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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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CASE# 35212-5-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION TWO

STATE OF WASHINGTON,)
Respondent)
vs.)
THOMAS WS RICHEY,)
Petitioner)

PETITIONER'S REPLY BRIEF

ISSUES PERTAINING TO REPLY

- I. RESPONDENTS FLOG A DEAD HORSE IN ORDER TO TRIVIALIZE PETITIONER'S PLEADINGS.
- II. THE RESPONDENTS VERY OWN ARGUMENTS REVEAL THAT NO FACTUAL BASIS EXISTED IN WHICH TO SUPPORT THE ELEMENT OF PREMEDITATION IN MR RICHEY'S CASE.
- III. RESPONDENTS ARE WRONG IN ASSERTING THAT FUAMAILA IS THE GUIDING CASE THAT AFFECTS MR RICHEY.
- IV. MR RICHEY SHOULD NOT BE REMANDED TO THE SUPERIOR COURT TO AMEND HIS JUDGMENT.
- V. THE REMAINDER OF MR RICHEY'S CLAIMS ARE EXEMPT FROM THE ONE YEAR TIME BAR.

I. RESPONDENTS FLOG A DEAD HORSE IN ORDER TO TRIVIALIZE PETITIONER'S PLEADINGS.

The respondents try to trivialize petitioner's pleadings by attempting to convince this court that Mr Richey's sole motivation is to wrangle a transfer to a Scottish prison. This is a horse the respondents have previously flogged to death.

Mr Richey does not deny harboring a desire to return to his homeland, no less than an American in a Scottish prison desires to return to the United States. However, Mr Richey has never made demands nor threats to achieve this aim as the respondents falsely claim. Mr Richey did offer to drop his legal challenges in the US in exchange for a prison transfer under the treaty, but Mr Richey intended to raise the important issues now before this court in the International Court of Justice. Litigants in the ICJ are assigned legal representation. Under the US legal system, petitioners are not appointed representation and, frankly, pro-se litigation is a scary proposition. A pro-se litigant must traverse a difficult road laden with procedural pitfalls devised to catch the unwary.

In the respondents Response, they attempt to shove Mr Richey into such a procedural pitfall. They incorrectly claim that he has previously repeatedly raised the same issues that are now before this court, and that these issues should now be barred.

In 1991, Mr Richey filed the only PRP that challenged his criminal restraint. However, the issues were not heard nor considered because the PRP was dismissed as 'untimely filed.' Dismissal of issues does

not bar bringing the issues in a subsequent petition providing said issues were not determined on their merits. See PR of Hankerson, 149 Wn.2d 695 (2003); PR of Stenson, 150 Wn.2d 207 (2003). A Certificate has been filed in Mr Richey's case, pursuant to RCW 10.73.140, that certifies the issues he has raised have not previously been heard, considered, nor ruled upon, but were dismissed as untimely.

Mr Richey's other PRPs challenged prison infraction hearing decisions and therefore have no bearing on the issues before this court. Mr Richey's appeal, currently pending review by this court, also has no bearing on the immediate issues. The appeal is strictly confined to the issue of whether Mr Richey's direct appeal should be reinstated because the Superior Court admitted it failed to follow the law in advising Mr Richey of his appellate rights.

II. THE RESPONDENTS VERY OWN ARGUMENT REVEAL THAT NO FACTUAL BASIS EXISTED IN WHICH TO SUPPORT THE ELEMENT OF PREMEDITATION IN MR RICHEY'S CASE.

Respondents admit that Mr Richey pled guilty to a nonexistent crime, but they also state that he pled to the lawful crime of attempted intentional murder. See Response, page-7, line-1 and 21; page-8, line-7; page-10, line-6; page-11, footnote.

To support the argument, the respondents assert that there is a sufficient factual basis to support the element of attempted intentional murder. They direct this court to their exhibit at their Appendix C,

"Stipulation to Real Facts." See footnote on page-11 of STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION. The Real Facts state that Mr Richey entered the Military TV and Stereo Store "to purchase a television set," and it goes on to state that Mr Richey shot both store employees after becoming upset over the hidden cost of a television set he was purchasing.

It is certainly true that attempted intentional murder could be inferred by the Real Facts described in Appendix C. However, Mr Richey was never charged with attempted intentional murder, which is actually an element of second degree murder.

The respondents misguided arguments affirm and support exactly what Mr Richey has contended all along. No factual basis exists in his case to support the element of premeditation. As the respondents very own arguments clearly show, facts might exist to support the element of intentional attempted murder, but not premeditation. Premeditation is an element of 1^o Murder that is distinct from intent. See State v. Brooks, 97 Wn.2d 873 (1982). Premeditation and intent are separate elements. See State v. Bingham, 105 Wn.2d 820 (1986).

III. RESPONDENTS ARE WRONG IN ASSERTING THAT FUAMAILA IS THE GUIDING CASE THAT AFFECTS MR RICHEY.

The respondents argue that Mr Richey's case is similar to the case of In re PRP of Fuamaila, 131 Wn.App 108 (2006), in which the Court of Appeals held that where there are two or more alternative ways to commit a crime, it is permissible to charge both alternatives in the

same count and "[a] defendant does not have the right to plead guilty to just one of the alternative means (citing Bowerman). However, a trial court still must find a factual basis to support each element of a crime. See In re PRP of Keene, 95 Wn.2d 203, 210 (1980); Washington v. Powell, 29 Wn.App 163 (1981); In re Barr, 102 Wn.2d 265 (1984); CrR 4.2(d).

Mr Richey's case is not similar to Fuamaila for that crucial requirement. No factual basis exists to support the element of premeditation in Mr Richey's case. The Fuamaila decision regarded the question of whether a defendant can be charged with alternative means of a crime. This point is not in dispute here. But Fuamaila was charged and convicted of alternate means of a crime; therefore, although one alternate means was invalid, his conviction for the valid means still stood. Not so in Mr Richey's case where he was charged with alternate means but convicted of only one means. The Judgment and Sentence clearly states that the trial court specifically found Mr Richey guilty of only one means; RCW 9A.32.030(1)(c)+020, which is an invalid crime.

The only question in Mr Richey's case then is whether his Judgment and Sentence is a clerical error or a judicial error? The guiding case is therefore not Fuamaila as the respondents incorrectly claim. It is Presidential Estate Apartment Association v. Barret, 129 Wn.2d 320 (1996) (involving civil rule counterpart to CrR 7.8(a)). Under Presidential, if the court didn't state its intent on the record, the error is not a correctable error.

The respondents failed to address this crucial question raised by the presiding authority in Presidential, which is telling. On the

contrary, they claim that underlying documents may not be used to assess whether a judgment and sentence is valid on its face. But this argument belies Presidential and In the PRP of Hemenway, 147 Wn.2d 529 (2002). The documents considered as part of a plea agreement can be used to determine the facial validity of the judgment and sentence. Id. at 532-33.

Presumably, the respondents avoided referring to the underlying documents in Mr Richey's case for the obvious reason that those documents do not support their claim that Mr Richey's Judgment and Sentence contains a clerical error. The documents support the fact that Count II in Mr Richey's Judgment and Sentence is a judicial error.

The elements described in Mr Richey's plea agreement, to which he pled guilty, that were charged in the Amended Information, did not describe premeditation. The Real Facts at respondent's Appendix C, completely denies premeditation. Mr Richey's statement in his plea agreement completely denies premeditation. And the trial court record at sentencing shows that the State resolved to drop the element of premeditation because it was "in substantial question" and that the trial court adopted this resolution. As a result, the trial court never questioned Mr Richey over the element of premeditation. See attached Trial Record.

Mr Richey's Judgment & Sentence clearly shows that the trial court specifically found him guilty of only RCW 9A.32.030(1)(c) +9A.28.020, attempted felony murder. This renders the Judgment and Sentence invalid on its face. It has long been recognized that a Judgment and Sentence

based on a conviction of a nonexistent crime entitles one to relief on collateral review. E.g. Ex Parte Lombardi, 13 Wn.2d 1 (1942).

To support their claim that Mr Richey's Judgment and Sentence is a clerical error, respondents argue that Mr Richey's case is similar to In re PRP of Mayer, 128 Wn.App. 694 (2005), in which Mayer's Amended Information and Judgment and Sentence contained errors that convicted him of more sever crimes than that described in Mayer's plea agreement. But there is no similarity connecting Mayer's and Mr Richey's case.

Mayer's plea agreement and his Amended Information described the elements of second degree murder to which he was pleading guilty, and a factual basis existed on the record to support this lesser crime. Also, the court did not state its intent to find Mayer guilty of the more sever crimes, therefore, an obvious clerical error was evident.

Again, the respondents are misguided. The relevant case to determine whether an error is clerical or judicial is Presidential. In Mr Richey's case, the state proposed a resolution to drop the element of premeditation and the court adopted that resolution. In Mr Richey's plea agreement, the elements to which he was pleading guilty do not describe premeditation. Mr Richey's plea statement completely denies premeditation. Finally, the Real Facts, upon which Mr Richey's conviction rests, completely denies premeditation. There was no factual basis for the court to convict Mr Richey of the element of premeditation and the record clearly supports this. Inexplicably, the element of premeditation remained in the Amended Information in Count II, and this was a Scrivener's error. "A prosecutor's Information must be based on his

belief there is good ground to support the allegation." See CrR 2.1; CR11; State v. Cameron, 30 Wn.App. 229 (1991). The prosecutor stated in the trial record that a "substantial question" existed whether they could prove premeditation in Mr Richey's case.

IV. MR. RICHEY SHOULD NOT BE REMANDED TO THE SUPERIOR COURT
TO AMEND HIS JUDGMENT

The respondents suggest that Mr Richey's case be remanded to the Superior Court so that Count II of his Judgment and Sentence be changed to RCW 9A.30.32(1)(a)+9A.28.020, attempted premeditated murder. They argue that a clerical error requires such a correction. But a clerical error is not what occurred in this case. The State Supreme Court has held that the trial court must state its intent on the record at the original sentencing hearing. If it didn't do that, the error is not correctable. See Presidential, Supra, at 324-25.

The US Supreme Court has held that it is a fundamental due process violation to convict a person for a crime without proof of all the elements of the crime. See Fiore v. White, 531 US 225, 228-29 (2001). But this is what the respondents are asking. The court cannot go back, rethink the case, and enter an amended Judgment that does not find support in the trial record.

The proper remedy is to vacate Count II and remand for resentencing, or allow Mr Richey to withdraw his plea of guilty. Due process requires this.

V. THE REMAINDER OF MR RICHEY'S CLAIMS ARE EXEMPT FROM THE
ONE YEAR TIME BAR

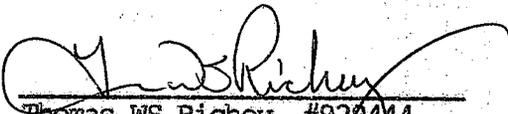
The respondents claim, without argument, that the remainder of Mr Richey's claims are time barred, or were previously rejected in PRP No. 15638-5-II.

The remaining claims, as argued in Mr Richey's Petition, render his Judgment and Sentence facially invalid, and in accordance with RCW 10.73.090, these claims are exempt from the one year time bar.

None of the claims have previously before been heard, considered, nor ruled upon by this court. They should now be heard.

Dated this 6th day of November 2006.

Respectfully submitted,


Thomas WS Richey, #928444
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

cl. file

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE
FILED

STATE OF WASHINGTON
COUNTY CLERK'S OFFICE

STATE OF WASHINGTON, A.M. JUN 24 1993 P.M.

Plaintiff,

PIERCE COUNTY, WASHINGTON
TED R. HUNT, COUNTY CLERK
DEPUTY

vs.

NO. 86-1-00658-5

THOMAS WILLIAM SINCLAIR RICHEY,

Defendant.

ORIGINAL

3 JUN 24 1993

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 23rd day of April, 1987 the
above-captioned cause came on duly for hearing before the
HONORABLE D. GARY STEINER, Superior Court Judge in and for
the County of Pierce, State of Washington; the following
proceedings were had, to-wit:

APPEARANCES

FOR THE PLAINTIFF: CARL HULTMAN
Deputy Prosecutor

FOR THE DEFENDANT: LARRY NICHOLS
Attorney at Law

Reported by
Angela McDougall, CSR, RPR

MORNING SESSION

APRIL 23, 1987

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MR. HULTMAN: Good morning, Your Honor. The matter before the Court this morning is the matter of the State of Washington versus Thomas William Sinclair Richey; 86-1-00568-5. Mr. Richey is present in court with his attorney Larry Nichols. I'm Carl Hultman representing the State of Washington.

Your Honor, we are before the Court this morning having reached an agreement; that is, the State with the defendant and his attorney as to the resolution of this case. We last were before the Court when the State indicated that it had reviewed this case in light of the further material that had been supplied during the course of investigation and pendency of the charge in this case; the defendant having been charged with aggravated murder in the first degree and the State initially having sought the death penalty in this case. At that last proceeding, the State indicated to the Court its desire to withdraw that notice of intention to seek the death penalty and simply proceed on the charge of aggravated murder in the first degree and a joint count of attempted murder in the first degree.

1 Since that time, we have engaged in extensive
2 discussion and negotiations with the defense. The
3 State and the defense have now arrived at a
4 resolution of this case which we would ask the Court
5 to review and approve and proceed with. That
6 resolution is as follows: The State is prepared to
7 file an Amended Information which now reduces -- the
8 order of charges when this was originally charged,
9 for reasons I'm not aware of, Count One was charged
10 as attempted murder and Count Two was charged as
11 aggravated murder in the first degree.

12 In the Amended Information, as well as
13 reducing the murder charge to one of murder in the
14 first degree, not aggravated murder in the first
15 degree, I have reordered the charges in the Amended
16 Information so that murder in the first degree,
17 which is actually felony murder in the first degree,
18 becomes Count One and attempted murder in the first
19 degree becomes Count Two.

20 I would ask the Court to accept this plea
21 resolution and I will describe it in general terms
22 for the Court's determination as to whether the
23 resolution appears to be in the interest of justice
24 pursuant to 9.94A.090 and the standards set out in
25 9.94A.450.

1 The State is reducing the murder charges to
2 felony murder in the first degree, leaving Count Two
3 the same as originally charged, attempted murder in
4 the first degree. The State and the defense have
5 entered into a stipulation and agreement that the
6 Court should exercise its discretionary powers under
7 the Sentencing Reform Act and impose an exceptional
8 sentence in this case, one of 65 years or translated
9 into months, 780 months, I believe, under the
10 Sentencing Reform Act.

11 The State feels, and the defense I think
12 would join in this, that this plea resolution is in
13 the interest of justice for a variety of reasons.
14 Paragraph No. 1, the elements that we are removing
15 from the charge by amending it to felony murder in
16 the first degree with respect to the victim,
17 Arlene Cosner, is the element of premeditation. The
18 State feels at least a substantial issue has been
19 raised by evidence presented both by the
20 investigation of the crime itself and subsequent
21 thereto by the product of psychiatric and
22 psychological evaluations which went into the
23 psychiatric and mental health history of the
24 defendant as well as the problems of actually the
25 influence of intoxication by way of drug usage on

1 the day in question.

2 We feel that this element, which would be a
3 necessary element to support our charge of
4 aggravated murder in the first degree, is in
5 substantial question. That a plea resolution such
6 as this is in the interest of justice. Number one,
7 it does provide the Court with the opportunity to
8 impose a substantial punishment measured against the
9 circumstances of this crime, measured against other
10 crimes of a similar type. It is a fair punishment
11 which both victims in this case, Mr. Scott Sanford,
12 who was the victim of Count Two of the attempted
13 murder in the first degree is present in court this
14 morning. Mr. Sanford and his family are here.

15 The plea resolution with respect to
16 Count One, the murder charge, has been approved and
17 endorsed by Mr. Robert Cosner who lives out of state
18 in Minnesota who is a widower and survivor of
19 Arlene Cosner the victim of Count One. He has been
20 kept aware of all the plea negotiations and the work
21 that I had been doing on this case.

22 He was contacted by me personally as we
23 selected this morning's date and time to resolve
24 this case and reminded again that this is what we
25 are going to do. He expressed his approval of it.

1 I further reminded him that under the
2 Victim's Rights Act he had a right to be present to
3 present in writing or by other means any information
4 he wished the Court to consider. He did not wish to
5 present any further information. He simply wishes
6 to be advised as to the fact that the case was
7 concluded after we resolve it this morning. He did
8 not wish to be present and did not wish to make any
9 statement. He does approve of the resolution.

10 The State feels that those are important
11 factors in the Court's decision, but they are not
12 the only ones the Court should consider. The Court
13 should consider some of the other factors the State
14 has in terms of dealing with this question of
15 premeditation of which I have already mentioned a
16 couple of them.

17 In addition to that, during this taking of
18 the statement of Mr. Richey, Detective Tom Lawrence
19 asked how his military training might have had
20 something to do with what occurred in this
21 situation. He then went into a discussion about his
22 training as an Army Ranger and how it may have
23 created in him a certain response to resort to
24 violence in terms of situations of stress while
25 trying to make sure with Mr. Lawrence that he didn't

1 believe his Ranger training in any way encouraged
2 his response in this situation particularly. That
3 is, they didn't teach him to shoot store clerks
4 because of his misunderstanding about the price of
5 the purchase he's making.

6 He still made some indication and there is
7 some indication that Ranger training is a very
8 intensive kind of training where people are, in
9 fact, taught to become very use to the idea of using
10 violence as responses to situations where they find
11 themselves or feel themselves to be in jeopardy.
12 That kind of training went into some of the
13 psychiatric -- or the awareness of that kind of
14 training went into some of the psychiatric opinions.
15 I might say that out of five total psychiatric and
16 psychological evaluations that were done on
17 Mr. Richey, three of the ones that were done for the
18 defense indicated substantial question in the
19 psychiatrist's mind as to whether or not he had a
20 sufficient mental capacity at the time of the crime.
21 Given all of his background, his family history of
22 violence, the training he'd had, drug ingestion,
23 there was a substantial question in their mind
24 whether or not he had the mental capacity to form a
25 premeditated intent and whether or not that capacity

1 was diminished by these kinds of factors.

2 Other factors that we feel the Court should
3 consider and that we have considered are
4 statistically and historically there is far more
5 permanence by a case that's resolved by a guilty
6 plea than there is one resolved by trial. There are
7 far more opportunities for problems to occur, errors
8 to occur that may result in the setting aside of a
9 verdict and sentence in a case that's gone to trial.
10 So there are very practical reasons then for
11 resolving a case such as this in this fashion.

12 There are other factors that include the
13 stress to be put on victims and witnesses who may
14 have to testify at a trial, under the stresses of
15 that trial, and that concern of the State focuses
16 both on the victim's involvement for Scott Sanford
17 and on the widower involved. Also, Detective
18 Thomas Lawrence, who the Court may be aware,
19 underwent brain surgery this last fall and has
20 medically retired from the Sheriff's Office. He has
21 new problems both with memory retention and with
22 being a witness in a courtroom.

23 These kind of factors are matters that the
24 State feels the Court should consider as the State
25 has in arriving at a decision in light of the

1 stipulated facts, in light of the factors admitted
2 by the defense, and in light of the fact the defense
3 itself is agreeing to this exceptional sentence
4 upward as a matter of plea resolution. Then the
5 totality of this plea resolution is in the terms of
6 9.94A.090 and the interest of justice.

7 THE COURT: Let me recount this in rather
8 ordinary language to make sure we are on the same
9 wavelength and that the people in the audience
10 understand.

11 To start off with, it started as a first
12 degree aggravated murder charge and the prosecutor,
13 on the basis of the information it received,
14 withdrew the request for the death penalty, feeling
15 that the prosecution may not be able to prove the
16 absence of mitigating circumstances for death. That
17 is step number one.

18 Is that correct?

19 MR. HULTMAN: That already occurred.

20 THE COURT: That is within the province of
21 the prosecutor to withdraw the request for the death
22 penalty.

23 The second stage is the question of an
24 agreement or reduction to first degree felony murder
25 from aggravated murder, reserving the right to life

1 without parole.

2 The first degree aggravated murder, life
3 without parole, requires proof beyond a reasonable
4 doubt of premeditation. On the basis of all the
5 information you have received, you feel that there
6 may be some serious question as to proof in that
7 matter and the question of how the jury would rule
8 in that matter.

9 Is that substantially correct?

10 MR. HULTMAN: Yes. The State doesn't concede
11 the question, obviously, because we feel it is one
12 of the considerations the Court should make in terms
13 of the exceptional sentence. But we feel it is a
14 substantial question that, given all the other
15 factors and put into the mix of all of this,
16 justifies the resolution that we are proposing
17 today. Yes.

18 THE COURT: This plea of guilty will be to
19 first degree felony murder and attempted murder.
20 The standard range for those offenses is in the area
21 of 30 years with them to run concurrently. The
22 agreement that you have is that that would be
23 enhanced by finding of an exceptional sentence for
24 aggravating circumstances within the Court's
25 discretion and in the interest of justice pursuant

1 to the matters that you have recited for a
2 recommended sentence of 65 years.

3 Is that right?

4 MR. HULTMAN: Yes, Your Honor.

5 THE COURT: The defendant is how old?

6 MR. HULTMAN: Just 19. He was 18 at the time
7 the crime was committed.

8 THE COURT: 65 and 19, he would be age 84 at
9 the time of release.

10 MR. HULTMAN: That is absent consideration of
11 good time. Good time consideration mixed into that,
12 that could reduce the possible release date
13 substantially to something around the age of 60.

14 THE COURT: If he displays exemplary behavior
15 while in prison for the 40 odd some years, he can
16 conceivably be released at 61 or 62. In the absence
17 of that, it could be as late as age 84.

18 Is that correct?

19 MR. HULTMAN: That is correct.

20 MR. NICHOLS: We agree.

21 THE COURT: Let me hear from Mr. Sanford for
22 just one minute before I take the plea.

23 Mr. Sanford, do you want to come forward,
24 sir?

25 Good morning, sir.

1 MR. SANFORD: Good morning.

2 THE COURT: I don't want to put you through a
3 lot because I imagine this is difficult for you.
4 Your full name is Scott J. Sanford. You were one of
5 the victims in this matter?

6 MR. SANFORD: Yes.

7 THE COURT: I assume that you've had a full
8 opportunity to discuss this with the prosecutor and
9 think about it with your family and all that.

10 MR. SANFORD: I have.

11 THE COURT: You have heard what the
12 prosecutor and the defense counsel intend to do. In
13 a way, this is your case. You apparently have no
14 objections. In fact, you are in favor of the
15 resolution that the prosecutor is indicating.

16 Is that right?

17 MR. SANFORD: That's correct.

18 THE COURT: Thank you very much.

19 You have submitted an Amended Information
20 which the Court accepts subject to the plea of
21 guilty. You can proceed with the taking of the plea
22 if you wish, Mr. Nichols.

23 MR. NICHOLS: We have a copy of the Amended
24 Information. We would waive the reading. I have
25 discussed this with Thomas, my client. There's been

1 no change in Count Two. It is an attempted murder
2 first. We agree with the amendment to murder in the
3 first degree during the course of the robbery.

4 I have gone over the statement of plea of
5 guilty last night with my client in the
6 Pierce County Jail. He has filled out Statement 18
7 in his own handwriting. He's been candid with me
8 and with the police throughout this entire
9 investigation and, in fact, gave a statement after
10 he was apprehended as to what took place that day.
11 He's also signed on the bottom of the last page a
12 waiver of the right to a presentence report.

13 I provided the Court with a copy of the
14 psychological investigations, which I would request
15 be for your information purposes only, and that I
16 retrieve those afterward. I don't want them to be
17 made part of the record so that everybody in the
18 county has an opportunity to read and review them.
19 In those psychological reports, you will see that
20 there was some question as to whether he
21 premeditated this because of his background, his
22 violence, his alcoholic parents, his ingestion of
23 drugs and LSD and sniffing glue at age 12 and so
24 forth. We'll go into that as we get to it.

25 THE COURT: Let's address the waiver of the

1 presentence report. Are both counsel and defendant
2 in agreement that there be no presentence? You feel
3 that all the information provided is substantial or
4 more than any presentence investigation. Is that
5 the picture?

6 MR. NICHOLS: That's correct.

7 MR. HULTMAN: State is satisfied that it
8 wouldn't in any way assist the Court in the
9 sentencing.

10 THE COURT: Your full name is Thomas William
11 Sinclair Richey. Is that correct?

12 DEFENDANT RICHEY: Yes.

13 THE COURT: You have a right to remain silent
14 today. Do you understand that?

15 DEFENDANT RICHEY: Yes.

16 THE COURT: You have heard your attorney and
17 the prosecutor explain what has happened here today.
18 You understand what is going on?

19 DEFENDANT RICHEY: Yes, I do.

20 THE COURT: Do you read and write the English
21 language?

22 DEFENDANT RICHEY: Yes.

23 THE COURT: What is your education?

24 DEFENDANT RICHEY: High school. That's all.

25 THE COURT: You are not presently under the

1 influence of any medication or drugs or anything
2 which would alter your understanding of the
3 proceedings today?

4 DEFENDANT RICHEY: No, I'm not.

5 THE COURT: The first page of the Statement
6 of Defendant on Plea of Guilty indicates the Amended
7 Information to the count of murder in the first
8 degree or felony murder and attempted murder in the
9 first degree. The elements and the maximum sentence
10 are contained on page one. Do you thoroughly
11 understand that?

12 DEFENDANT RICHEY: Yes, yes, I do.

13 THE COURT: Have you had a chance to go over
14 with your attorney each and every sentence, each and
15 every paragraph of the Statement of Defendant on
16 Plea of Guilty?

17 DEFENDANT RICHEY: Yes, I have.

18 THE COURT: Do you understand it?

19 DEFENDANT RICHEY: Yes.

20 THE COURT: At the top of page three,
21 paragraph 6, and at the bottom of page two, A
22 through G, are a number of rights you lose or give
23 up when you plead guilty. Do you understand all
24 those rights that you give up?

25 DEFENDANT RICHEY: Yes.

1 THE COURT: Paragraph 11 is the
2 recommendation of the prosecutor and the apparent
3 recommendation with respect to the exceptional
4 sentence. Do you understand that and agree to it?

5 DEFENDANT RICHEY: Yes.

6 THE COURT: Paragraph 18 indicates, I
7 believe, in your printing what took place that gave
8 rise to these charges.

9 DEFENDANT RICHEY: Yes.

10 THE COURT: Do you understand that?

11 DEFENDANT RICHEY: Yes.

12 THE COURT: Is that your printing or your
13 attorney's?

14 DEFENDANT RICHEY: That's mine.

15 THE COURT: That is your printing?

16 DEFENDANT RICHEY: Yes, it is.

17 THE COURT: Is that a true and accurate
18 statement of what took place?

19 DEFENDANT RICHEY: Yes.

20 THE COURT: Are you entering these pleas
21 freely and voluntarily?

22 DEFENDANT RICHEY: Yes, I am.

23 THE COURT: Are you acting under force or
24 duress of any kind?

25 DEFENDANT RICHEY: No.

1 THE COURT: Has anyone made you any promises
2 to induce you to enter either of these pleas?

3 DEFENDANT RICHEY: No.

4 THE COURT: What is your plea to each of the
5 counts as indicated by the Amended Information?

6 DEFENDANT RICHEY: Guilty.

7 THE COURT: Guilty of each?

8 DEFENDANT RICHEY: Yes.

9 THE COURT: And both?

10 DEFENDANT RICHEY: Yes.

11 THE COURT: Accepting the Statement of
12 Defendant on Plea of Guilty as to both counts on the
13 23rd day of April 1987 in the presence of the
14 defendant and his attorney. I am signing the
15 Statement of Defendant on Plea of Guilty.

16 Mr. Hultman.

17 MR. HULTMAN: Your Honor, as we have
18 indicated, then it is the mutual recommendation,
19 stipulation and agreement of the parties that the
20 Court impose a sentence today for each count. I
21 think that's the way it probably should be that each
22 count get a 65 year maximum term, or 65 year term
23 running concurrently with each other as an
24 exceptional sentence upward.

25 In support of that exceptional sentence

1 upward, Your Honor, we will ask the Court to make
2 Findings of Fact and Conclusions of Law for this
3 exceptional sentence. I did provide Your Honor with
4 copies of that pleading yesterday with Mr. Nichols'
5 agreement. That the Court make those findings at
6 this sentence; that the defendant has entered pleas;
7 that the standard sentence range is insufficient to
8 adequately punish this defendant basically is what
9 these findings say. That there was deliberate
10 cruelty, number one, evidenced by shooting two
11 people directly in the head at short range because
12 of the vulnerability of that particular organ of the
13 body; and number two, that the concurrent sentencing
14 aspect of the Sentencing Reform Act, while they may
15 operate adequately for most cases, are inadequate in
16 this case to correctly express the public's response
17 and punishment terms as to what has happened here.

18 Those are the reasons for supporting the
19 exceptional sentence upward that could be argued
20 even if the defense wasn't in agreement with this.
21 This was an adversary proceeding we were undertaking
22 this morning. However, there's been an added
23 stipulated agreement that the Court may consider the
24 real facts of this case. Included in these real
25 facts are the fact that these victims were escorted

1 from one point to another in the store where this
2 incident occurred at gunpoint. An appreciable and
3 measurable amount of time necessarily elapsed when
4 they were at gunpoint and before the fatal shots or
5 the fatal shot was fired into Ms. Cosner, and
6 luckily, non-fatal shot was fired into Mr. Sanford
7 thereby supporting the Court's consideration. We
8 felt that the evidence could have, in fact,
9 supported a finding that the crime was premeditated
10 murder. Therefore, urging the Court to consider
11 real facts in support of a higher charge than it is
12 pled to in support of an exceptional sentence to
13 that end.

14 I would ask the Court to admit the stipulated
15 Findings of Fact both as Appendix B part one and
16 part two and to enter the Findings of Fact and
17 Conclusions of Law and impose the sentence of 65
18 years.

19 THE COURT: I see the signature of
20 Thomas William Sinclair Richey on the stipulation to
21 sentence in excess of the sentencing range.
22 Mr. Richey, is that your signature?

23 DEFENDANT RICHEY: Yes.

24 THE COURT: Mr. Nichols.

25 MR. NICHOLS: Throughout the course of over a

1 year in dealing with Thomas in this case and
2 discussing with the prosecutor, it was always our
3 opinion and still is that this case was filed by a
4 previous administration for political reasons and
5 should have never been a death penalty case. The
6 facts didn't support the filing of that.
7 Fortunately, there's light at the end of the tunnel
8 for Pierce County. This prosecutor presently, John
9 Ladenburg, agreed there are some psychological --
10 this man has a serious problem. I am not going to
11 spend a lot of time on it because you've read it.
12 He's from a broken home and his parents are
13 alcoholics. He was beaten severely which resulted
14 in him before he was 18 harboring more aggression
15 than probably any of us have or have seen in a long
16 time. The only way he could control the aggression
17 was through the use of LSD, sniffing glue, and
18 getting whatever he can get his hands on as far as
19 controlling himself.

20 When he had those, he felt he was somewhat
21 under control. The trouble was he built up a
22 resistance. There would have been testimony that he
23 had ingested two hits of LSD on the day of this
24 particular case.

25 We are not offering that as an excuse.

1 There's a lot of people that come from broken homes
2 that don't shoot people in TV and stereo shops, but
3 it is an explanation as to what happened. People
4 want to know what happened. Whether a jury would
5 have bought a defense of diminished capacity was, in
6 my opinion and the opinion of other lawyers that
7 know what they are doing in these cases, a
8 substantial risk. The average juror is older and
9 don't understand the effect of drugs and how these
10 people age 10 to 18 get involved in this kind of
11 thing.

12 It was my opinion that there was a good
13 probability, having done cases similar to this
14 murder case, that a jury would have closed their
15 eyes to what actually Thomas was doing and opened
16 their eyes to the fact that the woman was young and
17 has left a widower with a 20 month old baby. I
18 didn't have a lot of faith in the defense of
19 diminished capacity and neither did my client.

20 We felt that when the death penalty was
21 removed properly and in good faith and by the
22 prosecutor, this should have been filed as an
23 aggravated case originally. We thought the chance
24 was great that there was a possibility of
25 conviction. The jury would have probably not even

1 paid any attention to a diminished capacity defense
2 because of the way these victims were shot and the
3 age of the woman.

4 Because of that, I told Tom and explained to
5 him that if we could beat the aggravated or the
6 issue of premeditation, the best we could hope for
7 in this case is precisely what he is pleading guilty
8 to and that's felony murder during the course of the
9 robbery. He did ask the victim at one stage prior
10 to shooting him where the money was. But before the
11 victim was able to respond, there were two shots
12 fired instantaneously.

13 It should be stated clearly on the record
14 that there's no evidence of any type of execution
15 killing in this. An execution killing in my opinion
16 is similar to the Wame (phonetic) or what have you.
17 None of these victims were tied up.

18 In our opinion and looking at the autopsy,
19 they were both standing. They weren't being forced.
20 They weren't begging for their lives. The original
21 probable cause statement put in the execution style
22 killing. Fortunately, the prosecutor has not
23 mentioned that word or indicated any type of killing
24 of that nature in any of these proceedings today.
25 There was also little, if any, time that elapsed

1 between the two shots. He has no understanding of.
2 what actually happened in his mental process at the
3 time that he shot those people. Fortunately, one
4 survived.

5 What we are getting at is the standard range
6 of only 30 years. I don't know of a judge in my
7 experience -- he had to rely on my experience and we
8 were able to establish a relation of trust, which we
9 did. He did rely on me in that I don't think a
10 judge would have given him 30 years, which is the
11 top range, had I been able to beat the aggravated
12 murder down to felony murder. I was convinced that
13 they'd have found a way to make an exceptional
14 sentence. There was plenty of aggravating factors
15 which the prosecutor has put in this stipulated
16 agreement.

17 The other motivating factor was the quality
18 of life. Tom has never told me or has ever told
19 anybody else that he did not shoot these people.
20 He's always faced what he's done. He knows he has
21 to spend part of his life in prison. Probably all
22 of it. None of us will probably be alive by the
23 time Tom is even considered for release. So he has
24 every day for the rest of his life to remind himself
25 of why he's sitting in Monroe or wherever he happens

1 to be. But the quality of life in a felony murder
2 is substantially different than the quality of life
3 in an aggravated murder.

4 Aggravated murderer goes to Monroe and they
5 don't do anything but wither away in a maximum
6 security cell block. A felony murderer has a chance
7 to get moved to different institutions in a little
8 bit of a less restrictive setting, and after a
9 substantial period of time has gone by, probably
10 many years in his case, until he proves himself a
11 model prisoner, he has better opportunities. He can
12 make something of himself. He may not ever see the
13 outside, and maybe he doesn't belong in the
14 civilized world, but there are some things that I
15 have discovered in Tom that are worth saving.

16 He was only 18 when this took place. He's
17 not a candidate to be hung. Hanging accomplishes
18 nothing. Twenty years from now when they drag him
19 out of the cell and put a noose around his neck, who
20 cares. It is not a deterrent to anybody in my
21 estimation. So this I think is a fair and just
22 resolution to this case. He's prepared to suffer
23 whatever punishment you impose. It is true he could
24 work hard and he could get out in 40 years from
25 today, if he's lucky, which has him 60 years old.

1. And probably by then there wouldn't be a whole lot
2 of aggression left if he's even alive. Most people
3 don't last that long in the Department of
4 Corrections.

5 THE COURT: Mr. Thomas William
6 Sinclair Richey, is there anything you'd like to say
7 before the Court imposes sentence?

8 DEFENDANT RICHEY: I would like to apologize
9 to Scott Sanford and his family for what I done.
10 That's about it.

11 THE COURT: The record should reflect that
12 the Court finds that in the interest of justice
13 pursuant to the statute that the resolution as
14 requested by counsel is adopted. The Court adopts
15 the Findings of Fact and Conclusions of Law for the
16 exceptional sentence, specifically finding that the
17 aggravated circumstance as specifically set forth
18 and others indicated by counsel are sufficient for
19 an aggravated and exceptional sentence upward.

20 I don't think there's much to say about this
21 case. This case is so tragic it just defies
22 imagination. One of the most difficult jobs a judge
23 has to do is to even sit through this kind of
24 proceeding under these circumstances.

25 I suppose there is a question as to whether

1 the jury might find that this is a life without
2 parole and then might find that this is a first
3 degree felony murder situation. And in view of all
4 of the evidence that the prosecutor thinks it has
5 and the defense has which indicates the standard
6 range would be 30 years, 30 years is not enough. I
7 have a duty to the public and to other people to
8 make sure that no one is ever shot again by this
9 gentleman. I hope he rehabilitates himself. The
10 compelling factor in my mind is punishment and
11 precluding the possibility, even the slightest
12 possibility of this happening again. I guess on the
13 basis of what I've heard, there's a likelihood he
14 would not come out of prison until he's 84 and the
15 soonest he can come out of prison would be 61 or 62
16 under exceptional behavior and extraordinary
17 behavior. I think Mr. Nichols has indicated
18 correctly that it is difficult in prison for that
19 many years under the circumstances. Therefore, the
20 measure of safety to the community is very, very
21 high, which gives me some assurance that the
22 sentence is fair and just.

23 Upon your plea of guilty, it is the judgment
24 of the Court that you are guilty. As to each count,
25 you are sentenced to the Department of Corrections

1 for a period of 65 years, the same to run
2 concurrently with each other. I'm signing in open
3 court the Findings of Fact and Conclusions of Law
4 for exceptional sentence on the 23rd day of April
5 1987.

6 Filing the stipulated sentence executed by
7 the defendant. Filing the Amended Information.
8 Executing the Warrant of Commitment to the
9 Department of Corrections for a period of 65 years
10 running concurrently.

11 MR. HULTMAN: Ask the Court to impose the
12 standard financial assessments. Whether or not
13 he'll be able to pay them or ever pay them, we still
14 feel there's no reason to do anything less than we
15 would with any other defendant in this regard. We
16 are not asking for restitution. There are
17 substantial medical bills. There's no reasonable
18 likelihood that they will ever be paid by him, but
19 we ask that the \$70 cost normally imposed be imposed
20 here; that the \$70 victim penalty assessment which
21 is mandatory be imposed; and that the fines of \$365
22 be imposed.

23 THE COURT: That motion is granted.

24 Handing to all counsel all of the papers and
25 all of the reports and would they please have the

1. appropriate ones filed.

2. MR. HULTMAN: Thank you, Your Honor. I would
3. hand to the Court the Judgment and Sentence which
4. Mr. Nichols and I have reviewed which I have
5. completed.

6. THE COURT: Executing the Judgment and
7. Sentence in open court in the presence of the
8. defendant and his attorney for commitment of 65
9. years concurrently.

10. (Matter concluded.)

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6 NOV 2006

CASE NO. 35212-5-II

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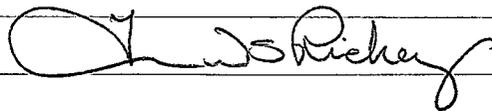
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THOMAS W.S. RICHEY #929444, PRO-SE
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CLALLAM BAY WA 98326

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CASE# 35212-5-II

06 NOV -7 PM 12: 25

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

BY: _____
DEPUTY

STATE OF WASHINGTON,)
Respondent)
vs.)
THOMAS WS RICHEY,)
Petitioner)

CERTIFICATE OF SERVICE
BY MAILING

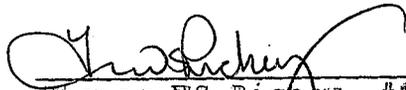
I, Thomas WS Richey, Petitioner, hereby certify under the penalty of perjury that I mailed a Petitioner's Reply, via the US mail, to:

P. Grace Kingman, Asst Pros Atty
Office of the prosecuting Attorney
930 Tacoma Avenue South Room 946
Tacoma WA. 98402.

I swear that the foregoing is true.

Dated this 6th day of ^{NOVEMBER} ~~October~~ 2006.

Respectfully submitted,



Thomas WS Richey, #929444
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

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