

FILED
Court of Appeals
Division III
State of Washington
5/17/2019 12:22 PM

No. 36570-1-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

CHARLES WALTER WEBER,

Defendant/Appellant.

BRIEF OF RESPONDENT

Respectfully submitted:

By: Nicholas A. Holce, WSBA # 46576
Deputy Prosecuting Attorney

240 W. Alder St. Ste 201
Walla Walla, WA 99362
509-524-5445

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred at the trial court level and the trial court's determinations should be affirmed.

III. ISSUES

1. Where this Court has already denied Mr. Weber's identical arguments earlier this year in a personal restraint petition, did the trial court abuse its discretion in coming to the same conclusion as this Court did in the PRP?
2. Where the Washington Supreme Court has ruled notice of a sentence under the Persistent Offender Accountability Act is not required by due process, is this Court bound by that holding?

IV. STATEMENT OF THE CASE

On April 15, 2005, Charles Weber was sentenced to life in prison without the possibility of parole for his conviction of Assault in the Second Degree, after being found guilty by a jury on February 16, 2015. *State v. Weber I*, 137 Wn. App. 852, 856-57, 155 P.3d 947 (2007). At his sentencing hearing, the State presented evidence that Weber had a

conviction for Assault in the Second Degree from 1999 in King County and a conviction for Attempted Murder in the Second Degree and Assault in the First Degree in 2003 in King County. CP 5. The King County trial court vacated the Assault in the First Degree conviction pursuant to double jeopardy. CP 5. In June 2005, the Court of Appeals reversed the vacation of the Assault in the First Degree conviction and instead vacated the Murder in the Second Degree conviction because the Assault in the First Degree conviction was the more serious charge. *State v. Weber II*, 127 Wn. App. 879, 112 P.3d 1287 (2005), *aff'd* 159 Wn.2d 252 (2006). The court remanded Weber's 2003 case to be sentenced on his Assault in the First Degree conviction. *Id.* He was resentenced March 27, 2007. A copy of the original Judgment and Sentence and subsequent Judgment and Sentence (Amended Post-Appeal) are attached as Appendix A and were included in the record in CP 47.

In 2009, Weber filed a timely personal restraint petition. He asserted ineffective assistance of counsel because the defense at trial was consent and self-defense. On July 2, 2009, the court of appeals dismissed Weber's personal restraint petition. *In re Matter of Weber I*, 27530-2-III (slip op.) (2009), *rev. denied* 83398-2 (October 16, 2009). The opinion is attached as Appendix B and was included in CP 46.

On July 10, 2018, Weber filed a motion for an evidentiary hearing in the instant case. CP 23. He again asserted actual innocence and argued his life sentence was based on a vacated conviction. The court denied his motion for new trial and motion for an evidentiary hearing. CP 39. He subsequently deluged the court with additional motions, which were dismissed as duplicative. CP 41. He filed this appeal in Division III on January 15, 2019, challenging the order dismissing the duplicative motions. CP 36.

On October 24, 2018, the Walla Walla County Superior Court received and transferred Mr. Weber's petition for writ of habeas corpus ad subjiciendum to the court of appeals as a personal restraint petition ("PRP"). In the petition, the defendant asserted he is factually innocent of the crime of which he was found guilty. He further argued that the State had not met its burden of proof for his prior convictions. That PRP was dismissed as untimely and frivolous. *In re Matter of Weber II*, 36426-7-III slip op. (Jan. 4, 2019). That PRP was appealed to the Washington Supreme Court, where it is being reviewed. *In re Matter of Weber II*, 96749-1 (Wn. Apr. 4, 2019). Attached as Appendix C is this Court's order dismissing the PRP and the Washington Supreme Court's ruling.

V. ARGUMENT

a. The Trial Court Appropriately Denied Weber's Duplicative Motions, as Should This Court.

The first issue is whether the trial court erred in denying Weber's motions without an evidentiary hearing. Weber's motions were untimely. CrR 7.8(b); RCW 10.73.090, .100, .130. Untimely motions may be summarily dismissed without necessitating a hearing. *State v. Dallman*, 112 Wn. App. 578, 582-83, 50 P.3d 274 (2002).¹ Further, Weber consistently cited CrR 7.8(b)(2) as his authority for a new trial. CrR 7.8(b)(2) addresses "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5." The State noted in its August 30 response Weber's motions were based on evidence he knew about at the time of his trial, demonstrating the evidence was not "newly discovered," and he did not act with due diligence.² CP 46. Therefore, an evidentiary hearing was unnecessary, and the court properly denied his motions.

¹ The *Dallman* court also noted the appeal there was unperfected due to not having been served on the State. 112 Wn. App. at 582, 50 P.3d 274. Here, the State was not served and had to receive a copy of the notice of appeal from this Court on January 31, 2019.

² In his timely direct appeal, the defendant argued his counsel was ineffective for failing to call certain witnesses and for the tactical error of arguing consent. His argument failed. *State v. Weber I*, 137 Wn. App. 852, 155 P.3d 947 (2007). In his first, timely PRP, the defendant argued ineffective assistance of counsel again, this time asserting counsel should have advised him to take the plea deal. His PRP was dismissed. *In re Weber I*, 27530-2-III, slip op. (Wn. App. July 2, 2009). In his second, untimely PRP, Weber argued his sentence was based on a vacated conviction. His PRP was dismissed as frivolous. *In re Weber II*, 36426-7-III, slip op. (Wn. App. Jan. 4, 2019). Through all

Weber also argued that his sentence was based on a vacated sentence. He made the identical argument in a PRP that was submitted to this Court in October 2018 while he was concurrently pursuing the matter in Walla Walla Superior Court. This Court issued an opinion on his PRP on January 4, 2019, dismissing his petition as frivolous.³ *In re Weber II*, 36426-7-III. The law of the case doctrine controls and precludes further consideration of arguments already resolved. *E.g.*, *State v. Schwab*, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008) (“The law of the case doctrine provides that once there is an appellate court ruling, its holding must be followed in all of the subsequent stages of the same litigation.”); *State v. Roy*, 147 Wn. App. 309, 314, 195 P.3d 967 (2008); RAP 2.5(c)(2). To date, Weber has filed a direct appeal, a PRP in 2009, a PRP in 2018, and a bevy of motions in superior court resulting in this appeal in 2019. “A petitioner cannot be allowed to institute appeal upon appeal and review upon review in forum after forum ad infinitum.” *In re Taylor*, 105 Wn.2d 683, 688, 717 P.2d 755 (1986) (citing *In re Hagler*, 97 Wn.2d 818, 826, 650 P.2d 1103) (1982)).

In *In re Weber II*, this Court correctly noted:

of this, he was aware of the witnesses who could have been called. *See* Defendant’s Motion for New Trial, CP 24 (discussing codefendants and other witnesses). Further, he was aware of the process to address these issues in either his direct appeal or his first PRP.

³ The trial court referenced this decision when denying Weber’s duplicate motions. RP 15.

Although Mr. Weber is correct that one of his strike offenses – the 2003 attempted murder conviction – was vacated, his argument ignores the fact that another strike offense was reinstated in its place, the 2003 first degree assault. . . . Since the SRA requires the sentencing court to sentence a persistent offender to life without release, Mr. Weber’s criminal history still requires the court to impose a sentence of life in prison, and accordingly he would receive the exact same sentence if we were to remand for resentencing. The sentence imposed is not unlawful.

Weber II, 36426-7-III, slip op. at 3-4. *In re Weber II* is now under review with the Washington Supreme Court. *In re Weber II*, 96749-1. Although under different circumstances defense’s arguments could warrant further discussion, such analysis is not appropriate in this case due to the law of the case doctrine. Therefore, the argument regarding the vacated conviction must fail.

b. Weber Was Not Due Additional Notice of His Mandatory Sentence if He Lost at Trial.

The next issue, which is raised for the first time on appeal, is whether the State was required to provide notice to Weber that he was facing a third most serious offense that would result in life in prison under the Persistent Offender Accountability Act, RCW 9.94A.570. It was not. “Because the POAA is a sentencing statute, [the defendant] had no constitutional right to pretrial notice that he faced the possibility of being sentenced as a persistent offender. . . . [P]retrial notice of a possible sentence under the POAA is not constitutionally mandated.” *State v.*

Crawford, 159 Wn.2d 86, 96, 147 P.3d 1288 (2006). While providing notice is a best practice, failure to do so does not violate due process. *Id.* Therefore, the additional grounds for relief fails as well.

VI. CONCLUSION

For the foregoing reasons, the State respectfully submits the Court should affirm the trial court's order denying the duplicative motions.

DATED: May 17, 2019

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'N. A. Holce', with a long, sweeping horizontal line extending to the right.

Nicholas A. Holce, WSBA #46576
Deputy Prosecuting Attorney

Certificate of Mailing or E-mailing

I certify that I sent a true and correct copy of the foregoing Brief of Respondent to the Attorney for Appellant:

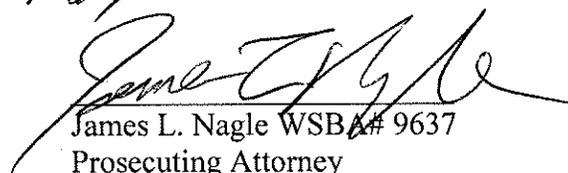
() in the U.S. Mail in an envelope, Postage Prepaid, addressed to:

Dennis W. Morgan
Attorney at Law
PO Box 1019
Republic, WA 99166-1019

(X) via this Court's e-service by prior agreement under GR 30(b)(4) to:

nodblspk@rcabletv.com

on the 17~~th~~ day of May, 2019.



James L. Nagle WSBA# 9637
Prosecuting Attorney
240 W. Alder, Suite 201
Walla Walla WA 99362-2807

Appendix A

State v. Charles Walter Weber

King County Superior Court cause no. 03-1-05510-3 SEA

Judgment and Sentence, March 27, 2007 and
Judgment and Sentence, August 15, 2015

CERTIFIED COPY

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

VUCSA OVER 21

CERTIFIED COPY TO COUNTY JAIL ~~MAR 27 2007~~

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 03-1-05510-3 SEA

Vs.

JUDGMENT AND SENTENCE
FELONY (Amended)
post-Appeal

Charles Walter Weber

Defendant,

I. HEARING

I.1 The defendant, the defendant's lawyer, Randall Hill, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 7-1-03 by jury * of

Count No.: I Crime: Attempted Murder in the Second Degree
RCW 9A.28.020 & 9A.32.050(1)(a) Crime Code: 10142
Date of Crime: 3-18-03 Incident No. _____

Count No.: II Crime: Assault in the First Degree
RCW 9A.26.011(1)(a) Crime Code: 01010
Date of Crime: 3-18-03 Incident No. _____

Count No.: III Crime: Unlawful Possession of a Firearm in the First Degree
RCW 9A.41.040(1)(a)(2)(A) Crime Code: 00531
Date of Crime: 3-18-03 Incident No. _____

Count No.: IV Crime: VUCSA: Possession w/ Intent to Deliver Cocaine
RCW 9A.56.401(a)(1)(I) Crime Code: 07320
Date of Crime: 3-18-03 Incident No. _____

[] Additional current offenses are attached in Appendix A

* Defendant pleaded guilty to count IV, on 6-11-03.

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) I, II RCW 9.94A.510(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) I, III, IV

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count <u>II</u>	9	<u>XII</u>	240-318	460	300-378	Life and/or \$ 50,000
Count <u>III</u>	7	<u>VII</u>	67-89		67-89	10 yrs and/or \$ 25,000
Count <u>IV</u>	7	<u>VIII</u>	77-102		77-102	10 yrs and/or \$ 25,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

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 D. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.
 The Court ~~dismisses~~ Count(s) I → Pursuant to double jeopardy principles Count I (Att. vacates Murder in the Second Degree) is vacated because count II (Assault in the First Degree) is the more serious crime.

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 ~~Date to be set.~~
 Defendant waives presence at future restitution hearing(s).
 ~~Restitution is not ordered.~~
 Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
 (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
 (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030);
 (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
 (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
 (RCW 9.94A.030)
 (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
 (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
 (h) \$ _____, Other costs for: _____

- 4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ ~~500.00~~ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.
 Court Clerk's trust fees are waived.
 Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____ m.

260 months/days on count II; 102 months/days on count IV; _____ months/day on count _____

89 months/days on count III; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts II, III, IV are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 60 months for count II

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-10-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 320 months. (260 + 60)

Credit is given for ~~30~~ days served days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6). *Department of Corrections*

4.5 NO CONTACT: For the maximum term of Life years, defendant shall have no contact with Gabriel Manzo-Vasquez

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

(c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:

- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
- Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
- Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
- Crime Against Person, RCW 9.94A.411 - 9 to 18 months
- Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

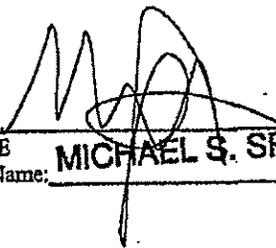
APPENDIX H for Community Custody conditions is attached and incorporated herein.
 APPENDIX J for sex offender registration is attached and incorporated herein.

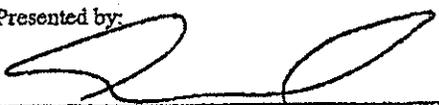
4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 3-27-07


 JUDGE MICHAEL S. SPEARMAN
 Print Name: _____

Presented by: 
 Deputy Prosecuting Attorney, WSBA# 27449
 Print Name: C. Andrew Colasurdo

Approved as to form: 
 Attorney for Defendant, WSBA # 6161
 Print Name: Randall Hall

FINGERPRINTS

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: +
DEFENDANT'S ADDRESS: 110 Dac

DATED: 3/23/07
[Signature]
JUDGE, KING COUNTY SUPERIOR COURT
MICHAEL S. SPEARMAN

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: [Signature]
DEPUTY CLERK

<p>CERTIFICATE</p> <p>I, _____, CLERK OF THIS COURT, CERTIFY THAT THE ABOVE IS A TRUE COPY OF THE JUDGEMENT AND SENTENCE IN THIS ACTION ON RECORD IN MY OFFICE. DATED: _____</p> <p>_____ CLERK</p> <p>BY: _____ DEPUTY CLERK</p>	<p>OFFENDER IDENTIFICATION</p> <p>S.I.D. NO. _____</p> <p>DOB: _____</p> <p>SEX: _____</p> <p>RACE: _____</p>
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 03-1-05510-3 SEA

vs.

JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

CHARLES WALTER WEBER

Defendant,

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
VUCSA: POSSESS METH	03/22/2002	ADULT	011112275	KING CO
ESCAPE FROM COMMUNITY CUSTODY.	03/22/2002	ADULT	011090140	KING CO
ASSAULT 2	03/18/1999	ADULT	981099671	KING CO
HARASSMENT	11/07/1997	ADULT	971071531	KING CO
TAKING MOTOR VEHICLE WITHOUT PERMISSION	04/12/1996	JUVENILE	968013449	KING CO
ATTEMPTED ROBBERY 1 XXXXXXXXXXXXXXXXXXXX	06/05/1992	JUVENILE	928000255	KING CO

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(S)):

Date: 0/8/03



JUDGE, KING COUNTY SUPERIOR COURT
MICHAEL S. SPEARMAN

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Charles Walter Weber

Defendant.

No. 03-1-05510-3 SEA

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 3-27-07

JUDGE, King County Superior Court

MICHAEL S. SPEARMAN

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Charles Walker Weber

Defendant,

No. 03-1-05510-3 SEA

JUDGMENT AND SENTENCE
APPENDIX H
COMMUNITY PLACEMENT OR
COMMUNITY CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

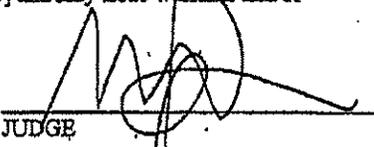
OTHER SPECIAL CONDITIONS:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall comply with the following crime-related prohibitions: _____
- _____
- _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 3-27-03


JUDGE
MICHAEL S. SPEARMAN

I BARBARA MINER Clerk of the Superior Court of the State of Washington for King County do hereby certify that this copy is a true and perfect transcript of said original as it appears on file and of record in my office and of the whole thereof IN TESTIMONY WHEREOF I have affixed this seal of said Superior Court at my office at Seattle on this date JUL 12 2018



BARBARA MINER Superior Court Clerk

By J. Willers
Deputy Clerk

**CERTIFIED
COPY**

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

DOC
WARRANT OF TRANSFER ISSUED
AUG 15 2003

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

CHARLES WALTER WEBER

Defendant,

No. 03-1-05510-3 SEA

**JUDGMENT AND SENTENCE
FELONY**

I. HEARING

1.1 The defendant, the defendant's lawyer, RANDALL HALL, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

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

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 07/01/2003 by jury verdict (Counts I - III) and on 06/11/2003 by guilty plea (Count IV) of:

Count No.: I Crime: ATTEMPTED MURDER IN THE SECOND DEGREE *
RCW 9A.28.020 & 9A.32.050 (1) (a) Crime Code: 10142
Date of Crime: 03/18/2003 Incident No. _____

Count No.: II Crime: ASSAULT IN THE FIRST DEGREE *
RCW 9A.36.011 (1) (a) Crime Code: 01010
Date of Crime: 03/18/2003 Incident No. _____

Count No.: III Crime: UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE
RCW 9A.10.40 (1) (a) (2) (a) Crime Code: 00531
Date of Crime: 03/18/2003 Incident No. _____

Count No.: IV Crime: VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT:
POSSESS WITH INTENT TO MANUFACTURE OR DELIVER COCAINE
RCW 69.50.401 (a) (1) (I) Crime Code: 07320
Date of Crime: 03/18/2003 Incident No. _____

PRESENTENCING STATEMENT & INFORMATION ATTACHED

[] Additional current offenses are attached in Appendix A

* Pursuant to double jeopardy principles count II is vacated.

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) I & II RCW 9.94A.510(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) I, III, IV

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	8	XII	240 TO 318 240 TO 318 <u>192.75 - 267.75</u>	+60 MONTHS	300 TO 378 <u>252.75 to 327.75</u>	LIFE AND/OR \$50,000
Count III	67	VII	67 TO 89 67 TO 89 <u>67 TO 89</u>		67 TO 89 <u>67 TO 89</u>	10 YRS AND/OR \$20,000
Count IV	67	VII	67 TO 89 67 TO 89 <u>67 TO 89</u>		67 TO 89 <u>67 TO 89</u>	10 YRS AND/OR \$25,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

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 D. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.
 The Court ~~Dismisses~~ Count(s) II pursuant to double jeopardy principles
vacate

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500 + Rest. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from the date of sentence or release from confinement to assure payment of financial obligations.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____ m.

230 months/days on count I; 89 months/days on count IV; _____ months/day on count _____
89 months/days on count III; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts I, III, IV are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 60 months for count I

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-1-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 290 months.

Credit is given for 143 days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of Life years, defendant shall have no contact with Gabriel Manzo Vasquez

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
 - Sex Offense, RCW 9.94A.030(38) - 36 to 48 months ~~when not sentenced under RCW 9.94A.712~~
 - Serious Violent Offense, RCW 9.94A.030(37) 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

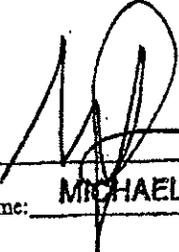
- APPENDIX H for Community Custody conditions is attached and incorporated herein.
- APPENDIX J for sex offender registration is attached and incorporated herein.

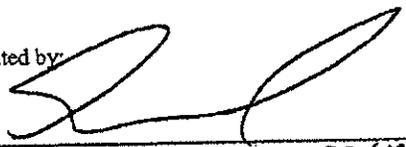
4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

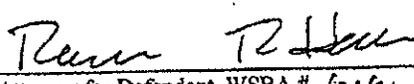
4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 8/8/03


 JUDGE
 Print Name: MICHAEL S. SPEARMAN

Presented by: 
 Deputy Prosecuting Attorney, WSBA# 27449
 Print Name: C. Andrew Colvard

Approved as to form:

 Attorney for Defendant, WSBA # 6161
 Print Name: RANDALL HALL

FINGERPRINTS

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Charles Weber
DEFENDANT'S ADDRESS: C/O DOC

CHARLES WALTER WEBER

DATED: 8/8/03

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

BY: Barbara Miner
DEPUTY CLERK

JUDGE, KING COUNTY SUPERIOR COURT

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO.
DOB: OCTOBER 26, 1978
SEX: M
RACE: W

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

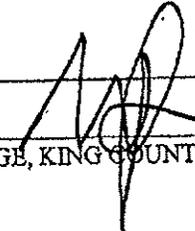
STATE OF WASHINGTON,)	
)	
	)	Plaintiff,
	)	No. 03-1-05510-3 SEA
vs.)	
	)	JUDGMENT AND SENTENCE,
	)	(FELONY) - APPENDIX B,
CHARLES WALTER WEBER	)	CRIMINAL HISTORY
)	
	)	Defendant,

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
VUCSA: POSSESS METH	03/22/2002	ADULT	011112275	KING CO
ESCAPE FROM COMMUNITY CUSTODY	03/22/2002	ADULT	011090140	KING CO
ASSAULT 2	03/18/1999	ADULT	981099671	KING CO
HARASSMENT	11/07/1997	ADULT	971071531	KING CO
TAKING MOTOR VEHICLE WITHOUT PERMISSION	04/12/1996	JUVENILE	968013449	KING CO
ATTEMPTED ROBBERY 1 (Control did not count)	06/05/1992	JUVENILE	928000255	KING CO

The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 0/8/03



 JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
 vs.)
 CHARLES WALTER WEBER)
 Defendant,)

No. 03-1-05510-3 SEA
APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

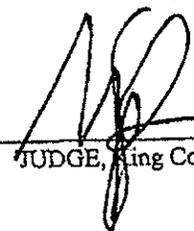
(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 8/8/03



JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 03-1-05510-3 SEA
)	
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
CHARLES WALTER WEBER	)	COMMUNITY PLACEMENT OR
	)	COMMUNITY CUSTODY
Defendant,)	

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

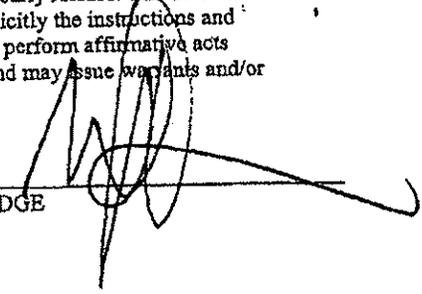
- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall comply with the following crime-related prohibitions: _____
- _____
- _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 8/8/03

JUDGE



I BARBARA MINER Clerk of the Superior Court of the State of Washington for King County do hereby certify that this copy is a true and perfect transcript of said original as it appears on file and of record in my office and of the whole thereof IN TESTIMONY WHEREOF I have affixed this seal of said Superior Court at my office at Seattle on this date JUL 12 2018



BARBARA MINER Superior Court Clerk
By J. Wilcox
Deputy Clerk

Appendix B

In the Matter of the Personal Restraint of Weber,

No. 27530-2-III, Order Denying Personal Restraint Petition
Court of Appeals, Div. III, filed July 2, 2009

No. 83398-2, Ruling Denying Review
Supreme Court, filed October 16, 2009

No. 27530-2-III
PRP of Weber

In this timely petition, Mr. Weber again argues that he had ineffective assistance of trial counsel. This court will not consider an issue that was raised and rejected on appeal unless the interests of justice require relitigation of that issue. *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 719, 16 P.3d 1 (2001); *In re Pers. Restraint of Taylor*, 105 Wn.2d 683, 687-88, 717 P.3d 755 (1986). Mr. Weber contends he raises a new and distinct legal basis for granting relief: he asserts that if counsel had advised him that consent was not a defense to a prison assault and that self-defense was negated by his admission during trial that he struck the first blow, he would have taken the State's plea offer to charge him with a lesser crime. Because this ground for ineffective assistance of counsel was not raised on appeal, it is properly raised in this petition. *Taylor*, 105 Wn.2d at 688.

To prevail, Mr. Weber must show either an error of constitutional magnitude that caused actual prejudice or a nonconstitutional error that caused a complete miscarriage of justice. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). He may not rely on conclusory allegations, but must show with a preponderance of the evidence that the error caused him prejudice. *Id.*

Ineffective assistance of counsel is an error of constitutional magnitude. *State v. Davis*, 141 Wn.2d 798, 860-61, 10 P.3d 977 (2000). To prove ineffective assistance of counsel, Mr. Weber must show with a preponderance of the evidence that his counsel's performance was deficient and that this deficiency prejudiced the defense. *Strickland v.*

No. 27530-2-III
PRP of Weber

Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Counsel's performance is presumed reasonable. *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). When counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as the basis for a claim of ineffective assistance. *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991), *cert. denied*, 506 U.S. 856 (1992).

Mr. Weber contends trial counsel failed to warn him of various consequences: in particular, that he should not admit on the witness stand that he threw the first punch and that consent is no defense against a charge of assault in prison. If he had known these consequences, he argues, he would have agreed to plead guilty to third degree assault.

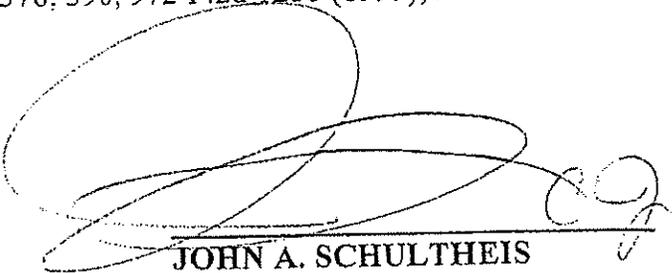
But trial counsel's pursuit of self-defense and consent as defenses to the second degree assault charge was a reasonable trial strategy. Although Mr. Weber admitted he threw the first punch, he claimed that the other inmate charged into his cell with the intent to fight. Under those circumstances, landing the first blow might be viewed as a reasonable way to avoid injury. *See State v. Graves*, 97 Wn. App. 55, 62, 982 P.2d 627 (1999) (self-defense requires evidence of a good faith belief in the necessity of force) and *State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997) (the degree of force used in self-defense is the degree a reasonable person would find necessary under the circumstances). And this court noted in *Weber*, 137 Wn. App. at 859, that consent was traditionally considered a defense to assault. This court established new precedent in Washington by holding that consent is not a defense to second degree assault between

No. 27530-2-III
PRP of Weber

two incarcerated people. *Id.* at 860. Defense counsel reasonably relied on traditional consent cases and did not anticipate the ruling in *Weber*.

A criminal defendant has a constitutional right to effective counsel, but does not have a constitutional right to successful assistance of counsel. *State v. Adams*, 91 Wn.2d 86, 89, 586 P.2d 1168 (1978); *State v. Garcia*, 45 Wn. App. 132, 141, 724 P.2d 412 (1986). Mr. Weber's trial counsel was not successful, but he was effective. Because Mr. Weber fails to show prejudice caused by constitutional error, his petition is dismissed.¹ RAP 16.11(b). The court also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

DATED: July 2, 2009



JOHN A. SCHULTHEIS
CHIEF JUDGE

¹ Mr. Weber's appendix of affidavits from witnesses does not help him. Most of them simply support the theory of consent that was addressed and rejected on appeal. The victim's affidavit, which recants his trial testimony and asserts that he—not Mr. Weber—threw the first punch, contradicts Mr. Weber's own testimony and therefore is insufficient to show prejudice.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
SUPREME COURT
STATE OF WASHINGTON
09 OCT 16 PM 2:33
BY RONALD R. SPRINGER
CLERK

In re the Personal Restraint of
CHARLES WALTER WEBER,
Petitioner.

NO. 83398-2
RULING DENYING REVIEW

Inmate Charles Weber was convicted of second degree assault against another inmate. Because the conviction constituted Mr. Weber's third "strike," he was sentenced to life without the possibility of early release. Mr. Weber's judgment and sentence was affirmed on direct appeal. Mr. Weber then filed a personal restraint petition in Division Three of the Court of Appeals, which the chief judge dismissed. Mr. Weber now seeks this court's review. RAP 16.14(c); RAP 13.5A(a)(1).

On direct appeal Mr. Weber argued that defense counsel was ineffective in not investigating witnesses who he claimed would have supported his assertion that the assault victim was a willing participant in the fight resulting in his conviction. The Court of Appeals rejected this claim, holding that consent is not a valid defense to second degree assault involving two incarcerated people. *State v. Weber*, 137 Wn. App. 852, 860, 155 P.3d 947 (2007), *review denied*, 163 Wn.2d 1001 (2008). In his personal restraint petition, Mr. Weber claims that defense counsel was ineffective in failing to inform him that consent was not a viable defense, and in failing to warn him that it would jeopardize his self-defense theory if he testified that he threw the first punch. Mr. Weber claims he would have accepted an offer to plead guilty to third degree assault had he been warned of these consequences.

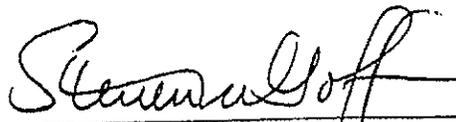
569/1103

Defense counsel cannot be faulted for failing to recognize that consent was not a viable defense at the time of trial. *Weber* was the first decision to hold that consent is not a defense to assaulting another prisoner. According to Mr. Weber, counsel did not proffer a consent defense in any event. The gravamen of his ineffectiveness claim on direct appeal was that defense counsel did not pursue such a theory. The decision in *Weber* foreclosed that claim. Mr. Weber's argument on this point is unpersuasive.

Mr. Weber's testimony that he threw the first punch did not necessarily negate self-defense, since Mr. Weber's primary theory was that the victim charged into his cell intending to fight. Throwing the first punch is not inconsistent with the use of reasonable force to prevent injury. See *State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997). Trial counsel thus had tactical reasons for basing Mr. Weber's defense on that theory. See *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996) (tactical and strategic decisions will not support ineffectiveness claim).

Mr. Weber offers a number of witness affidavits in support of his petition, including the victim's recantation. But the affidavits support the untenable theory that the victim entered the fray voluntarily and thus consented to the assault. And the victim recantation is highly dubious because it contradicts Mr. Weber's claim that he, and not the victim, threw the first punch. The affidavits are insufficient to establish prejudice arising from the claimed ineffectiveness of counsel. See *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004).

The motion for discretionary review is denied.


COMMISSIONER

Appendix C

In the Matter of the Personal Restraint of Weber,

No. 36426-7-III, slip opinion
Court of Appeals, Div. III, filed January 4, 2019

No. 96749-1, Commissioner Ruling
Supreme Court, filed April 4, 2019

FILED
Jan 04, 2019
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint	)	No. 36426-7-III
of:)	
)	
CHARLES WALTER WEBER,	)	ORDER DISMISSING PERSONAL
	)	RESTRAINT PETITION
)	
Petitioner.)	

Charles Walter Weber seeks relief from restraint imposed for his 2005 Walla Walla County conviction for second degree assault. The sentencing court found that Mr. Weber was a persistent offender and sentenced him to life without the possibility of parole. Mr. Weber did not appeal the judgment and sentence, which became final on the date it was filed with the superior court clerk: April 15, 2005. RCW 10.73.090(3)(a).

Since Mr. Weber filed this petition more than one year after the judgment and sentence became final, it is untimely under RCW 10.73.090(1) unless the judgment and sentence is invalid on its face, the court lacked competent jurisdiction over the matter, or the petition falls within one of the exceptions set forth in RCW 10.73.100(1)-(6).

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Mr. Weber claims his sentence is facially invalid and that the sentence imposed was in excess of the court's jurisdiction under RCW 10.73.100(5). Specifically, he claims that one of the prior convictions the court relied on to find that Mr. Weber was a persistent offender was subsequently vacated, and accordingly the court erred by sentencing him to a life sentence. He asks the court to restore his original sentencing release date of May 12, 2028.

Under the Persistent Offender Accountability Act, RCW 9.94A.570, a persistent offender must be sentenced to life imprisonment without the possibility of parole – the statute grants no discretion to judges where an offender is deemed to be a persistent offender. *State v. Crawford*, 159 Wn.2d 86, 101, 147 P.3d 1288 (2006). Depending on the type of crime committed, persistent offenders are informally classified as either “three strikes” or “two strikes” offenders (which does not apply here). For a defendant to be a “three strikes” persistent offender, the defendant must: (i) be convicted of a “most serious offense,” (ii) have previously been convicted, on at least two separate occasions, of most serious offenses, and (iii) at least one of the prior convictions must have occurred before the commission of any other most serious offenses. RCW 9.94A.030(38)(a)(i)-(ii). As relevant here, “most serious offenses” include all class A felonies and second degree assault. RCW 9.94A.030(33)(a)-(b).

At the sentencing hearing, the Walla Walla superior court found that Mr. Weber's criminal history included a 1999 King County conviction for second degree assault and a

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2003 King County conviction for attempted second degree murder. The court held that Mr. Weber's 2005 offense of second degree assault constituted a most serious offense, and that he had at least two prior most serious offenses, at least one of which occurred before the commission of the other most serious offense for which Mr. Weber was previously convicted. The court accordingly sentenced Mr. Weber to life imprisonment as a persistent offender in April 2005.

Division One of this court subsequently vacated Mr. Weber's 2003 conviction for attempted murder in June 2005. *State v. Weber*, 127 Wn. App. 879, 112 P.3d 1287 (2005). However, the court reversed the trial court's vacation of Mr. Weber's first degree assault conviction (which the trial court vacated on double jeopardy grounds) and remanded for resentencing. The Washington Supreme Court subsequently affirmed Division One, and remanded for resentencing. *State v. Weber*, 159 Wn.2d 252, 149 P.3d 646 (2006).

Although Mr. Weber is correct that one of his strike offenses – the 2003 attempted murder conviction – was vacated, his argument ignores the fact that another strike offense was reinstated in its place, the 2003 first degree assault. Accordingly, Mr. Weber still qualifies as a persistent offender under RCW 9.94A.030(38): he was convicted of a most serious offense with respect to the 2005 second degree assault, he was convicted of two prior most serious offenses: second degree assault and first degree assault, and at least one of the prior convictions occurred before the commission of any other most serious

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offenses. Since the SRA requires the sentencing court to sentence a persistent offender to life without release, Mr. Weber's criminal record still requires the court to impose a sentence of life in prison, and accordingly he would receive the exact same sentence if we were to remand for resentencing. The sentence imposed is not unlawful.

Mr. Weber has failed to demonstrate an arguable basis for relief in law or in fact, and his petition is dismissed as frivolous. *In re Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015); RAP 16.11(b).



REBECCA L. PENNELL
ACTING CHIEF JUDGE

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A.C.J. ORDER FACT SHEET
PERSONAL RESTRAINT PETITIONS

Case Name: *In re PRP of Weber*

Case Number: 36426-7-III

1. TRIAL COURT INFORMATION:

SUPERIOR COURT: Walla Walla County no. 041005342

Judgment/Order being reviewed: J&S

Judge Signing: Schacht

Date Filed: 4/15/2005

2. SUPERIOR COURT INFORMATION

Is further action required by the superior court?

YES

NO

RP
Judge's Initials

FILED
APR - 4 2019
WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

CHARLES WALTER WEBER,

Petitioner.

No. 9 6 7 4 9 - 1

Court of Appeals No. 36426-7-III

RULING

Charles Walter Weber moved in Walla Walla County Superior Court for relief from a persistent offender life sentence imposed on his 2005 conviction for second degree assault. He pointed out that one of his “strike” convictions had been subsequently vacated on appeal, and he contended that the vacation rendered his 2005 judgment and sentence facially invalid under RCW 10.73.090. *See State v. Weber*, 127 Wn. App. 879, 882, 112 P.3d 1287, 1289 (2005), *aff’d*, 159 Wn.2d 252, 149 P.3d 646 (2006). The superior court transferred the petition to Division Three of the Court of Appeals for treatment as a personal restraint petition. CrR 7.8(c). The acting chief judge dismissed the petition as frivolous. RAP 16.11(b). Mr. Weber now seeks this court’s discretionary review.

The acting chief judge ordered dismissal in part on the basis of her conclusion that another strike offense had been reinstated in place of the vacated

conviction: a 2003 conviction for first degree assault. *See Weber*, 159 Wn.2d at 279 (remanding for resentencing). It in fact appears that is the case, but the judgment and sentence arising out of resentencing was not made part of the record here. The State has not yet responded to the personal restraint petition, and it would be helpful to understand the State's position on Mr. Weber's claims, particularly as to the existence of a judgment and sentence conclusively establishing that his 2003 first degree assault conviction was reinstated. *See In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 799-800, 272 P.3d 209 (2012) (discussing which documents may be considered to determine whether a judgment and sentence is "valid on its face" under RCW 10.73.090(1)). Accordingly, the State through the Walla Walla County Prosecuting Attorney is designated as the respondent and is directed to answer the motion for discretionary review no later than June 3, 2019. Mr. Weber may, but is not required to, file a reply no later than July 3, 2019.


COMMISSIONER

April 4th, 2019

WALLA WALLA COUNTY PROSECUTING ATTORNEY

May 17, 2019 - 12:22 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
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Appellate Court Case Title: State of Washington v. Charles Walter Weber
Superior Court Case Number: 04-1-00534-2

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