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SUPREME COURT  
STATE OF WASHINGTON

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

*In re Personal Restraint Petition of:*

No. 83544-6

JEFFREY COATS,  
Petitioner.

SUPPLEMENT IN SUPPORT OF  
MOTION FOR DISCRETIONARY  
REVIEW

I. INTRODUCTION

Petitioner, Jeffrey Coats, submits this supplement to his *Motion for Discretionary Review*.

II. ADDITIONAL FACTS

On March 17, 1995, Jeffrey Coats pleaded guilty to one count of Robbery in the First Degree, one count of Conspiracy to Commit Robbery in the First Degree, and one count of Conspiracy to Commit Murder in the First Degree.

The *Amended Information* alleged that both conspiracy charges were committed during the same time frame (August 30 – September 6), involved the same co-conspirators (Gene Anderson, Anthony Pugh, and Will Davis), and involved the same victim (the unknown-to-the-co-conspirators owner of a BMW). Only the criminal

*Supp. to Motion for Discretionary Review-1*

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1 objective differed, in an obvious way (one count involved the robbery of the victim; the  
2 other involved the murder of the same victim).  
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4 The *Affidavit for Determination of Probable Cause* stated, in pertinent part:

5 The defendant, together with two other juveniles, got together in advance of the  
6 criminal episode and mutually agreed that they wanted to ‘jack’ someone for their  
7 car (rob the person). They discussed a particular BMW automobile that was  
8 frequently located in a particular parking garage in downtown Tacoma. They  
9 agreed that the car owner would be killed, with one conspirator contributing the  
10 particular proposal that the victim’s throat be cut and his tongue pulled through  
the opening so that it lay on his chest – a so-called “Cuban necktie” killing.

11 Soon after this agreement, on the day in question, three of the conspirators, Pugh,  
12 Anderson, and Coats, met to carry out the scheme.....

13 See *Appendix C* to State’s Response. Likewise, the “Affidavit for Factual Basis For  
14 Defendant’s Plea” (*Appendix C*) also details one plan to rob and kill.  
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16 It is true that the victim of the actual crime was not the unknown owner of the  
17 BMW. Instead, after the three defendants were chased out of the parking lot before the  
18 BMW owner returned to his car, “the three of them went in search of another vehicle  
19 eventually deciding on the car belonging to Mr. Greiner.” See *Appendix C*, Factual  
20 Basis for Plea.  
21

22  
23 However, any attempt by the State to argue that a second, separate conspiracy  
24 was formed after the failed attempt on the BMW owner, fails here because Mr. Coats  
25 was not charged with a separate conspiracy involving Greiner (or his car) and did not  
26 plead guilty to such an allegation. Instead, both conspiracy charges involved the BMW  
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1 owner. The record only reveals one conspiracy with two criminal objectives regarding  
2 the BMW owner.

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4 When Coats pled guilty he entered a “straight plea” on the second and third  
5 counts—admitted that he committed the conspiracy to commit robbery, as well as the  
6 completed robbery. Coats entered an *Alford/Newton* plea to the conspiracy to murder  
7 count. *See Appendix B* to PRP. During the plea colloquy, the trial court inquired  
8 whether there had been any discussions about “merger of some of the offenses and  
9 what’s appropriate with regard to computing the standard range for sentencing  
10 purposes.” RP 7 (*Appendix B* to State’s Response). Defense counsel noted that “it’s out  
11 understanding that the crimes that are alleged are three separate and distinct crimes.” RP  
12 7. The prosecutor then pointed out that the State had calculated the offender score by  
13 counting each current crime: “This is the absolute maximum counting each one...for the  
14 offender score.” RP 8.

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19 IV. ARGUMENT

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21 Mr. Coats’ two conspiracy convictions violate double jeopardy, specifically the  
22 “unit of prosecution” rule. The unit of prosecution for multiple conspiracy counts  
23 focuses on the number of criminal agreements, not the number of criminal objectives.  
24 As a result, Mr. Coats’ *Judgment* is invalid on its face. In addition, his judgment is  
25 timely under RCW 10.73.100 (3).  
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1 In *State v. Bobic*, 140 Wn.2d 250, 265, 996 P.2d 610 (2000), the Washington  
2 Supreme Court held “the appropriate focus in Washington is on the conspiratorial  
3 agreement, not the specific criminal object or objects.” “Considering the Legislature is  
4 presumed to be familiar with its rules, its prior legislation, and prior court decisions  
5 pertaining to double jeopardy, we conclude the Legislature intended the unit of  
6 prosecution for conspiracy, within the meaning of double jeopardy, to be an agreement  
7 and an overt act rather than the specific criminal objects of the conspiracy.” *Id.* at 266.

8 The Court continued:

9  
10 As to the conspiracy charges, Bobic and Stepchuk participated in a single  
11 criminal enterprise with multiple criminal objectives. Because their conduct  
12 constitutes only one violation of the conspiracy statute for purposes of double  
13 jeopardy, we vacate two of their three conspiracy convictions and remand the  
14 case to the trial court for proceedings consistent with this opinion.  
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16  
17 *Id.* at 267. *Bobic*, which construed what the statute has meant from its inception, relied  
18 heavily on the analogous federal statute and its leading case: *Braverman v. United*  
19 *States*, 317 U.S. 49, 54, 63 S.Ct. 99, 87 L.Ed. 23 (1942). In *Braverman*, the Supreme  
20 Court noted the appropriate focus of review in a conspiracy count is the agreement, not  
21 the criminal object:  
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23  
24 [T]he precise nature and extent of the conspiracy must be determined by  
25 reference to the agreement which embraces and defines its objects. Whether the  
26 object of a single agreement is to commit one or many crimes, it is in either case  
27 that agreement which constitutes the conspiracy which the statute punishes. The  
28 one agreement cannot be taken to be several agreements and hence several  
29 conspiracies because it envisages the violation of several statutes rather than one.

30 *Braverman*, 317 U.S. at 53.

1           Subsequent Washington cases have further illustrated this point. *See generally*  
2 *State v. Jensen*, 164 Wn.2d 943, 950, 195 P.2d 512 (2008) (*sua sponte* accepting review  
3 on the “unit of prosecution” argument and applying *Bobic* to solicitation); *State v.*  
4 *Varnell*, 162 Wn.2d 165, 170 P.3d 24 (2007) (solicitation “unit of prosecution” rule).

5  
6           In *State v. Williams*, 131 Wn. App. 488, 128 P.3d 98 (2006), the defendant was  
7 charged with two conspiracies—count I (conspiracy to commit second degree robbery)  
8 and count II (conspiracy to commit first degree burglary). Because conspiracy is an  
9 inchoate crime, not a completed crime, any number of acts in the days preceding the  
10 climax in that case could have been labeled the substantial step that completed the crime  
11 of conspiracy. “For this reason, the defendant is not required to prove that a particular  
12 substantial step established one possible criminal element of the scheme and not another  
13 in order to avoid multiple punishments for the same criminal conduct.” *Id.* at 497. “For  
14 us, this is one crime which should result in one punishment. Nothing in this record  
15 suggests that more than one criminal transaction was planned.” *Id.* *See also State v.*  
16 *Knight*, 134 Wn. App. 103, 110, 136 P.3d 1116 (2006); *affd* 162 Wn.2d 806, 174 P.3d  
17 1167 (2008) (Although the plans changed day to day on the methods to be employed in  
18 robbing Mr. Cole, these plans all served the single criminal conspiracy. Thus conspiracy  
19 to commit burglary and robbery constituted one unit of prosecution and each individual  
20 conviction could not count as separate conviction for offender score purposes.)

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22           Mr. Coats did not waive this claim either by pleading guilty or by disavowing a  
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1 “merger” challenge at the time of the guilty plea. *See State v. Knight*, 162 Wn.2d 806,  
2 174 P.3d 1167 (2008). “[C]laims which go to ‘the very power of the State to bring the  
3 defendant into court to answer the charge brought against him’ are not waived by guilty  
4 pleas.” *State v. Amos*, 147 Wash. App. 217, 195 P.3d 564 (2008) (quoting *Knight*, 162  
5 Wn.2d at 811).  
6

7  
8 Further, this supplementary pleading does not change the essence of Mr. Coats’  
9 claim in his PRP. Coats has always claimed that his *Judgment* is invalid on its face and  
10 that it reveals an invalid guilty plea. In his prior pleading, he argued that his judgment  
11 was facially invalid and guilty plea involuntary because he was misinformed about the  
12 maximum possible sentence. *See also State v. Weyrich*, 163 Wn.2d 554, 557, 182 P.3d  
13 965 (2008) (“Because Weyrich was misinformed that the statutory maximum sentence  
14 for the thefts was 5 years [rather than 10], he should have been allowed to withdraw his  
15 pleas.”). That argument does not change in this pleading. Instead, Coats simply now  
16 points to another error arising from the same record, *i.e.*, the same proceeding.  
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21 Coats previously sought to withdraw his plea. He does not abandon that request.  
22 However, he prefers the remedy offered in *Knight*: remand for resentencing without the  
23 offending count (or its 2 offender score points).  
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1 V. CONCLUSION

2 Based on the above, this Court should accept review.  
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4 DATED this 8<sup>th</sup> day of September, 2009.

5 /s/ Jeffrey E. Ellis  
6 Jeffrey E. Ellis #17139  
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**To:** Jeff Ellis  
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Attached please find a supplement to MDR for filing. I have served opposing counsel by sending a copy of this email to her legal assistant and by mailing a copy, postage pre-paid to Ms. Proctor.

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