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STATE OF WASHINGTON

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NO. 80070-7

SUPREME COURT FOR THE STATE OF WASHINGTON

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

NO. 35212-5-II

IN RE THE PERSONAL RESTRAINT

OF

THOMAS W.S. RICHEY,

Petitioner.

FILED
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STATE OF WASHINGTON

SUPPLEMENTAL BRIEF IN SUPPORT OF
PERSONAL RESTRAINT PETITION

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ORIGINAL

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I. SUPPLEMENTAL FACTUAL BACKGROUND RELEVANT TO PRP

Mr. Richey was accused of entering a store to buy a television set, and then of shooting two store employees at close range – killing one and maiming the other. He was originally charged by Information dated March 31, 1986, with one count of attempted first-degree murder and one count of aggravated first-degree murder. The state sought the death penalty; a notice of special sentencing proceeding (the proceeding for determining whether death is the appropriate penalty) was filed.

It quickly became clear, however, that Mr. Richey was not the remorseless killer that the state originally pictured. Mitigation investigation revealed that Mr. Richey had grown up in a sad and abusive environment resulting in numerous psychological problems. The transcript of the sentencing hearing reveals that even the state agreed that Mr. Richey suffered from numerous psychological problems that mitigated his culpability. 4/23/87 VRP:4 (Appendix A). Indeed, the state acknowledged that Mr. Richey had ingested the drug LSD before he entered the store and fired his gun, and that he was suffering from its ill hallucinogenic effects while he was in the store, while he was trying to buy the television, and while he fired his gun. 4/23/87 VRP:4-7. The state further acknowledged that the combination of that drug, the abusive

upbringing, and his pre-existing psychological problems were exacerbated by his military training as an Army Ranger – training that contributed to his reflexive use of force upon feeling trapped. Id.

Because of these mitigating factors, the Pierce County Prosecutor moved to strike the notice of special sentencing proceeding and the Superior Court granted that motion. An Amended Information was filed on April 23, 1987, without the aggravated murder count. It is attached as Appendix B.

The Amended Information, however, charges not just felony murder in Count I, but also something that (as discussed below) is not a crime – *attempted felony murder* – in Count II. This Count II alleges that Mr. Richey committed or attempted robbery, and that, “in the course of or furtherance of said crime or in immediate flight therefrom,” he did not kill someone, but he *failed* to kill someone. Specifically, it charges that Mr. Richey “shot” victim Scott Jacob Sanford during a robbery and that Mr. Sanford lived, not died.

This charge, of committing or attempting robbery and of shooting (but not killing) Mr. Sanford during the course of that robbery, is the crime to which Mr. Richey pled guilty. Mr. Richey’s factual statement, contained in his Statement of Defendant on Plea of Guilty at paragraph 18, filed on April 24, 1987 (Appendix C, p. 5), confirms this.

The problem is that felony murder requires the commission of an underlying felony (such as robbery) *plus an accompanying death* during the course of that underlying felony. As we discuss below, where there is no resulting death, there is no felony murder. There is certainly a felony, and there may be an attempt to commit a murder, but there is no felony murder and there is no crime of attempted felony murder.

Mr. Richey pled guilty to this non-existent crime nevertheless.

II. SUPPLEMENTAL ARGUMENT: MR. RICHEY PLED GUILTY TO THE NON-EXISTENT CRIME OF ATTEMPTED FELONY MURDER. THIS IS IMPERMISSIBLE UNDER STATE STATUTORY LAW AND STATE AND FEDERAL CONSTITUTIONAL LAW.

A. Mr. Richey Pled Guilty to Attempted Felony Murder with No Resulting Death in Count II and This is a Non-Existent Crime.

Count II of the Amended Information, purporting to charge attempted felony murder, reads in relevant part:

... do accuse THOMAS WILLIAM SINCLAIR RICHEY of the crime of ATTEMPTED MURDER IN THE FIRST DEGREE, ... committed as follows:

That THOMAS WILLIAM SINCLAIR RICHEY, in Pierce County, Washington, on or about the 28th day of March, 1986, did unlawfully and feloniously with *premeditated intent to cause the death of another person, did shoot Scott Jacob Sanford, thereby attempting to cause the death of Scott Jacob Sanford, a human being, and/or while committing or attempting to commit the crime of Robbery in the First Degree, and in the course of or*

furtherance of said crime or in immediate flight therefrom, did shoot Scott Jacob Sanford, a human being, not a participant in such crime, thereby attempting to cause the death of Scott Jacob Sanford, contrary to RCW 9A.28.020 and 9A.32.030(1)(a)(c), and against the peace and dignity of the State of Washington.

Amended Information (Appendix B), Count II, page 2.

The emphasized material in this second count charges two different types of murder crimes in the same paragraph. The first one is an attempt (referring to the attempt statute, RCW 9A.28.020) to commit premeditated murder (per RCW 9A.32.030(1)(a)). Certainly, that *is* a crime in the state of Washington.

But that is not the crime to which Mr. Richey pled guilty. In fact, there is no factual basis for such a premeditated crime against Mr. Sanford in Mr. Richey's case. The Statement of Defendant on Plea of Guilty (Appendix C) contains in paragraph 18 the factual statement of the defendant. It completely *denies* any element of premeditated intent to kill – it states, instead, that Mr. Richey's sole intent was “to buy a TV” and that the shots were “instantaneous” [sic] rather than premeditated. That factual statement reads in full as follows:

On March 28th, 1986 I went into Military TV/Stereo store, *with the intent to buy a T.V. as I had tried to do in a previous store* that day. Prior to going into the store I had taken L.S.D. During the negotiations to buy the T.V. something clicked in my head, and I took Arlene Koestner to the back room and when I got there Scott Sandford was

already present. I asked him where the money was and then he turned around startling me. I then shot him once in the head then shot Arlene in the head. *Both shots were instantanious [sic].* On my way out of the store I took stereo equipment and a contract with my signature on it. This happened in Pierce County.

Appendix C, p. 5, ¶ 18 (emphasis added). There is nothing in here to support the element of premeditated intent to kill, which would be necessary to support a plea to attempted premeditated first-degree murder. In fact, this factual statement denies such premeditated intent.

Thus, Mr. Richey did not plead guilty to premeditated murder. He did not admit premeditation or even intent to kill.

The second half of the charge in Count II of the Amended Information charges something else. That second half of the charge, following the “and/or” reference, seems to be a charge of committing a felony but *failing* to commit a murder in the course of that felony – rather than of successfully committing a murder in the course of that felony. That portion of Count II states, “while committing or attempting to commit the crime of Robbery in the First Degree, and in the course of or furtherance of said crime or in immediate flight therefrom, did shoot Scott Jacob Sanford, a human being, not a participant in such crime, thereby *attempting to cause the death* of Scott Jacob Sanford, contrary to RCW 9A.28.020 and 9A.32.030(1)(a)(c).” Appendix B (emphasis added).

It is certainly true that attempted robbery, like completed robbery, can form the basis for a first-degree felony murder charge in Washington. RCW 9A.32.030(1)(c). But this charge goes further. It charges not just an attempted robbery, but also a resulting survival – not a resulting death; an attempted death.

No statute in Washington describes such a crime. Washington’s felony murder law allows a defendant to be convicted of a *murder* committed by another, provided that the defendant was sufficiently involved in a felony that led to the murder. RCW 9A.32.030(1)(c). The state can charge an attempt to commit robbery as the underlying crime. Id. In fact, the state is not required to prove any specific intent with regard to felony murder other than the intent required for the underlying crime, whether it be a completed or uncompleted attempted robbery. State v. Frazier, 99 Wn.2d 180, 192, 661 P.2d 126 (1983); State v. Gamboa, 38 Wn. App. 409, 685 P.2d 643 (1984).

But the consequence that must follow is “causes the death” of another. RCW 9A.32.030(1)(c). Not “attempts to cause the death.” This means an actual, though unintended, death.

Mr. Richey’s *pro se* PRP accurately explained that this interpretation – the fact that attempted felony murder is a non-existent crime – is supported by the specific intent language of the attempt statute, RCW 9A.08.020(1), as

well as by the decisions of other jurisdictions that have considered this question.¹

The only real question is whether this claim is cognizable now.

B. Following *Andress*² and *Hinton*³, a Guilty Plea to a Non-Existent Crime is Void and Must be Vacated Under State Law.

Attempted felony murder is a non-existent crime. Following In re *Andress*, 147 Wn.2d 602, and In re *Hinton*, 152 Wn.2d 853, a conviction of such a non-existent crime is void.

C. A Plea of Guilty to a Non-Existent Crime is Void and Must be Vacated Under State and Federal Constitutional Law.

A plea of guilty to a non-existent crime is void and must be vacated under state and federal constitutional law, also.

This is clear from the U.S. Supreme Court's recent decision in *Fiore v. White*, 531 U.S. 225, 121 S. Ct. 712, 148 L. Ed. 2d 629 (2001).

¹ See *State v. Briggs*, 218 Wis.2d 61, 66, 579 N.W.2d 783 (Wis. Ct. App. 1998); *State v. Kimbrough*, 924 S.W.2d 888, 892 (Tenn. 1996); *People v. Stephenson*, 30 P.3d 715 (Colo. Ct. App. 2000), cert. denied as improvidently granted, 2002 Colo. LEXIS 310 (Apr. 9, 2002); *State v. Burns*, 979 S.W.2d 276 (Tenn. 1998), cert. denied, 527 U.S. 1039 (1999); *State v. Lea*, 126 N.C. App. 440, 450, 485 S.E.2d 874 (N.C. App. 1997) (numerous supporting citations omitted).

² *In re the Personal Restraint of Andress*, 147 Wn.2d 602, 56 P.3d 981 (2002).

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

In Fiore, the defendant was convicted of operating a dump *without* a permit, on the theory that he *violated the terms of his permit*. Later, the Pennsylvania Supreme Court held in a different case that the State must prove the complete absence of a permit. The U.S. Supreme Court certified to Pennsylvania's high court the question of whether this subsequent decision announced a new rule of law, or whether it stated the law at the time of Fiore's offense. The Pennsylvania court answered that the element of complete absence of a permit had always been the law, so the U.S. Supreme Court ruled that conviction without proof of that element of the actual crime (when properly construed) violated the right to due process – and, under the due process clause of the U.S. Constitution, the conviction should be vacated.

The protection afforded by the due process clause of the Washington Constitution is largely co-extensive with the protection afforded by the due process clause of the U.S. Constitution. State v. Manussier, 129 Wn.2d 652, 679-80, 921 P.2d 473 (1996), cert. denied, 520 U.S. 1201 (1997). Hence, conviction of a non-existent crime violates the state constitution, also.

This result is consistent with the Ninth Circuit's decisions in Suniga v. Bunnell, 998 F.2d 664 (9th Cir. 1993) and Shackleford v. Hubbard, 234 F.3d 1072 (9th Cir. 2000), cert. denied, 534 U.S. 944

(2001), also. Both were California cases involving improper jury instructions on felony murder. In Suniga, the court said the underlying felony could be assault; in Shackleford, it was torture. But neither underlying felony was actually a predicate to felony murder under California law. In Suniga, the appellate court ruled that the instruction permitting conviction of the non-existent crime so infected the trial with unfairness that it violated the right to due process, citing Estelle v. McGuire, 502 U.S. 62, 112 S. Ct. 475, 480, 116 L. Ed. 2d 385 (1991). In Shackleford, the appellate court followed this reasoning of Suniga.

In sum, conviction of a non-existent crime does not just violate state statute and state law. It also violates the due process protections of the state and U.S. Constitutions.

D. The State Errs in Claiming that the “Successor” Bar of RCW 10.73.140 Applies Here.

The state has argued that RCW 10.73.140 bars Mr. Richey’s PRP because it is a successor PRP. As this Court has recognized, however, that bar applies only in the appellate court – it does not apply in the Washington Supreme Court. In re Johnson, 131 Wn.2d 558, 566, 933 P.2d 1019 (1997).

E. Neither the RAP 16.4(d) Nor the “Abuse of the Writ” Bars Apply Here, Either.

The bar on successor PRP’s of RAP 16.4(d) does not apply to this

case, either. RAP 16.4(d) applies only to a successor PRP raising a similar claim for relief, not to a PRP raising a new claim.⁴ The claim raised in this PRP is new; it was not contained in earlier PRP's.

In addition, Mr. Richey's prior PRP's were filed *pro se*. Thus, the judge-made bar against filing second or successor PRP's is also inapplicable; the "abuse of the writ doctrine" does not apply where the prior PRP's were filed *pro se*. In re Perkins, 143 Wn.2d 261, 265 n.5; In re Greening, 141 Wn.2d 687, 700; In re Stoudmire, 141 Wn.2d 342, 352, 5 P.3d 1240 (2000).

F. Following *Hinton*, it is Clear that the One-Year Time Bar Does Not Apply to Convictions of Non-Existent Crimes.

Under RCW 10.73.090, the one-year time limit on PRP's applies only "if the judgment and sentence is valid on its face." A judgment that

⁴ In re Stoudmire, 145 Wn.2d 258, 262-63, 36 P.3d 1005 (2001), amended (January 15, 2002) (RAP 16.4(d) bars consideration of a second PRP, absent good cause, only where it seeks "*similar relief*" to prior PRP); In re Greening, 141 Wn.2d 687, 699, 9 P.3d 206, 212 (2000) (citing Matter of Jeffries, 114 Wn.2d 485, 488-92, 789 P.2d 731 (1990)); In re the Personal Restraint of Haverty, 101 Wn.2d 498, 502-03, 681 P.2d 835 (1984) (following definition of "similar relief" in Sanders v. United States, 373 U.S. 1, 14, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963), successive petition could be dismissed under RAP 16.4(d) only where prior PRP had been denied on grounds previously heard and determined on merits); In re Personal Restraint of Perkins, 143 Wn.2d 261, 265 & n.4, 19 P.3d 1027 (2001) (reiterating that RAP 16.4(d)'s prohibition of successor petitions applies only to petitions seeking *similar relief*); id., 143 Wn.2d at 266, n.7 ("although lack of good cause is a valid basis for the Supreme Court to dismiss a successive PRP *where the same relief is sought* under RAP 16.4(d), where the petitioner raises a new issue, the only procedural bar at the Supreme Court level is abuse of the writ.") (citing Stoudmire, 141 Wn.2d at 352) (all emphasis added).

shows a conviction for a non-existent crime is not “valid on its face.” In re Hinton, 152 Wn.2d 853, 857-58.

The state has submitted a supplemental authority letter citing In re Stoudmire, 141 Wn.2d 342, 349, and In re Hankerson, 149 Wn.2d 695, 700, 72 P.3d 703 (2003). It seems that the state is citing these cases in an effort to convince this Court to dismiss Mr. Richey’s PRP as “mixed,” that is, as based upon both timely and time-barred claims.

The state misconstrues the rule established by those cases, though. The rule established by those cases is that if a PRP contains some claims that are timely under an exception to RCW 10.73.100, and some claims that are untimely because they do not fit within an exception to RCW 10.73.100, then the entire PRP should be dismissed because it contains a mixture of timely and untimely claims, under RCW 10.73.100.

But you do not get to RCW 10.73.100 at all, if the Judgment is not valid on its face. As the Stoudmire court itself explained, “If a petition is based on grounds not listed in RCW 10.73.100, the petition is subject to the one-year time bar of RCW 10.73.090 *unless it qualifies under the exceptions to the time bar in .090 itself.*” Stoudmire, 141 Wn.2d at 346 (emphasis added). To make this perfectly clear, the Stoudmire court later reiterated: “Acceptance of the State’s view, however, does not mean that mixed petitions are always entirely dismissed. Rather, RCW 10.73.100

indicates that a mixed petition is subject to the time limits of RCW 10.73.090. Some of Stoudmire's claims may still be considered if they fit under exceptions to the time bar contained in RCW 10.73.090 itself." Stoudmire, 141 Wn.2d at 349.

The key "exception[]" listed "in .090 itself" is that the Judgment is not valid on its face. The Stoudmire decision to which the state cites actually went on to hold that some of the claims listed in Stoudmire's PRP *did* fit within that .090 exception. This Court ruled that those claims – primarily the one concerning the statute of limitations – rendered the conviction invalid on its face, and dealt with those claims on the merits, despite the fact that there were other untimely claims in that same PRP! Stoudmire, 141 Wn.2d at 354-55.

Stoudmire and Hankerson thus do not undermine – but affirmatively support – Mr. Richey's claim that his PRP claim concerning his plea to a non-existent crime is completely exempt from the one-year time limit of RCW 10.73.090. That is also the holding of Hinton, 152 Wn.2d 853, 857-58, and the numerous authorities cited within.

G. **Following *Hemenway*⁵, it is Clear that this Court Can Examine Not Just the Judgment But Also the Guilty Plea Statement to Determine if the Judgment is Valid on Its Face.**

⁵ In re Personal Restraint of Hemenway, 147 Wn.2d 529, 55 P.3d 615 (2002).

Respondent also asserts that this Court cannot review the guilty plea statement – and perhaps cannot review anything but the Judgment itself – to determine whether the Judgment is valid on its face. Response, p. 10.

Actually, Mr. Richey wins even under that standard: the Judgment states that he pled guilty to “attempted murder in the first degree,” citing the following on the “RCW” blank line: “9A.32.030(1)(c) + .020.” Judgment, p. 1, paragraph 2. RCW 9A.32.020(1)(c) is the first-degree felony murder statute. RCW 9A.08.020 is the attempt statute – that is obviously what the reference to “RCW” “+” “.020” means; there is no other logical interpretation of the additional .020 statute. Mr. Richey’s key claim is that attempted felony murder is a non-existent crime, and there it is on the first page of the Judgment.

But that is not the applicable standard. For purposes of the RCW 10.73.090 facial invalidity issue, the “Judgment” includes not only the J&S. It also includes the guilty plea document. Hence, errors that are obvious from the face of the J&S plus the guilty plea are also exempt from the one-year time limit of RCW 10.73.090. In re Hemenway, 147 Wn.2d 529, 532-33 (judgment is invalid on its face when it “evidences the invalidity without further elaboration”; court can consider documents filed

as part of plea agreement in determining facial validity of judgment); In re Personal Restraint of Fumaila, 131 Wn. App. 908, 918, 131 P.3d 318 (2006) (citations omitted).

H. Following *Thompson*⁶, This Court Cannot Simply Replace an Invalid Statute With a Valid Statute.

Finally, the state claims that if Mr. Richey did plead to an invalid statute, then this Court should just remand to the trial court to replace that with a cite to a valid statute. Response, p. 9 (characterizing the error as “the incorrect statutory reference of the judgment and sentence”); *id.*, p. 10 (“The remedy for the incorrect statutory citation is to remand to the trial court for correction of the clerical/scrivener error in the judgment and sentence”).

But this Court cannot take a plea to an invalid crime and replace it with a plea to a valid crime.

This is clear this Court’s decision in In re Personal Restraint of Thompson, 141 Wn.2d 712. In that case, the defendant pled guilty to and was convicted of the crime of first-degree rape of a child. Unfortunately, that crime had not yet been enacted at the time of the alleged acts. Mr. Thompson therefore sought to vacate his plea by filing a personal restraint

⁶ In re Personal Restraint of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000).

petition well after the usual one-year deadline for filing such PRP's had passed.

This Court granted the PRP. It ruled that the one-year time period did not apply, because the conviction was invalid on its face – since it showed a plea to a statute that was not yet on the books at the time of the acts alleged.

This Court further ruled that Mr. Thompson did not waive his right to challenge the conviction, by pleading guilty.

Of critical importance to the state's contention that this Court can just replace an invalid conviction with a valid one, this Court continued that Mr. Thompson could *not* be declared guilty of another child-rape-like crime that was on the books at the time of the acts to which he pled guilty, even though the acts to which he admitted would have fit that existing crime, as well. This Court explained that Mr. Thompson could not be deemed guilty of that alternative crime, because it was not the crime he was charged with and not the crime he pled guilty to:

The State urges that Thompson be held to his bargain because he stipulated to conduct which would have given rise to criminal penalties under the former RCW 9A.44.070 (first degree statutory rape) as well as under RCW 9A.44.073 (first degree rape of a child), upon which the mistaken charge was based. ... If he is thought to be guilty under the former RCW 9A.44.070, his plea was not knowing and voluntary. Under Hews II [108 Wn.2d 579, 741 P.2d 983 (1987)] one of the requirements of a valid

plea is that the defendant be informed of the requisite elements of the crime charged. Hews II, 108 Wash.2d at 589, 741 P.2d 983. One of the elements of first degree statutory rape is that the victim be less than 11 years old (former RCW 9A.44.070); for first degree rape of a child the victim must be less than 12 years old. Also, the earlier statute requires the perpetrator to be over 13 years of age, whereas the later statute says instead that the perpetrator must be at least 24 months older than the victim and not married to the victim. Former RCW 9A.44.070; RCW 9A.44.073. Because Thompson pleaded guilty to first degree rape of a child, if held responsible for first degree statutory rape, he would not have been properly informed of the elements of that crime. *Thompson was not charged with, did not plead guilty to, and was not convicted of first degree statutory rape. Under these circumstances, Thompson cannot be held responsible for that offense.*

Thompson, 141 Wn.2d at 722-23.

This quote shows that in Thompson, there were several defects in the guilty plea preventing this Court from agreeing to find Mr. Thompson guilty of statutory rape: he was not charged with that crime, but with a different (and non-existent crime); he was not advised of the elements of that crime; and he did not plead guilty to that crime, even though he pled guilty to something really, really, close, that might have established a factual basis for the uncharged crimes.

Essentially all of those defects are present in Mr. Richey's case. He was charged with the non-existent crime of attempted first-degree felony murder. He was incorrectly advised of the elements of felony murder – and he could not be correctly advised of the elements of

attempted felony murder because they do not exist. See Statement of Defendant on Plea of Guilty, p. 1, ¶ 5 (Appendix C). He pled guilty, but not to attempted premeditated murder because he never admitted premeditated intent to kill and not to attempted felony murder because there was no dead body.

The state asserts that he pled guilty to something close, that is, to first-degree murder. That is not true, because he never admitted premeditated intent to kill. But even if he had, the state could not just substitute that crime for the invalid one. Under Thompson – and the authority upon which it relies for the rule that one cannot be convicted of a crime to which one does not plead guilty – a plea to something close, even something with almost identical elements, is not sufficient. The plea to the attempted felony murder charge therefore remains invalid.

III. CONCLUSION

For all of the foregoing reasons, the PRP should be granted.

DATED this 24th day of September, 2007.

Respectfully submitted,



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Thomas W.S. Richey

CERTIFICATE OF SERVICE

I certify that on the 24th day of September, 2007, a true and correct copy of the foregoing SUPPLEMENTAL BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION was served upon the following individuals by depositing same in the U.S. Mail, first-class, postage prepaid:

P. Grace Kingman
Pierce County Prosecutor's Office
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Washington Corrections Center
PO Box 900
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Sheryl Gordon McCloud

APPENDIX

A

Ch. file

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

STATE OF WASHINGTON, A.M. JUN 24 1987 P.M.

Plaintiff,

PIERCE COUNTY, WASHINGTON
TED RUIT, COUNTY CLERK
BY _____) DEPUTY

vs.

NO. 86-1-00658-5

THOMAS WILLIAM SINCLAIR RICHEY,)

Defendant.)

ORIGINAL

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

JUN 24 1987

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.)

11

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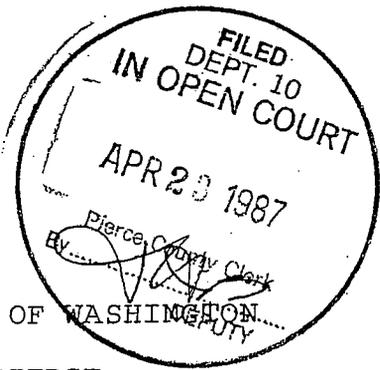
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24

25

APPENDIX

B



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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 THOMAS WILLIAM SINCLAIR RICHEY,)
)
)
 Defendant.)

NO. 86-1-00658-5
AMENDED
INFORMATION

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse THOMAS WILLIAM SINCLAIR RICHEY of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That THOMAS WILLIAM SINCLAIR RICHEY, in Pierce County, Washington, on or about the 28th day of March, 1986, did unlawfully and feloniously while committing or attempting to commit the crime of Robbery in the First Degree, and in the course of or furtherance of said crime or in immediate flight therefrom, shot Arlene Rae Koestner, a human being, not a participant in such crime, thereby causing the death of Arlene Rae Koestner, on or about the 29th day of March, 1986, contrary to RCW 9A.32.030(1)(c), and against the peace and dignity of the State of Washington.

COUNT II

1
2 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
3 accuse THOMAS WILLIAM SINCLAIR RICHEY of the crime of ATTEMPTED MURDER
4 IN THE FIRST DEGREE, a crime of the same or similar character, and/or
5 so closely connected in respect to time, place and occasion that it
6 would be difficult to separate proof of one charge from proof of the
7 others, committed as follows:

8 That THOMAS WILLIAM SINCLAIR RICHEY, in Pierce County,
9 Washington, on or about the 28th day of March, 1986, did unlawfully
10 and feloniously with premeditated intent to cause the death of another
11 person, did shoot Scott Jacob Sanford, thereby attempting to cause the
12 death of Scott Jacob Sanford, a human being, and/or while committing
13 or attempting to commit the crime of Robbery in the First Degree, and
14 in the course of or furtherance of said crime or in immediate flight
15 therefrom, did shoot Scott Jacob Sanford, a human being, not a
16 participant in such crime, thereby attempting to cause the death of
17 Scott Jacob Sanford, contrary to RCW 9A.28.020 and 9A.32.030(1)(a)(c),
18 and against the peace and dignity of the State of Washington.

19 DATED this 10th day of April, 1987.
20

21 JOHN W. LADENBURG

22 _____
23 PROSECUTING ATTORNEY IN AND FOR
24 SAID COUNTY AND STATE.

25 By: 
26 CARL T. HULTMAN
27 Deputy Prosecuting Attorney
28

AMENDED
INFORMATION - 2

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402
Telephone: 591-7400

APPENDIX

C

COURT OF THE STATE OF WASHINGTON

FOR PIERCE COUNTY

FILED

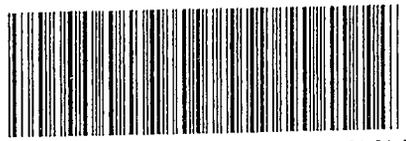
IN COUNTY CLERK'S OFFICE

A.M. APR 24 1987 P.

PIERCE COUNTY, WASHINGTON

6976 1/24-87 50.00

By [Signature]



86-1-00658-5 22428087 STDFG 01-21-05

STATE OF WASHINGTON,

Plaintiff,

vs.

THOMAS WILLIAM SINCLAIR RICHEY,

Defendant.

NO. 86-1-00658-5

STATEMENT OF DEFENDANT ON PLEA OF GUILTY (Felony)

1. My true name is Thomas William Sinclair Richey

2. My age is 19

3. I went through the 12 grade in school.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is:

LARRY NICHOLS

5. I have been informed and fully understand that I am charged with the crime(s) of _____

MURDER IN THE FIRST DEGREE, COUNT I and ATTEMPTED MURDER IN THE FIRST DEGREE, COUNT II

The elements of the crime(s) are: COUNT I: that on or about March 28, 1986, in Pierce County, Wa., Arlene Rae Koestner was killed; the defendant was committing or attempting to commit the crime of Robbery in the First Degree; the defendant caused the death of Arlene Koestner in the cause of and in furtherance of such crime. She was not a participant in said crime. COUNT II: that on or about March 28, 1986, in Pierce County, Wa., the defendant did shoot Scott Jacob Sanford attempting to cause the death of Scott Jacob Sanford while committing or attempting to commit the crime of Robbery in the First Degree or in the cause of or furtherance of such crime. Scott Jacob Sanford was not a participant in said crime.

The maximum sentence(s) is (are): LIFE, AT TO EACH COUNT

years and \$ 50,000.00, AS TO EACH COUNT

fine(s).

In addition, I understand that I must have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is/are at least COUNT I: 271 mos COUNT II: 180 mos and no more than COUNT I: 361 mos COUNT II: 240 mos.

6970 1/24/2005 158881

based upon my criminal history which I understand the Prosecutor presently knows to be: _____

SENTENCING DATE	CRIME	ADULT/JUVI	CRIME DATE	
Ct. II	Att. Murder 1°	adult	3/28/86	S/V

Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the information.

And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

12. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions of guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the Prosecuting Attorney's recommendation increases: _____

NO PRIORS

13. I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I also understand that the court must sentence to a mandatory minimum term, if any, as provided in paragraph 14 and that the court may not vary or modify that mandatory minimum term for any reason.

14. I have been further advised that the crime(s) of _____

with which I am charged carries with it a term of total confinement of not less than 6970 1/24/2005 150084 years.

I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge).

15. I have been advised that the sentences imposed in Counts I and Count II

will run consecutively (concurrently) unless the court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole.

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement: ON MARCH 28TH 1986 I WENT INTO MILITARY TV/STEREO STORE, WITH THE INTENT TO BUY A TV. AS I HAD TRIED TO DO IN A PREVIOUS STORE THAT DAY. PRIOR TO GOING INTO THE STORE I HAD TAKEN LSD. DURING THE NEGOTIATIONS TO BUY THE TV. SOMETHING CLICKED IN MY HEAD, AND I TOOK ARLENE KOESTNER TO THE BACK ROOM AND WHEN I GOT THERE SCOTT SANDFORD WAS ALREADY PRESENT. I ASKED HIM WHERE THE MONEY WAS AND THEN HE TURNED AROUND STARTLING ME I THEN SHOT HIM ONCE IN THE HEAD THEN SHOT ARLENE IN THE HEAD BOTH SHOTS WERE INSTANTANIOUS. ON MY WAY OUT OF THE STORE I TOOK STEREO EQUIPMENT AND A CONTRACT WITH MY SIGNATURE ON IT. THIS HAPPENED IN PIERCE COUNTY.

19. I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the court.

6978 1/24/2005 150085

Tom W. Richey
THOMAS RICHEY Defendant

Carl T. Hultman
Deputy Prosecuting Attorney
CARL T. HULTMAN

Larry Nichols
Defendant's Attorney
LARRY NICHOLS

The foregoing statement was read by or to the defendant and signed by the defendant in the presences of his or her attorney, and the undersigned Judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Further, the court finds that acceptance of this plea is consistent with prosecuting standards and the interests of justice.

Dated this 23 day of April, 1987

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 24 1987 P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT, CO. CLERK

[Signature]
Judge

I KNOW I HAVE A RIGHT TO A PRE-SENTENCE REPORT, BUT I WISH TO WAIVE MY RIGHT AND BE SENTENCED TODAY.

23 APRIL 1987

Tom W. Richey