

NO. 85358-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT PETITION OF

WILLIAM PURSLEY,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER WILLIAM PURSLEY

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STATE OF WASHINGTON
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A. ISSUE

Whether a judgment and sentence is facially invalid based on a plea-based conviction for second degree felony murder that is improperly predicated on felonies excluded from the second degree felony murder statute?

B. STATEMENT OF THE CASE

The State by second amended information charged William Pursley with second degree felony murder (count I) and first degree assault (count II) with deadly weapon enhancements. App. A. That information alleged the crime of second degree murder was committed as follows:

That the defendant, on or about the 17th day of June 1994, *while committing or attempting to commit the felony crime of First or Second Degree Robbery, and in the course of or in furtherance of said crime or in immediate flight therefrom*, did cause the death of Michael Killpack, a human being, not a participant in such crime, said death occurring on or about the 17th day of June, 1995, the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a .25 automatic pistol; as defined by RCW 9.94A.125 and RCW 9.94A.310; proscribed by RCW 9A.32.050(1)(b), a felony.

App. A (emphasis added).

In 1995, Pursley entered an Alford¹ plea to second degree murder and first degree assault "as charged in the Second Amended Information." App. B at 4. The plea statement acknowledged the charge of second degree murder and, consistent with the second amended information, set forth the elements of that crime as follows:

That the defendant, 1) in Snohomish County, Washington, 2) on or about the 17TH day of June, 1994, 3) *while committing or attempting to commit the felony crime of First or Second Degree Robbery*, 4) *and in the course of or in furtherance of said crime or in immediate flight therefrom*, 5) did cause the death of Michael Killpack, 6) a human being, 7) not a participant in such crime, 8) said death occurring on or about the 17th day of June, 1995; 9) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a .25 automatic pistol.

App. B at 1 (emphasis added).

A supplement to the statement on plea of guilty set forth the elements of first degree robbery related to count I and acknowledged he would likely be found guilty of the elements described in Count I of the second amended information. App. C. Following Pursley's guilty plea, the court sentenced Pursley to consecutive terms of confinement consisting of 147 months for second degree murder (count I) and 117 months for first degree assault (count II). App. D. Pursley did not appeal.

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

Pursley later filed a pro se personal restraint petition challenging the calculation of credit for time served and early release credit, for which he was granted relief. In re Pers. Restraint of Pursley, 147 Wn. App. 1052, Not Reported in P.3d (2008).

In 2010, Pursley filed a motion to modify or correct the judgment and sentence pursuant to CrR 7.8(b) and CrR 4.2(d). App. E. He argued the judgment and sentence is facially invalid because the crime of second degree felony murder predicated on first degree robbery does not exist and that his plea was involuntary. Id. The trial court granted the State's motion to transfer Pursley's motion to the Court of Appeals as a personal restraint petition. App. F. The Court of Appeals then transferred the petition to the Supreme Court after determining Pursley had previously filed a petition without raising his current challenge. App. F. This Court retained Pursley's petition for consideration on its merits and assigned counsel to assist Pursley.

C. ARGUMENT

1. THE JUDGMENT AND SENTENCE IS INVALID ON ITS FACE BECAUSE SECOND DEGREE FELONY MURDER PREDICATED ON FIRST OR SECOND DEGREE ROBBERY IS A NON-EXISTENT CRIME.

The crime of second degree felony murder predicated on first or second degree robbery does not exist under the felony murder statutes.

Pursley pled guilty to a non-existent crime. The judgment and sentence is therefore facially invalid and Pursley's second degree felony murder conviction must be vacated.

a. There Is No Procedural Bar To Considering Pursley's Petition On Its Merits.

RCW 10.73.090(1) provides "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." Pursley may challenge his judgment and sentence, despite the one-year bar of RCW 10.73.090(1), if his judgment and sentence is facially invalid. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). Facial invalidity of the judgment and sentence may be shown by related documents, including charging instruments and statements of guilty pleas. In re Pers. Restraint of Hinton, 152 Wn.2d 853, 858, 100 P.3d 801 (2004) (citing In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002)).

"Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face." Hinton, 152 Wn.2d at 857. Pursley's argument that he was convicted of a nonexistent crime must therefore be addressed on its merits to determine if the judgment and

sentence is facially invalid. See In re Pers. Restraint of Cruze, 169 Wn.2d 422, 427, 237 P.3d 274 (2010) (addressing merits of claim to determine if judgment and sentence invalid on its face).

The fact that this is Pursley's second petition presents no procedural bar to considering it. RAP 16.4(d) provides "[n]o more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown." Under RAP 16.4(d), a successive petition for similar relief or on similar grounds is dismissed absent good cause shown. In re Pers. Restraint of Van Delft, 158 Wn.2d 731, 737, 147 P.3d 573 (2006). Pursley's current petition raises conviction for a non-existent crime as a ground for relief for the first time. App. F. His first petition raised issues involving calculation of credit for time served and early release credit. See In re Pers. Restraint of Pursley, 147 Wn. App. 1052, Not Reported in P.3d (2008). The "similar grounds" bar under RAP 16.4(d) is therefore inapplicable.

The abuse of writ doctrine is inapplicable as well. "A prisoner's second or subsequent personal restraint petition that raises a new issue for the first time will not be considered if raising that issue constitutes an abuse of the writ." In re Pers. Restraint of Turay, 153 Wn.2d 44, 48, 101 P.3d 854 (2004). It is an abuse of the writ for a petitioner to raise a new issue in a successive petition that was available but not relied upon in a

prior petition if the petitioner was represented by counsel throughout postconviction proceedings. In re Pers. Restraint of Jeffries, 114 Wn.2d 485, 492, 789 P.2d 731 (1990).

The abuse of writ doctrine applies only where the petitioner was represented by counsel throughout postconviction proceedings. In re Pers. Restraint of Martinez, 171 Wn.2d 354, 363, 256 P.3d 277 (2011) (citing In re Pers. Restraint of Greening, 141 Wn.2d 687, 700-01, 9 P.3d 206 (2000)). The doctrine does not apply here because Pursley's previous petition was pro se. See Pursley, 147 Wn. App. 1052 (noting pro se status).

b. Second Degree Felony Murder Predicated On First Or Second Degree Robbery Is A Non-Existent Crime.

"One of the elements of second degree felony murder is the predicate felony." Hinton, 152 Wn.2d at 857. Conviction for second degree felony murder based on a predicate felony that does not exist under the second degree felony murder statute is a conviction for a nonexistent crime. See Hinton, 152 Wn.2d at 857 (addressing assault as predicate felony under former RCW 9A.32.050).

In this case, Pursley was convicted of second degree felony murder based on the predicate felony of first or second degree robbery. But neither first nor second degree robbery is a predicate felony under the second degree murder statute. Pursley was therefore convicted of a non-

existent crime. Basic principles of statutory analysis compel this conclusion.

RCW 9A.32.030(1)(c) defines the crime of first degree murder in relevant part as follows

He or she commits or attempts to commit the crime of either (1) robbery in the first or second degree, (2) rape in the first or second degree, (3) burglary in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants[.]

(emphasis added).

RCW 9A.32.050(1)(b) defines the crime of second degree murder in relevant part as follows

He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants[.]

(emphasis added).

When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal and strict interpretation. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). "[C]ourts are to give effect to that plain meaning

as an expression of legislative intent." State v. Thompson, 151 Wn.2d 793, 801, 92 P.3d 228 (2004).

The plain language of RCW 9A.32.050(1)(b) specifies second degree felony murder is committed when a person commits or attempts to commit "any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c)." First and second degree robbery are among the enumerated felonies in the first degree murder statute. RCW 9A.32.030(1)(c). It follows that one cannot be convicted of second degree murder based on the predicate felony of first or second degree robbery. That is a nonexistent crime under the plain language of the second degree murder statute.

Responding to Pursley's pro se filings, the State argues Pursley pled guilty to an existent crime. Response to Personal Restraint Petition (Response) at 4-6. If the State's interpretation of the statute were followed, a portion of the statute would be rendered meaningless. Specifically, the portion stating second degree felony murder is committed when a person commits or attempts to commit any felony "other than those enumerated in RCW 9A.32.030(1)(c)." RCW 9A.32.050(1)(b).

Crimes are defined by statute. RCW 9A.04.040(1) ("An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime."). Statutes

should be construed so that no part is rendered meaningless or superfluous. City of Bellevue v. Lorang, 140 Wn.2d 19, 25, 992 P.2d 496 (2000). If any predicate felony could support a conviction under the second degree felony murder statute, there would be no reason why the legislature would specifically state that certain predicate felonies are reserved for the first degree murder statute.

"In determining the elements of a statutorily defined crime, principles of statutory construction require the court to give effect to all statutory language if possible." State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). Giving effect to all statutory language in defining the crime of second degree felony murder under RCW 9A.32.050(1)(b) leads to the inevitable conclusion that a person cannot commit second degree felony murder by committing a predicate felony that is enumerated in the first degree murder statute.

The State claims the statutory reference to a "felony 'other than those enumerated in RCW 9A.32.030(1)(c)' simply serves to distinguish between the crimes of first and second degree murder." Response at 6. But that interpretation is foreclosed by Hinton, which held "[o]ne of the elements of second degree felony murder is the predicate felony." Hinton, 152 Wn.2d at 857.

The State's interpretation seeks to reword the plain language of RCW 9A.32.050(1)(b) by substituting "any felony" for "any felony . . . other than those enumerated in RCW 9A.32.030(1)(c)." The courts will not subtract from the clear language of a statute unless the subtraction of language is imperatively required to make the statute rational. State v. Watson, 146 Wn.2d 947, 955, 51 P.3d 66 (2002). No such imperative presents itself here. The Legislature made a rational choice to exclusively reserve certain enumerated felonies as the predicate for first degree felony murder while relegating all other felonies to the second degree felony murder statute. The crime of second degree felony murder with first or second degree robbery as the predicate felony does not exist under the statute.

This Court's precedent supports Pursley's argument that he was convicted of a non-existent crime. In In re Pers. Restraint of Andress, the defendant was convicted of second degree felony murder with assault as the predicate felony. In re Personal Restraint of Andress, 147 Wn.2d 602, 604, 56 P.3d 981 (2002). This Court held a conviction of second degree felony murder could not be based upon assault as the predicate felony

under former RCW 9A.32.050(1)(b) and vacated his conviction. Andress, 147 Wn.2d at 604-05, 615-16.²

Relying on Andress, this Court in Hinton held the petitioners were convicted of a nonexistent crime when they pled guilty to second degree felony murder with assault as the predicate felony. Hinton, 152 Wn.2d at 857. This Court reasoned "[n]o statute established a crime of second degree felony murder based upon assault at the time the petitioners committed the acts for which they were convicted. A conviction under former RCW 9A.32.050 resting on assault as the underlying felony is not a conviction of a crime at all." Id.

The same reasoning applies here. No statute establishes a crime of second degree felony murder based upon first or second degree robbery.

The State argues the second amended information charges an actual crime because it alleged the elements for first degree murder under RCW 9A.32.030(1)(c). Response at 4. The problem with the State's argument is that Pursley did not plead guilty to first degree murder under RCW 9A.32.030(1)(c). He pled guilty to second degree felony murder under RCW 9A.32.050(1)(b). The crime of second degree felony murder

² In response to Andress, the Legislature amended RCW 9A.32.050(1)(b) to specifically include assault as a predicate felony. Laws of 2003, ch. 3, § 2.

predicated on first or second degree robbery does not exist under the second degree felony murder statute.

The State asserts the second degree murder conviction is still valid because a person who is charged with a crime can be convicted of the same crime in an inferior degree. Response at 4-5. The inferior degree rule applies when the defendant goes to trial and relies on the trier of fact to determine guilt. See, e.g., State v. Fernandez-Medina, 141 Wn.2d 448, 449-50, 6 P.3d 1150 (2000); State v. Tamalini, 134 Wn.2d 725, 728-29, 953 P.2d 450 (1998). The State cites no authority importing that inferior degree concept into the plea context. See State v. Young, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (courts may assume that, where no authority is cited in support of a proposition, "counsel, after diligent search, has found none.").

A plea of guilty is a plea of guilt to the information "*as charged*." State v. Bowerman, 115 Wn.2d 794, 799, 802 P.2d 116 (1990). The information here alleges Pursley committed the crime of second degree felony murder predicated on first or second degree robbery. App. A. But that crime does not exist under any statute.

The State's contention that Hinton does not apply because "neither first nor second degree murder is a non-existent crime" is therefore misplaced. Response at 5. The State did not charge and Pursley did not

plead guilty to first degree felony murder. The State did not charge and Pursley did not plead guilty to second degree felony murder predicated on a felony other than those enumerated in the first degree felony murder statute. Rather, the State charged and Pursley pled guilty to a second degree felony murder crime that does not legally exist under the second degree felony statute. App. A, B.

c. Pursley's Plea Was Invalid Under The Constitutional Due Process Standard Because The Elements Of The Charged Crime Do Not Constitute The Offense To Which He Pled Guilty.

If first or second degree robbery cannot serve as predicate felonies for second degree felony murder, it follows that Pursley's plea was invalid. "Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily." State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); U.S. Const. Amend. V and XIV, Wash. Const. art. I, § 3.

A plea cannot be voluntary "unless the defendant possesses an understanding of the law in relation to the facts." McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969). One of the requirements of a valid plea is that the defendant be correctly informed of the requisite elements of the crime charged. In re Pers. Restraint of Hews, 108 Wn.2d 579, 589-90, 741 P.2d 983 (1987). A defendant must also

understand the necessary facts to which he admits constitute the charged offense to which he pleads guilty. Hews, 108 Wn.2d at 590.

Here, the facts admitted by Pursley — that he committed first or second degree robbery and in the course of doing so caused the death of another — cannot as a matter of law constitute the charged offense of second degree felony murder for the reasons set forth in section 1. b., supra. Pursley was not informed of the requisite elements of the crime charged. As a result, his plea to second degree felony murder was not knowing, voluntary, and intelligent under the constitutional due process standard.

d. The Second Degree Felony Murder Conviction Must Be Vacated.

A personal restraint petitioner asserting constitutional error is entitled to relief upon establishing actual and substantial prejudice. Hinton, 152 Wn.2d at 859-60. In Hinton, conviction of a non-existent crime established a fundamental due process violation because assault could not stand as the predicate felony for second degree felony murder. Id.

Pursley was also convicted of a crime under a statute that did not criminalize his conduct as second degree felony murder. Because he has been convicted of a nonexistent crime, he has shown fundamental due process error that actually and substantially prejudiced him. Id.; U.S. Const. amend. XIV; Wash. Const. art. I, § 3.

"Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face." Hinton, 152 Wn.2d at 857. Pursley establishes that he was convicted of a non-existent crime. His judgment and sentence is therefore invalid on its face and this Court may grant relief despite the one-year time bar under RCW 10.73.090(1). Goodwin, 146 Wn.2d at 866.

"It has long been recognized that a judgment and sentence based on conviction of a nonexistent crime entitles one to relief on collateral review." Hinton, 152 Wn.2d at 860. The conviction for second degree felony murder must be vacated and the case remanded to the trial court for further lawful proceedings. Id. at 861.

D. CONCLUSION

Pursley respectfully requests that this Court grant his personal restraint petition, vacate the second degree felony murder conviction, and remand to the trial court for further lawful proceedings.

DATED this 17th day of October 2011.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC



CASEY GRANNIS
WSBA No. 37301
Office ID No. 91051
Attorneys for Petitioner

APPENDIX A

CERTIFIED
COPY

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KAY D. ANDERSON
SUPERIOR COURT OF WASHINGTON COUNTY CLERK
FOR SNOHOMISH COUNTY SNOHOMISH COUNTY

THE STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 PURSLEY, WILLIAM VAHID,)
)
 Defendant.)

No. 94-1-01390-9
SECOND
AMENDED INFORMATION

Aliases:

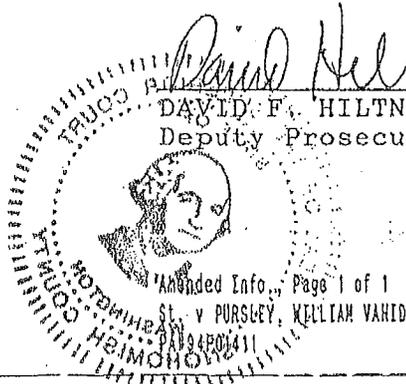
Comes now James H. Krider, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his Information, charges and accuses the above-named defendant(s) with the following crime(s) committed in the State of Washington:

COUNT I: SECOND DEGREE MURDER, committed as follows: That the defendant, on or about the 17TH day of June, 1994, while committing or attempting to commit the felony crime of First or Second Degree Robbery, and in the course of or in furtherance of said crime or in immediate flight therefrom, did cause the death of Michael Killpack, a human being, not a participant in such crime, said death occurring on or about the 17th day of June, 1995, the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a .25 automatic pistol; as defined by RCW 9.94A.125 and RCW 9.94A.310; proscribed by RCW 9A.32.050(1)(b), a felony.

COUNT II: FIRST DEGREE ASSAULT, committed as follows: That the defendant, on or about the 17th day of June, 1994, with intent to inflict great bodily harm, did assault another person, to-wit: Michael Conner, with a deadly weapon and by any force or means likely to produce great bodily harm or death, to-wit: a baseball bat; the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a baseball bat; as defined by RCW 9.94A.125 and RCW 9.94A.310: proscribed by RCW 9A.36.011(1)(a), a felony.

JAMES H. KRIDER
PROSECUTING ATTORNEY

David F. Hiltner
DAVID F. HILTNER, #11851
Deputy Prosecuting Attorney



Snohomish County Prosecuting Attorney
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NVL/DFH/jdd

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EXHIBIT 4

APPENDIX B

FILED

JUN 2 PM 4 49

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

KAY D. ANGELO
COUNTY CLERK
SNOHOMISH CO. WASH

THE STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 PURSLEY, WILLIAM VAHID,)
)
 Defendant.)

No. 94-1-01390-9

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

**CERTIFIED
COPY**

1. My true name is WILLIAM VAHID PURSLEY.

2. My age is 16. 3. I went through the 9th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) 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 MICKEY L. KROM.

(b) I am charged with the crimes of Count 1: Second Degree Murder, RCW 9A.32.030(1)(c), Count 2: First Degree Assault, RCW 9A.36.011(1)(a).

The elements of the crimes are:

COUNT I: That the defendant, 1) in Snohomish County, Washington, 2) on or about the 17TH day of June, 1994, 3) while committing or attempting to commit the felony crime of First or Second Degree Robbery, 4) and in the course of or in furtherance of said crime or in immediate flight therefrom, 5) did cause the death of Michael Killpack, 6) a human being, 7) not a participant in such crime, 8) said death occurring on or about the 17th day of June, 1995; 9) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a .25 automatic pistol.

COUNT II: That the defendant, 1) in Snohomish County, 2) on or about the 17th day of June, 1994, 3) with intent to inflict great bodily harm, 4) did assault another person, to-wit: Michael Conner, 5) with a deadly weapon and by any force or means likely to produce great bodily harm or death, to-wit: a baseball bat; 6) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a baseball bat.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) 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) The right to remain silent before and during trial, and I need not testify against myself.
- (c) The right at trial to hear and question witnesses who testify against me.
- (d) 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) The right to appeal a determination of guilty after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
(a) The crime with which I am charged carries a maximum sentence of:
Count I: Life imprisonment and a \$50,000 fine. Count II: Life imprisonment
and a \$50,000 fine.

The standard sentence range is/are: 135 to 178 months as to Count I; 105 to 135 months as to Count II, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence 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 always includes convictions in juvenile court for sex offenses, whatever my age was when the sex offense was committed, or is now. Criminal history also includes convictions in juvenile court for other felonies or serious traffic offenses that were committed when I was 15 years of age or older. However, if I was 23 years of age or older when I committed the crime to which I am now pleading guilty, the juvenile conviction only counts if it was for a class A felony, or a sex offense.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendations increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the recommendation to the judge as stated on the attached plea agreement form.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) The crime of Assault 1^o has a mandatory minimum sentence of at least 5 years of total confinement. The law does not allow any reduction of this sentence. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(i) The sentence imposed on Counts 1+2 will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(j) In addition to confinement, the judge will sentence me to

community placement for at least 2 years. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(n) 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.

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the State of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

(q) If the crime charged herein is a "crime of violence" as defined by RCW 9.41.010(11); a "serious offense" as defined by RCW 9.41.010(12); a domestic violence offense enumerated in RCW 10.99.010(2); a harassment offense enumerated in RCW 9A.46.060; a felony in which a firearm was used or displayed; a felony violation under RCW 69.50; or is a conviction under RCW 46.61.502 or RCW 88.12.100 (and this is at least my fourth conviction under either of these statutes within the five years preceding the date of my guilty plea), the court has informed me orally and in writing that this plea of guilty will make me ineligible to possess a firearm pursuant to RCW 9.41.040. (If not applicable, this paragraph should be stricken and

initialed by the defendant and the judge.)

Second

7. I plead guilty to the crime(s) of Count 1 ~~First~~ Degree Murder, Count 2 First Degree Assault, as charged in the Second Amended Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime. This is my statement:

Pursley
to North Carolina v. Mead and State v. Mead
I wish to enter a plea of guilty to guilty
of the state felon offense, and the benefit of that offense.
I have discussed the case with my lawyer
and received his advice. I believe that I
substantiated likelihood that I could be convicted
if this case went to trial. If I want to strike

12. 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.

13. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

X William V. Pursley
WILLIAM VAHID PURSLEY
DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

David F. Hiltner
DAVID F. HILTNER, #11851
DEPUTY PROSECUTING ATTORNEY

Mickey L. Krom
MICKEY L. KROM, #7064
DEFENDANT'S LAWYER

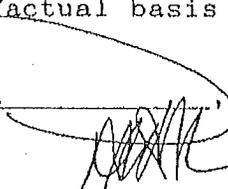
A I would have a more serious charge and a longer possible sentence. Rather than take that risk, I want to plead guilty. I believe this is in my best interest.

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check appropriate box):

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her;
- * (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 2nd day of June, 1995.



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 _____, 1995.~~

~~_____
INTERPRETER~~

APPENDIX C

FILED

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KAY L. ANDERSON
COUNTY CLERK
SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 94-1-01390-9
)	
v.)	Supplement to Defendant's
)	Statement on Plea of Guilty
PURSLEY, WILLIAM VAHID,)	
)	
Defendant.)	

I, William Vahid Pursley acknowledge that I have been fully advised, after consultation with my attorney, that the elements of First Degree Robbery as referred to in Count I are, that on or about May 17, 1995, that with intent to steal, that I or an accomplice did unlawfully take personal property from the person of Michael Killpack against such person's will by use or threatened use of immediate force, violence or fear of injury, and in the commission of or immediate flight therefrom that I or an accomplice was armed with a deadly weapon, to-wit: a .25 caliber handgun.

I, William Vahid Pursley, acknowledge that it is likely I would be found guilty of the elements as described in Counts I and II of the Second Amended Information ~~including those~~ including those elements as enumerated above. I re-affirm my desire to plead guilty pursuant to State v. Newton and North Carolina v. Alford so that I can take advantage of the plea bargain and that I understood the elements of First Degree Robbery at the time of the original plea. I wish to re-affirm my original plea in order to take advantage of the plea bargain.

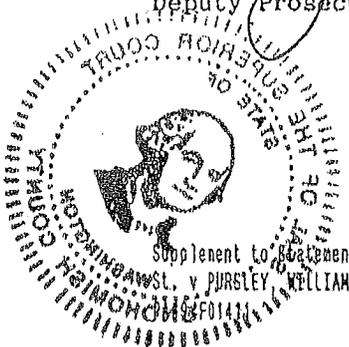
Done in open court this 9th day of JUNE, 1995.

David F. Hiltner
DAVID F. HILTNER, #11851
Deputy Prosecuting Attorney

William Vahid Pursley
WILLIAM VAHID PURSLEY
Defendant

Merley Kram
Attorney for Defendant #7064
Deputy Prosecuting Attorney

[Signature]
Judge



Supplement to Statement on Plea, Page 1 of 1
ST. v. PURSLEY, WILLIAM VAHID

** or did unlawfully attempt to steal personal property*

Snohomish County Prosecuting Attorney
S:\foras
NVL/DFH/jdd

65

EXHIBIT 6

APPENDIX D

**CERTIFIED
COPY**

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

FILED

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KAY D. ANDERSON
COUNTY CLERK
SNOHOMISH CO. WASH.

THE STATE OF WASHINGTON,)
)
) Plaintiff,)
)
) v.)
)
) PURSLEY, WILLIAM VAHID,)
)
)
)
) Defendant.)

No. 94-1-01390-9

JUDGMENT AND SENTENCE

Aliases:

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 06/02/95 by plea of:

Count No.: I Crime: SECOND DEGREE MURDER WITH DEADLY WEAPON ALLEGATION
RCW 9A.32.050(1)(b)
Crime Code _____ Date of crime 06/17/94
Incident #LYN 9405129

Count No.: II Crime: FIRST DEGREE ASSAULT WITH DEADLY WEAPON ALLEGATION
RCW 9.94A.125, 9.94A.310, 9A.36.011(1)(a)
Crime code _____ Date of crime 06/17/94
Incident #LYN 9405129

- () Additional current offenses are attached in Appendix A.
- () With a special verdict/finding for use of deadly weapon on Count(s) _____.

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

- () Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

- () Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are:

2. CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are:

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Class
(a) None				

- () Additional criminal history is attached in Appendix B.
- () Prior convictions counted as one offense in determining the offender score are: _____

3 Jail/694

Cy 67

SENTENCING DATA:

	Offender Seriousness			Maximum Term
	Score	Level	Range	
Count No. I	0	XIII	135-178-123-164 months	Life
Count No. II	0	XII	105-135 months	Life

() Additional current offense sentencing data is attached 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.

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) () \$ WAIVED, Court costs, including reimbursement for costs of extradition, if incurred; plus any costs determined after this date as established by separate order of this court;

(b) (x) \$100.00, Victim assessment;

(c) (X) \$ _____, Total amount restitution (with credit for amounts paid by co-defendants; the amount and recipient(s) of the restitution are as established by separate order of this court;

(d) () \$631/\$691, Recoupment for attorney's fees; WAIVED

(e) () \$ _____, Fine;

(f) () \$ _____, Dep't, Drug enforcement fund;

(g) () \$ _____, Other costs;

2. () The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms: () Not less than \$ _____ per month, (X) on a schedule established by the defendant's community corrections officer, to be paid within 120 months of () this date (X) release from confinement.

3. The defendant shall remain under the Court's jurisdiction and the supervision of the State Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.

4. (X) The defendant shall be prohibited from having any contact, directly or indirectly, with Michael Killpack or Michael Connors for a period of 10 years after release. Family

5. () The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.

6. The Court, upon motion of the State, DISMISSES Count(s) _____.

7. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the State Department of Corrections as follows commencing () immediately () no later than _____

147 months for Count No. I
117 months for Count No. II

() The terms in Counts No. 1+2 are (~~concurrent~~) (consecutive).

() The sentence herein shall run (~~concurrently~~) (~~consecutively~~) with the sentence in cause number(s) _____.

() Credit is given for 412 days served solely in regard to this offense.

8. () The defendant shall serve a two year term of community placement, or up to the period of earned early release, whichever is longer, during which term the mandatory conditions set forth below shall be followed:

(a) The defendant shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The defendant shall work at department of corrections-approved education, employment, and/or community service;

(c) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The defendant in community custody shall not unlawfully possess controlled substances; and

(e) The defendant shall pay community placement fees as determined by the department; and, in addition, the following conditions shall also be followed:

(f) () The defendant shall remain () within () outside of the following geographical area: _____

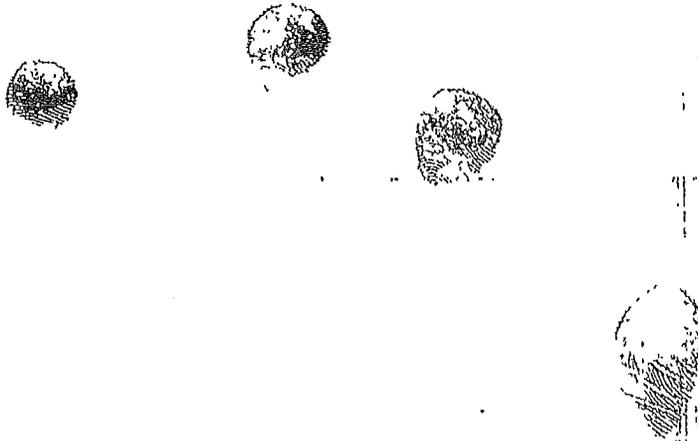
(g) () The defendant shall not have direct or indirect contact with: Michael Killpack's Family or Michael Connor

(h) () The defendant shall participate in crime-related treatment or counseling services as directed by the department.

(i) () The defendant shall not consume alcohol.

(j) () The defendant shall comply with the following crime-related prohibitions: _____

FINGERPRINTS



Right Hand
Fingerprints of:
WILLIAM VAHID PURSLEY

* William Pursley
(Defendant's Signature)

Attested by:
Kay D. Anderson, Snohomish Co Clerk

By: K.A. Brown
(Deputy Clerk)

Dated: 8/4/95

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 Co. Clerk

By: _____
(Deputy Clerk)

OFFENDER IDENTIFICATION

S.I.D. No. WA
Date of Birth 10/03/78
Sex M
Race White
ORI WA0310000
OCA 109147
OIN 04940512904
DOA 10/14/94

APPENDIX E

CERTIFIED
COPY

FILED

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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



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

STATE OF WASHINGTON

Plaintiff,

vs.

WILLIAM PURSLEY,

Defendant

Case No. 94-1-01390-9

**MOTION TO MODIFY OR CORRECT
JUDGEMENT AND SENTENCE**
(pursuant to CrR 7.8)(B)(4&5)&
CrR 4.2(d)

IDENTITY

COMES NOW, the Defendant, Pro se, currently being housed at the Monroe Correctional Complex, and in the above captioned action, and moves this Honorable Court for a remand without withdrawal of his guilty plea.

FACTS

- A. The defendant appeared before Judge Joseph A. Thibodeau.
- B. The State being represented by David F. Hiltner, of Snohomish County Prosecutors Office.
- C. The defendant being represented by Mickey L. Krom Defense Attorney.
- D. The defendant plead guilty and received a sentence of 264 months.

2010 MAY 13 AM 10:47

COURT OF SUPERIOR COURT
SNOHOMISH COUNTY

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JURISDICTION

This motion is made pursuant to CrR 7.8(c)(1) which provides in pertinent part:

"An application to the court shall be made by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of the writing is fulfilled if the motion is stated in a written notice of the hearing of the motion".

The defendant is entitled to relief as his sentence was imposed or entered in violation of the laws of the State of Washington. The Sentencing Court has the duty and the Authority to correct the error upon its discovery. See State v. Ford, 137 Wn. 2d 472 in part:

"This court has a duty and power to correct the error upon its discovery, even where the parties not only failed to object but agreed with the sentencing Judge...The error is unmistakable, evident and undisputable."

See In re Greening, 142 Wn. 2d 687 & In re Personal Restraint of Hinton, 152 Wn. 2d 853 (2004).

"CrR 4.2(d) imposes a duty on the court to determine that the defendant is entering a plea with correct understanding of the consequences of his plea. That rule implements important constitutionally mandated principals. That duty was not met here." In re Murillo, 134 Wash. App. At 531 (internal citation removed).

GROUND

Defendant had been charged, convicted and sentenced on August 4th 1995 of a *non-existent statute of the Felony Index*. As a "15 year old Juvenile." The Defendant ultimately plead guilty to two felony counts, Count I Second Degree Felony Murder pursuant to RCW 9A.32.050 (1)(b) predicated on a First Degree Robbery.

1 The defendant was sentenced to a term of imprisonment of 147 months on
2 count I and 117 Months on count II to be served consecutively; the defendant's total
3 confinement time served to date is 189 months.

4 **STATUTE ERROR**

5 The issue of error is in count I of the information, which specifically
6 alleges "Second Degree Felony Murder" As defined by RCW 9A.32.050 (1)(b)."A
7 person is guilty of Murder in the second degree when he commits or attempts to
8 commit any felony other than those enumerated in RCW 9A.32.030 (1)(c)". RCW
9 9A.32.030 (1)(c) Reads: "when he or she commits or attempts to commit the crime of
10 1) Robbery in the First or Second Degree".

11 *At the time of the commission of this offense there was no statutory scheme*
12 *under the SRA which would allow the trial courts or the state to charge and convict a*
13 *defendant for this crime. (See defendant's Attachment "A" Judgment& Sentence and*
14 *Attachment "B" defendant's charging information's).*

15 **AUTHORITY**

16
17
18 1. There is an error in the *Charging Document, Plea Agreement* and the
19 *Judgment and Sentence* which requires *remedy*, (Due Process Requires a factual
20 Basis for excepting guilty pleas,) State v. Mendoza, 157 Wn. 2d 582 (2006) See also
21 State v. Cordiga, 162 Wn 2d at 912 (2008) and Pers. Restraint of West, 154 Wn. 2d
22 209,110 P.3d 1122 (2005).

23
24
25 2. It is overtly direct and obvious that the charge in count I is at odds with
26 the Court Rules of Washington at CrR 4.2 (d) **Voluntariness**.

1 The court shall not accept a plea of guilty, without first determining
2 that it is made voluntarily, competently and with an understanding
3 of the nature of the charge and the consequences of the plea. The
4 court shall not enter a judgment upon a Plea of guilty unless it is
5 satisfied that there is a factual basis for the plea.

6 Since the defendant's conviction has been final for more than one year, he must
7 address the time bar issue-arguing first that his *Judgment* is facially invalid and then
8 moving to his guilty plea to show that it was based on a "manifest error" and is
9 unconstitutional.

10 3. RCW 10.73.090 establishes a one-year time limit for collateral attack on
11 a judgment. More than one year has elapsed since this conviction was final. However,
12 the one year time limit does not apply to a judgment invalid on its face pursuant to
13 RCW 10.73.090 and the provisions provided in RCW 10.73.100(2); "*when one year
14 time limit not applicable*" See also *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50
15 P.3d 618 (2002). In part:

16 "A judgment and sentence is invalid on its face if it evinces
17 the invalidity "without further elaboration". The phrase "on its
18 face includes documents signed as part of a plea agreement.

19 As our Supreme Court has explained:

20 "[T]he relevant question in a criminal case is whether the judgment and
21 sentence is valid on its face, not whether related documents, such as plea
22 agreements, are valid on their face. Such documents may be relevant to the question
23 whether a judgment is valid on its face, but only if they disclose facial invalidity in the
24 judgment and sentence itself."

25 See *In re Restraint of Turay*, 150 Wn. 2d 71, 82, 74 P.3d 1194 (2003). See also
26 *State v. Lewis*, ___ Wn. App. ___, ___ P.3d ___ (August 28, 2007).

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

3 4. The Washington State Supreme Court has clearly held that a person can
4 raise a challenge to a plea to a non-existent crime at any time, and the fact that the
5 person pled guilty or even admitted to the elements of a different, existing, crime, did
6 not save the conviction. *Id.* (holding (1) one year limitations on collateral attack did not
7 apply to convictions that were constitutionally invalid on its face; (2) defendant did not
8 waive right to collaterally attack conviction on basis of facial invalidity by guilty plea; (3)
9 defendant was entitled to vacation of conviction of crime that was not yet enacted at
10 the time that the underlying conduct occurred.

11 5. Furthermore the trial court does not have the authority to alter the
12 statutory scheme of the SRA to conform to a Plea Agreement. The fixing of legal
13 punishments for criminal offenses is a legislative function. See *State v. Ammons*, 105
14 Wn. 2d at 175. And *State v. Monday*, 85 Wn. 2d at 906, And PRP of *West*, 154 Wn.
15 2d.204.
16

17 6. Defendant had previously informed the court of the *fundamentally*
18 *defected information* by letter addressed to the Sentencing Judge in June 2009, of
19 which was filed by the clerk; (*see docket*) which was then forwarded to the Deputy
20 Prosecuting Attorney David F. Hiltner and to the attorney of record for the defendant,
21 for review and possible action.

22 To date neither aforementioned parties has contacted the defendant or
23 responded to numerous inquiries.
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ARGUMENT

A. This is the Defendant's first collateral attack on this *Judgment*.

B. The defendant also address's with argument that his motion *should not be transferred to the Court of Appeals pursuant to CrR 7.8(c)(2) as a Personal Restraint Petition*, as though the transfer would serve "*the ends of Justice*", because it denies the right to direct appeal under RAP 2.2(9) and shifts the burden of proof from the state onto the inexperienced "in law" defendant, making it possible to continue *confinement* under a clearly illegal Judgment and Sentence in violation of due process; but,

Prejudice to the defendant may be overcome by this courts appointment of counsel to properly present and argue this case.

C. Division Two rendered a decision in *State v. Smith*, 144 Wn. App. 860, 864 (2008) which expressed In relevant part:

"We agree with Smith that converting and transferring a CrR 7.8 motion to a personal restraint petition could infringe on his right to choose whether he wanted to pursue a personal restraint petition because he would then be subject to the successive petition rule in RCW 10.73.140 as a result of the conversion on the motion."

The court went on to cite federal authority to support this conclusion. See *Castro v. United States*, 540 U.S. 375, 383. 124 S. Ct. 786, 157 L.Ed 2d 778 (2003).

See also *State v. Hibdon*, 140 Wn. App. 534 (2007).

The Washington Court of Appeals recently expressed a view in *State v. Davis*, 146 Wn. App. 714, 724 (2008) that, the best approach is, In part:

"we believe it is better for both the offender and the DOC to have the trial court impose a sentence that is clear to all from the outset, given the number of offenders and the complexity sentences imposed under the SRA, a clear mandate from the trial court's sentence".

1 D. The defendant attributes the error to be upon the Snohomish County
2 Superior Court Judge, Joseph A. Thibodeau, the District Prosecuting Attorney, David
3 F. Hiltner and the Attorney of record Mickey L. Krom, for charging, convicting and
4 sentencing the defendant to a non-existent, Statutorily invalid crime.(The interests of
5 Justice would best be served by the trial Court Correcting its own Errors).

6
7 **RELIEF**

8 The defendant seeks to have the non-existent crime vacated without
9 withdrawal of the plea agreement. *The defendant does not seek to withdraw his plea*
10 *where he plead guilty to multiple charges and he has "fulfilled the terms of the plea*
11 *agreement". See PRP of West, 154 Wn. 2d 175 204. See State v. Ellts, 94 Wn. 2d*
12 *489, 495-96. (Citation omitted). See also Goodwin, 146 Wn. 2d at 877 ("Correcting an*
13 *erroneous sentence in excess of statutory authority does not affect the finality of that*
14 *portion of the judgment and sentence that was correct and valid when imposed.")*

15 Indivisibility of the plea has no bearing on the analysis that the crime was
16 non-existent.

17
18 See State v. Knight, 162 Wn.2d 813 (2008) In part:

19 "Knights guilty plea need not be withdrawn because guilty
20 pleas, like jury verdicts, do not violate double jeopardy...
21 Since the plea agreement has been fully satisfied here,
22 the indivisibility of the plea agreement has no bearing
23 on our analysis."

24 Furthermore, [see Knight at 812] In part:

25 "correctly understood, the plea agreement has no bearing
26 on the ability of the court to vacate a conviction entered
pursuant to the guilty plea itself, because the plea itself
need not be disturbed."

The Defendant should be remanded for imposition of the predicate felony of first
degree robbery upon vacation of the second degree felony murder that does not exist

1 in the felony index. Based on the analysis of the evidence supporting the plea
2 agreement and the subsequent plea to first degree robbery, this supports the remedy
3 and as it applies to the "workman Standard" 90 Wn.2d at 433.

4 See State v. Hughes, 118 Wn. APP. 713 (2003). In part:

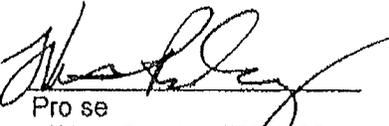
5 "Remand for second degree Assault, because facts for
6 that crime were Proven as part of higher crime..."

7
8 **AFFIDAVIT**

9 STATE OF WASHINGTON)
10) ss:
11 COUNTY OF SNOHOMISH)

12 I, William Pursley, declare under penalty of perjury, that the statements within
13 this Motion are true and correct to the best of my knowledge and have been executed
14 on this 15th day of March, 2010 under the laws of the State of Washington, and to the
15 laws of the United States of America, that the foregoing is true and correct pursuant to:
16 RCW 9A.72.085, and 28 U.S.C. 1746.

17 Respectfully submitted this 15th day of March, 2010

18
19 
20 Pro se
21 William Pursley #729493
22 MCC/MSU
23 P.O. 7001
24 MONROE, WA 98272

25 **Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright, 626 F.2d 1184**
26 **(1980); Affidavit sworn as true and correct under penalty of perjury and has full**
force of law and does not have to be verified by Notary Public.

APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

85358-4

In the Matter of the
Personal Restraint of:

WILLIAM VAHID PURSLEY,

Petitioner.

No. 65450-1-I

ORDER OF TRANSFER

FILED
CLERK OF COURT
10 DEC 11 AM 8:37
BY RONALD J. CRAMER
CLERK

William Pursley entered an Alford¹ plea to second degree felony murder and first degree assault in Snohomish County Cause No. 94-1-01390-9. On August 4, 1995, the trial court imposed a standard range sentence of 147 months for the murder and 117 months for the assault to run consecutively. Pursley did not appeal.

On January 22, 2008, Pursley filed a personal restraint petition in the Supreme Court challenging the computation of credit for time he served in the Snohomish County Jail. The Supreme Court transferred the petition to this court, which granted certain relief in No. 62293-5-I, In re Pers. Restraint of Pursley.

On March 17, 2010, Pursley filed a CrR 7.8 motion to modify his judgment and sentence in Snohomish County Superior Court, seeking to vacate his felony murder conviction without withdrawal of the plea agreement because second-degree felony murder based on a first or second degree robbery, as charged in the information to which he entered his plea, is a nonexistent crime. The superior court transferred the matter to this court to be considered as a personal restraint petition.

Pursley argues that his petition is not subject to the time bar of RCW 10.73.090 because his judgment and sentence is invalid on its face. In particular, Pursley refers to the second amended information charging him with second degree murder for causing the

¹ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

No. 65450-1-1/2

death of the victim "while committing or attempting to commit the felony crime of First or Second Degree Robbery." RCW 9A.32.030(1)(c) provides that a person is guilty of first degree murder when he causes death while committing or attempting to commit the crime of "(1) robbery in the first or second degree." RCW 9A.32.050(1)(b) provides that a person is guilty of second degree murder for causing death during the commission or attempt to commit "any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c)." Because the predicate felony is an element of second degree felony murder, Pursley argues that the information here demonstrates that he was convicted of a nonexistent crime and sufficiently establishes the invalidity of his judgment and sentence. See In re Hinton, 152 Wn.2d 853, 857-58, 100 P.3d 801 (2004). In reviewing the records and files before this court, it appears that the petition is not frivolous.

However, RCW 10.73.140 divests this court, but not the Supreme Court, of subject matter jurisdiction "[i]f a person has previously filed a petition for personal restraint ...unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition." Pursley has neither mentioned his prior petition nor offered any explanation for his failure to raise his current challenge in his prior petition. Accordingly, the petition should be transferred to the Washington Supreme Court for review and consideration under RCW 2.06.030 and In re Pers. Restraint of Perkins, 143 Wn.2d 261, 19 P.3d 1027 (2001).

No. 65450-1-1/3

Now, therefore, it is hereby

ORDERED that the personal restraint petition is transferred to the Washington
Supreme Court for final determination.

Done this 22nd day of November, 2010.

Lesch, A.C.J.
Acting Chief Judge

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 NOV 22 AM 8:22

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Personal Restraint Petition of:)

WILLIAM PURSLEY,)

Petitioner.)

NO. 85358-4-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 12TH DAY OF OCTOBER, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER WILLIAM PURSLEY** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE
3000 ROCKEFELLER AVENUE
EVERETT, WA 98201

[X] WILLIAM PURSLEY
DOC NO. 739493
MONROE CORRECTIONS CENTER
P.O. BOX 777
MONROE, WA 98272

SIGNED IN SEATTLE WASHINGTON, THIS 12TH DAY OF OCTOBER, 2011.

x Patrick Mayovsky

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
OCT 13 AM 8:13
PATRICK MAYOVSKY
COURT CLERK