

SUPREME COURT # 22868-7

COURT OF APPEALS #272770

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IN RE PERSONAL RESTRAINT  
PETITION OF VINCENT ADOLPH

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MOTION FOR  
DISCRETIONARY REVIEW

RECEIVED  
SUPERIOR COURT  
STATE OF WASHINGTON  
2003 MAR 23 AM 7:52  
C. SANDOZ, CLERK  
CERK

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Vincent Adolph #887962  
Airway Heights Correction Center  
PO Box 2049 (C4, A7)  
Airway Heights, WA 99001-2049

A. IDENTITY OF MOVING PARTY.

Vincent Adolph, petitioner, pro se, asks this court to accept review of the decision designated in part B of this motion.

B. DECISION OF THE COURT OF APPEALS.

Court of appeals ruling dismissing personal restraint petition #272770, filed on March 3, 2009, attached as appendix A.

C. ISSUES PRESENTED FOR REVIEW.

I. **WAS THERE SUFFICIENT ADMISSIBLE EVIDENCE PRESENTED AT THE SENTENCING HEARING TO ESTABLISH THE LINCOLN COUNTY DUI?**

II. **DID THE COURT OF APPEALS ERR BY FAILING TO TRANSFER MR. ADOLPH'S 2ND PERSONAL RESTRAINT PETITION TO THIS COURT?**

D. STATEMENT OF THE CASE.

1. Procedural History.

On June 3, 2005, an Okanogan County jury found Mr. Adolph guilty of Vehicular Homicide and Vehicular Assault. See Okanogan County Superior Court #031004152. He was sentenced on September 19, 2005, to 96 months in prison. The sentence included three 2 year enhancements for prior DUI's, two of which were out of Okanogan County and one was out of Lincoln County. Id. The Court of Appeals affirmed Mr. Adolph's direct appeal and the Supreme Court subsequently denied discretionary review. Mr. Adolph eventually filed his first and timely personal restraint petition which was denied on September 10, 2007. See Court of Appeals #26367-3-III. Mr. Adolph then filed his second and timely personal restraint petition back in the court of appeals claiming there was insufficient evidence presented at the sentencing hearing

to establish the Lincoln County DUI and therefore the 2 year enhancement related to that offense must be vacated. See In re Personal Restraint Petition of Vincent Adolph, Court of Appeals #27277-0-III. The Chief Judge, after ordering additional briefing, dismissed that petition by finding that he lacked jurisdiction under RCW 10.73.140 to consider the matters presented and also alluded that the State sufficiently proved the Lincoln County DUI. See Order Dismissing Personal Restraint Petition, appendix A. The dismissal of that petition is now the basis of this Motion for Discretionary Review.

2. Relevant Facts.

At sentencing, to prove the Lincoln County DUI, the State offered a non-court certified driving abstract and a non-court certified "DCH" printout from the prosecutor's office. See Sentencing Transcripts at 23-28; Driving Abstract, appendix B; DCH printout, appendix C. Defense Counsel immediately objected to those items being used to prove that prior conviction by stating:

I would argue to the Court that in regards to the conviction from Lincoln County, that the record is insufficient. I don't believe the materials provided sufficiently set forth that conviction.

Sentencing Transcripts at 31-32.

The Court then asked the prosecutor:

Well do you have an answer to the statement from [Defense Counsel] that the evidence is insufficient to establish the Lincoln County DUI based solely on the abstract of Driving Record? Shouldn't we have some kind of docket ---...---ticket or something here?

Sentencing Transcripts at 54.

The Prosecutor replied:

It requires--the State's required to prove that by a preponderance. We attached a certified copy of the Department of Licensing abstract, which shows conviction in Lincoln County. There's also a copy, though not certified but its also accessible to the Court in its own system, criminal history which also shows the conviction and corroborates that abstract. The defendant was convicted of DUI in that county and that's what it's showing.

Sentencing Transcripts at 54-55.

The prosecutor further explained that the driving abstract is maintained by the Department of Licensing and the "DCH" printout is maintained by the office administrator of the court system. Id.

After taking the arguments into account and recognizing that Mr. Adolph completely challenged the evidence used to prove the Lincoln County DUI, the court ultimately found that the State adequately proved the Lincoln County DUI with the driving abstract and the DCH printout:

Because--there is no question--the Court-- the State has adequately proved a 1988 deferred prosecution in Okanogan County, a 1992 conviction for DUI in Lincoln County, and a 1993 deferred DUI in Okanogan County, and the two deferreds are the easiest because the State does have a certified docket that shows unquestionably the details of those convictions and **Mr. Maxey fully challenges the State's level of proof for the Lincoln County Conviction from 1992.** DUI convictions in district Court though are not like Superior Court convictions. They don't have the same documents. What the State has is--and I believe I tried to question the State carefully about this but it has a certified abstract of driving record, which includes the Lincoln County conviction. I believe the date of offense is twelve three '91 and the conviction is three nineteen '92. So--this record is certified. It means that this conviction exists in the Licensing Department's computer system.

Now that is initiated, as the Court understands it, in a separate system with the conviction and the proof that is sent to the Department of Licensing by the Court upon conviction but the Court also maintains a separate system. The court--the Office of the Administrator of the Court that is not dependent on that system as far as this Court understands and there is that system, which we access on the Court's personal computers or the District Court's personal computers in this case, or the prosecutor's personal computer, has a--a view called the defendant's criminal history, which we call DCH and that view also shows the nineteen, twelve four '92 DUI conviction for DUI--excuse me, a date--I'm just trying to compare the numbers here. A date of offense of twelve thirty '91 for Lincoln County case DUI and a judgment of guilty. So I think the State's met its burden on that offense also so there are three priors--three that are used for sentencing enhancement. A couple of points about this, we will be talking about mitigating circumstances under the Sentencing under the Sentencing Reform Act.

Sentencing Transcripts at 59-61.

After careful consideration of relevant mitigating factors, the Court gave Mr. Adolph a mitigated sentence of 96 months in prison which comprised of 24 months for the base offense ran consecutively to 72 months in DUI enhancements. Sentencing Transcripts at 75 ff.

After Mr. Adolph's judgment was pronounced and the court imposed the 96 month sentence, and after Mr. Adolph and his counsel and the judge signed the finished judgment & sentence (Id. at 85-87), the State sought to introduce more documents to establish the Lincoln County DUI. Id. at 87-89. Those documents were a certified copy of the Lincoln County DUI citation (appendix C) and a certified copy of the Court docket sheet (appendix D) related to that offense. Id. The prosecutor explained to the court that the newly offered documents wouldn't make any difference on appeal and that he wanted defense counsel to agree to make them

part of the record. Id. While the court explained that he did not use the newly offered documents in making his decision on the existence of the Lincoln County DUI, he allowed them to become part of the record.

Id.

E. ISSUES AND ARGUMENTS ON WHY REVIEW SHOULD BE GRANTED.

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

I. **WAS THERE SUFFICIENT ADMISSIBLE EVIDENCE PRESENTED AT THE SENTENCING HEARING TO ESTABLISH THE LINCOLN COUNTY DUI?**

In this case, the state offered a driving abstract (appendix B), a DCH printout (appendix C), a Lincoln County DUI citation (appendix D), and a court docket sheet (appendix E) to prove the Lincoln County DUI. Mr. Adolph asserts that all of these documents were inadmissible and therefore the 2 year enhancement related to the Lincoln County DUI must be reversed and vacated because without any admissible evidence to prove the Lincoln County DUI the record is insufficient. In the alternative, even if the driving abstract and the DCH printout were admissible, Mr. Adolph asserts that the Lincoln County DUI citation and the court docket sheet related to that offense were not under

the 'second bite of the apple' rule. And without the DUI citation and the court docket sheet, Mr. Adolph asserts that the non-court certified driving abstract coupled with the non-court certified DCH printout was insufficient to prove the existence of the Lincoln County DUI and therefore the 2 year enhancement related to that offense must be reversed and vacated.

Due process requires the State to prove the existence of a prior conviction by a preponderance of the evidence. State v. Lopez, 147 Wn.2d 515, 519 (2002); State v. Ford, 137 Wn.2d 472, 479-80 (1999); State v. McCorkle, 137 Wn.2d 490, 495 (1999); Jackson v. Virginia, 443 US 307 (1979); US Const. Amend. 14; Wash. Const. art. I, sec. 3 (due process). To establish the existence of a prior conviction, a certified copy of the relevant judgment & sentence is the best evidence. Lopez, 147 Wn.2d at 519. Although a certified copy of a judgment & sentence is the best evidence of a prior conviction, the State may introduce other comparable evidence only if it shows that the best evidence is unavailable for some reason other than the serious fault of the proponent. *Id.* (citing State v. Fricks, 91 Wn.2d 391, 397 (1997)(discussing the best evidence rule)). In that case, comparable documents of record or trial transcripts may suffice. Ford, 137 Wn.2d at 480. Typically, they would be court certified. State v. Rivers, 130 Wn. App. 701 (2005), review denied, 158 Wn.2d 1008 (2006)(citing several cases that relied on court certified documents to prove various facts).

At the sentencing hearing, if a defendant specifically objects to the State's evidence of the existence of a prior conviction and the

evidence is insufficient, "the State must present additional evidence to carry its burden of proving the conviction by a preponderance of the evidence." Rivers, 130 Wn. App. at 701-02 (citing State v. Cabrera, 73 Wn. App. 165, 168-69 (1994)). However, if the State fails to present additional evidence to meet its burden, they will not get a second chance to do so after the imposition of the judgment & sentence and will be held to the existing record. Lopez, 147 Wn.2d at 520; Ford, 137 Wn.2d at 485; McCorkle, 137 Wn.2d at 496-97; State v. Wilson, 113 Wn. App. 122, 139 (2002), review denied, 149 Wn.2d 1006 (2003)(citing McCorkle, 137 Wn.2d at 497)("When the State fails to carry its burden of proof after a specific objection, it is not provided a further opportunity to do so....").

When the above law is applied to the facts of this case it is clear that the non-court certified driving abstract (appendix B) and the non-court certified DCH printout (appendix C) was inadmissible to prove the existence of the Lincoln County DUI because the State, in violation of Lopez, 147 Wn.2d at 519, failed to show that the best evidence to prove that conviction (i.e., a court certified copy of the relevant judgment & sentence which in District Court comprises of a certified copy of the docket sheet and/or a certified copy of the citation) was unavailable. In any event, even if the driving abstract and the DCH printout was admissible, they were still insufficient to prove a prior conviction. See generally, Rivers, 130 Wn. App. at 698-705.

Also, when the above law is applied to the facts of this case it is clear that the court certified Lincoln County DUI citation (appendix

D) and the court certified docket sheet related to that offense (appendix E) was inadmissible under the "second bite of the apple" rule to prove the existence of the Lincoln County DUI because under Lopez, Ford, and McCorkle, the State cannot, after the imposition of the judgment and sentence, get a second chance to prove a prior conviction when the defendant objected to the sufficiency of the evidence presented during the sentencing hearing. Lopez, 147 Wn.2d at 520; Ford, 137 Wn.2d at 485; McCorkle, 137 Wn.2d at 496-97.

1. For a DUI Conviction in District Court, What Documents Make Up The Judgment & Sentence?

Apparently, in District Court, they do not use a standardized judgment and sentence form. Sentencing Transcripts at 60; Order Dismissing PRP, appendix A at 2. So if a district court does not use a standardized judgment and sentence form, what court documents make up the judgment & sentence? In this case, the prosecutor, the judge, and defense counsel clearly believe that a certified court docket sheet fits the bill. For example, to prove the other two DUI's the State offered only certified court docket sheets showing those convictions which defense counsel did not object to, and the court found that those docket sheets "show unquestionably the details of those convictions." Sentencing Transcripts at 59-61. In addition to establishing a judgment and sentence for a DUI offense, another comparable document would be a court certified copy of the DUI citation because it shows the judgment at the bottom half of the page. See DUI citation, appendix D. Furthermore, the State repeatedly referred to the DUI citation as the judgment. State's Answer to PRP at 2; State's

Supplement Answer to Court's Question at 3 (the DUI citation is the "Lincoln County 'judgment.'"). And significantly, at the sentencing hearing when the defense objected to the driving abstract and the DCH printout, the court did not ask the State to produce a 'judgment & sentence' but instead questioned him, "shouldn't we have some kind of docket[,] ticket or something?" Sentencing Transcripts at 54. Thus, in District Courts that do not use a standardized judgment and sentence form, it is clear that the documents that make up a judgment & sentence for a DUI conviction is a certified court docket sheet related to that offense or a certified copy of the DUI citation or a combination of the two. Therefore, for all future purposes, when the phrase 'judgment & sentence' is mentioned it will implicitly consist of the above documents (i.e., the court docket sheet and/or the DUI citation sheet) because those documents make up the judgment and sentence.

2. When The State Fails To Establish That A Judgment & Sentence Is Unavailable To Prove A Prior Conviction, May The State Offer Other Evidence To Prove That Conviction?

To establish a prior conviction, a certified copy of the judgment & sentence is the best evidence. Lopez, 147 Wn.2d at 519. Although a judgment & sentence is the best evidence of a prior conviction, the State may introduce other comparable evidence only if it shows that the best evidence is unavailable for some reason other than the serious fault of the proponent. Id.

In this case, at the sentencing hearing, the State offered the driving abstract (appendix B) and the DCH printout (appendix C) to prove

the Lincoln County DUI without ever mentioning a Lincoln County judgment & sentence let alone if it was available or not. Then, in the chain of events, defense counsel objected to those items then the court ruled they were sufficient to prove the Lincoln County DUI and sentenced Mr. Adolph then once all of the parties signed the finished judgment & sentence the State introduced the Lincoln County judgment & sentence documents (i.e., the docket sheet and the DUI citation) and wanted to make them part of the record which the court did.

Under Lopez, the State could only offer the driving abstract and the DCH printout to prove the Lincoln County DUI if it showed that the Lincoln County judgment & sentence documents were unavailable for some reason other than their own serious fault. Here, the State did not make that showing and even eventually came up with the Lincoln County judgment & sentence documents. Significantly, it was after the court found the existence of the Lincoln County DUI and after the court imposed the sentence upon Mr. Adolph and the parties signed the finished judgment & sentence. Therefore, because the State failed to meet their burden of showing that the Lincoln County DUI judgment & sentence documents were unavailable, the driving abstract and the DCH printout was inadmissible. See Lopez, 147 Wn.2d at 519; Rivers, 130 Wn. App. at 698-705 (the Court could not think of any reason why the State could not, prior to the imposition of the sentence, come up with a certified copy of the judgment & sentence to prove a prior offense).

At any rate, even if the driving abstract and the DCH printout were correctly admitted, those two non-court certified documents were

still insufficient to prove the existence of the Lincoln County DUI. In Rivers, the court found that a prior conviction set forth in a court certified judgment & sentence of some other offense is insufficient to prove the existence of the prior conviction. Rivers, 130 Wn. App. at 698-705. Under the reasoning of Rivers it would be unreasonable to rule that a non-court certified driving abstract coupled with a non court certified DCH printout is better evidence to prove a prior conviction than a court certified judgment & sentence that showed the prior conviction. Is the driving abstract (appendix B) even reliable, the State has consistently argued that Mr. Adolph had three previous DUI's but this driving abstract only shows two. Thus, under Rivers and the cases contained therein, the driving abstract coupled with the DCH printout is insufficient to prove the Lincoln County DUI. Rivers, 130 Wn. App. at 698-705. In addition, the driving abstract was not court certified and the DCH printout was not certified by any entity, therefore those documents should not have been used at a sentencing hearing to prove a prior conviction. Id. at 704 ("the supreme court in Lopez applied the certified copy requirement to evidence presented at a sentencing hearing."); Lopez, 147 Wn.2d at 518-19.

3. When A Defendant Objects To The Evidence Submitted By The State To Prove A Prior Conviction And That Evidence Is Either Insufficient Or Inadmissible, May The State Get 'A Second Bite At The Apple' By Introducing Supplement Evidence After The Judgment & Sentence Has Been Imposed?

At a sentencing hearing, if a defendant specifically objects to the State's evidence of the existence of a prior conviction and the evidence

is insufficient or inadmissible, "the State must present additional evidence to carry its burden of proving the conviction by a preponderance of the evidence." Rivers, 130 Wn. App. at 701-02 (citing State v. Cabrera, 73 Wn. App. 165, 168-69 (1994)). And if the State fails to present additional evidence to meet its burden, they will not get a second chance to do so after the imposition of the judgment & sentence and will be held to the existing record. Lopez, 147 Wn.2d at 520; Ford, 137 Wn.2d at 485; McCorkle, 137 Wn.2d at 496-97; Wilson, 113 Wn. App. at 139 ("When the State fails to carry its burden of proof after a specific objection, it is not provided a further opportunity to do so....").

In argument two, supra, Mr. Adolph established that both the driving abstract and the DCH printout were inadmissible under Lopez to prove the Lincoln County DUI and that they were insufficient under Rivers and the cases contained therein to prove that conviction as well. See Argument 2.

In this case, after Mr. Adolph's sentence was imposed and after Mr. Adolph and his attorney and the judge signed off on the finished judgment & sentence (sentencing transcripts at 85-87), the State sought to introduce a court certified docket sheet showing the Lincoln County DUI conviction and a court certified "judgment" of that conviction which is a copy of the DUI citation. See Sentencing Transcripts at 87-89; Appendix C & D. These documents cannot be used in proving the existence of the Lincoln County DUI because the court did not rely on them when he found the Lincoln County DUI (Id.) and, more importantly, the State does not get a second chance to prove a prior conviction if the defendant objected to the evidence used to prove the prior offense. Rivers, 130 Wn. App. at 706-07; McCorkle, 137 Wn.2d

at 497 (When the State fails to carry its burden of proof after a specific objection, it is not provided a further opportunity to do so). In this case, Mr. Adolph clearly objected to the use of the driving abstract and the DCH printout to prove the Lincoln County DUI. Sentencing Transcripts at 31-32. The court recognized this objection and stated, "[Mr. Adolph] fully challenges the State's level of proof for the Lincoln County conviction." Id. at 60. The court then found that the State had proved the Lincoln County DUI with the driving abstract and the DCH printout. Id. at 60-61. Noteworthy is the fact that the State, prior to the court's ruling, did not offer any additional evidence to prove the Lincoln County DUI. Then after the court ruled on the Lincoln County DUI and sentenced Mr. Adolph and signed the judgment & sentence, the State sought to introduce more evidence (i.e., the docket sheet and the DUI citation) to further prove the Lincoln County DUI. Id. at 87-89. Under the facts of this case coupled with the relevant law, the docket sheet and the DUI citation was clearly inadmissible under the 'second bite of the apple' rule set forth in McCorkle, 137 Wn.2d at 497; Ford, 137 Wn.2d at 485; Lopez, 147 Wn.2d at 520.

Based on the above arguments this court should find: (1) that the driving abstract and the DCH printout was inadmissible under Lopez; (2) that the driving abstract and DCH printout was insufficient under Rivers to prove the existence of a prior DUI conviction; and (3) that the court docket sheet and the DUI citation were inadmissible under the '2nd bite of the apple' rule set forth in Lopez, Ford, and McCorkle. And based on these findings, which leaves no admissible evidence to prove

the Lincoln County DUI, this court should accept review under RAP 13.4 (b)(1)(2)(3)(4) and ultimately remand this matter back to the Superior Court for resentencing. See State v. Bergstrom, 162 Wn.2d 87 (2007).

In Bergstrom, supra, 162 Wn.2d at 93-94, the court stated:

...if the defense does specifically object during the sentencing hearing but the State fails to produce any evidence of the defendant's prior convictions, then the State may not present new evidence at resentencing. Id.; Cadwallader, 155 Wn.2d Wash.2d at 877-78, 123 P.3d 456. After the defense specifically objects, putting the sentencing court on notice that the State must present evidence, the State is held to the initial record on remand. Ford, 137 Wn.2d at 485, 973 P.2d 452.

Id.

**II. DID THE COURT OF APPEALS ERR BY FAILING TO TRANSFER MR. ADOLPH'S 2ND PERSONAL RESTRAINT PETITION TO THIS COURT?**

When the court of appeals receives a second personal restraint petition that violates RCW 10.73.140 by raising "new" issues, the court of appeals does not have jurisdiction to hear or dismiss the petition and therefore must transfer it to the Supreme Court where RCW 10.73.140 does not apply. See In re Turay, 150 Wn.2d 71, 86-87 (2003); In re Fawcett, 147 Wn.2d 298, 301 (2002) ("when review of a PRP is barred by RCW 10.73.140 the court of appeals must transfer the petition to the [the Supreme Court] if it raises new grounds for relief."); In re Crabtree, 141 Wn.2d 577, 582 (2000) (when the court of appeals receives a subsequent petition it may not consider under RCW 10.73.140, the proper procedure is to transfer it to the Supreme Court). In re Baily, 141 Wn.2d 20, 28 (2000); In re Johnson, 131 Wn.2d 558, 563-67 (1997); RCW 2.06.030 ("No case, appeal or petition

for a writ filed in the Supreme Court or the [court of appeals] shall be dismissed for the reason that it was not filed in the proper court, but is shall be transferred to the proper court."); In re Perkins, 143 Wn.2d 261, 264-67 (2001)(the court of appeals properly transferred a successive PRP to the Supreme Court); In re Turay, 153 Wn.2d 44, 48-49 (2004)(RCW 10.73.140 does not apply to the Supreme Court).

In this case, the Chief judge of the court of appeals found that Mr. Adolph's petition was successive and being such he dismissed it under RCW 10.73.140. Under the above law the Chief judge clearly erred by: (1) dismissing the petition; and by (2) failing to transfer the petition to the Supreme Court where RCW 10.73.140 does not apply. See Above Cases. F.

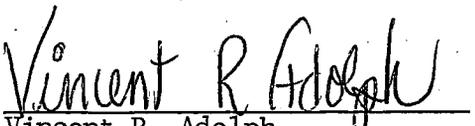
CONCLUSION.

Because the chief judge erred by failing to transfer the PRP to this court, Mr. Adolph asks this court to reach the merits of the issues he raised.

This court should accept review of this issue because the court of appeals ruling dismissing Mr. Adolph's subsequent PRP and their failure to transfer the PRP to this court is in direct conflict with all of the above Supreme Court law. See RAP 13.4(b)(1).

Dated this 19th day of March, 2009.

Respectfully Submitted,

  
Vincent R. Adolph

FILED

MAR -3 2009

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

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

<b>In the Matter of the Personal Restraint</b>	)	<b>27277-0-III</b>
<b>of:</b>	)	
	)	
	)	
<b>VINCENT R. ADOLPH,</b>	)	<b>ORDER DISMISSING PERSONAL</b>
	)	<b>RESTRAINT PETITION</b>
<b>Petitioner.</b>	)	
	)	

Vincent R. Adolph seeks relief from personal restraint imposed in his 2005 Okanogan County jury conviction of vehicular homicide and vehicular assault. Mr. Adolph's conviction was affirmed by this court in March 2007 and a personal restraint petition was dismissed in September 2007. *See* Commissioner's Ruling, No. 24597-7-III (March 16, 2007); Order Dismissing Personal Restraint Petition, No. 26367-3-III (September 10, 2007). In this, his second personal restraint petition, he contends the State failed to prove the existence of a prior conviction by a preponderance of the evidence.

Under RCW 10.73.140, this court lacks jurisdiction to consider a successive petition that raises issues that were or could have been raised in a prior petition unless the petitioner shows good cause why he did not raise these issues before. *In re Pers.*

Appendix A

No. 27277-0-III  
PRP of Adolph

*Restraint of VanDelft*, 158 Wn.2d 731, 737-38, 147 P.3d 573 (2006). To establish good cause, the petitioner must show that an objective impediment external to the defense prevented him from raising the issues earlier. *State v. Crumpton*, 90 Wn. App. 297, 302-03, 952 P.2d 1100 (1998) (analogizing to the definition of good cause in RCW 10.95.040(2)).

Mr. Adolph contends the State offered only a driving record abstract from the Department of Licensing and a printout from the prosecutor's office to prove a prior Lincoln County conviction for driving under the influence. Citing *State v. Rivers*, 130 Wn. App. 689, 128 P.3d 608 (2005), he argues that only a court-certified copy of the judgment and sentence is sufficient to establish his criminal history.

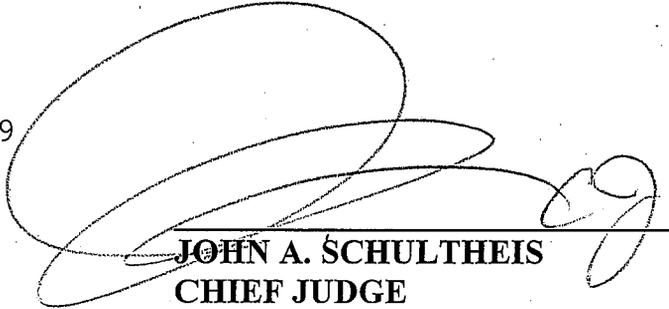
*Rivers* followed well-established precedent that the State must prove the existence of prior convictions by a preponderance of the evidence. *Id.* at 698. Although a certified copy of a judgment and sentence is the best evidence of a prior conviction, other documents of record or transcripts may be used to establish criminal history. *Id.* at 699-701 (citing *State v. Lopez*, 147 Wn.2d 515, 519, 55 P.3d 609 (2002) and *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999)). In this case, the Lincoln County district court apparently does not file a standard judgment and sentence. Consequently, the State presented a certified Lincoln County docket and another document showing the judgment. Mr. Adolph's counsel agreed that the documents were valid and that they could be included in the record. (9/19/05 RP 87-88) This agreement waived his

No. 27277-0-III  
PRP of Adolph

challenge to the existence of the Lincoln County conviction. *State v. Bergstrom*, 162 Wn.2d 87, 94, 169 P.3d 816 (2007); *Rivers*, 130 Wn. App. at 701.

At any rate, the cases cited in *Rivers*, including *Lopez* and *Ford*, were decided long before Mr. Adolph's previous petition. He does not show that there was an outside impediment preventing him from raising this issue before. Accordingly, this court does not have jurisdiction to consider his successive petition, and it is dismissed. *VanDelft*, 158 Wn.2d at 737-38; RAP 16.11(b). The court also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

DATED: March 3, 2009



**JOHN A. SCHULTHEIS**  
**CHIEF JUDGE**

OKANOGAN COUNTY

JUN 28 2005

PROSECUTOR'S OFFICE

06-27-05 \*\* ABSTRACT OF COMPLETE DRIVING RECORD  
 LIC# ADOLP-VR-433D7 SS# 536-62-8781 STATUS: PDL CLEAR  
 ADOLPH, VINCENT RANDOLPH JR DOB 03-27-1957 CDL CLEAR  
 181 DUTCH ANDERSON RD SEX M EYES BRN LICENSE ISSUED 04-02-02  
 OMAK WA 98841 HGT 5'07" WGT 190 LICENSE EXPIRES 03-27-07

\*\*MAIL ADDR ON FILE? N

CDL CLASS: A ENDORSEMENTS: N

NOTE: M 052301 052301 M 062999 062999 M 032698 032698

\* 123091 DRIVING UNDER INFLUENCE 031992 D LINCOLN CO 22 000010093  
 \* 120492 DRIVING UNDER INFLUENCE DEF.PRO D OKANOGAN CO.24 007074463  
 012603 ACCIDENT MOVING 02 VEH  
 120293 PROB DI DEFERRED PROSECUTION 120298 000000

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206.194.129.5

FTCP2459

2/1



I CERTIFY THE ABOVE TO BE TRUE AND CORRECT.

*Renee Jounrley*  
 CUSTODIAN OF RECORDS

Appendix B

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DN2000SX

08/16/05 13:38:30

DN2001MI Defendant Case History (DCH)

OKANOGAN COUNTY DIST PUB 1 of 1

Case: \_\_\_\_\_ Csh: \_\_\_\_\_ Pty: \_\_\_\_\_ StId: D ADOLPVR433D7 WA  
 Name: ADOLPH, VINCENT R JR \_\_\_\_\_ NmCd: IN 382 97536

CONFIDENTIAL--NOT FOR RELEASE

More>

True Name: ADOLPH, VINCENT R JR IN 382 97536

6 Cases

AKA's:

S N Case	LEA Ty Crt	Violation		--- Status ---						
		Date	Short Title	DV	Jg	CD	W	F	O	
7074463	WSP CT OKD	12/04/92	DUI			DW	CL			
		12/04/92	DWLS 3RD DEGREE			DW				
10094	LSH CN LID	12/30/91	LOADED GUN IN MOTOR DRIVEN VE	G		CL	*	*		
10093	LSH CT LID	12/30/91	DUI	G		CL				
F00078694	SPP CN SPM	04/14/91	DISORDERLY CONDUCT	D		CL	*	*		
		04/14/91	RESISTING ARREST	G						
6307	OMP CT OKD	11/26/87	DUI			DW	CL			
03-1-00415-2	S1 S24	01/26/03	VEHICULAR HOMICIDE	N		G				
		01/26/03	VEHICULAR ASSAULT	N		G				

PF1	PF2	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	PER	CDK	PLS	CDT	BWD	FWD	DOL	COS	CFHS	EXIT
4-®		1 Sess-1		206.194.129.5				FTCP1348		6/75

Appendix C  
 39

03-1-004152

FILED  
OKANOGAN COUNTY SUPERIOR COURT  
JACKIE BRADLEY COBURN CLERK

091-3634  
0010093

INFRACTION  CRIMINAL  
STATE OF WASHINGTON  
COUNTY OF LINCOLN  
CITY/TOWN OF  
IN THE DISTRICT COURT  
WOLFGANG LINCOLN  
PLAINTIFF VS. JAMES DEBENANT  
OKANOGAN COUNTY SUPERIOR COURT  
JACKIE BRADLEY COBURN CLERK  
WASHINGTON  
NO. WA-12271000 COURT NO. 4-22-13

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON  
DRIVER'S LICENSE NO. ADL4UR0133D9  
NATAL LAST FIRST MIDDLE INITIAL  
ROBERT VINCENT RANDOLPH  
ADDRESS RT 2 Box 5092  
CITY STATE ZIP CODE EMPLOYER  
OMAK WA 98841  
DATE OF BIRTH 07/12/57 HEIGHT 507 WEIGHT 150 EYES HAIR  
VIOLATION DATE MON DAY 12 30 97 TIME 2214  
AT LOCATION SW of Omak Hwy 2 Lincoln

91-3634

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND  
LICENSE NO. 4C7288 STATE WA EXPIRES 07/01/97 MAKE MODEL YEAR  
TRUCK 147000110001  
OWNER/LESSEE/OTHER THAN DRIVER ADDRESS CITY STATE ZIP CODE

AND THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES/INFRACTIONS  
VIOLATION/STATUTE CODE DESCRIPTION VEHICLE NO. LICENSE NO. PLATE  
KIA 4461502 Driving A motor vehicle while under the influence of intoxicating liquor

APPEARANCE AND FINE  
91-4343  
U.S. FUNDS \$ 1000  
DATE ISSUED 11/30/97

WITHOUT FURTHER NOTICE HAVING COMMITTED EACH OF THE ABOVE INFRACTING OFFENSES I PROMISE TO RESIGN AS DIRECTED ON THE NOTICE  
OFFICER K.T. Henshaw NUMBER 1228  
DECEASED'S SIGNATURE [Signature] DATE 12/30/97 PLACE Lincoln WA

INFRACTION	COMPLAINT/CITATION	PENALTY
RESPONSE DEPOSITION FINE	PLEA GING FINDING FINE	SUSPENDED \$ JB-TOTAL
C NO CFC E P Y	G NG 6 G NG D BF 560	560
C NO E NU E A Z	G NG G NG R P S	111.00
TOTAL		671.00

This is to certify that the foregoing is a true copy (photographic) of a record on file in the District Court of Lincoln County, WA.  
Richard D. Henshaw  
Clerk, Lincoln County District Court

Appendix D

DB AC20SX:LDH  
06/02/2005 12:45 PM

LINCOLN COUNTY DISTRICT COURT  
D O C K E T

PAGE 3

CASE: 10083 154  
Criminal Traffic  
Agency No.

DEFENDANT

ADO. PHIL VINCENT R JR  
181 DUNN ANDERSON RD  
OMAK WA 98841

Home Phone: 5098263720  
work Phone: 5096342737

AKA No aliases on file.

OFFICER

87055 LSH HEMBACH, KELLY

CHARGES

Violation Date: 12/30/1991  
1 45.01.502 DUI

Dv Plea  
Guilty

Finding  
Guilty

TEXT

5	12/31/1991	Case Filed on 12/31/1991			DJS
	03/19/1992	Plea/Response of Guilty Entered on Charge 1			
		Finding/Judgment of Guilty for Charge 1			
		Court Imposes Fine on Charge 1:		560.00	
		with 0.00 Suspended			
		Court Imposes Jail time of 1 D on Charge 1			
		with 0 D Suspended			
		Driver's License Suspended on Charge 1 for 90 D			
	07/26/1993	OFF 1 HEMBACH, KELLY Added as Participant			
		Accounts Receivable Created		396.00	
		Case Scheduled on Time Pay Agreement 1 for:		471.00	
	08/03/1993	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	08/31/1993	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	10/05/1993	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	11/02/1993	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	11/30/1993	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	01/04/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	01/11/1994	94011100067 Time Payment Received		25.00	DJS
	02/01/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	02/08/1994	94039100103 Time Payment Received		100.00	DJS
	03/02/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	04/05/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	04/12/1994	94102100030 Time Payment Received		50.00	DJS
	05/03/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	05/06/1994	94126100044 Time Payment Received		25.00	DJS
	05/20/1994	94140100034 Time Payment Received		25.00	
	05/31/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	06/06/1994	Time Pay Agreement 1 Rescheduled for:		171.00	DJS
		94157100058 Time Payment Received		25.00	
	07/01/1994	94182100002 Time Payment Received		25.00	
	08/30/1994	94242100071 Time Payment Received		50.00	
	11/01/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	11/15/1994	94319100056 Time Payment Received		25.00	DJS
	11/29/1994	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			SYS
	01/03/1995	DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1			
	01/30/1995	95030100022 Time Payment Received		25.00	DJS

Docket continued on next page

Appendix E

0770205X LDH  
06/02/2005 12:46 PM

LINCOLN COUNTY DISTRICT COURT  
D O C K E T

PAGE: 2

CASE: 10088 LSH  
Criminal Traffic  
Agency No.

DEFENDANT  
ADOLPH, VINCENT W JR

(EX) - Continued

S 01/31/1995 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1 SYS  
02/28/1995 DELINQUENT Time Pay Statement Sent for Time Pay Agreement 1  
03/03/1995 95062100043 Time Payment Received 21.00 DJS  
Case Paid in Full and Removed from Time Pay  
Charge 1: Def. complied with Jail Sentence  
Case Disposition of CL Entered

ACCOUNTING SUMMARY

	Total Due	Paid	Credit	Balance
Timepay: W	396.00	396.00		

ADDITIONAL CASE DATA

Case Disposition

Disposition: Closed Date: 03/03/1995  
License Surrender Date: 01/01/1990

Personal Description

Sex: M Race: 1 DOB: 03/27/1967  
Dr. Lic. No.: ADOLPVR433D7 State: WA Expires: 1994  
Employer:  
Height: 5 7 Weight: 150 Eyes: BRO Hair: BLK  
Identifying Information: TRUE NAME

End of docket report for this case

This is to certify that the foregoing is a true copy (photographic) of a record on file in the District Court of Lincoln County, WA.

*Luella D. Johnson*  
Clerk, Lincoln County District Court

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2009 MAR 23 AM 7:52  
BY RONALD R. CARPENTER  
CLERK

IN THE WASHINGTON STATE SUPREME  
COURT

In re Personal Restraint )  
Petition of: )  
Vincent Adolph. )  
 )  
 )  
 )  
 )  
 )

No: COA #27277-0-III  
S.Ct. #  
**DECLARATION OF SERVICE**  
**BY MAILING**

I, Vincent Adolph, petitioner, in the above entitled cause, do hereby declare that I have served the following documents;

Motion for discretionary review

Upon:

Division III  
Court of Appeals  
500 N Cedar St.  
Spokane, WA 99201

Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

I deposited with the C4-Unit Officer Station, by processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2049, Airway Heights, WA 99001-2049.

On this 19th day of March, 20 09.

I certify under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully Submitted,  
Vincent Adolph  
Petitioner