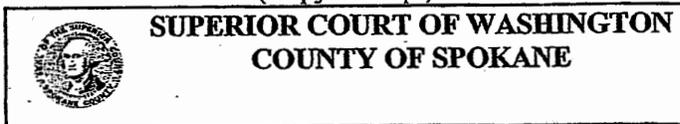
GEORGE DEAN BARTZ, pro se

POB 1088

Deer Park, WA 99006

(Copy Receipt)

(Clerk's Date Stamp)



WASHINGTON STATE  
Petitioner(s)/Plaintiff(s)

Vs.

GEORGE DEAN BARTZ  
Respondent(s)/Defendant(s)

CASE NO. 91-1-00416-2

PRAECIPE FOR CLERK'S PAPERS  
AND EXHIBITS

CT. OF APPEALS NO. 354865

TO THE CLERK OF THE COURT:

Please prepare the following documents or exhibits in the order indicated for transmittal to the Court.

Document/ Exhibit Number	Date Filed	Title
<u># 39</u>	<u>5/12/17<sup>15</sup></u>	<u>MOTION TO VACATE JUDGMENT &amp; SENTENCE ORDER</u>
<u># 45</u>	<u>6/13/17</u>	<u>MOTION FOR RECONSIDERATION</u>
<u># 44</u>	<u>6/12/17</u>	<u>LETTER FROM JUDGE PLESE</u>
<u># 46</u>	<u>6/7/17/17</u>	

Send a copy of each alphabetical index to each of the parties and prepare a cover sheet, a copy of which is to be sent to each party pursuant to RAP 9.7.

Dated: 10/4/17

Address: PB 1088  
(Street)

DEER PARK WA 99006  
(City) (Zip)

Telephone: 509-904-7675

George J. Bartz  
Signature

GEORGE DEAN BARTZ  
Typed or Printed Name

Attorney for: \_\_\_\_\_

FILED

NOV 03 2017

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

(Copy Receipt)

(Clerk's Date Stamp)



**SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE**

**STATE OF WASHINGTON,**

**Plaintiff/Petitioner(s),**

**VS.**

**BARTZ, GEORGE DEAN,**

**Defendant/Respondent(s).**

**COA NO. 35486-5-III**

**SUPERIOR CT NO. 1991-01-00416-2**

**INDEX TO CLERKS PAPERS  
(INX)**

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GEORGE BARTZ  
4104 Burroughs Rd  
POB 1088  
Deer Park, WA 99006  
509-992-4430  
[bartzgeorge@yahoo.com](mailto:bartzgeorge@yahoo.com)

CN: 199101004162  
**SN: 39**  
PC: 6

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MAY 15 2017

Prosecuting Attorney  
Spokane County, WA

**SUPERIOR COURT OF THE STATE OF WASHINGTON**

FILED

**IN AND FOR SPOKANE COUNTY**

MAY 15 2017

**WASHINGTON STATE,**

Plaintiff,

vs.

**GEORGE DEAN BARTZ,**

Defendant.

Case No: 91-1-00416-2

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

**MOTION TO VACATE  
JUDGMENT AND SENTENCE**

COMES NOW, George Dean Bartz, pro se asking this court to vacate the judgment and sentence entered into on November 14, 1991, Cause No. 91-000416-2, for the crime of statutory rape.

**FACTS**

Defendant pled guilty to two counts of Statutory Rape under RCW 9A.44.073(1) and was sentenced by the court to conditions and requirements that have been completed. All aspects of the judgment and sentence were completed within the sentence range of 41-54 months.

Defendant has now learned of the separate rulings by Division I, Division II, and Division III concerning the requirement to register for the crime of statutory rape and the court(s) decisions concerning the validity of the crime of Statutory Rape, after the repeal of the language by the Legislature in 1988.

Based upon the language within the decisions rendered by the separate Courts of Appeals defendant asks that this court vacate the judgment and sentence entered into on November 14, 1991.

**LEGAL PRECEDENT**

On July 26, 2011, Division I of the Washington State Court of Appeals ruled in the case of *State of Washington v. Homer Connell Taylor III, No. 66965-6-1*. "Taylor contends that his prior conviction under a repealed

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MOTION TO VACATE JUDGMENT AND SENTENCE  
GEORGE D. BARTZ  
POB 1088  
Deer Park, WA 99006  
509-992-4430

statute does not meet the SRA's definition of a sex offense because it is not currently a violation of chapter 9A.44 RCW." The Washington state legislature repealed the language of statutory rape in the session laws of 1988.

*State v. Ollie V. Church*, Division II, No. 42337-5-II. "This case is indistinguishable from *Taylor*. As in *Taylor*, Church was convicted of statutory rape, and offense that was repealed and replaced with the current crime of rape of a child. See *State v. Stockwell*, 159 Wn2d, 394, 397-98, 150 P.3d 82 (2007). Offense, thus did not meet the definition of a sex offense under RCW 9.94A.030 (46). Therefore, the State failed to prove that Church had been convicted of a sex offense which triggered his duty to register. Concluding that *Taylor* applies to this case, we reverse and remand for dismissal of Church's conviction." *State v. Ollie V. Church*, Division II, No. 42337-5-II.

"To show that his restraint is unlawful, a petitioner must demonstrate either constitutional error that resulted in actual and substantial prejudice or a fundamental defect of a nonconstitutional nature that resulted in a complete miscarriage of justice. *In re Pers. Restraint of Cook*, 14 Wn.2d 802, 810-13, 792 P.2d 506 (1990). The imposition of an unlawful sentence is a fundamental defect. *In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 818, 272 P.3d 209 (2012.)

"In addition, a petition challenging a judgment and sentence generally must be filed within one year after the judgment becomes final. RCW 10.73.090 (1). The time limit may be avoided if the judgment and sentence is invalid on its face. RCW 10.73.090 (1). A judgment is invalid on its face under RCW 10.73.090 (1) where the trial court exceeded its statutory authority in entering the judgment or sentence. *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 135, 267 P.3d 324 (2011). Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face. *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004). This is true whether or not the petitioner pleaded guilty. *Hinton*, 152 Wn.2d at 860. An agreement to plead guilty to a nonexistent crime does not foreclose collateral relief because a plea agreement cannot exceed the statutory authority granted to the courts. *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 723, 10 P.3d 380 (2000).

The Courts of Appeals noted that: "the stated purpose of the bill was to make corrections to sentencing laws at the request of the Sentencing Guidelines Commissions. 1999 Final Legislative Report, 56<sup>th</sup> Wash. Leg. At 77. *State of Washington v. Homer Carnell Taylor III*, 66965-6-I."

MOTION TO VACATE JUDGMENT AND SENTENCE  
GEORGE D. BARTZ  
POB 1088  
Deer Park, WA 99006  
509-992-4430

"We observed further that despite the holding in *Taylor*, the legislature has not amended the sex offense definition to include comparable post-1976 felonies that were subsequently repealed. The Legislature is presumed to be familiar with past judicial interpretations of statutes, including appellate court decisions. *State v. Stalke*, 152 Wn. App. 805, 812-13, 219 P.3d 722 (2009), *review denied*, 168 Wn.2d 1043 (2010). [L]egislative in-action following a judicial decision interpreting a statute often is deemed to indicate legislative acquiescence in or acceptance of the decision." *Stalker*, 152 Wn.App. at 813. "[W]here statutory language remains unchanged after a court decision the court will not overrule the clear precedents interpreting the same statutory language." *Stalker*, 152 Wn.App. at 813 (quoting *Riehl v. Foodmaker, Inc*, 152 Wn.2d 138, 147, 94P.3d, 94 P.3d 930 (2004)).

"Stare decisis" is a Latin term, meaning "to stand by things decided." BLACK'S LAW DICTIONARY 1626 (10<sup>th</sup> ed. 2014). The doctrine of stare decisis has two primary incantations: vertical stare decisis and horizontal stare decisis. Under the vertical stare decisis, courts are required to follow decisions handed down by higher courts in the same jurisdiction. For example, trial and appellate courts in Washington must follow decisions beaded down by our Supreme Court and the United States Supreme Court. Adherence is mandatory, regardless of the merits of the higher court's decision. *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984)...." *In re. Pers. Restraint of Arnold*, 34018 -0-III.

## CONCLUSION

Petitioner asks that based upon the language in the rulings in the cases cited that this court, having jurisdiction in this matter, vacate the 1991 conviction. Petitioner also asked that this court Order that the name of George Dean Bartz, be removed from the State's Sex Offenders Registry based upon the fact that petitioner has no other sex offender convictions.

Petitioner has completed all sanctions and additionally has registered us as a sex offender, contrary to the plain language expressed by the court, for the past 25 years.

Dated this 12<sup>th</sup> day of May, 2017.

*George D. Bartz*  
George D Bartz, pro se  
4014 West Burrows Rd.  
PO Box 1088  
Deer Park, WA 99006  
509-992-4430  
bartzgeorge@yahoo.com

4  
MOTION TO VACATE JUDGMENT AND SENTENCE  
GEORGE D. BARTZ  
POB 1088  
Deer Park, WA 99006  
509-992-4430

**RECEIVED**

**MAY 15 2017**

Prosecuting Attorney  
Spokane County, WA

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE**

**WASHINGTON STATE,**

Plaintiff,

vs.

**GEORGE DEAN BARTZ,**

Defendant.

Case No. 91-1-00416

**ORDER**

(OR)

**I. BASIS**

George Dean Bartz, pro se, moved the court for: **MOTION TO VACATE JUDGMENT AND SENTENCE.**

**II. FINDING**

After reviewing the case record to date, and the basis for the motion, the court finds that: the legal argument presented has established that the defendant's motion should be granted.

**III. ORDER**

**IT IS ORDERED** that defendant's motion to **VACATE JUDGMENT AND SENTENCE** is granted. It is also ordered that if no other registerable sex offense are on Mr. Bartz' record that his name be removed from the Sex Offender Registry in Washington State.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE

*George D. Bartz*

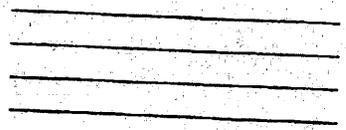
George D. Bartz

4014 W. Burroughs Rd.

POB 1088

Deer Park, WA 99006

[bartzgeorge@yahoo.com](mailto:bartzgeorge@yahoo.com)



GEORGE BARTZ  
4014 West Burroughs Rd.  
POB 1088  
Deer Park, WA 99006  
509-992-4430  
[bartzgeorge@yahoo.com](mailto:bartzgeorge@yahoo.com)

**FILED**

**JUN 12 2017**

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

CN: 199101004162

**SN: 44**

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**SUPERIOR COURT OF THE STATE OF WASHINGTON**

**IN AND FOR SPOKANE COUNTY**

<b>WASHINGTON STATE,</b>	)	<b>CASE NO. 91-1-00416-2</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>MOTION FOR RECONSIDERATION</b>
	)	
<b>GEORGE DEAN BARTZ,</b>	)	
	)	
<b>Defendant.</b>	)	

COMES NOW, George Dean Bartz, pro se, asking this court to RECONSIDER the ruling on Count II, entered on June 1, 2017. On that date, the court vacated the judgment and sentence on Count I, and the duty to register as a sex offender. Defendant considers that Count II, should also be dismissed based upon the following facts.

**FACTS**

Defendant submits the following: "A judgment is invalid on its face under RCW 10.73.090 (1) where the trial court exceeded its statutory authority in entering the judgment or sentence. *In re Pers. of Coats*, 173 Wn.2d 123, 135, 267 P.3d 324 (2011). Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face. *In re Pers. of Hinton*, 152 Wn.2d 853, 860, 100 P.3d 801 (2004)."

Nowhere in the language of the above cases does it discuss actual guilt or innocence let alone any timeframe. It simply and succinctly determines that a court cannot, for any reason, convict using the

MOTION FOR RECONSIDERATION

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language of a nonexistent crime. Based upon the fact that I was convicted of statutory rape, a nonexistent crime at the time of sentencing, the judgment and sentence must be vacated.

In the Response, submitted by the prosecutor's office, on page 2 the following language is submitted:

"NEW SECTION. Sec. 25. This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." (Emphasis Mine)

I have emphasized the words, "already in existence" as the key language in this section. At the time of the recodification of the Statutory Rape laws, I had no liability. True, a crime had been committed, but no liability in any way, shape or form had been adjudicated, which, as I read it, is the controlling factor in this section.

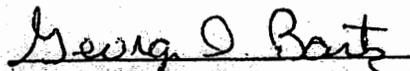
#### CONCLUSION

This court has ruled that the two counts are different when in fact the language of a "nonexistent crime" does not make a distinction. To say that one count, because of the date, has standing is to make the term arbitrary and meaningless. I was convicted of a nonexistent crime, on both counts.

I ask that this court follow the language, as written, and vacate Count II.

SUBMITTED THIS 12<sup>th</sup> day of June, 2017.

Submitted by:



George D. Bartz, pro se  
4014 W. Burroughs Road  
POB 1088  
Deer Park, WA 99006  
509-992-4430  
[bartzgeorge@yahoo.com](mailto:bartzgeorge@yahoo.com)

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CN: 199101004162

**SN: 45**

PC: 2

FILED  
JUN 16 2017  
Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON )

Plaintiff, )

v. )

GEORGE DEAN BARTZ )  
WM 06/21/45 )

Defendant(s). )

No. 91-1-00416-2

PA# 91-9-80155-0

RPT# CT I, II: 001-90-0055684

RCW CT I, II: 9A.44.070-F (#67320)

ORDER ^

**I. BASIS**

The Plaintiff, State of Washington represented by Prosecutor LAWRENCE H. HASKELL, through his Deputy Prosecutor EDWARD D. HAY, moved the court for denying Mr. Bartz's motion in part.

**II. FINDING**

After reviewing the case record to date, and the basis for the motion, the court finds that: Mr. Bartz pleaded guilty on October 9, 1991 to two counts titled First Degree Statutory Rape under RCW 9A.44.070. Count I alleged offense dates of July 1, 1988 through October 31, 1989. Count II related to acts occurring between September 1, 1984 and December 31, 1985. Laws of Washington 1988, Chapter 145, Section 24 and 25 repealed the crime of 1<sup>st</sup> Degree Statutory

Page 1

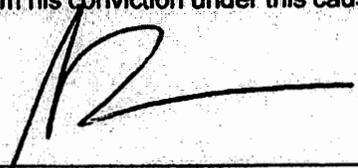
SPOKANE COUNTY PROSECUTING ATTORNEY  
COUNTY CITY PUBLIC SAFETY BUILDING  
SPOKANE, WA 99260 (509) 477-3662

1 Rape for acts occurring on or after July 1, 1988. The repeal did not apply offenses occurring before  
2 July 1, 1988.

3  
4 **III. ORDER**

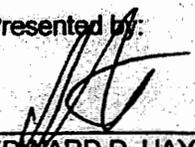
5 IT IS ORDERED that: Mr. Bartz' motion to vacate his conviction of Count I is granted. His  
6 motion to vacate his conviction under Count II, of 1<sup>st</sup> Degree Statutory Rape is denied. The  
7 conviction under Count II remains in full effect. Mr. Bartz is relieved of his duty to register as a Sex  
8 Offender to the extent to which that duty arises solely from his conviction under this cause number.

9 DATED this 15<sup>th</sup> day of June, 2017.

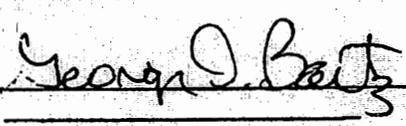
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11 \_\_\_\_\_  
12 JUDGE / COURT COMMISSIONER

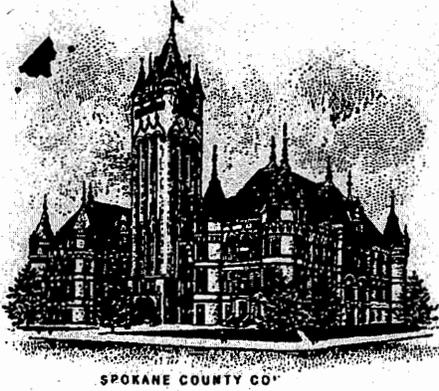
13 JUDGE ANNETTE S. PLESE

14 Presented by:

15  #29408  
16 EDWARD D. HAY  
17 Deputy Prosecuting Attorney  
18 WSBA # 11846

19 Approved:

20   
21 \_\_\_\_\_



**STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT**

**Annette S. Plese**  
Superior Court Judge

Spokane County Courthouse  
1116 West Broadway Avenue  
Spokane, Washington 99260-0350  
(509) 477-4709  
dept1@spokanecounty.org

CN: 199101004162

**SN: 46**

PC: 2

July 17, 2017

FILED

JUL 18 2017

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

George Bartz  
4194 Burroughs Rd.  
POB 1088  
Deer Park, WA 99006

Ed Hay  
Deputy Prosecuting Attorney  
1100 W. Mallon  
Spokane, WA 99260

RE: State v. Bartz No. 91-1-00416-2

Dear Mr. Bartz and Mr. Hay:

This letter is a follow up in regards to Mr. Bartz's oral motion for reconsideration on Count II. Mr. Bartz puts great weight in his argument on the *State v. Washington v. Homer Connell Taylor III, No. 66965-6-1*, (decided July 26, 2011 - Division I case). However, the *Taylor* case involved a defendant who was convicted of Failing to Register as a Sex-Offender from an underlying conviction that no longer existed under the sex offenses.

The Court of Appeals concluded Mr. Taylor could not be convicted of failing to register because the underlying sex offense for which he was convicted of no longer existed. Since it no longer existed under the sex offense statute, then Mr. Taylor was relieved of having to register as a sex offender. The Court vacated the conviction for Failing to Register as a Sex Offender, not his original conviction.

The Court did not rule that the underlying conviction should be vacated off Mr. Taylor's record merely because it no longer existed. They ruled that any requirements of registration under that previous conviction were no longer applicable. This Court already ruled that Mr. Bartz's charge in Count I shall be vacated and dismissed as it falls within the gap created by the legislature.

Subsequently, the repeal clause did not extinguish liability for acts occurring before July 1, 1998. As the *Laws of Washington 1988*, Chapter 145, section 25, stated:

"This act shall not have the effect of terminating or in any way modifying liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988".

Count II of Mr. Bartz's judgment and sentence occurred between September 1, 1984 and December 31, 1985. Clearly, Count II shall not be vacated. However, all registration requirements cease based on the ruling in *Taylor*.

After reconsidering Mr. Bartz's motion to vacate Count II, the Court is denying his request.

Sincerely,



Judge Annette S. Plese  
Chief Criminal Judge

CC: Court File