

No. 96773-3

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

DWAYNE BARTHOLOMEW,

Petitioner.

NO. 52354-0-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION

1. Whether the petition should be dismissed as time barred?
2. Even if this court were to find an exception to the time-bar, has the petitioner established a record sufficient for review?

B. STATUS OF PETITIONER

Petitioner, Dwayne Bartholomew, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause No. 81-1-00579-1. Appendix A. The defendant was born October 5, 1960. On August 1, 1981, he murdered a man in a robbery. Appendix D. On December 3, 1981, the petitioner was found guilty after jury trial of Aggravated Murder in the First Degree. *Id.* A sentencing hearing was held the following

1 day. *State v. Bartholomew*, 98 Wn.2d 173, 654 P.2d 1170 (1982).¹ The petitioner called a
2 psychiatrist who testified during the sentencing hearing that the petitioner suffered from a
3 “profound characterological disorder” which somehow impaired his capacity to care about
4 the consequences of his action. *Id.* at 179. The psychiatrist conceded that defendant posed
5 a danger to others but estimated that there was a 50 percent chance that the disorder could,
6 over a period of years, be overcome. *Id.* The petitioner was sentenced to death, but the
7 death penalty portion was overturned on direct appeal and converted to a life sentence. *Id.*
8 at 216. The case was heard by the United States Supreme Court and remanded back to the
9 Washington State Supreme Court. *See Washington v. Bartholomew*, 463 U.S. 1203, 103
10 S. Ct. 3530 (1983), and *State v. Bartholomew*, 101 Wn.2d 631, 683 P.2d 1079 (1984).

11 In *Bartholomew*, 101 Wn.2d 631, the defendant challenged numerous aspects of
12 the sentencing hearing, including whether the sentencing court properly defined
13 “mitigating circumstances.” *Id.* at 647. The court found that, although the phrase
14 “mitigating circumstances” was not defined by the sentencing court for the sentencing
15 jury, such a definition was not required. *Id.* at 647-648. The court noted that the court
16 read the sentencing jury a list of the mitigating factors contained in RCW 10.95.070. *Id.* at
17 647. Included among the list of mitigating factors read to the jury were “Whether, at the
18 time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or
19 her conduct or to conform his or her conduct to the requirements of law was substantially
20 impaired as a result of mental disease or defect....,” and “Whether the age of the defendant
21 at the time of the crime calls for leniency....” RCW 10.95.070(6) and (7).

22 On October 16, 2017, the defendant moved to modify his sentence under CrR 7.8.
23 Appendix B. The Superior Court transferred this matter to the Court of Appeals on
24
25

¹ Petitioner asserts he was sentenced a final time in 1986. The Petitioner fails to substantiate this statement with citations, transcripts, or other records. The source of this information is unclear to the State at this time.

1 October 17, 2017. Appendix C. On September 12, 2018, the defendant filed a Personal
2 Restraint Petition under the above-captioned cause number.

3
4 C. ARGUMENT.

5 1. THE PETITION SHOULD BE DISMISSED WHERE IT IS TIME
6 BARRED.

7 Personal restraint procedure came from the State's habeas corpus remedy, which is
8 guaranteed by article 4, § 4 of the State Constitution. *In re Personal Restraint of Hagler*,
9 97 Wn.2d 818, 823, 650 P.2d 1103 (1982). Collateral attack includes personal restraint
10 petitions, and a motion to vacate judgment. RCW 10.73.090(2). Collateral attack by
11 personal restraint petition is not, however, a substitute for direct appeal. *Hagler*, 97
12 Wn.2d. at 824. "Collateral relief undermines the principles of finality of litigation,
13 degrades the prominence of the trial, and sometimes costs society the right to punish
14 admitted offenders." *Hagler*, 97 Wn.2d at 824 (citing *Engle v. Issac*, 456 U.S. 107, 102 S.
15 Ct. 1558, 71 L. Ed. 2d 783 (1982)). These costs are significant and require that collateral
16 relief be limited in state as well as federal courts. *Hagler*, 97 Wn.2d at 824.

17 Because of the costs and risks involved, there is a time limit in which to file a
18 collateral attack. The statute that sets out the time limit provides:

19 No petition or motion for collateral attack on a judgment and sentence in a
20 criminal case may be filed more than one year after the judgment becomes
21 final if the judgment and sentence is valid on its face and was rendered by
a court of competent jurisdiction.

22 RCW 10.73.090(1). The Supreme Court has addressed what made a judgment facially
23 invalid under RCW 10.73.090.

24 Under this statute, the "facial invalidity" inquiry is directed to the
25 judgment and sentence itself. "Invalid on its face" means the judgment
and sentence evidences the invalidity without further elaboration.

1 *In re Personal Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *see*
2 *also In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002) (court
3 could properly consider petitioner’s challenge to offender score because judgment was
4 facially invalid by inclusion of washed out juvenile convictions).

5 A claimed facial invalidity must be “...a more substantial defect than a technical
6 misstatement that had no actual effect on the rights of the petitioner.” *In re Personal*
7 *Restraint of Benavidez*, 160 Wn. App. 165, 170, 246 P.3d 842 (2011) (quoting *In re*
8 *Personal Restraint of McKiearnan*, 165 Wn.2d 777, 783, 203 P.3d 375 (2009)). In
9 *McKiearnan*, the court held that a misstatement of the maximum sentence on the judgment
10 and sentence did not render the judgment and sentence invalid. *McKiearnan*, 165 Wn.2d
11 777.
12

13 The Washington Supreme Court recently conducted a helpful review of what
14 documents other than the judgment and sentence courts have looked to when finding
15 facial invalidity. *In re Personal Restraint of Coats*, 173 Wn.2d 123, 143, 267 P.3d 324
16 (2011).

17 While the Court does not limit its review for facial invalidity to the four corners of
18 the judgment and sentence, it only considers other documents to the extent that they reveal
19 some fact that shows the judgment and sentence is invalid on its face because of a legal
20 error. *Coats*, 173 Wn.2d. at 138-39. The court has found invalidity based upon charging
21 documents, verdicts and plea statements of petitioners on plea of guilty. *In re Personal*
22 *Restraint of Carrier*, 173 Wn.2d 791, 799, 727 P.3d 209 (2012). While the court may
23 consult verdict forms, it may not consult the jury instructions, trial motions, and other
24 documents that relate to whether the petitioner received a fair trial. *In re Personal*
25

1 *Restraint of Scott*, 173 Wn.2d 911, 917, 271 P.3d 218, (2012). Further, “[a] judgment
2 and sentence may be valid on its face even if the petitioner can show some error that
3 might have received relief if brought on direct review or in a timely personal restraint
4 petition.” *Scott*, 173 Wn.2d at 917.

5 The general rule is that a judgment and sentence is invalid on its face, if it
6 demonstrates that the trial court did not have the power or statutory authority to impose
7 the judgment or sentence. *Scott*, 173 Wn.2d at 916, 917. For the reasons argued below,
8 the petitioner has not established a facially invalid judgment under this standard. In
9 addition to the exceptions listed within RCW 10.73.090, there are other specific
10 exceptions to the one-year time limit for collateral attack:
11

12 The time limit specified in RCW 10.73.090 does not apply to a petition or motion
13 that is based solely on one or more of the following grounds:

14 (1) Newly discovered evidence, if the petitioner acted with
15 reasonable diligence in discovering the evidence and filing the petition or
16 motion;

16 (2) The statute that the petitioner was convicted of violating was
17 unconstitutional on its face or as applied to the petitioner’s conduct;

17 (3) The conviction was barred by double jeopardy under
18 Amendment V of the United States Constitution or Article I, section 9 of
19 the State Constitution;

18 (4) The petitioner pled not guilty and the evidence introduced at
19 trial was insufficient to support the conviction;

19 (5) The sentence imposed was in excess of the court’s jurisdiction;
20 or

20 (6) There has been a significant change in the law, whether
21 substantive or procedural, which is material to the conviction, sentence, or
22 other order entered in a criminal or civil proceeding instituted by the state
23 or local government, and either the legislature has expressly provided that
24 the change in the law is to be applied retroactively, or a court, in
25 interpreting a change in the law that lacks express legislative intent
regarding retroactive application, determines that sufficient reasons exist
to require retroactive application of the changed legal standard.

RCW 10.73.100.

1 Personal restraint petitions are also governed by the rules of appellate procedure,
2 which work in conjunction with the statutes. Under RAP 16.4, the court will grant
3 appropriate relief under a personal restraint petition where a petitioner is under restraint,
4 and that restraint is unlawful for one of seven specified reasons. RAP 16.4(a)-(c).

5 However, even where a valid ground exists under RAP 16.4, the court will only
6 grant relief if such relief can be granted under RCW 10.73.090, .100 and .130. RAP
7 16.4(d), provides, in part:

8 The appellate court will only grant relief by a personal restraint petition if
9 other remedies which may be available to petitioner are inadequate under
10 the circumstances and if such relief may be granted under RCW
11 10.73.090, .100 and .130.

12 If the Court independently reviews a petition filed more than one year after finality,
13 the issues within it must necessarily fall within one of three categories: 1) no exception
14 applies, and issue is time barred; 2) the issue is allowed under an exception listed in RCW
15 10.73.100; 3) the issue is allowed under an exception listed in RCW 10.73.090(1). If an
16 issue does not fall into any exception, the entire petition is dismissed. *In re Personal*
17 *Restraint of Stoudmire*, 141 Wn.2d 342, 350-51, 5 P.3d 1240 (2000) (*Stoudmire I*).

18 Here, the petitioner was sentenced on December 21, 1981. Appendix A. As a
19 result, this personal restraint petition is well beyond the one-year collateral attack time
20 limit. Petitioner's initial petition relied primarily on a now-reversed determination that
21 *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) constituted a significant change in
22 the law. *See* Br. of Petitioner at 7. Since Petitioner filed his initial PRP, however, the
23 Washington Supreme Court has determined that *O'Dell* is not retroactive, and it therefore
24 does not serve as an exception to the time limit imposed in this case. *Matter of Light-*
25 *Roth*, 191 Wn.2d 328, 422 P.3d 444 (2018).

1 Petitioner attempts to sidestep the fact that *O'Dell* was not found to be retroactive
2 by submitting additional authority and arguing that he was not afforded the opportunity to
3 place his youth before the sentencing court, thus distinguishing this case from *Light-Roth*.
4 This argument, of course, does not address RCW 10.73.090, which clearly time bars the
5 petitioners PRP here. Indeed, by arguing that this matter is distinguishable from *Light-*
6 *Roth*, petitioner effectively concedes that it is immaterial to his case. The argument is a
7 concession that he cannot rely on *O'Dell* or *Light-Roth* to meet his burden to prove he is
8 entitled to an exception from the one-year time limit.

9 Moreover, it is clear that the law afforded Petitioner the opportunity to argue that
10 his age was a mitigating factor to the sentencing jury, but Petitioner chose not to do so. It
11 is important to note that the petitioner does not provide transcripts or other records of the
12 arguments made at the original sentencing hearing to meet his burden here, *see* Section 2,
13 *infra*. Even the sparse record before this Court, however, reveals that the sentencing court
14 instructed the jury to consider mitigating factors including “Whether the age of the
15 defendant at the time of the crime calls for leniency....” *Bartholomew*, 101 Wn.2d at 647;
16 RCW 10.95.070 (7). Such a scheme provided a statutorily sanctioned means by which the
17 petitioner could place his youthfulness before the jury and one which vested the sentencing
18 jury with the discretion to consider his age. With this argument available to him, the
19 petitioner chose to call a single witness to testify about his mental capacity in accordance
20 with RCW 10.95.070(7). *Bartholomew*, 101 Wn.2d at 647. Far from being deprived of
21 the opportunity to argue the effect of youthfulness, the record before this Court is that the
22 petitioner’s sentencing arguments were made with mental capacity and youthfulness
23 available to him. It appears he chose not to make an argument regarding age and to focus
24 instead on mental capacity, and the jury was not unanimously convinced by this argument.

1 He is not now entitled to a new sentencing hearing at which he can make a new argument
2 which he chose not to make in the original instance.

3 There is some suggestion in the petitioner's filings that he relies on *Roper v.*
4 *Simmons*, 125 S. Ct. 1183, 543 U.S. 551, 125 S. Ct. 1183 (2005); *Miller v. Alabama*, 567
5 U.S. 460, 132 S. Ct. 2455 (2012); and *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L.
6 Ed.2d 599 (2016) to overcome the time-bar here. These cases are not material here
7 because *Roper*, *Miller*, and *Montgomery* apply to juveniles, not individuals who, like the
8 defendant, were nearly 21 years old when they shot and murdered an individual in a
9 robbery. Even if these cases applied, however, their key holdings mandate that the
10 sentencing court have discretion to consider the youthfulness of an offender. The jury here
11 was instructed that it could consider youthfulness, satisfying the requirements of these
12 cases.

13 Petitioner has not met his burden of proving that the issues in his petition fall
14 within a recognized exception to the one-year time limit. *Shumway v. Payne*, 136 Wn.2d
15 383, 399-400, 964 P.2d 349 (1998).

16 2. EVEN IF THIS COURT WERE TO REACH THE MERITS OF
17 THE PETITIONER'S CLAIM, HE PROVIDES AN
18 INADEQUATE RECORD ON WHICH TO SUPPORT HIS
CLAIM.

19 A personal restraint petitioner is required to provide "the facts upon which the
20 claim of unlawful restraint of petitioner is based and the evidence available to support the
21 factual allegations. . . ." RAP 16.7(a)(2)(i). This requirement means that a "petitioner
22 must state with particularity facts which, if proven, would entitle him to relief." *In re*
23 *Personal Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

24 The Petitioner has provided no transcripts or other information from the
25 sentencing hearing from which this court might conclude that he has met his burden on

1 the merits in this case. However, *State v. Bartholomew*, 98 Wn.2d 173, 654 P.2d 1170
2 (1982), *Washington v. Bartholomew*, 463 U.S. 1203, 103 S. Ct. 3530 (1983), and *State v.*
3 *Bartholomew*, 101 Wn.2d 631, 683 P.2d 1079 (1984) reveal that the petitioner was
4 afforded the opportunity to make arguments at the original sentencing which he
5 inaccurately claims were denied to him.

6 Petitioner inaccurately asserts that the statute under which he was sentenced
7 allowed for no consideration of his age. *See* Brief of Petitioner at 3. This is inaccurate.
8 As noted above, the sentencing court instructed the jury to consider mitigating factors,
9 including those listed in .95.070(7): “Whether the age of the defendant at the time of the
10 crime calls for leniency.” *Bartholomew*, 101 Wn.2d at 647.

11 Petitioner also inaccurately asserts that the statute under which he was sentenced
12 allowed for no consideration of mitigating circumstances other than age, such as his
13 depression, suicidal ideation, and mental problems at the time of the crime. *See* Brief of
14 Petitioner at 3-5. This is also inaccurate. At sentencing, the court read the seven
15 mitigating factors present in RCW 10.95.070. *Bartholomew*, 101 Wn.2d at 647. The
16 petitioner even made use of RCW 10.95.070(6) by calling a psychiatrist to testify about
17 his “profound characterological disorder.” *Bartholomew*, 98 Wn.2d at 179.

18 Petitioner asserts that “At resentencing, the jury did not unanimously agree that
19 there were insufficient mitigating circumstances to warrant leniency.” Br. of Petitioner at
20 5. It is unclear what evidence substantiates this claim by the petitioner. If true, however,
21 it indicates that the jury was not unanimously convinced that mitigation was warranted
22 where they were provided the testimony of the petitioner’s psychiatrist. The evidence that
23 the petitioner seeks to present again was not persuasive and there is no reason on this
24 record to conclude it would be a second time.

1 Petitioner’s unsubstantiated claims are contradicted by the published opinions
2 pertaining to this case. He fails to provide any transcripts or court records to substantiate
3 his claims that he was denied the opportunity to place youthfulness or other mitigating
4 factors before the jury. His petition is unaccompanied by any appendices or transcripts
5 from which this Court might conclude that his claims have merit. On the record that is
6 before this Court, the Petitioner made the decision to call a witness to substantiate his
7 argument for mitigation.

8 Petitioner seeks to invoke *State v. Bassett*, __ Wn.2d __, 428 P.3d 343 (2018),
9 suggesting that the differences between juveniles and adults continue until the age of 20.
10 *Bassett*, however, applied to a 16- and 17-year-old, not to a 20-year-old. Bassett did
11 acknowledge that the mitigating effects of youth continue until *slightly* past the age of 18.
12 *Bassett* __ Wn.2d __ (at P.3d 349-350), but it did not say these continue until over 2 years
13 past the age of 18. Even if they had, however, the record before this Court is that the
14 petitioner was able to present mitigation factors to the jury, that the jury was instructed
15 that it could consider the youthfulness of the petitioner, and that the petitioner did in fact
16 present mitigation regarding his mental capacity and whether he appreciated the
17 wrongfulness of his actions. Thus, even if Bassett applied here, it was satisfied in this
18 case.

19 At this point the petitioner has not provided a record for this court to conduct a
20 further review. Because the petitioner has failed to provide an adequate record for review
21 and has not identified any evidence to support his claim, his claim fails.

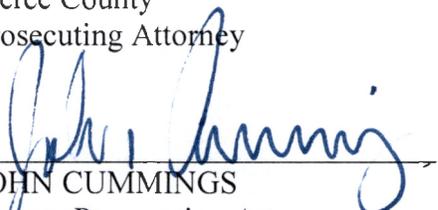
22 D. CONCLUSION

23 The petition should be dismissed as time-barred. As a secondary consideration, if
24 this court were to reach the merits of his claim, he is not entitled to relief because his claim
25

1 is contradicted by the court opinions pertaining to his case and he has failed to provide an
2 adequate record for this court to conduct a review.

3 DATED: December 11, 2018

4 MARK LINDQUIST
5 Pierce County
6 Prosecuting Attorney

7 
8 JOHN CUMMINGS
9 Deputy Prosecuting Attorney
10 WSB # 40505

11 Certificate of Service:

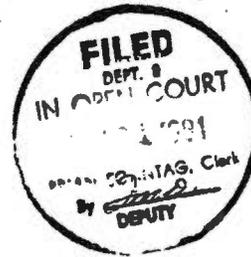
12 The undersigned certifies that on this day she delivered by U.S. mail or
13 ABC-LMI delivery to the petitioner true and correct copies of the document to
14 which this certificate is attached. This statement is certified to be true and
15 correct under penalty of perjury of the laws of the State of Washington. Signed
16 at Tacoma, Washington, on the date below.

17 12.11.18 Theresa K
18 Date Signature

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APPENDIX "A"

DEC 21 1981



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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 DWAYNE EARL BARTHOLOMEW,)
)
 Defendant.)
)
)

NO. 81 1 00579 1
JUDGMENT AND SENTENCE

THIS MATTER has come on this day before the undersigned judge of the above entitled court for imposition of judgment and sentence upon the defendant, DWAYNE EARL BARTHOLOMEW. The defendant was present in court with his attorney, Murray Anderson. Also present in court was Michael R. Johnson, Deputy Prosecuting Attorney for Pierce County, Washington. The defendant was duly informed by the court of the nature of the amended information found against him for the crime of Aggravated Murder in the First Degree, RCW 9A.32.030(1)(a) Laws of 1981, C.138, Sec. 2, committed on or about the 1st day of August, 1981; of his arraignment and plea of not guilty of the offense charged; and of his trial and the verdict of the jury on the 3rd day of December, 1981, finding him guilty of the crime of Aggravated Murder in the First Degree; of the jury having found on the 4th day of December, 1981, in the special sentencing proceeding held under Laws of 1981, Ch. 138, Sec. 5, 6, that there are not sufficient mitigating circumstances to merit leniency.

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him and no sufficient

JUDGMENT AND SENTENCE - 1

1 cause being shown or appearing to the court, the court renders its
2 judgment:

3 That whereas DWAYNE EARL BARTHOLOMEW having been duly
4 convicted in this court of the crime of Aggravated Murder in the
5 First Degree as charged in the amended information, Now, Therefore,

6 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the
7 defendant, DWAYNE EARL BARTHOLOMEW, is guilty of the crime of
8 Aggravated Murder in the First Degree, RCW 9A.32.030(1)(a), Laws of
9 1981, Ch. 138, Sec. 2, as charged in the amended information and
10 he is hereby sentenced to suffer the penalty of death, as provided
11 in Sec. 18, Ch. 138, Laws of 1981, and that he be confined in the
12 penitentiary of the State of Washington at Walla Walla, Washington in
13 segregation from other prisoners not under sentence of death, until
14 such time as the Supreme Court of the State of Washington completes
15 its review of the death penalty and the defendant is ordered back
16 before this court for further proceedings.

17 The defendant, DWAYNE EARL BARTHOLOMEW, is hereby remanded
18 to the custody of the Sheriff of Pierce County to be by him detained
19 until called for by the transportation officers of the Department
20 of Corrections, authorized to conduct him to said penitentiary. Said
21 transport is to occur within ten (10) days of the date of this
22 Judgment and Sentence, per Sec. 17, Ch. 138, Laws of 1981.

23 DONE IN OPEN COURT this 24 day of December, 1981.

[Handwritten Signature]
J U D G E

27 Presented by:

28 *[Handwritten Signature: Michael R. Johnson]*
29 MICHAEL R. JOHNSON
30 Deputy Prosecuting Attorney

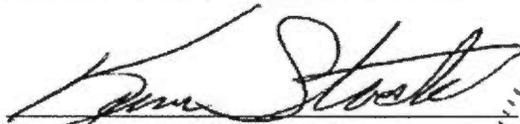
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DEPT. 8
IN OPEN COURT
DEC 1 1981
BRIAN SONNTAG, Clerk
By *[Signature]*
DEPUTY

JUDGMENT AND SENTENCE - 2

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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of December, 2018



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: December 11, 2018 12:56 PM



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APPENDIX “B”

whether his youthfulness justified an exceptional sentence below the standard range.

3. FACTS RELEVANT TO THE MOTION

The State charged Bartholomew with one count of aggravated murder in the first degree. At sentencing Bartholomew's counsel did not request the sentencing Court to consider Bartholomew's age when imposing sentence.

BECAUSE THE DECISION IN STATE v. O'DELL ANNOUNCED A SIGNIFICANT, MATERIAL CHANGE IN THE LAW THAT APPLIES RETROACTIVELY, BARTHOLOMEW'S MOTION SURVIVES THE TIME BAR MANDATED BY RCW 10.73.090.

"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." RCW 10.73.090(1).

But, there are exceptions to the one-year time limit. RCW 10.73.100. The one-year limit does not apply to a petition that is based solely on the ground that there has been (1) a significant change in the law, (2) that is material to the defendant's sentence, and (3) applies retroactively. RCW 10.73.100(6).

RETROACTIVITY

"Whether a changed legal standard applies retroactively is a distinct inquiry from whether there has been a significant change in the law." In re Pers. Restraint of Tsai, 183 Wn.2d 91, 103, 351 P.3d 138 (2015).

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The Supreme Court decision in State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015) significantly broadened the circumstances under which a defendant's youthfulness may justify an exceptional sentence below the standard range. O'Dell at 695-96. This announced a change in the interpretation of the SRA, specifically RCW 9.94A.535(1) and RCW 9.94A.535(1)(e). Because the SRA is a statute this new interpretation should apply retroactively.

MATERIAL TO SENTENCE

The change in the law announced in O'Dell is material to Bartholomew's sentence because he was only 20 years old when he committed his crime. Although Bartholomew did not seek an exceptional sentence downward based on his age, it would be unreasonable to hold that a case which announces a significant change in the law, because it has made a new argument available to Bartholomew, not material, because Bartholomew did not make that argument at trial.

The evidence is now strong that the brain does not reach its full development in those areas that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable until they are in their mid 20's. That evidence is highly relevant to Bartholomew's culpability for murder.

The trial records will show that Bartholomew's crime bears the now-recognized hallmarks discussed in In re Pers. Restraint of Kevin Light-Roth, No. 751298-I. Bartholomew's crime was impulsive; was committed in an emotional

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neightened context; and displayed astonishingly poor judgment.

4. CONCLUSION

Because the change in the law announced in O'Dell is material to Bartholomew's sentence, this Court should -at the minimum- remand for a evidentiary hearing.

DATED this 26th Day of September, 2017

Respectfully submitted



Dwayne E. Bartholomew
#280766
P.O. Box 2049
Airway Heights, WA 99001

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2589

10/16/2017

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of December, 2018



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: December 11, 2018 12:56 PM



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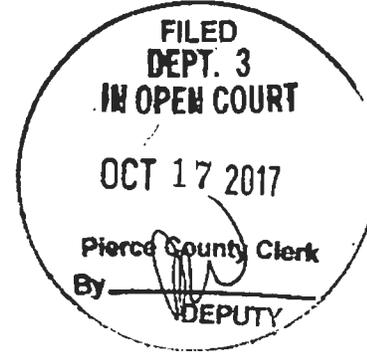
APPENDIX "C"

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81-1-00579-1 50124053 ORDM 10-19-17

Case Number: 81-1-00579-1 Date: December 11, 2018
SerialID: 63142C5F-E59B-4052-89010A8A78797F35
Certified By: Kevin Stock Pierce County Clerk, Washington



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

Cause No: 81-1-00579-1

vs.

**ORDER ON DEFENDANT'S MOTION TO
MODIFY JUDGMENT AND SENTENCE**

BARTHOLOMEW, DWAYNE EARL,
Defendant

CLERK'S ACTION REQUIRED

THIS MATTER came before the undersigned judge of the above entitled court upon review of the defendant's motion(s) filed on October 16, 2017. After reviewing the defendant's written pleadings, the court now enters the following order pursuant to CrR 7.8(c)(2):

A. IT IS HEREBY ORDERED that this petition is transferred to the Court of Appeals, Division II, to be considered as a personal restraint petition. The petition is being transferred because:

it appears to be time-barred under RCW 10.73.090;

is not time-barred under RCW 10.73.090, but is untimely under CrR 7.8(a)

and therefore would be denied as an untimely motion in the trial court; or

is not time barred but does not meet the criteria under CrR 7.8 (c)(2) to allow the court to retain jurisdiction for a decision on the merits.

If box "A" above is checked, the Pierce County Superior Court Clerk shall forward a copy of this order as well as the defendant's pleadings identified above, to the Court of Appeals.

1 B. IT IS HEREBY ORDERED that this court will retain consideration of the motion
2 because the following conditions have been met: 1) the petition is not barred by the one year
3 time bar in RCW 10.73.090, and either:

- 4 the defendant has made a substantial showing that he or she is entitled to relief; or
5 the resolution of the motion will require a factual hearing.

6 IT IS FURTHERED ORDERED that the defendant's motion shall be heard on its merits.

7 The State is directed to:

8 file a response by _____ After reviewing
9 the response, the Court will determine whether this case will be transferred to the
10 Court of Appeals, or if a hearing shall be scheduled.

11 appear and show cause why the defendant's motion should not be granted. That
12 hearing shall be held on _____ at _____ a.m. / p.m.

13 As the defendant is in custody at the Department of Corrections, the State is further
14 directed to arrange for defendant's transport for that hearing.

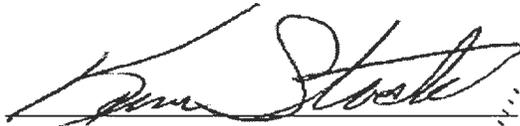
15 If box "B" above is checked, the clerk is directed to send a copy of this Order to
16 the Appellate Division of the Pierce County Prosecutor's Office.

17 DATED this 17 of October, 2017.

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FILED
DEPT. 3
IN OPEN COURT
OCT 17 2017
Pierce County Clerk
By M. AS
DEPUTY
JUDGE MICHAEL E. SCHWARTZ

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of December, 2018



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: December 11, 2018 12:56 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "D"

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 11 day of December, 2018



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: December 11, 2018 12:56 PM



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PIERCE COUNTY PROSECUTING ATTORNEY

December 11, 2018 - 1:59 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52354-0
Appellate Court Case Title: Personal Restraint Petition of Dwayne Earl Bartholom
Superior Court Case Number: 81-1-00579-1

The following documents have been uploaded:

- 523540_Personal_Restraint_Petition_20181211135857D2532635_4185.pdf
This File Contains:
Personal Restraint Petition - Response to PRP/PSP
The Original File Name was prp bartholomew.pdf

A copy of the uploaded files will be sent to:

- TimF@mhb.com
- griff1984@comcast.net
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