

NO. 60180-6-I

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

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IN RE THE PERSONAL RESTRAINT OF  
CHRISTOPHER QUINN

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PETITIONER'S REPLY BRIEF

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FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2009 OCT 19 PM 4:16

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A. SUPPLEMENTAL STATEMENT OF THE CASE

1. Facts concerning timeliness of Mr. Quinn's motion to withdraw his guilty plea. Mr. Quinn's Judgment and Sentence was filed on May 15, 2006. Judgment and Sentence (attached to Brief of Respondent as Appendix D). Mr. Quinn filed a pro se motion to withdraw his guilty plea after he had been placed in custody of the Department of Corrections (DOC). Motion and Memorandum of Fact and Law to Withdraw Guilty Plea. The motion was dated April 7, 2007, but not filed until June 7, 2009. Id.

Mr. Quinn placed the motion and copies for Judge Christopher Washington and Deputy Prosecuting Attorney Zach Wagnild in the prison mail system where they were mailed on April 17, 2007. Declaration of Christopher Quinn and attached postal transfer forms filed in this Court September 22, 2009 (attached as Appendix A). The motion was addressed to the King County Superior Court in Kent; the prosecutor's copy was addressed to Mr. Wagnild at the prosecutor's Seattle office, and Judge Washington's copy was addressed to him at the Regional Justice Center in Kent. Id. The DOC postage transfer forms refer to the mailing as a motion plus exhibits or supporting documents. Id.

2. Facts concerning Mr. Quinn's attempts to withdraw his guilty plea. Shortly after Mr. Quinn entered a guilty plea in King County Superior Court, he wrote to the Public Defender's Office requesting to withdraw the plea because his attorney, Carol Ellerby, did not provide effective assistance of counsel. Order on Reference Hearing Finding of Fact 16.<sup>1</sup> Ms. Ellerby moved to withdraw as Mr. Quinn's attorney, and Joseph Chalverus was appointed to represent him in her stead. Order on Reference Hearing, Findings of Fact 16-17; 7/31/08RP 22-23.

Mr. Chalverus filed a motion to withdraw Mr. Quinn's guilty plea. Motion and Memorandum of Fact and Law to Withdraw Plea (attached to State's Supplemental Response as Appendix C). Mr. Chalverus argued that the plea should be withdrawn because the written plea agreement, wherein the State agreed to dismiss two counts of the information, was not attached to the Statement of Defendant on Plea of Guilty. Id. at 3, 4-5; 7/31/09RP 60-61. Mr. Quinn had no input into the motion, which he hoped would be based upon Ms. Ellerby's failure to investigate his case. 7/31/08RP 25, 32.

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<sup>1</sup> A copy of the Order on Reference Hearing Findings of Fact is attached to this brief as Appendix D.

When Mr. Quinn received a copy of the motion prepared by his attorney and attached copy of the guilty plea statement filed in court, he saw the correct term of community custody – 60 months to life. Prior to that time Mr. Quinn believed he could receive a community custody term of between 36 and 48 months based upon Ms. Ellerby's recitation of the State's plea recommendation. Order on Reference Hearing, Finding of Fact 17, Conclusion of Law 3; 7/29/08RP 137-38; 7/31/08RP 31.

The Honorable Christopher Washington heard the motion to withdraw Mr. Quinn's guilty plea prepared by Mr. Chalverus. After the court denied the motion, Mr. Quinn told the court that the guilty plea form had been changed without his knowledge:

THE DEFENDANT: This copy that was given to me, of the plea agreement, Your Honor, the day before I was signing it, it had been altered. It was changed. I was never informed that these changes were made.

THE COURT: What changes are you talking about?

THE DEFENDANT: From minimum term of sixty months to thirty-six and forty-eight months of community custody to a lifetime of community custody and a minimum of sixty months.

THE COURT: Well, this hasn't been briefed and are we prepared to discuss this matter? I'm not sure. I have not read this.  
No, let's do one thing at a time.

MR. WAGNILD [DPA]: No, frankly, Your Honor, this is not an issue at this time. I mean, it's simply not an issue.<sup>2</sup>

5/5/06RP 11.

The sentencing court expressed concern that a plea agreement may have been altered, but the prosecutor convinced the court that Mr. Quinn could only raise the issue through counsel; the court therefore did not consider Mr. Quinn's argument.

5/5/06RP 11-13; Order on Reference Hearing Finding of Fact 18.

The court encouraged Mr. Quinn to consult with his attorney, and Mr. Quinn explained his contact with Mr. Chalverus had been quite limited. 5/5/06RP 13-14.

Mr. Chalverus did not file a new motion to withdraw Mr. Quinn's guilty plea or address the issue at sentencing, and had only limited contact with Mr. Quinn prior to the sentencing hearing.

5/12/06RP 12. Mr. Quinn was sentenced on May 15, 2006, and his sentencing included a term of community custody of up to life in prison. Judgment and Sentence at 5 (attached to State's Supplemental Response as Appendix D).

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<sup>2</sup> Although the deputy assured the court this was not an issue, at the reference hearing ordered by this Court, Mr. Wagnild admitted changing the term of community custody and plea recommendation on the guilty plea statement prior to entry and not mentioning the change to defense counsel. Order on Reference Hearing Finding of Fact 6, Conclusion of Law 3.

B. ARGUMENT IN REPLY

1. MR. QUINN'S MOTION TO WITHDRAW HIS GUILTY PLEA WAS TIMELY

a. Mr. Quinn placed his motion to withdraw his guilt plea in the mail system within one year of the filing of his Judgment and Sentence. The State asserts that Mr. Quinn did not demonstrate that his motion to withdraw his guilty plea was timely filed. The State, however, did not have the benefit of Mr. Quinn's most recent declaration concerning timeliness, which was filed after the State filed its response brief.<sup>3</sup> Mr. Quinn's declaration demonstrates he placed his motion to withdraw his guilty plea in the prison mail system on or before April 14, and thus it was filed within the one-year deadline. Appendix A; RCW 10.73.090; CrR 7.8(b); CrR 4.2(f); GR 3.1.

Mr. Quinn's Judgment and Sentence was filed on May 15, 2006, so the one-year deadline for collaterally attacking his conviction ended on May 16, 2007. RAP 18.6(a); Judgment and Sentence (attached to Response Brief as Appendix D). Mr. Quinn's motion to withdraw his guilty plea was date-stamped in superior court on June 6, 2007, the same day it was transferred to this Court

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<sup>3</sup> Mr. Quinn's three declarations concerning the timeliness of his motion to withdraw his guilty plea are attached here as Appendixes A-C.

for treatment as a personal restraint petition.<sup>4</sup> Motion and Memorandum of Fact and Law to Withdraw Guilty Plea. However, the motion was timely filed because it was placed in the prison mail system on or before April 14, 2007. Appendix A; GR 3.1(a).

Other information in the court file supports Mr. Quinn's declaration. The motion, for example, is dated April 6, 2007. Motion and Memorandum of Fact and Law to Withdraw Guilty Plea. Also in court file is a declaration of service showing Mr. Quinn served a copy on the prosecutor by placing it in the mail system on April 12. Declaration of Service by Mailing (attached to Petitioner's Supplemental Brief as Appendix A). Thus, Mr. Quinn has shown he mailed his motion withdraw his guilty plea, a copy to Judge Washington, and a copy to the prosecutor by placing them in the prison mail system prior to April 14. Appendix A.

b. Mr. Quinn need only make a "threshold showing" that the motion is timely. This Court asked the parties to address who has the burden of proving a personal restraint petition meets the statutory time deadlines. Order Appointing Counsel and Referring Petition to Panel of Judges. The Washington Supreme Court has required a personal restraint petitioner to make only a "threshold

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<sup>4</sup> The motion was reviewed by the court prior to entry of the written transfer order. Appendix C.

showing” that the petition complies with the statutory time requirements. Shumway v. Payne, 136 Wn.2d 383, 400, 964 P.2d 349 (1998)).

Thus, the State’s argument that Mr. Quinn bears the burden of proving timeliness is not well founded. While the State is correct that the Rules of Appellate Procedure permit the appellate court to dismiss a petition without calling for a response, the rules do not allocate a burden of proof for procedural issues such as timeliness.

The State relies upon a footnote in In re Personal Restraint of Runyon, 121 Wn.2d 432, 452 n.16, 853 P.2d 424 (1993), which states the petitioner “generally” has the burden of proving the invalidity of his or her conviction. The footnote addresses the allocation of the burden of proof of whether a petitioner was advised of the deadlines for collateral attack. In that case, the Runyon Court noted, the petitioner must assert he was not advised of the time deadlines, the State then has the burden of production of showing any attempt, and the petitioner then has the opportunity to produce additional evidence. Runyon, 121 Wn.2d at 452 n.16.

The State also relies upon the Court of Appeals opinion in In re Personal Restraint of Becker, 96 Wn.App. 902, 906-07, 982 P.2d 639 (1999), aff’d on other grounds, 143 Wn.2d 491, 20 P.3d 409

(2001). Becker's writ of habeas corpus was filed well after the one-year time deadline had expired, but he had not been given notice of that deadline by the municipal court. Becker, 96 Wn.App. at 906, 907. Because CrRLJ 7.2(b) did not require the court to inform a defendant who pled guilty of the time deadline, the Court of Appeals reversed the superior court and dismissed the writ untimely. Id. at 907-08. Notably, the Court of Appeals in Becker did not state the petitioner had the burden of proving his writ of habeas corpus was timely, but simply stated the petition must meet the "threshold burden" of showing the petition complied with RCW 10.73.090 and 10.73.100. Becker, 96 Wn.App. at 905 (quoting Shumway, 136 Wn.2d at 399-400).

The State also fails to mention that Becker was affirmed by the Supreme Court on different grounds than those for which it is cited. Brief of Respondent at 11. The Washington Supreme Court dismissed the writ as successive and did not address the timeliness issue. Becker, 143 Wn.2d at 495.

c. This Court must address Mr. Quinn's personal restraint petition because it is timely. Mr. Quinn has met his "threshold burden" of showing he placed his motion to withdraw his guilty plea

and supporting memorandum in the prison mail system before the year deadline had expired. This Court should address his petition.

2. IN THE ALTERNATIVE, THE STATE WAIVED ITS ARGUMENT THAT MR. QUINN'S MOTION TO WITHDRAW HIS GUILTY PLEA WAS NOT TIMELY FILED

When Mr. Quinn's motion to withdraw his guilt plea was transferred to this Court, the State was given the opportunity to file a response. In its response, the State did not challenge the timeliness of Mr. Quinn's motion. State's Response to Personal Restraint Petition, filed August 23, 2007. Instead, the prosecutor told this Court, "the State assumes that this petition was timely filed pursuant to GR 3.1." *Id.* at 2. Should this Court find Mr. Quinn failed to meet the threshold burden of showing his motion was timely, this Court should find the State waived its argument that his motion to withdraw his guilt plea was not timely but not raising it promptly.

The State asserts Mr. Quinn's waiver argument is improper because it is based upon cases addressing waiver of defenses in civil cases. Brief of Respondent at 12. A personal restraint petition, however, is a civil proceeding. *State v. LaBeur*, 33 Wn.App. 762, 657 P.2d 802, rev. denied, 99 Wn.2d 1013 (1983).

“A writ of habeas corpus is a civil action for the enforcement of the right to personal liberty. And so a writ of habeas corpus is generally subject to the rules governing civil proceedings.” Becker, 96 Wn.App. at 906-07 (citations omitted).

The State further argues the facts of this case do not support waiver, attempting to distinguish Lybbert v. Grant County, 141 Wn.2d 29, 38-39, 1 P.3d 1124 (2000). Under the common law doctrine of waiver addressed in Lybbert, a defendant in a civil action may waive an affirmative defense, such as the statute of limitations, if either (1) assertion of the defense is inconsistent with the defendant’s prior behavior, or (2) the defendant has been dilatory in asserting the defense. Lybbert, 141 Wn.2d at 39; accord King v. Snohomish County, 146 Wn.2d 420, 424, 47 P.3d 563 (2002). The doctrine of waiver is designed to prevent one party from ambushing another through delay or misdirection. Lybbert, 141 Wn.2d at 40; King, 146 Wn.2d at 424.

The State is now asserting a defense that is inconsistent with its prior position that Mr. Quinn’s motion appeared to comply with the statutory time limits. The State is also tardy in making this argument. The State filed the State’s Response to Personal Restraint Petition in August 2007, but did not argue the petition was

untimely until October 2008, after a lengthy reference hearing in superior court resulted in factual findings and legal conclusions adverse to the State. Memories fade, and the State initial assertion that Mr. Quinn's motion was timely and its lack of diligence arguing to the contrary has made it difficult for Mr. Quinn to show his motion was filed in a timely manner.

This Court should find the State waived its timeliness argument but not raising it in its response to his personal restraint petition and waiting until after a reference hearing in superior court resulted in findings and conclusions favorable to Mr. Quinn.

### 3. MR. QUINN DID NOT WAIVE HIS RIGHT TO WITHDRAW HIS GUILTY PLEA

The reference hearing court found Mr. Quinn's court-appointed counsel affirmatively misadvised him concerning the mandatory community custody term he faced as a direct consequence of his guilty plea. The court further found the misunderstanding was not corrected before Mr. Quinn entered his plea. Order on Reference Hearing at 8-9. Thus, his guilty plea was involuntary. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006).

a. Mendoza's wavier analysis does not apply because Mr. Quinn's actual sentencing consequences were more onerous than he had been advised. The State does not challenge the reference court's findings and agrees that Mr. Quinn's guilty plea was involuntary. Brief of Respondent at 15. Instead, the State argues Mr. Quinn waived this argument by not raising it at his sentencing hearing. Supplemental Response at 3-5; Brief of Respondent at 15-18.

The State relies upon Mendoza, supra, but misrepresents its holding. Brief of Respondent at 15-17. The Mendoza Court held the defendant waived his right to challenge the validity of his plea by failing to move to withdraw the plea prior to sentencing because his standard sentence range was actually lower than he had been advised at the time of the entry of his guilty plea. Mendoza, 157 Wn.2d at 591-92. Thus, under Mendoza, waiver occurs when (1) the correct sentencing consequences are less onerous than those written in the plea agreement, (2) the defendant is informed of the less onerous standard prior to sentencing, and (3) the defendant is given the opportunity to withdraw the plea before sentencing but does not do so. Id. at 591-92; State v. Blanks, 139 Wn.App. 543, 549, 161 P.3d 455 (2007), rev. denied, 163 Wn.2d 1046 (2008).

The State is unable to refer this Court to any Washington cases applying Mendoza's waiver analysis when the defendant was sentenced to a higher punishment than he was advised at the time of his guilty plea. The State attempts to shift the focus from the Mendoza requirement of a less onerous sentence by citing the concurring opinion in State v. Codiga, 162 Wn.2d 912, 175 P.3d 1082 (2008). Brief of Respondent at 17. The Codiga Court found that, given the plain language of the defendant's plea agreement, he could not withdraw his guilty plea when additional criminal history was discovered and the standard sentence range was therefore greater. Codiga, 162 Wn.2d at 925, 928-29. The concurring opinion cited by the State agreed with the majority's result, but would have based the ruling on waiver, not the language of the plea agreement. Id. at 932 (Chambers, J., concurring). The State's citation to the portion of the concurrence that departs from the majority view is thus misleading.

b. Mendoza does not apply because Mr. Quinn attempted to withdraw his guilty plea prior to sentencing and tried to alert the court that he was not informed of the sentencing consequences of his plea. The State's argument also ignores Mr. Quinn's attempts to withdraw his guilt plea before sentencing and alert the court to

the invalidity of the plea. Mr. Quinn informed the public defender's office that he wanted to withdraw his guilty plea, and new counsel was appointed to represent him. New counsel filed a motion to withdraw Mr. Quinn's guilty plea on grounds that were almost if not completely specious. Apparently, replacement counsel did not investigate the law and facts of this case. When Mr. Quinn tried to point out that he was misadvised as to the sentencing consequences of his plea at the motion to withdraw his guilty plea, the court would not hear his argument as it was not made by his attorney. 5/5/06RP 11-14. Thus, Mr. Quinn attempted withdraw his plea prior to sentencing. "Either a motion to withdraw or objection at sentencing is all that Mendoza requires." State v. Codiga, 162 Wn.2d 912, 930 n.5, 175 P.3d 1082 (2008) (emphasis deleted) (citing Mendoza, 157 Wn.2d at 591-92).

The State's argument that Mr. Quinn waived his right to withdraw his invalid guilty plea by not doing so at sentencing is premised only upon the actions of Mr. Quinn's attorney. Mr. Quinn was not only entitled to counsel, he was entitled to effective assistance of counsel. U.S. Const. amends. VI, XIV; Const. art. 1, §§ 3, 22; Kimmelman v. Morrison, 477 U.S. 365, 377, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986). Effective counsel is expected to "at a

minimum, conduct a reasonable investigation” in order to make informed decisions about how to best represent his client. In re Personal Restraint of Davis, 152 Wn.2d 647, 721, 101 P.3d 1 (2004) (quoting In re Personal Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001)) (emphasis deleted). If this Court determines that Mendoza is applicable to Mr. Quinn’s case, the matter must be returned to the superior court for yet another reference hearing to determine if Mr. Quinn was provided with effective assistance of counsel at sentencing.

c. In the alternative, the State waived its Mendoza argument. Mr. Quinn also argued State waived its incorrect Mendoza argument by not addressing it sooner. Petitioner’s Supplemental Brief at 26-28. The State dismisses this argument in a footnote, stating it believed Mr. Quinn was correctly informed of the consequences of his guilty plea, relying in “good faith” on the plea documents. Brief of Respondent at 15 n.5.

Yet the plea documents had been altered prior to entry by the deputy prosecutor who handled the case in the trial court, and he did not alert defense counsel to the changes. Brief of Respondent at 15 n.5; 7/31/08RP 42-44, 49-50, 51-54. The State’s reliance upon the guilty plea statement in this circumstance is not

understandable, as the State was aware of the plea form had been changed prior to entry.

In contrast, it is understandable that Mr. Quinn would rely upon his court-appointed attorney to assist him. The attorney, however, either did not understand the fact that Mr. Quinn was affirmatively misadvised as to the sentencing consequences of his plea or did not understand that legally such incorrect advice rendered the guilty plea involuntary. If the State believes Mr. Quinn waived the constitutional invalidity of his guilty plea because his court-appointed counsel did not raise the issue at sentencing – even when Mr. Quinn tried to bring it to the court’s attention – then the State similarly waived any Mendoza argument by not raising it in its initial response to Mr. Quinn’s personal restraint petition.

### C. CONCLUSION

Courts have upheld statutory time deadlines and other procedural requirements that limit a prisoner’s ability to collaterally attack a criminal conviction in order to protect the constitutional writ of habeas corpus, which is “reserved for cases ‘where the processes of justice are actually subverted.’” Runyon, 121 Wn.2d at 453-54 (quoting Frank v. Mangum, 237 U.S. 309, 346-47, 35 S.Ct. 582, 59 L.Ed. 969 (1915) (Holmes, J., dissenting)). Mr.

Quinn's attorney affirmatively misadvised him about the consequences of his guilty plea; he did not understand he faced a mandatory term of community custody up to life, and his guilty plea was therefore invalid. This is a case where justice was subverted, and this Court should grant Mr. Quinn's petition and permit him to withdraw his guilty plea.

DATED this 19<sup>th</sup> day of October 2009.

Respectfully submitted,



Elaine L. Winters – WSBA #7780  
Washington Appellate Project  
Attorneys for Petitioner

**APPENDIX A**

**PETITIONER'S DECLARATION CONCERNING TIMELINESS  
WITH ATTACHED EXHIBITS**

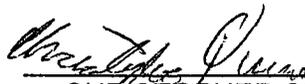
**Filed September 22, 2009**



4. As the attached forms demonstrate, I placed my motion and supporting documents in the prison legal mail system on April 14, 2007. I mailed the motion and supporting documents to the Clerk of the Superior Court at the Regional Justice Center in Kent with copies to Deputy Prosecuting Attorney Zachary Wagnild in the King County Courthouse in Seattle and to Judge Christopher Washington at the Regional Justice Center. The form correctly states the motion and attachments weighed 9.2 and 9.5 ounces.

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

9-20-09 Monroe, WA  
DATE and PLACE

  
CHRISTOPHER QUINN



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

POSTAGE TRANSFER  
TRANSFERENCIA DEL COSTO DE FRANQUEO

POSTAGE DUE  
FRANQUEO A PAGAR  
\$ 2.55

A 32L

PLEASE WITHDRAW SUFFICIENT FUNDS FROM MY ACCOUNT TO COVER THE COST OF MAILING THE ATTACHED LETTER/PACKAGE.  
VOR DE RETIRAR LOS FONDOS SUFICIENTES DE MI CUENTA PARA CUBRIR LOS COSTOS DE ENVIAR LA CARTA/EL PAQUETE ADJUNTA; /O.FA

<input type="checkbox"/> TRUST ACCOUNT Cuenta Fiduciaria de Deposito	<input type="checkbox"/> POSTAGE ACCOUNT Cuenta de correo	<input type="checkbox"/> INDIGENT Indigente	<input checked="" type="checkbox"/> LEGAL MAIL Propiedad	<input type="checkbox"/> PROPERTY Deuda de Franqueo	<input type="checkbox"/> POSTAGE DUE Franqueo A Pagar
INMATE NAME (PLEASE PRINT) NOMBRE (FAVOR DE USAR LETRA DE MOLDE) <b>CHRISTOPHER QUINN</b>			HALL/UNIT SECCION/UNIDAD <b>R-A 32-1</b>		
DOC NUMBER/ DOC NUMERO <b>889745</b>			DATE		
INMATE SIGNATURE/ FIRMA DEL PRESO			DATE		
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<input checked="" type="checkbox"/> CERTIFIED Certificado	<input checked="" type="checkbox"/> RETURN RECEIPT Recibo de Vuelta	<input type="checkbox"/> U.P.S. (NO P.O BOXES ACCEPTED)			
MAIL ROOM STAFF OFICIAL DEL CUARTO DE CORREO <b>KCA</b>			DATE MAILED FECHA DEL ENVIO <b>4-17-07</b>		
NAME / NOMBRE <b>CLEARK OF THE SUPERIOR COURT</b>			COMMENTS COMENTARIOS		
STREET / CALLE <b>401 FOURTH AVE. NORTH ROOM 2C</b>					
CITY / CIUDAD <b>SENI</b>		STATE / ESTADO <b>WA.</b>	ZIP / CODIGO POSTAL <b>98052-4429</b>		
ITEM / ARTICULO <b>motion and supoting docs</b>					

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DOC 02-003 ES (REV 01/29/04)

White - Inmate Banking    Canary - Mail Staff    Pink - Inmate



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

POSTAGE TRANSFER  
TRANSFERENCIA DEL COSTO DE FRANQUEO

POSTAGE DUE  
FRANQUEO A PAGAR  
\$ 2.55

A 32L

PLEASE WITHDRAW SUFFICIENT FUNDS FROM MY ACCOUNT TO COVER THE COST OF MAILING THE ATTACHED LETTER/PACKAGE.  
VOR DE RETIRAR LOS FONDOS SUFICIENTES DE MI CUENTA PARA CUBRIR LOS COSTOS DE ENVIAR LA CARTA/EL PAQUETE ADJUNTA; /O.FA

<input type="checkbox"/> TRUST ACCOUNT Cuenta Fiduciaria de Deposito	<input type="checkbox"/> POSTAGE ACCOUNT Cuenta de correo	<input type="checkbox"/> INDIGENT Indigente	<input checked="" type="checkbox"/> LEGAL MAIL Propiedad	<input type="checkbox"/> PROPERTY Deuda de Franqueo	<input type="checkbox"/> POSTAGE DUE Franqueo A Pagar
INMATE NAME (PLEASE PRINT) NOMBRE (FAVOR DE USAR LETRA DE MOLDE) <b>CHRISTOPHER QUINN</b>			HALL/UNIT SECCION/UNIDAD <b>R-A-32-1</b>		
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INMATE SIGNATURE/ FIRMA DEL PRESO			DATE		
MAIL OPTIONS			PROPERTY OPTIONS		
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<input checked="" type="checkbox"/> CERTIFIED Certificado	<input checked="" type="checkbox"/> RETURN RECEIPT Recibo de Vuelta	<input type="checkbox"/> U.P.S. (NO P.O BOXES ACCEPTED)			
MAIL ROOM STAFF OFICIAL DEL CUARTO DE CORREO <b>KCA</b>			DATE MAILED FECHA DEL ENVIO <b>4-17-07</b>		
NAME / NOMBRE <b>Zachary Wagnild DPA</b>			COMMENTS COMENTARIOS		
STREET / CALLE <b>516 THIRD ave W-554 king co prosecutor offic</b>					
CITY / CIUDAD <b>SEATTLE WA.</b>		STATE / ESTADO <b>WA.</b>	ZIP / CODIGO POSTAL <b>98107</b>		
ITEM / ARTICULO <b>motion and exhibits</b>					

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.17, and RCW 40.14

4/17/07



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

POSTAGE TRANSFER  
TRANSFERENCIA DEL COSTO DE FRANQUEO

POSTAGE DUE  
FRANQUEO A PAGAR  
\$ 2.55

A 32 L

PLEASE WITHDRAW SUFFICIENT FUNDS FROM MY ACCOUNT TO COVER THE COST OF MAILING THE ATTACHED LETTER/PACKAGE.  
FAVOR DE RETIRAR LOS FONDOS SUFICIENTES DE MI CUENTA PARA CUBRIR LOS COSTOS DE ENVIAR LA CARTA/EL PAQUETE ADJUNTA; /O.FA

<input type="checkbox"/> TRUST ACCOUNT Cuenta Fiduciaria de Deposito	<input type="checkbox"/> POSTAGE ACCOUNT Cuenta de correo	<input type="checkbox"/> INDIGENT Indigente	<input checked="" type="checkbox"/> LEGAL MAIL Propiedad	<input type="checkbox"/> PROPERTY Deuda de Franqueo	<input type="checkbox"/> POSTAGE DUE Franqueo A Pagar
INMATE NAME (PLEASE PRINT) NOMBRE (FAVOR DE USAR LETRA DE MOLDE) CHRISTOPHER QUINN			HALL/UNIT SECCION/UNIDAD R-A-32-1		
DOC NUMBER/ DOC NUMERO 889745			DATE		
INMATE SIGNATURE/ FIRMA DEL PRESO			DATE		
MAIL OPTIONS			PROPERTY OPTIONS		
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MAIL ROOM STAFF OFICIAL DEL CUARTO DE CORREO KAL			DATE MAILED FECHA DEL ENVIO 4/17/07		
NAME / NOMBRE HON JUDGE CHRISTOPHER WASHINGTON			COMMENTS COMENTARIOS		
STREET / CALLE 401 FOURTH AVE. NORTH ROOM 2D					
CITY / CIUDAD KENI		STATE / ESTADO WASHINGTON	ZIP / CODIGO POSTAL 96032-4429		
ITEM / ARTICULO motion and suport docs					

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SEP 22 2009

**DECLARATION OF DOCUMENT FILING AND MAILING/DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 63348-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for  **respondent Anne Marie Summers - King County Prosecuting Attorney-Appellate Unit**,  **appellant** and/or  **other party**, at the regular office or residence as listed on ACORDS or drop-off box at the prosecutor's office.

  
MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: September 22, 2009

**APPENDIX B**

**PETITIONER'S DECLARATION CONCERNING TIMELINESS**

**Filed July 17, 2009**



4. I later filed a Notice of Appearance Pro Se by placing it in the prison mail system. After filing the motion, I became afraid the judge would not read the motion otherwise. I mailed copies of the Notice to the prosecutor and the judge.

5. I also remember writing a letter to Judge Washington about a month after filing the motion to withdraw the guilty plea because I had not heard anything from the court. By that time I had learned that Judge Washington was at the Seattle courthouse and not at the Regional Justice Center in Kent.

Signed at the Washington State Correction Center, Monroe,  
Washington, this 14 day of July 2009.

  
CHRISTOPHER A. QUINN

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

JUL 17 2009

**DECLARATION OF DOCUMENT FILING AND MAILING/DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 60180-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for  **respondent Ann Marie Summers - King County Prosecuting Attorney-Appellate Unit**,  **appellant** and/or  **other party**, at the regular office or residence as listed on ACORDS or drop-off box at the prosecutor's office.



MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: July 17, 2009

**APPENDIX C**

**JENNIE QUINN'S DECLARATION CONCERNING TIMELINESS**

**Filed July 17, 2009**

COPY

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

IN RE PERSONAL RESTRAINT  
OF CHRISTOPHER QUINN.

)  
)  
)  
)  
)  
)

No. 60180-6-1

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

JUL 17 2009

DECLARATION  
CONCERNING TIMELINESS

---

Jennie Quinn, states:

1. I am the mother of Christopher Quinn, who is the petitioner in the above-captioned personal restraint petition.
2. I remember that Christopher was concerned about filing his motion to withdraw his guilty plea before a certain deadline.
3. I also remember that some time after he had mailed the motion, Christopher asked me to call his sentencing judge, Christopher Washington, because he had not heard anything from the court about his motion.
4. I do not remember when I called Judge Washington, but I do remember talking to him. Judge Washington told me that he had been on vacation and Christopher's motion had been sitting on his desk. Judge Washington also told me that the motion was in the wrong court and that he would send it to the correct court soon.

Signed in San Francisco, California, this 14 day of July 2009.

  
JENNIE QUINN

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

JUL 17 2009

**DECLARATION OF DOCUMENT FILING AND MAILING/DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 60180-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for  **respondent Ann Marie Summers - King County Prosecuting Attorney-Appellate Unit**,  **appellant** and/or  **other party**, at the regular office or residence as listed on ACORDS or drop-off box at the prosecutor's office.



MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: July 17, 2009

**APPENDIX D**

**ORDER ON REFERENCE HEARING FINDINGS OF FACT**

**Filed August 19, 2008**

**FILED**  
KING COUNTY, WASHINGTON

AUG 19 2008

SUPERIOR COURT  
ANGIE VILLALBA  
DEPUTY

AUG 20 2008

COPY TO COURT OF APPEALS

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

STATE OF WASHINGTON,

Plaintiff,

v.

CHRISTOPHER A. QUINN,

Defendant.

No. 04-1-12352-2 KNT

COA 60180-6-I

ORDER ON REFERENCE HEARING  
FINDINGS OF FACT

[CLERK'S ACTION REQUIRED]

THIS MATTER came before the undersigned judge pursuant to an Order of Transfer from the Court of Appeals for a reference hearing to be conducted in accordance with RAP 16.12.

The Court of Appeals directed the Superior Court to hold a reference hearing in order to "determine whether Quinn was affirmatively misinformed about the length of community custody and, if he was, whether that misinformation was ever corrected prior to entry of the guilty plea." See Order of Transfer, Court of Appeals, November 13, 2007.



158

1 After considering the evidence presented at the reference hearing, this court answers the  
2 first question in the affirmative and the second in the negative. Below are the court's Findings of  
3 Fact.  
4

5 The State appeared through Matt Anderson of the King County Prosecuting Attorney's  
6 Office; Mr. Quinn appeared through Ms. Sabrina Housand. The court considered the exhibits  
7 admitted at the hearing; the testimony of the following individuals: Judy Baskin, Christopher  
8 Anthony Quinn, Donald Wackerman, Zachary Wagnild, and Carol Ellerby; and argument of  
9 counsel.  
10

11 FINDINGS OF FACT

- 12 1. Christopher Quinn was charged in King County Superior Court with two counts of  
13 Child Molestation in the First Degree and one count of Communicating With a Minor  
14 for Immoral Purposes under the above entitled cause number. He was represented by  
15 The Defender Association (TDA) during the pendency of his case in Superior Court.  
16
- 17 2. Mr. Don Wackerman represented Mr. Quinn until Mr. Wackerman left TDA's  
18 employment in the fall of 2005. Mr. Wackerman discussed the prosecutor's plea  
19 offers with Mr. Quinn, and they discussed the fact that indeterminate sentencing  
20 meant Mr. Quinn faced a possible life sentence for the charged crimes. However,  
21 most of their discussions were about the possibility of the state adding additional  
22 counts, various discovery issues, and the possibility of obtaining a Special Sex  
23 Offender Sentencing Alternative (SSOSA) which would avoid the risk of a lifetime in  
24 prison. Mr. Wackerman did not discuss the specifics of a plea with Mr. Quinn, and  
25 never reviewed a plea form with him.  
26  
27  
28

1 3. Mr. Wackerman testified that in reviewing TDA's attorney case file for Mr. Quinn, in  
2 preparation for the reference hearing, he discovered a State's recommendation form  
3 for a felony sex offense dated 7/22/05, and signed by deputy prosecutor Roger  
4 Rogoff. The recommendation on this form indicated that the community custody  
5 period would be 36 to 48 months. It did not reference the life maximum. (State's  
6 Exhibit 7). Mr. Wackerman did not believe that he had ever provided a copy of that  
7 sentencing recommendation to Mr. Quinn.  
8

9  
10 4. Upon Mr. Wackerman's departure from TDA, Ms. Carol Ellerby took over Mr.  
11 Quinn's representation in August of 2005. Ms. Ellerby was his attorney of record  
12 when he entered a plea of guilty on December 15, 2005. The focus of Ms. Ellerby's  
13 representation was preparation for trial and that there was no plan for Mr. Quinn to  
14 plead guilty between August and November.  
15

16  
17 5. Over the course of time Mr. Quinn decided that he would plead guilty, and the plea  
18 hearing was set to be heard on December 13, 2005. Ms. Ellerby visited Mr. Quinn,  
19 who was in custody during the pendency of his case, and reviewed the plea form with  
20 him a few days prior to December 13, 2005. Ms. Ellerby's practice was to fill out the  
21 Statement of Defendant on Plea of Guilty (plea form) and make two copies, one for  
22 the TDA attorney file and one for the client. She did that on this occasion and  
23 provided Mr. Quinn with his own copy of the plea form, which he reviewed while she  
24 went over and explained the plea form with him (Defendant's Exhibit 3). On the  
25 copy of the plea form Ms. Ellerby provided to Mr. Quinn, and on the original form  
26 that she provided to the prosecutor, the State's recommendation on page 7, paragraph  
27  
28

1 (g), indicates "36 - 48 mos cc." Ms. Ellerby read that paragraph to Mr. Quinn as it  
2 was written when she reviewed the plea form with him.

3  
4 6. Ms. Ellerby submitted the original plea form to the Prosecutors' Office. Deputy  
5 Prosecutor Zack Wagnild reviewed the plea form to ensure that it was correct. After  
6 reviewing the document, Mr. Wagnild corrected the "36 - 48 mos cc" portion of the  
7 State's recommendation by "whiting out" the "36 - 48 mos" portion and replacing it  
8 with "life on." (State's Exhibit 1). Mr. Wagnild testified that there was never any  
9 discussion of reducing the community custody period and that it could not be done in  
10 any case for the specific charges and he believed it was just a mistake. Ms. Ellerby  
11 was unaware that this change had been made to the original plea form she submitted.

12  
13  
14 7. After Ms. Ellerby reviewed the plea form with him, but before entry of his plea, Mr.  
15 Quinn wrote a letter to Ms. Ellerby indicating that he wanted to enter an Alford plea  
16 (Defendant's Exhibit 10).<sup>1</sup> He also specifically referred to the State's  
17 recommendation of 36 to 48 months of community custody and asked if this meant  
18 that if he was released from jail he would be done with DOC after that period.

19  
20 8. Ms. Ellerby did not receive Mr. Quinn's letter (Exhibit 10) asking about the  
21 community custody period until after Mr. Quinn had pled guilty. Therefore, she did  
22 not realize he had a question about the length of community custody he faced, or that  
23  
24

25 <sup>1</sup> Exhibit 10 includes an envelope dated September 22, 2005. Ms. Ellerby testified that she  
26 believes the envelope was inadvertently placed with the letter when trying to organize TDA' file,  
27 which was in disarray at the time of the reference hearing. The content of the letter makes it  
28 clear that it was written when the entry of his plea was imminent. The court is persuaded that in  
29 September of 2005 the case was set for trial, so Mr. Quinn would not have been discussing a  
plea).

1 she had erroneously indicated that the State was recommending 36 to 48 months of  
2 community custody on the plea form she provided to Mr. Quinn and had reviewed  
3 with him prior to the plea. She did not discuss the issue with him or address his  
4 question about the length of the community custody he was facing and she did not  
5 correct the error of 36 to 48 months of community custody in the State's  
6 recommendation.  
7

8  
9 9. Ms. Ellerby appeared in court with Mr. Quinn on December 13, 2005, for the entry of  
10 his plea (State's Exhibit 5). Mr. Quinn signed the original plea form, the felony plea  
11 agreement, and a stipulation to have the matter heard by a pro tem judge. However,  
12 prior to the plea colloquy, Mr. Quinn asked Ms. Ellerby if she had received his letter,  
13 and then stated that he wanted to enter an Alford plea. Upon hearing that there might  
14 be some misunderstanding, the court set the plea over to another time. While in court  
15 that day, neither Mr. Quinn nor Ms. Ellerby saw the change that Mr. Wagnild had  
16 made to page 7, paragraph (g) of the plea form, and neither of them was aware that  
17 the community custody range had been incorrect when Ms. Ellerby reviewed the plea  
18 form with Mr. Quinn.  
19

20  
21 10. Either later in the day on December 13, 2005, or on the following day, December 14,  
22 2005, Ms. Ellerby visited Mr. Quinn to discuss his plea. She advised him not to enter  
23 an Alford plea because it would require a stipulation to the Certification for the  
24 Determination of Probable Cause, and for purposes of the indeterminate sentencing  
25 Ms. Ellerby felt it was very important for him not to stipulate to "real facts." Ms.  
26 Ellerby had specifically negotiated an agreement with the prosecutor that Mr. Quinn  
27  
28

1 would not be agreeing to "real facts," and an Alford plea would negate that advantage.

2 Ms. Ellerby did not discuss community custody with Mr. Quinn and had no further  
3 contact with Mr. Quinn before he entered his plea.  
4

5 11. Ms. Ellerby left for vacation on December 15, 2005,, and was unable to handle Mr.  
6 Quinn's entry of plea in court. She wrote a note to the coverage attorney from TDA,  
7 Judy Baskin. (Defendant's Exhibit 9). The coverage note makes no reference to  
8 community custody. When she left for vacation, Ms. Ellerby still had not received the  
9 letter Mr. Quinn referenced on the record at the December 13, 2005, court  
10 appearance.  
11

12 12. Ms. Baskin appeared in court with Mr. Quinn on December 15, 2005. (Defendant's  
13 Exhibit 4, State's Exhibit 6). Mr. Quinn did not speak to her until the plea was called  
14 and he was brought into the courtroom. Ms. Baskin had no independent recollection  
15 of the plea or any discussions she might have had with Mr. Quinn. However, she  
16 testified that it is her practice to initial, and have the client initial, any changes or  
17 additions that have been made to the plea form since it was initially reviewed with the  
18 client. Neither Ms. Baskin's initials nor Mr. Quinn's initials appear by the changes  
19 Mr. Wagnild made to page 7, paragraph (g) of the original plea form.  
20  
21

22 13. During the very brief plea colloquy, the court did not read the State's sentencing  
23 recommendation into the record and made no mention of the length of community  
24 custody. (Defendant's Exhibit 4, State's Exhibit 6).  
25

26 14. Ms. Baskin identified her handwriting, which is in blue ink, on a copy of the plea  
27 form that was found in TDA's case file for Mr. Quinn. (State's Exhibit 2). On page  
28

1 7, paragraph (g) of the plea form, Ms. Baskin had crossed out the "36 - 48 mo cc" and  
2 wrote "life on cc." Ms. Baskin had no independent recollection of doing this, and  
3 does not know if she made this correction before or after Mr. Quinn entered the plea.  
4 As a coverage attorney, there were times when she reviewed the plea paperwork after  
5 the plea had gone through. A client's desire to withdraw his plea would be one of  
6 those occasions when she would review the plea paperwork after the plea had been  
7 entered.  
8

9  
10 15. Mr. Quinn had no prior experience with the criminal justice system. He was under  
11 the impression that if he went to trial, the State could amend the charges and increase  
12 the sentence and that he if pled guilty he would face a lesser sentence. At the time he  
13 entered his plea, he understood that the indeterminate sentencing scheme meant that  
14 he was facing a possible lifetime in prison. However, he did not understand that if he  
15 was released from prison, he was also facing a mandatory lifetime period of  
16 community custody. Based on the copy of the plea form he received, which Ms.  
17 Ellerby reviewed with him, he believed the State was recommending 36 to 48 months  
18 of community custody and that 36 to 48 months of community custody was the time  
19 period he would be facing if and when he was released from prison. Any  
20 misunderstanding or questions he had about the length of community custody were  
21 not addressed between the time he was given the erroneous State's recommendation  
22 of 36 to 48 months of community custody, and the time he entered his plea.  
23  
24

25  
26  
27 16. Shortly after Mr. Quinn entered his plea, he wrote a letter to Ms. Baskin of TDA  
28 indicating that he felt Ms. Ellerby had been ineffective in representing him and that he  
29

1 wanted to withdraw his plea. When Ms. Ellerby returned from vacation on January 9,  
2 2006, and Ms. Baskin informed her that Mr. Quinn wanted to withdraw his plea. Ms.  
3 Ellerby filed a notice of withdrawal, dated January 12, 2006, and filed it with the  
4 court on January 13, 2006. (Defendant's Exhibit 13).

6 17. Mr. Joe Chalverus was subsequently appointed to represent Mr. Quinn for a motion to  
7 withdraw his plea. Mr. Chalverus provided Mr. Quinn with a copy of his brief in  
8 support of the motion approximately one week prior to the date the motion was  
9 scheduled. A copy of the original plea form that was entered and filed on December  
10 15, 2005, was attached to Mr. Chalverus's brief. This was the first time Mr. Quinn  
11 saw the correction Mr. Wagnild had made to the community custody range on page 7,  
12 paragraph (g) of the form.

15 18. At the May 5, 2006, motion hearing to withdraw his plea, Mr. Quinn told the trial  
16 court that changes had been made to the plea form subsequent to having signed it.  
17 When asked what the changes were, Mr. Quinn stated that the community custody  
18 range had been changed from 36 to 48 months to life. (Defendant's Exhibit 8). The  
19 trial court did not consider Mr. Quinn's argument.

21 Based on the above findings, the court ultimately concludes as follows:

23 1. Ms. Ellerby affirmatively misinformed Mr. Quinn about the length of community custody  
24 when she reviewed the plea form with him. She specifically advised him that the State  
25 was recommending 36 to 48 months of community custody, when the correct and  
26 statutorily mandated term of community custody for the crime to which Mr. Quinn was  
27 pleading was life.  
28

1 2. Mr. Quinn understood that he was facing a mandatory minimum sentence with the  
2 possibility of life in prison, but did not understand that if he was released from prison he  
3 also faced a mandatory life period of community custody. Mr. Quinn believed that Ms.  
4 Ellerby's representation of the State's recommendation of 36 to 48 months indicated that  
5 this was the period of community custody he faced if he was released from prison if he  
6 pled guilty. He believed that the State's recommendation was a legal and valid  
7 sentencing recommendation and that a sentencing judge could impose a shorter  
8 community period.  
9

10  
11 3. The erroneous information about the length of community custody was not corrected  
12 prior to Mr. Quinn's entry of the plea. At the time he entered the plea on December 15,  
13 2005, he was unaware of the correction to the term of community custody Mr. Wagnild  
14 made to page 7, paragraph (g) of the plea form, changing it from 36 to 48 months to life.  
15 Mr. Quinn remained unaware of the change until approximately four months later, when  
16 Mr. Chavelrus provided him with a copy of the original plea form that had been filed on  
17 December 15, 2005.  
18

19  
20  
21 In accordance with the Order of Transfer, these Findings are now entered this 19<sup>th</sup> day of  
22 August, 2008.

23 IT IS FURTHER ORDERED that these Findings and all appellate court files shall be  
24 returned to the Court of Appeals for a final determination on the merits.

25  
26   
27 \_\_\_\_\_  
28 Judge Mary I. Yu  
29 KING COUNTY SUPERIOR COURT

