

No. 63009-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DAVID D. HALL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Monica Benton

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by denying Mr. Hall's motion for relief from judgment on the grounds it was untimely.

2. The trial court erred by failing to transfer Mr. Hall's motion for relief from judgment to the Court of Appeals for consideration as a personal restraint petition.

3. The trial court erred by denying Mr. Hall's motion for reconsideration.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Shortly after Mr. Hall's appeal was mandated to amend the judgment and sentence, he filed a motion for relief from judgment in the superior court, citing CrR 7.8(a)(3), (5). Mr. Hall's motion was filed within the "reasonable time" deadline of CrR 7.8(b). The motion was also filed well within one year of the date the judgment became final as required by CrR 7.8(b) and RCW 10.73.090. Did the trial court err by denying Mr. Hall's motion for relief from judgment as untimely?

2. The trial court refused to consider the issues raised in Mr. Hall's motion for relief from judgment and suggested he file a personal restraint petition. Where CrR 7.8(c) requires the trial court to transfer a motion for relief from judgment to the Court of Appeals

for treatment as a personal restraint petition unless a show cause hearing is needed, did the trial court abuse its discretion by refusing to address Mr. Hall's motion and failing to transfer it to this Court for treatment as a personal restraint petition?

C. STATEMENT OF THE CASE

David D. Hall was convicted of four counts of first degree robbery, one count of second degree assault, and one count of attempted first degree robbery in King County Superior Court. CP 41, 47. This Court affirmed the robbery and attempted robbery convictions on appeal, but vacated the second degree assault conviction because it merged into one of the robbery convictions. CP 53, 55.

Upon remand, the prosecutor set the case for a resentencing hearing. SuppCP \_\_\_\_ (Notice of Resentencing Hearing, sub. no. 124, filed October 17, 2008). Prior to that hearing, Mr. Hall filed a pro se Supplemental Motion for Relief from Judgment, in which he argued his judgment was void because it listed the incorrect date for the jury verdict.<sup>1</sup> CP 59-70. Mr. Hall also filed a Statement of Additional Authorities, referring the court to RAP 12.2. SuppCP

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<sup>1</sup> The supplemental motion addressed issue number four, but there is no earlier motion in the superior court file.

\_\_\_ (Statement of Additional Authorities, sub. no. 127, filed December 18, 2008).

At the hearing upon remand, the Honorable Monica Benton entered an order amending the Judgment and Sentence by vacating the second degree assault conviction as ordered by this Court. CP 74-75. The order also corrected problems with the Judgment referred to in Mr. Hall's pro se motion, changing the statutory reference for first degree robbery and clarifying which counts were subject to firearm enhancements.<sup>2</sup> CP 74-75; RP 3-4.

The day before the hearing, Mr. Hall served the prosecutor and the court with a Second Motion for Relief from Judgment addressing the constitutionality of the firearm enhancement statute.<sup>3</sup> CP 78-143; RP 4, 6. The prosecutor argued the matter was not properly before the superior court and suggested Mr. Hall should have filed a personal restraint petition. RP 4. Mr. Hall pointed out that under RAP 12.2, the court could consider his motion now that the mandate had issued, as the motion did not address issues raised in his appeal. RP 5-6.

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<sup>2</sup> These errors were apparently addressed in the motion that was not filed.

<sup>3</sup> Mr. Hall's attorney filed the motion for him electronically after the hearing. CP 78, 142-43. His attorney was appointed for the remand hearing and did not provide any representation for the motion for relief from judgment. RP 8.

In discussing the motion with the parties, the court opined (1) the prosecutor had not been given sufficient time to respond to Mr. Hall's motion, (2) the court did not have jurisdiction to hear the motion, (3) any motions Mr. Hall filed would be transferred to the appellate court, and (4) the motion was not brought within the time period for a motion for arrest of judgment. RP 6-9. The court declined to consider the substance of Mr. Hall's motion. CP 73; RP 9. The terse written ruling states, "The court finds that the motion is untimely and the court declines to consider the motion." CP 73. The court did not refer the motion to the Court of Appeals for treatment as a personal restraint petition. CP 73.

Mr. Hall later filed a Motion for Reconsideration and asked the court to set a show cause hearing. CP 144-58. The court denied the motion without a hearing.<sup>4</sup> CP 170-72. The written order denying the motion sets forth CrR 7.8(c) and RCW 10.73.090 in order to give Mr. Hall "notice of his rights on appeal" and cautions Mr. Hall to be "mindful that these deadlines for petitions of

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<sup>4</sup> The ruling is incorrectly entitled, "Motion for Relief from Judgment." CP 170.

relief may result in a procedural bar” for his claims. CP 171-72.

Mr. Hall appeals.<sup>5</sup> CP 76-77, 173-75; RAP 2.2(a)(10), (13).

D. ARGUMENT

MR. HALL’S MOTION FOR RELIEF FROM JUDGMENT  
WAS NOT UNTIMELY AND SHOULD HAVE BEEN  
TRANSFERRED TO THIS COURT FOR TREATMENT  
AS A PERSONAL RESTRAINT PETITION

The superior court refused to consider Mr. Hall’s motion for relief from judgment, but did not transfer the motion to the appellate court for consideration as a personal restraint petition as required by CrR 7.8(c). The court reasoned the motion was untimely, but did not explain why the motion was not within the time deadlines set by CrR 7.8. The trial court abused its discretion because Hall’s motion was filed within the time deadlines set by CrR 7.8 and RCW 10.73.090 and because CrR 7.8 requires the court to transfer the motion to the Court of Appeals for treatment as a personal restraint petition if it does not set a show cause hearing.

An order denying a motion for relief from judgment is appealable as of right. State v. Larranaga, 126 Wn.App. 505, 509-

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<sup>5</sup> While waiting for a ruling on his motion for reconsideration, Mr. Hall filed a habeas corpus petition in Whitman County Superior Court, which was transferred to this Court for treatment as a personal restraint petition. In re Personal Restraint of David D. Hall, No. 63050-4-I. Mr. Hall’s motion to lift the stay and consolidate the petition with this appeal was denied without prejudice to renew the motion after the briefing in this appeal is complete.

10, 108 P.3d 833 (2005). A trial court's decision denying a motion for relief from judgment is reviewed for an abuse of discretion. Id.

1. Mr. Hall's motion for relief from judgment was not time barred by CrR 7.8 or RCW 10.73.090. CrR 7.8 provides a mechanism to request relief from a criminal judgment on various grounds. Unless the motion is based upon a clerical mistake, it must be brought "within a reasonable time." CrR 7.8(b). A one-year deadline applies to motions based upon reasons not applicable here, such as mistake or newly discovered evidence. Id.

The rule also incorporates the time limitations found at RCW 10.090-.130. Id. The rule states in relevant part:

On the motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

- (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;
- (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void; or
- (5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year

after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

CrR 7.8(b) (emphasis added).

Here, Mr. Hall brought his Second Motion for Relief from Judgment shortly after the Court of Appeals' mandate and at the time his judgment was amended. This was certainly within a "reasonable time" of the amended judgment as required by CrR 7.8. The motion was raised under CrR 7.8(c)(3) and (5) and addresses the constitutionality of the statutes authorizing his firearm enhancements. CP 78-143. It is thus not subject to the one-year deadline from entry of judgment, which applied to motions brought under CrR 7.8(c)(1) and (2).

CrR 7.8 also incorporates the time limits found in RCW 10.73, but Mr. Hall's motion was not time barred by RCW 10.73.090. RCW 10.73.090 creates a one-year time limit for collateral attack on a criminal conviction. RCW 10.73.090(1). The year, however, begins when the judgment is "final." *Id.* Mr. Hall's judgment was not final until the superior court amended his judgment on January 8, 2009, pursuant to this court's September 26, 2008 mandate. In re Personal Restraint of Skylstad, 160 Wn.2d

944, 948, 162 P.3d 413 (2007) (one year begins after mandate from defendant's second appeal after resentencing); In re Personal Restraint of Isadore, 151 Wn.2d 294, 296-97, 88 P.3d 390 (2004) (addressing without comment personal restraint petition filed almost two years after guilty plea but less than a year after amended judgment entered); RCW 10.73.090(3); CP 52. The motion for relief from judgment was served on January 7 and filed on February 18, 2009, and thus it was not barred by RCW 10.73.090(3).

Alternatively, the motion was not untimely as the rule requires the court to set the matter for a show cause hearing where the State would have an opportunity to respond. Orally the trial court mentioned several reasons why it should not address Mr. Hall's motion for relief from judgment, including its concern that the prosecutor did not have time to respond. RP 5, 6, 7-8. Thus, the cryptic use of the word "untimely" could refer to the fact Mr. Hall served the motion on the State the day before the resentencing hearing. CP 73. The court's written ruling denying Mr. Hall's motion for reconsideration does not clear up the ambiguity. CP 170-72.

An incarcerated pro se litigant, Mr. Hall struggled to serve and file his motion before the hearing. RP 6. The plain language of

CrR 7.8(c)(3), however, calls for the court to set a show cause hearing after receiving a motion for relief from judgment unless the court transfers the motion to the appellate court.

If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for a hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

CrR 7.8(c)(3) (emphasis added). Thus, Mr. Hall properly filed his motion, and the court should have set it for a show cause hearing, giving the State the opportunity to file a reasoned response to Mr. Hall's motion.

A court abuses its discretion if it adopts a position that is manifestly unreasonable or based upon untenable grounds. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008). A discretionary decision is based upon untenable grounds or mandate for untenable reasons if it is based upon facts unsupported by the record or reached by applying the incorrect legal standard. Id. (quoting State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)). Here, the trial court misunderstood the time-limit requirements of CrR 7.8 and RCW 10.73.090 and thus its finding that Mr. Hall's motion was untimely is based upon an erroneous view of the law. This Court should reverse the court's

determination that Mr. Hall's motion for relief from judgment was untimely.

2. The trial court was required by CrR 7.8 to transfer Mr. Hall's motion for relief from judgment to the Court of Appeals. The plain language of CrR 7.8(c) required the trial court to transfer Mr. Hall's motion for relief from judgment to the Court of Appeals or set a show cause hearing. The rule does not permit the court to deny a motion for relief from judgment without a hearing and then do nothing to facilitate its transfer to the appellate court. The trial court abused its discretion by failing to transfer Mr. Hall's motion to this Court.

CrR 7.8(c) provides the procedure for a motion for relief from judgment. The plain language of the rule gives the trial court two options – it may transfer the matter to the Court of Appeals or it may set it for a show cause hearing. CrR 7.8(c).

(2) *Transfer to the Court of Appeals.* The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

(3) *Order to Show Cause.* If the court does not transfer the motion to the Court of Appeals, it shall

enter an order fixing a time and place for a hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

CrR 7.8(c)(2), (3) (emphasis added). When a court rule uses the word “shall,” as does CrR 7.8(c), the rule creates a mandatory directive to the court absent contrary legislative intent. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994) (general rule is use of word “shall” is mandatory); State v. Greenwood, 120 Wn.2d 585, 592, 845 P.2d 971 (1993) (court rules interpreted using canons of statutory construction).

As mentioned above, a trial court abuses its discretion if its ruling is made by applying the wrong legal standard. Quismundo, 164 Wn.2d at 504. “Indeed, a court ‘would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.’” Id. (quoting Washington State Physicians Ins. Exch. & Assn. v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993)). Here, the trial court decided not to consider Mr. Hall’s motion for relief from judgment, but did not look at the applicable court rule, CrR 7.8, to learn its options. The court rule requires the trial court to transfer the motion to the appellate court for treatment as a personal restraint petition or to set a show cause hearing. CrR 7.8(c). The trial court abused its discretion by deciding not to address Mr. Hall’s

motion and dismissing it without a hearing rather than transferring the motion to the Court of Appeals as required by the court rule.

The State may argue that Mr. Hall, a pro se litigant, did not specifically request transfer to the appellate courts but instead asked for a show cause hearing. But as the Washington Supreme Court recently explained, however, the trial court is obligated to follow the law regardless of the arguments made by the parties. Quismundo, 164 Wn.2d at 505-06.

CrR 7.8(c) creates a clear road map for the trial court in addressing a motion for relief from judgment. The rule does not permit the court to decline to rule on the motion or deny it without review. The trial court here abused its discretion by refusing to apply the court rule and transfer Mr. Hall's motion to the Court of Appeals.

3. Mr. Hall's motion for relief from judgment was timely, and the trial court abused its discretion by failing to transfer the motion to the Court of Appeals. The trial court improperly declined to address Mr. Hall's motion for relief from judgment on the grounds it was untimely, when the judgment was filed well within a year of the date his judgment was amended and the date the Court of Appeals mandate terminated his appeal. The trial court further abused its

discretion by suggesting Mr. Hall file a personal restraint petition but failing to transfer his motion to this Court for treatment as a personal restraint petition. The court orders refusing to address the motion and denying Mr. Hall's motion for reconsideration must be reversed. In the interests of judicial economy and expediency, Mr. Hall's appeal should be immediately consolidated with his pending personal restraint petition and considered by this Court on an accelerated basis.

E. CONCLUSION

The trial court erred by refusing to consider David Hall's motion for relief from judgment as untimely. He respectfully requests the court orders be reversed and his case considered as a personal restraint petition.

DATED this 8<sup>th</sup> day of September 2009.

Respectfully submitted,



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

STATE OF WASHINGTON, )

Respondent, )

v. )

DAVID HALL, )

Appellant. )

NO. 63009-1-I

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SEATTLE, WA

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8<sup>TH</sup> DAY OF SEPTEMBER, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 8<sup>TH</sup> DAY OF SEPTEMBER, 2009.

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