

No. 60780-4

81102-4

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

RECEIVED
COURT OF APPEALS
DIVISION ONE
OCT 10 2007

IN RE PERSONAL RESTRAINT PETITION OF:

MICHAEL W. MCKIEARNAN,

PETITIONER.

PERSONAL RESTRAINT PETITION

Jeffrey E. Ellis #17139
Attorney for Mr. McKiearnan

Law Offices of Ellis,
Holmes & Witchley, PLLC
705 Second Ave., Ste. 401
Seattle, WA 98104
(206) 262-0300 (ph)
(206) 262-0335 (fax)

A. STATUS OF PETITIONER

Michael McKiearnan challenges his 1987 Snohomish County conviction for Robbery in the First Degree (87-1-00313-7).

B. FACTS

On May 14, 1987, McKiearnan pled guilty to Robbery in the First Degree for a crime that occurred two months earlier, on March 14, 1987. His *Statement of Defendant on Plea of Guilty* (Appendix A), which is signed by McKiearnan, his attorney, the prosecutor, and the Judge, states that the maximum sentence for the crime is "twenty (20) years to life imprisonment." In fact, the maximum penalty was life.

McKiearnan was sentenced on May 19, 1987. The *Judgment* (Appendix B) repeats the error from the plea form, stating in Section 3 that the maximum term is "20 yrs. to life."

This is McKiearnan's first collateral attack on this *Judgment*.

C. ARGUMENT

1. INTRODUCTION

McKiearnan's *Judgment* is facially invalid because it reveals that, when he pled guilty, he was incorrectly informed of the maximum possible penalty. The maximum penalty was not "twenty years to life." It was life. Unlike pre-SRA cases where the sentencing court had the discretion to cap the maximum at 20 years (or set it at life), in McKiearnan's case neither the

sentencing court nor any other authority had the power to set the maximum term at twenty years. As a result, it is clear that McKiearnan was misinformed of the maximum punishment when he pled guilty. At sentencing, the error was repeated on the face of his *Judgment*.

McKiearnan's *Judgment* is facially invalid. Thus, McKiearnan's petition is not time barred.

Because McKiearnan's plea was based on misinformation about a direct consequence, it was unconstitutional because it was neither knowing nor voluntary. McKiearnan does not need to show that he would have made a different choice if he had been correctly advised that the maximum could not have been set at 20 years, but only at life. Instead, McKiearnan is entitled to withdraw his plea.

2. MCKIEARNAN'S JUDGMENT IS INVALID ON ITS FACE

Since McKiearnan's conviction has been final for more than one year, he must address the time bar issue—arguing first that his *Judgment* is facially invalid and then moving to his guilty plea to show that it was based on a “manifest error.”

RCW 10.73.090 establishes a one-year time limit for collateral attack on a judgment. More than one year has elapsed since this conviction was final. However, the one-year time limit does not apply to a judgment

invalid on its face. RCW 10.73.090; *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002).

A judgment and sentence is invalid on its face if it evinces the invalidity “without further elaboration.” *Goodwin*, 146 Wn.2d at 866. The phrase “on its face” includes the documents signed as part of a plea agreement. *Id.* at 866 n. 2 (citing *In re Restraint of Stoudmire*, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000); *In re Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)).

As our Supreme Court has explained: “[T]he relevant question in a criminal case is whether the judgment and sentence is valid on its face, not whether related documents, such as plea agreements, are valid on their face. Such documents may be relevant to the question whether a judgment is valid on its face, but only if they disclose facial invalidity in the judgment and sentence itself.” *In re Restraint of Turay*, 150 Wn.2d 71, 82, 74 P.3d 1194 (2003). *See also State v. Lewis*, ___ Wn. App. ___, ___ P.3d ___ (August 28, 2007).

In the case at bar, the maximum penalty on the *Judgment* is clearly erroneous. Prior to the adoption of the SRA, judges imposing sentences set the maximum term. For individuals sent to prison, the parole board then set the minimum term. For many Class A offenses, the maximum penalty was 20 years to life. *See* RCW 9.95.010; RCW 9A.20.020. Robbery in the First Degree was such an offense. In those cases, a sentencing judge acted

entirely within her statutory authority if she imposed a sentence less than life, as long as it did not drop below twenty years. In other words, “20 to life” represented the maximum sentence’s discretionary range. In 1984, things changed. RCW 9A.20.021 (4). From that time on, the maximum for first-degree robbery has been set at life. RCW 9A.20.021.

McKiernan’s *Judgment* lists the date (“3-14-87”) and name (First Degree Robbery) of McKiernan’s crime of conviction and then states that the “Maximum Term” is “20 Yrs. to Life”. From this information alone, it is obvious that the maximum sentence is erroneous. Thus, the face of McKiernan’s *Judgment* reveals the error without further elaboration.

Thus, the question then becomes whether this error in the *Judgment* identifies a defect in the guilty plea that merits relief. Here, it does.

4. MCKIERNAN’S JUDGMENT REVEALS AN INVOLUNTARY PLEA

When a defendant pleads guilty, he must do so knowingly, voluntarily, and intelligently. *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); *In re Barr*, 102 Wn.2d 265, 269, 684 P.2d 712 (1984); *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976). Whether a plea satisfies this standard depends primarily on whether the defendant correctly understood its consequences. *State v.*

Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). *See also* CrR 4.2(d); *In re Fonseca*, 132 Wn. App. 464, 132 P.3d 154 (2006) (plea withdrawn where defendant did not know he was ineligible for DOSA at time he pled guilty).

It is now well-settled that the constitutional validity of a guilty plea turns, in part, on whether the defendant was informed of “all” the “direct” consequences of his plea. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A sentencing consequence is direct when “the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.” *Id.* at 284, quoting *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

The maximum possible sentence is a “direct” consequence of a guilty plea. *State v. Vensel*, 88 Wn.2d 552, 555, 564 P.2d 326 (1977) (“We believe it is important at the time a plea of guilty is entered, whether in justice or superior court, that the record show on its face the plea was entered voluntarily and intelligently, and affirmatively show the defendant understands the maximum term which may be imposed.”).

Thus, the next question is whether Petitioner’s was misinformed of the maximum punishment when he pled guilty.

5. MISINFORMATION AND MATERIALITY

When a defendant is misinformed about a direct consequence of a guilty plea he does not need to demonstrate that the misinformation materially affected his decision to plead guilty. *In re Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004); *State v. Mendoza*, 157 Wn.2d 582, 590-91, 141 P.3d 49 (2006) (“In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated.”). According to *Isadore*, a defendant “need not make a special showing of materiality” in order for misinformation to render a guilty plea invalid, but instead must show only that the misinformation concerned “a *direct* consequence of [the] guilty plea.” 151 Wn.2d at 296 (emphasis added).

For example, in *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988), the Washington Supreme Court held the defendant was entitled to withdraw his guilty plea because both parties were unaware of a mandatory minimum sentence requirement. When Miller entered his guilty plea to first degree murder, he had been misinformed by his attorney, who in turn had been misinformed by the prosecutor, that he could receive an exceptional

sentence of less than 20 years. Prior to sentencing, Miller was informed that a first degree murder conviction carried a mandatory 20-year sentence. On review, the Supreme Court held that because Miller entered his plea without knowing the true sentencing consequences of that decision, his plea was involuntary and he was entitled, if he so desired, to withdraw the plea. *Id.* at 536-37.

In *Mendoza*, the defendant was misinformed about the standard range. The true range was actually lower than stated on the plea form. Nevertheless, the Supreme Court held that “a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.” 157 Wn.2d at 591.

Here, McKiearnan was misinformed about the maximum penalty—a direct consequence of his guilty plea. He was not informed of this mistake prior to sentencing. To the contrary, the mistake was repeated on his *Judgment*. Thus, McKiearnan’s plea was involuntary.

6. WITHDRAWAL OF PLEA

A defendant may withdraw his guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. *Isadore, supra*;

CrR 4.2(f). “An involuntary plea produces a manifest injustice.” *Isadore*, 151 Wn.2d at 298.

Where a plea agreement is based on misinformation, the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea.” *Walsh*, 143 Wn.2d at 8-9. *See also In re Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000). The defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy. *Miller*, 110 Wn.2d at 535.

McKiernan chooses withdrawal of his plea. If the State objects, then this Court should require the State to make a *prima facie* showing of any compelling reason not to allow this remedy. If the State cannot do so, then this Court should vacate the judgment and remand to Whatcom County Superior Court to allow McKiernan to withdraw his plea. If the State makes a *prima facie* showing, then the Court should remand for a hearing on McKiernan's choice of remedy.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate McKiernan's *Judgment* and remand this case to Snohomish County Superior Court to permit him to withdraw his guilty plea. In the alternative, this Court should remand for an evidentiary hearing on McKiernan's choice of remedy.

DATED this 8th day of October, 2007.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Jeff Ellis". The signature is written in a cursive style with several loops and a long horizontal stroke at the end.

Jeff Ellis #17139

Attorney for Mr. McKiearnan

Law Offices of Ellis, Holmes
& Witchley, PLLC

705 Second Ave., Ste. 401

Seattle, WA 98104

(206) 262-0300 (ph)

(206) 262-0335 (fax)

APPENDIX A ~
STATEMENT OF DEFENDANT ON PLEA OF GUILTY

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

5-14 87
CM

THE STATE OF WASHINGTON,

Plaintiff

vs.

MICHAEL W. MCKIEARNAN,

Defendant

No 87-1-00313-7

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

1. My true name is Michael W. McKiearnan
2. My age is 18
3. I went through the 11th grade in school 6-50 *
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 lawyers name is Mickey Krom
5. I have been informed and fully understand that I am charged with the crime(s) of First Degree Robbery, RCW 9A.56.200(1)(c)

that the elements of the crime(s) are: (1) On or about March 14, 1987; (2) in Snohomish County; (3) the defendant unlawfully took personal property from the person of Elliott Wright; (4) intending to permanently deprive Elliott Wright of the property; (5) that the taking was against the will of Mr. Wright and the defendant used force against Mr. Wright, to take and retain possession of the property; and that defendant inflicted bodily injury on Mr. Wright at the time he took Mr. Wright's property.

the maximum sentence(s) for which is (are): twenty (20) years to life imprisonment ~~years~~ and \$ 50,000

The standard sentence range for the crime is confinement for at least 36 months and not more than 48 months, based upon the prosecuting attorney's understanding of my criminal history, as stated on the attached plea agreement. If there is any dispute concerning my criminal history, I understand that the court will resolve the dispute at the sentencing hearing.

I have been given a copy of the information.

6. I have been informed and fully understand that, in addition to confinement for the standard range, the court will order me to pay \$50 as a victim's compensation fund assessment, and the court may order me to pay a fine, restitution, court costs, and attorney fees. I understand that the court may also place me on community supervision, impose restrictions on my conduct, and order me to perform community service.
7. I have been informed and fully understand that if I fit the definition of RCW 9.94A.030(12) the court may sentence me as a first time offender instead of giving me a sentence within the standard range. That sentence could include as much as 90 days confinement, two years community supervision, community service, a fine, restitution, court costs, attorney fees, and a \$50 victim compensation fund assessment. Additionally, I understand that the court could place restrictions on my conduct and require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or vocational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 1

PR-130, PAGE 1

White Copy Court file
Carbon Copy Defendant/Det.
Pink Copy Prosecutor

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8. 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.
 - (b) I have the right to remain silent before and during trial, and I need not testify against myself.
 - (c) I have the right at trial to hear and question witnesses who testify against me.
 - (d) I have the right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
 - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
 - (f) I have the right to appeal a determination of guilty after a trial.
 - (g) If I plead guilty, I give up the rights in statements 8(a)-(f).

9. I plead guilty to the crime(s) of First Degree Robbery as charged in the information.

10. I make this plea freely and voluntarily.
11. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
12. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
13. I have been informed and fully understand that the prosecuting attorney will make the recommendations to the court stated on the attached plea agreement form.

14. 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 or 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 this present offense. I fully understand that if criminal history in addition to that listed in the plea agreement is discovered, both the standard sentence range and the prosecuting attorney's recommendations 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 prosecuting attorney's recommendation increases.

15. 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 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 in some cases the court must sentence me to a mandatory minimum term as provided in paragraph 16.

16. I have been informed and fully understand that the crime(s) of First Degree Robbery

with which I am charged carries with it a term of total confinement of not less than _____ 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.

17. I have been informed and fully understand that the sentence imposed in case 86-1-C-190-5 will run concurrently unless the court finds substantial and compelling reasons to do otherwise.

18. I have been informed and fully 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.

19. 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.

20. The court has asked 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 or about March 14, 1987 in Shelburne County
I unlawfully took personal property from
Elliott Wright Against his will and with*

The use of Force to take and retain his property.

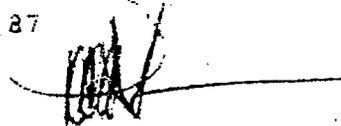
I have no independent recollection of striking the victim but I have reviewed his statement with my attorney and understand that he would testify that I did strike him and that he sustained bodily injuries as a result. Based on that testimony I believe a jury could convict me of the charge and wish to plead guilty to take advantage of the plea bargain offered.

- 21. I am aware that an affidavit of probable cause has been filed in this case. The court may consider this affidavit in deciding whether there is a factual basis for my plea.
- 22. I have read or have had read to me and fully understand all of the numbered sections above (1 through 21) and have received a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

Gerard McCamy
 Deputy Prosecuting Attorney

Michael W. McKiernan
 Defendant
 MICHAEL W. MCKIERNAN
Mickey Krom
 Defendant's Lawyer

GERARD MACCAMY
 The foregoing statement was read by or to the defendant and signed by the defendant in the presence 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.

Dated this 14 day of May, 1987

 Judge

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19____

Interpreter

APPENDIX B ~
JUDGMENT AND SENTENCE

SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON, Plaintiff

MICHAEL W. MCKIEARNAN, Defendant

SID NO.: WA13379895

DOCKET _____
CALENDAR _____
NO. 87-1-00313-7
87-9-02039-4
VIL. STA. _____

JUDGMENT AND SENTENCE (Felony)

I. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

- 1. CURRENT OFFENSE(S): The defendant was found guilty on May 14, 1987 by (plea) (jury verdict) (finding of the court) of: (date)
Count No.: I Crime: First Degree Robbery
RCW 9A.56.200(1)(a) Crime Code
Date of Crime 5/14/87 Incident No. FPE 118600
Count No.: Crime:
RCW Crime Code
Date of Crime Incident No.
Count No.: Crime:
RCW Crime Code
Date of Crime Incident No.

- [] With a special verdict/finding for use of deadly weapon on Count(s):
[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):
[] Additional current offenses are attached in Appendix A.

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

2. CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Table with 5 columns: Crime, Sentencing Date, Adult or Juv. Crime, Date of Crime, Crime Type. Row 1: Burglary 2nd, 5/87, A, 5/87-01140-5, F

- [] Additional criminal history is attached in Appendix B.

3. SENTENCING DATA: Offender Score, Seriousness Level, Range, Maximum Term. Row 1: I, 1, UX, 36-48 Mos., 20-Yrs. to Life

Handwritten initials/signature

[] Additional current offenses sentencing information is attached in Appendix C.

[] Following a hearing, the court found real and material facts as set forth in Appendix C.

4. EXCEPTIONAL SENTENCE;

[] Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. The reasons are set forth in Appendix D.

5. CATEGORY OF OFFENDER: The defendant is:

- (a) An offender who shall be sentenced to confinement over one year.
- (b) [] An offender who shall be sentenced to confinement one year or less.
- (c) [] A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.050(12), .120(5)).
- (d) [] A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) [] A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:

- (a) [] \$ _____, Court costs; plus any costs determined after this date.
 - (b) \$ 70.00, Victim assessment: Any such costs will be established by separate order of this court.
 - (c) _____, Restitution (with credit for amounts paid by co-defendants);
 The amount and the recipient(s) of the restitution are as established by separate order of this Court;
 - (d) \$ _____, Recoupment for attorney's fees;
 - (e) [] \$ _____, Fine;
 - (f) [] \$ _____, Drug enforcement fund;
 - (g) [] \$ _____, Other costs.
 - (h) Payments shall be made in the manner established by Local Rule 2.65 within a period of 10 days from the date of ~~this~~ order. Release from confinement.
 - (i) This Court shall retain jurisdiction over the defendant for a period of ten years to assure payment of the above monetary obligations.
2. The Court, upon motion of the State, DISMISSES Count(s) _____

3. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows commencing no later than the 19 day of May, 1987 at 1:30 P.M.

36 months for Count No. I
_____ months for Count No. _____
_____ months for Count No. _____

- The terms in Counts No. _____ are concurrent for a total term of _____ months.
- The terms in Counts No. _____ are consecutive for a total term of _____ months.
- The sentence herein shall run (concurrently) (~~consecutively~~) with the sentence in Michigan State Court No. 82-1-2190-5 (Count(s) or cause number(s))
- Credit is given for (time) (none) served.

The following ^{To be determined by the Judicial Clerk J.S.I.} Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- Appendix A, Additional Current Offenses:
- Appendix B, Additional Criminal History:
- Appendix C, Current Offense(s) Sentencing Information: and
- Appendix D, Reasons for an Exceptional Sentence.

DONE IN OPEN COURT this 19 day of May, 1987.

[Signature]

JUDGE

Presented by:
[Signature]
Deputy Prosecuting Attorney

Approved as to form:
[Signature]
HICKEY KROM
Attorney for Defendant

X [Signature]
MICHAEL W. MCKEARNAN
Defendant

FINGERPRINTS



Right Hand
Fingerprints of:

MICHAEL W. MCKLEARNAN

Michael W. McKlearnan
(Defendant's Signature)

Dated: _____

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____
Kay D. Anderson, Snohomish County Clerk

By: _____
(Deputy Clerk)

JUDGMENT AND SENTENCE (Felony)
FINGERPRINTS
Page ___ of ___

Attested by:

Kay D. Anderson, Snohomish County Clerk

By: *Cecilia M. ...*
(Deputy Clerk)

OFFENDER IDENTIFICATION

S.I.D. No.	<u>WA13379895</u>
Date of Birth	<u>8/26/68</u>
Sex	<u>M</u>
Race	<u>W</u>
ORI	<u>WA 0310000</u>
OCA	<u>62864</u>
GIN	<u>008717577-01/02</u>
DOA	<u>3/15/87</u>

1895

THE STATE OF WASHINGTON to the Sheriff of the county of Snohomish, state of Washington, and to the Secretary of the Department of Correction, and the Superintendent of the Washington Corrections Center of the state of Washington, GREETING:

WHEREAS MICHAEL W. MCKIFARNAN has been duly convicted of the crime(s) of First Degree Robbery as charged in the Amended/Information filed in the Superior Court of the state of Washington, in and for the county of Snohomish, and judgment has been pronounced against him that he be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.13.120, for the term of 36 months, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

This is to command you, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification and placement in such correctional facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

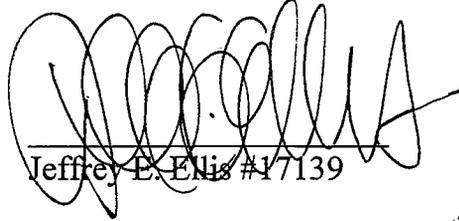
WITNESS the Honorable Paul D. Hansen Judge of the said Superior Court and the seal thereof, this 19th day of May, 1987.

CLERK OF THE SUPERIOR COURT

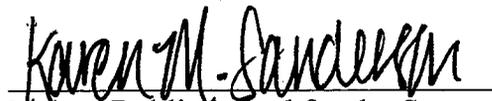
by: Connie Martinis
Deputy Clerk

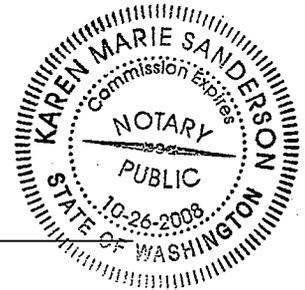
VERIFICATION OF PETITION

After being first duly sworn, on oath, I depose and say: That I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.


Jeffrey E. Ellis #17139

Subscribed and sworn to before me this 8th day of October.


Notary Public in and for the State
of Washington, residing at Seattle.



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**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I**

In re Personal Restraint Petition of
MICHAEL MCKIEARNAN,
Petitioner.

NO. _____
**PETITIONER'S MOTION TO
PROCEED IN FORMA PAUPERIS
AND WAIVE FILING FEE**

I. IDENTITY OF MOVING PARTY

Michael McKiearnan, Petitioner, seeks the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Waive the filing fee associated with Petitioner's *Personal Restraint Petition*. A copy of McKiearnan's Department of Corrections *In Forma Pauperis Status Report* is attached. Petitioner can supply additional information regarding his indigence, if requested.

III. FACTS

Petitioner is an indigent defendant who seeks to file the attached PRP. Due to his indigence, Mr. McKiearnan seeks to have the filing fee waived.

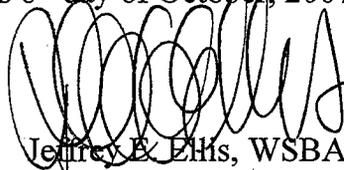
1 III. ARGUMENT

2 Pursuant to RAP 16.8, Petitioner respectfully requests that this Court waive the
3 filing fee associated with his *Personal Restraint Petition*.

4
5 IV. CONCLUSION

6 This Court should waive the filing fee in this case.

7
8 DATED this 8th day of October, 2007.

9
10 

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DEPARTMENT OF CORRECTIONS
WASHINGTON STATE REFORMATORY

Page 1 of 1
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PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD : 03/01/2007 TO 08/31/2007

DOC : 0000930033
DOB : 08/28/1968

NAME : MCKIEARNAN MICHAEL

ADMIT DATE :10/22/1990

ADMIT TIME :00:00

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
55.00	11.00	13.43	2.69

Alison
9/19/07