

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

In re Personal Restraint )  
Petition of )  
)  
)  
)  
)  
CURTIS THORNTON, )  
Petitioner. )  
\_\_\_\_\_ )

No. 63345-7-1  
STATE'S RESPONSE TO  
PERSONAL RESTRAINT  
PETITION

A. AUTHORITY FOR RESTRAINT OF PETITIONER.

Curtis Thornton is restrained pursuant to judgment and sentence in King County Superior Court No. 92-1-07847-0. Appendix A. Thornton has completed his term of confinement pursuant to this judgment. However, he is currently serving a term of life imprisonment without possibility of parole pursuant to judgment and sentence in Spokane County Superior Court No. 96-1-00785-5.<sup>1</sup>

<sup>1</sup> Thornton had previously been adjudged a habitual offender in 1977. State v. Thornton, 24 Wn. App. 881, 604 P.2d 1004 (1979).

STATE'S RESPONSE TO  
PERSONAL RESTRAINT PETITION

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B. ISSUES PRESENTED.

1. Whether this petition should be dismissed as untimely where there is no invalidity in the sentence that is apparent on the face of the judgment and sentence.

2. Whether this petition should be dismissed where the misadvisement regarding community placement in the plea form does not render the judgment and sentence invalid on its face.

3. Whether this petition should be dismissed where petitioner waived any claim regarding the misadvisement in the plea form at sentencing when he did not move to withdraw his plea.

4. Whether this petition should be dismissed where withdrawal of the plea is not warranted by the circumstances.

C. STATEMENT OF THE CASE.

In 1992, Curtis Thornton was charged by information with the crime of attempted robbery in the second degree. Appendix B. The Certification for Determination for Probable Cause reflects that on November 27, 1992, Thornton entered a food market in Seattle with a gun visible in his waistband and told a cashier to "put all the money in a bag, now!" The cashier was so frightened she was unable to open the till even after repeated attempts. Thornton fled

and was arrested by undercover officers a short distance away. The officers discovered the gun was a realistic-looking toy gun. Appendix B. A month later, the State amended the information to add a charge of robbery in the second degree. Appendix C. The Supplemental Certification for Determination of Probable Cause reflects that two days before the attempted robbery, Thornton robbed a Kentucky Fried Chicken restaurant by showing the employees a gun, stating "this is a robbery" and instructing them to empty the contents of the cash register into a paper bag. The employees positively identified Thornton in a line-up as the person that robbed the restaurant. Appendix C.

Thornton pled guilty to attempted robbery in the second degree, Count I, and robbery in the second degree, Count II. Appendix D. On page 2 of the Statement of Defendant on Plea of Guilty, which is customarily completed by defense counsel, Thornton was properly advised that the maximum sentence for Count I was five years imprisonment and a \$10,000 fine, and that the maximum sentence for Count II was ten years imprisonment and a \$20,000 fine. Appendix D. In the Plea Agreement, which is customarily completed by the prosecutor and was signed by all the parties, including Thornton, he was also properly advised of the

maximum terms. Appendix D. On page 4 of the Statement of Defendant on Plea of Guilty, Thornton was incorrectly advised that the judge would sentence him to community placement for at least one year. Appendix D. The State agreed to recommend a standard range sentence of 52 months as to Count I and 53 months as Count II, to be served concurrently, plus restitution, court costs, a victim penalty assessment and recoupment of defense attorney fees. Appendix D, State's Sentencing Recommendation. At page 4 of the Statement of the Defendant on Plea of Guilty Thornton was correctly advised that the state would recommend "53 months confinement, pay court costs, VPA, recoupment, restitution, NCO with victims." Appendix D. There is no mention of community placement in the State's recommendation.

Thornton was sentenced on April 23, 1993. Appendix A. He received a sentence of 53 months of total confinement. Appendix A. The court did not impose community placement. The judgment and sentence incorrectly states that the maximum term for the crime of attempted robbery in the second degree is "10 years and/or \$20,000 fine." The judgment and sentence correctly states that the maximum term for the crime of robbery in the second degree is "10 years and/or \$20,000 fine." The court imposed

restitution in the amount of \$237 and the \$100 victim penalty assessment and waived all other fees. Appendix A and C. Thornton did not appeal. Thornton filed a previous personal restraint petition that was dismissed by this Court in 2007.

Appendix E.

D. ARGUMENT.

1. THIS PETITION IS UNTIMELY BECAUSE THERE IS NO INVALIDITY IN THE SENTENCE THAT WAS IMPOSED.

Thornton contends that his petition, which was filed 16 years after his judgment and sentence became final, is not time-barred because the judgment and sentence is invalid on its face. His claim should be rejected. There was no error in the sentence imposed. As such, the judgment and sentence is not invalid on its face.

No petition collaterally attacking a judgment and sentence 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). A judgment becomes final on the date that it is filed with the clerk of the trial court if no appeal is filed. RCW 10.73.090(3). In the present case, the judgment and sentence became final in April of

1993. Appendix A. This petition was not filed until April of 2009, 16 years later.

Pursuant to RCW 10.73.090(1), the one-year time limit only applies if "the judgment and sentence is valid on its face." RCW 10.73.090(1). A judgment is valid on its face unless the judgment evidences an error without further elaboration. In re Personal Restraint of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000).

Thornton argues that the 1993 judgment and sentence is invalid on its face because the form states the incorrect maximum penalty for attempted robbery in the second degree. The maximum penalty for attempted robbery in the second degree, a class C felony, is five years and/or a \$20,000 fine. RCW 9A.56.210(2); 9A.20.021(1)(b); 9A.28.020(3)(c).

The actual "judgment" is contained in part III on the form. It states: "It is adjudged that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A." Appendix A. Thornton does not challenge the validity of this judgment.

Thornton also does not challenge the sentence imposed: a standard range sentence of 53 months of total confinement, plus restitution and victim's penalty assessment. Rather, Thornton

attempts to rely on an error contained in the document that does not affect the judgment or the sentence.

Washington courts have never adopted a rule that any mistake on the judgment form renders a judgment and sentence invalid on its face. The error must affect the validity of the sentence itself. For example, in In re Personal Restraint of Stoudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000), the judgment and sentence was invalid on its face because the crime was charged outside the statute of limitations thus rendering the sentence imposed invalid. In In re Thompson, *supra*, the judgment and sentence was invalid on its face because the defendant was convicted of a crime that did not exist at the time it was committed thus rendering the sentence imposed invalid. 141 Wn.2d at 719. In In re Personal Restraint of Goodwin, 146 Wn.2d 861, 865-66, 50 P.3d 618 (2002), the judgment and sentence was invalid on its face where the offender score was incorrectly calculated thus rendering the sentence imposed invalid. In In re Personal Restraint of West, 154 Wn.2d 204, 110 P.3d 1122 (2005), the judgment and sentence was invalid on its face due to a provision of the sentence that prohibited earned early release credit, which was outside the court's statutory authority, thus rendering the sentence imposed invalid. In no case

has a Washington court held a judgment and sentence invalid on its face based on a mistake on the judgment form that does not affect the validity of the sentence imposed. In its recent decision in In re Personal Restraint of McKiearnan, 165 Wn.2d 777, 782-83, 203 P.3d 375 (2009), the supreme court stated, "[t]o be facially invalid, a judgment and sentence requires a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner." In that case, the court held that a misstatement as to the maximum term on the judgment and sentence did not render it invalid on its face. Id. at 783. This Court should reject Thornton's contention that any mistake on the judgment and sentence renders the document invalid on its face, even where the mistake does not affect the validity of the sentence imposed. Thornton's judgment and sentence does not evidence an error in the sentence on its face. It is not invalid on its face.

Thornton also argues that the court's order prohibiting contact with Bree Hanson for ten years is invalid because Ms. Hansen was a victim of Count I. RCW 9.94A.120(17), in effect in 1992, authorized a sentencing court to impose an order prohibiting the offender from having any contact with "other specified individuals." The statute requires that such an order "relates

directly to the circumstances of the crime." Former RCW 9.94A.120(17) (1992). The statute does not limit no-contact orders to the named victims of particular crimes. Prohibiting Thornton from having contact with all of the victims of his known robberies relates to the circumstances of both of his robberies. The broad language of the statute allowed the court to prohibit Thornton from having contact with all his robbery victims for a maximum period of ten years.

**2. THE MISADVISEMENT REGARDING COMMUNITY PLACEMENT IN THE PLEA FORM DOES RENDER THE JUDGMENT AND SENTENCE INVALID ON ITS FACE.**

Thornton's claim that his plea was invalid because he was incorrectly advised at the time of his plea about community placement is a claim that is time-barred. Because the court did not impose community placement, Thornton's judgment and sentence is not facially invalid. The mistake in the plea form does not render the judgment and sentence invalid. Because the judgment and sentence is valid on its face, Thornton's petition should be dismissed as untimely.

As stated previously, the one-year time bar provided in RCW 10.73.090 for filing collateral attacks only applies if the judgment

and sentence is "valid on its face." RCW 10.73.090(1). A judgment is valid on its face unless the judgment evidences an error without further elaboration. In re Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000). Facial invalidity has been interpreted to include those documents signed as part of a plea agreement as well as the judgment and sentence itself. State v. Robinson, 104 Wn. App. 657, 17 P.3d 653 (2001). The documents of the plea can inform the inquiry as to whether the judgment and sentence is invalid on its face. State v. Hemenway, 147 Wn.2d 529, 55 P.3d 615 (2002). However, misinformation about the consequences of a plea is not a facial defect exempt from the one-year time limit on collateral attack. Id. at 533.

Thornton argues that his 1993 judgment and sentence is invalid on its face because he was misinformed about whether a term of community placement would be imposed. State v. Hemenway, supra, is directly on point. Hemenway pled guilty to child molestation in the first degree in 1996. The plea form did not advise Hemenway as to the mandatory two-year period of community placement, but rather stated that "the judge may place me on community supervision." 147 Wn.2d at 530. At sentencing

the court properly imposed a two-year term of community placement. Id. at 531.

Five years later, Hemenway filed a personal restraint petition contending that his guilty plea was involuntary because he was misadvised as to the mandatory period of community placement. Id. In the state supreme court, Hemenway argued that his petition was not time-barred by RCW 10.73.090 because his plea was invalid on its face. Id. The supreme court disagreed, holding that the petition was time-barred because the judgment and sentence was not invalid on its face. Id. at 532-33. The court stated, "the 'facial validity' inquiry is directed to the judgment and sentence itself." Id. at 532. The court concluded that the judgment and sentence was valid on its face because Hemenway was sentenced to the correct period of community placement. Id. The court rejected Hemenway's claim that the judgment and sentence should be considered invalid because the plea form was invalid on its face. Id. The Court stated, "[t]he question is not, however, whether the plea documents are facially invalid, but rather whether the judgment and sentence is invalid on its face. The plea documents are relevant only where they may disclose invalidity in the judgment and sentence. Here they do not." Id. at 533.

The supreme court reaffirmed this holding in In re Personal Restraint of Turay, 150 Wn.2d 71, 82, 74 P.3d 1194 (2003), stating that in Hemenway "we noted that the relevant question in a criminal case is whether the judgment and sentence is valid on its face, not whether related documents, such as plea agreements, are valid on their face." The mistake in Thornton's plea form does not render his judgment and sentence invalid on its face. Because the judgment and sentence is valid on its face, this petition, filed 16 years after the judgment and sentence became final, should be dismissed as untimely.

### 3. THORNTON WAIVED ANY CHALLENGE AT SENTENCING.

Even if Thornton's claim could be raised in an untimely petition, he would not be entitled to relief because he waived his challenge at sentencing. At the time of sentencing, when community placement was not imposed, Thornton did not move to withdraw his plea. That makes his case analogous to State v. Mendoza, 157 Wn.2d 582, 141 P.3d 49 (2006). In that case, the defendant learned at sentencing that his standard range was lower than he had been advised. Id. at 585. The supreme court held that under the circumstances it would not inquire into the materiality of

the misadvisement in the defendant's subjective decision to plead guilty. Id. at 590. However, the court held that Mendoza had waived the right to challenge the voluntariness of his plea at sentencing when he did not object to the lower standard range.

The court stated:

[I]f the defendant was clearly informed before sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea.

Id. at 592. In other words, if the defendant does not timely seek withdrawal upon learning that he was misadvised of a consequence, the defendant waives his challenge. Thornton did not object or move to withdraw his plea when community placement was not requested or imposed at sentencing. As such, Thornton waived his challenge to the voluntariness of his plea on that basis.

4. UNDER THE FACTORS SET FORTH IN STATE V. MORLEY, THORNTON IS NOT ENTITLED TO WITHDRAWAL OF HER PLEA.

In State v. Morley, 134 Wn.2d 588, 952 P.2d 167 (1998), the supreme court addressed the question of when a defendant who has been misadvised as to a consequence of a plea may be allowed to withdraw his plea. The court stated:

When a defendant is misinformed of the potential sentence, numerous factors must be analyzed when fashioning an appropriate remedy:

(1) Whether the error was inadvertent or the product of bad faith on the part of the State; where bad faith is found to exist, the court should give considerable weight to the choice of remedy;

(2) whether retrial of petitioner on the original charges would be frustrated by the absence of witnesses of either the State or the defendant;

(3) whether the discrepancy between the sentence imposed and the one anticipated by the plea agreement is great or small;

(4) the seriousness of the offenses to which the pleas were entered;

(5) whether the particular remedy selected will, in a fair way, restore defendant to the position he would have been in had the violation of CrR 4.2(d) not occurred.

134 Wn.2d at 621. An analysis of these factors in the present case shows that withdrawal of the plea is not warranted. First, there is no evidence that the error was made by the State. The Statement of Defendant on Plea of Guilty appears to have been filled out by the defense attorney, as is customary. Second, because the crime was committed over 17 years ago it is almost a certainty that significant evidence has been lost or destroyed, and the witnesses will have little memory of the events. Third, and most importantly, there is no discrepancy between the sentence imposed and the sentence anticipated: the State did not request community placement and community placement was not imposed. Fourth,

robbery in the second degree has been statutorily defined as a "most serious offense." RCW 9.94A.030(29)(o). As to the fifth factor, it is obvious that Thornton's present stated desire to withdraw his plea has nothing to do with the voluntariness of that plea, and is simply an attempt to invalidate his current persistent offender sentence. All of the five factors set forth in Morley weigh against allowing Thornton to withdraw his plea.

In sum, even if this petition were not untimely, Thornton has failed to establish that his plea was involuntary, or that withdrawal of his plea is a just remedy under these circumstances.

5. THIS PETITION MUST BE DISMISSED AS AN  
UNTIMELY SUCCESSIVE PETITION.

RCW 10.73.140 bars the Court of Appeals from considering a collateral attack when the petitioner has previously filed a personal restraint petition unless the petitioner shows good cause why the ground currently asserted was not raised earlier. This statutory bar includes all collateral attacks, including habeas corpus petitions. In re Personal Restraint of Becker, 143 Wn.2d 491, 496, 20 P.3d 409 (2001). If the petitioner fails to show good cause why the ground asserted was not raised earlier, and the petition is also time barred, this Court must dismiss the petition. In re Personal

Restraint of Turay, 150 Wn.2d 71, 87, 74 P.3d 1194 (2003).

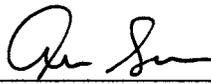
Thornton has failed to show good cause why the claims he now makes were not raised the collateral attack that was dismissed by this Court in 2007. Because the petition is also time barred, it must be dismissed as both untimely and successive.

E. CONCLUSION.

This petition should be dismissed as untimely and successive.

DATED this 1st day of July, 2009.

Respectfully Submitted,  
DAN SATTERBERG  
King County Prosecuting  
Attorney

by   
ANN SUMMERS, #21509  
Senior Deputy Prosecuting  
Attorney  
Attorneys for Respondent  
Office ID #91002

W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-9650

## APPENDIX A

DWA

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

NO. 92-1-07847-0

vs.

**JUDGMENT AND SENTENCE**

CURTIS GENE THORNTON,

Defendant.

**I. HEARING**

1.1 Pursuant to RCW 9.94A.110, sentencing hearing in this case was held on 4-23-93

Present were:  
Defendant: CURTIS G. THORNTON Defendant's Lawyer: Greg Girard

Deputy Prosecuting Attorney: CAROL SPOCK  
Other: \_\_\_\_\_

The state has moved for dismissal of count(s) \_\_\_\_\_

1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown

**II. FINDINGS**

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, court finds:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on (date): 2-18-93 by plea of:

Count No.: I Crime: Attempted Robbery Second Degree  
RCW 9A.56.210 Crime Code 12924  
Date of Crime 11-27-92 Incident No. \_\_\_\_\_

Count No.: II Crime: Robbery Second Degree  
RCW 9A.56.210 Crime Code 02924  
Date of Crime 11-25-92 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Additional current offenses are attached in **Appendix A.**

(a)  With a special verdict/finding for being armed with a deadly weapon on Count(s): \_\_\_\_\_

(b)  With a special verdict/finding that the defendant committed the crimes(s) with a sexual motivation on Count(s): \_\_\_\_\_

(c)  With a special verdict/finding for Violation of the Uniform Controlled Substances Act offense taking place  
 in a school zone  in a school  on a school bus  in a public park  in public transit vehicle  
 in a public transit stop shelter on Count(s): \_\_\_\_\_

(d)  Vehicle Homicide  Violent Offense (D.W.I. and/or reckless) or  Nonviolent (disregard safety of others)

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

(f)  Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: \_\_\_\_\_

(Current offenses not listed here are not encompassed)

93 9 10910 1

APR 27 1993

COMMITMENT ISSUED APR 27 1993

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS

PRESENTENCE STATEMENT & INFORMATION ATTACHED

POWER OF ATTORNEY

2.2 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) Robbery 1, 4-6-78, Adult, 83583,		Adult		King County
(b) Escape, 3-12-75, Adult, 6983,		Adult		Snohomish County
(c) Assault 2, 10-24-72, Adult, King County		Adult		King County
(d) Taking Motor Vehicle, 9-8-66, Adult 44595,		Adult		King County

- Additional criminal history is attached in Appendix B.  
 Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): \_\_\_\_\_

2.3 **SENTENCING OFFENDER SERIOUSNESS MAXIMUM**

DATA	SCORE	LEVEL	RANGE	TERM
Count I	: 8	IV	39.75- <del>52.5</del> months	10 years and/or \$20,000 fine.
Count II	: 8	IV	53-70 months	10 years and/or \$20,000 fine.
Count	:			

Additional current offense sentencing data is attached in Appendix C.

2.4 **EXCEPTIONAL SENTENCE:**  
 Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s)

Findings of fact and conclusion(s) are attached in Appendix D.

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) \_\_\_\_\_

**IV. ORDER**

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 **MONETARY OBLIGATIONS:** Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. Defendant shall pay to the Clerk of this Court:

(a) \$ 337.00 Total amount restitution (with credit for amounts paid by co-defendant) to:

Name	Address	Amount
_____	_____	\$ _____
_____	_____	\$ _____

Schedule of Restitution is attached as Appendix E.

Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_  date to be set.

(b) \$ waived, Court costs;

(c) \$100, Victim assessment;

(d) \$ waived, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104.

(e) \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived because court finds defendant is indigent.

(f) \$ \_\_\_\_\_, King County Interlocal Drug Fund;

(g) \$ \_\_\_\_\_, Other cost for: \_\_\_\_\_

(h) TOTAL monetary obligations: \$ 337.00

(i) The above payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk which are attached and incorporated into this order and the following terms:

Not less than \$ \_\_\_\_\_ per month

On a schedule established by the defendant's Community Corrections Officer.  : \_\_\_\_\_

and the clerk of the court shall credit monetary payments to the above obligations in the above-listed order.

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

CONFINEMENT OVER O... AR: Defendant is sentenced to a term of confinement in the custody of the Department of Corrections as follows, commencing (date): 17 January

39.75 months/days on Count No. I

53 months/days on Count No. II

months/days on Count No. \_\_\_\_\_

The terms in Count(s) No. I and II are concurrent ~~consecutive~~ and the sentence herein shall run concurrently/consecutively with the sentence in cause number(s) \_\_\_\_\_ but consecutive to any other cause not referred to in this Judgment.

The defendant shall receive credit for time served of 80 days solely for conviction under this cause number pursuant to RCW 9.94A.120(13).

4.3 NO CONTACT: For the maximum term of 10 years, defendant shall have no contact with Bruce Hansen (Stock Market) + Ken Harrison (Kentucky Fried Chicken)

4.4  BLOOD TESTING (sex, violent or prostitution offense or drug offense associated with the use of hypodermic needles): Appendix G, covering blood testing and counseling, is attached and incorporated by reference into this Judgment and Sentence.

4.5 COMMUNITY PLACEMENT: Community Placement is ordered for sex offense, serious violent offense, second degree assault, deadly weapon finding, Chapter 69.50 or 69.52 RCW offense, and standard mandatory conditions are ordered. Community placement is ordered for the maximum period of time provided by law.  Appendix H (for additional conditions) is attached and incorporated by reference in this Judgment and Sentence.

4.6  OFF-LIMITS ORDER: The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in Appendix I during the term of community placement.

4.7  SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: April 23, 1993

Bobbe J. Bridge  
Judge, King County Superior Court  
JUDGE BOBBE J. BRIDGE

Presented by:

Approved as to form:

Carlynn 91002  
Deputy Prosecuting Attorney

[Signature] 11039  
Attorney for Defendant

DNA

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Curtis G. Thornton )  
 Defendant. )

NO. 94-1-07847-0

APPENDIX G  
ORDER FOR BLOOD TESTING  
AND COUNSELING

(1)  4.4 **HIV TESTING AND COUNSELING.** (Required for defendants convicted of sexual offenses, drug offenses associated with the use of hypodermic needles, or prostitution related offenses committed after March 23, 1988):

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted **within 30 days.**

(2)  4.4 **DNA IDENTIFICATION TESTING.** (Required for defendants convicted of sexual offenses or violent offenses):

The Court orders the defendant to cooperate with the King County Department of Adult Detention and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangement for the test to be conducted **within 15 days.**

If both (1) and (2) are checked, two independent blood samples shall be taken.

Date: 4-23-93

Presented by:

Carol Span 91002  
Deputy Prosecuting Attorney

Bobbe J. Bridge  
JUDGE, King County Superior Court  
**JUDGE BOBBE J. BRIDGE**

[Signature] 11039  
Attorney for Defendant

[Signature]  
Defendant



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: C. Thornton  
DEFENDANT'S ADDRESS: DDc

CURTIS GENE THORNTON

DATED: April 23, 1993  
Bobbe J. Bridge  
JUDGE, KING COUNTY SUPERIOR COURT  
JUDGE BOBBE J. BRIDGE

ATTESTED BY:  
M. JANICE MICHELS, SUPERIOR COURT CLERK  
BY: Eileen L. McLeod  
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.  
DATED: \_\_\_\_\_

S.I.D. NO. WA10056991  
DATE OF BIRTH: APRIL 7, 1948  
SEX: M  
RACE: BLACK

CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

## APPENDIX B

FILED

DEC -2 PM 4:03

KING COUNTY  
COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )

Plaintiff, )

v. )

CURTIS GENE THORNTON )

Defendant. )

No. 92-1-07847-0

INFORMATION

WARRANT ISSUED  
ORIGINAL COUNTY \$110.00

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse CURTIS GENE THORNTON of the crime of Attempted Robbery in the Second Degree, committed as follows:

That the defendant CURTIS GENE THORNTON in King County, Washington on or about November 27, 1992, did unlawfully and with intent to commit theft attempt to take personal property, to-wit: United States currency, from the person and in the presence of Bree Hansen (Stock Market Foods), against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property;

Contrary to RCW 9A.28.020, 9A.56.210 and 9A.56.190, and against the peace and dignity of the State of Washington.

NORM MALENG  
Prosecuting Attorney

By:   
Terri Laken, WSBA #91002  
Deputy Prosecuting Attorney



Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

2 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Terri Luken is a Deputy Prosecuting Attorney for King  
4 County and is familiar with the police report and investigation  
5 conducted in Seattle Police Department case No. 92-536036;

6 That this case contains the following upon which this motion  
7 for the determination of probable cause is made;

8 On November 27, 1992, at approximately 9:20 pm, Bree Hansen was  
9 working as a cashier and helping a customer at Stock Market Foods,  
10 located in Seattle, King County, Washington, when the defendant,  
11 Curtis Thornton, pushed the customer aside and told Hansen to "Put  
12 all of the money in a bag, now!" Hansen was confused and did not  
13 know what was happening at first, but when the defendant repeated  
14 his demand, Hansen knew she was being robbed and became very  
15 frightened. Hansen was so scared, she could not open the till,  
16 despite many attempts. Hansen also noticed a gun in the waistband  
17 in the defendant's pants, and was afraid she would be shot if she  
18 could not open the till soon.

19 Another cashier, Lisa Fabatz, who was in the lane next to  
20 Hansen, leaned over and asked if she needed help. Hansen replied  
21 that the defendant wanted money, then Fabatz asked the defendant  
22 what was going on. The defendant mumbled something and pointed to  
23 the cash register. Fabatz thought the defendant was drunk, and did  
24 not know he was trying to rob Hansen, so she got on the intercom and  
25 paged her manager. When the defendant heard this, he fled the  
store. Moments later, a customer approached Hansen and told her  
that he just saw a car leave the parking lot very quickly, with its  
lights off, then he gave her a description of the car and a license  
number. The police were then called.

Seattle Police Officers Jokela and Hackett were working  
undercover in the area of the Sunrise Motel, a short distance from  
Stock Market Foods. The officers heard the police radio broadcast  
of the attempted robbery and a suspect and vehicle description.  
Within minutes, the defendant quickly drove into the parking lot of  
the Sunrise Motel.

Noticing that the description of the vehicle, the suspect, and  
the vehicle license plate number all matched the defendant, the  
officers approached and placed the defendant under arrest. Just  
before contacting him, the officers saw the defendant put something  
in the trunk of his car. After the defendant was arrested, the  
officers asked him if he could look in the trunk of his car, and he

Certification for Determination  
of Probable Cause - 1

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 told them to go ahead. When they looked in the trunk, the officers  
2 discovered a realistic-looking toy gun laying on top of a pile of  
clothes.

3 Hansen was then transported to the scene and positively  
4 identified the defendant as the person who had just tried to rob  
her.

5 The only passenger in the vehicle, Chris Henyard, was advised  
6 of her Miranda rights, which she acknowledged and waived. Henyard  
7 told the officers that the defendant, who had been drinking, drove  
8 her to the parking lot of Stock Market Foods, then he went into the  
9 store and she walked to a nearby bus stop to talk to friends who  
10 were standing there. Henyard then got back in the car and waited  
11 for the defendant. The defendant ran back to the car after a few  
minutes, then drove off at a high rate of speed. Henyard was  
12 frightened because the defendant had been drinking and was driving  
13 erratically, at one point striking a parked car and not stopping.  
14 When Henyard asked the defendant to stop or slow down, he refused,  
saying, "They're after me."

15 The State requests bail in the amount of \$10,000, and a No  
16 Contact Order with Bree Hansen, Lisa Fabatz and Stock Market Foods.  
17 The defendant was committed to prison in 1978 for a conviction for  
18 Robbery in the First Degree. The defendant is also a suspect in a  
19 recent robbery of a Kentucky Fried Chicken store, near Stock Market  
20 Foods, under Seattle Police Department incident number 92-533568.

21 Under penalty of perjury under the laws of the State of Washington,  
22 I certify that the foregoing is true and correct. Signed and dated  
23 by me this 2<sup>nd</sup> day of December, 1992, at Seattle, Washington.

24  
25  
  
\_\_\_\_\_  
Terri Luken, WSBA #91002

Certification for Determination  
of Probable Cause - 2

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

## APPENDIX C



FILED

93 JAN 28 PM 4: 17

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

1 THE STATE OF WASHINGTON, )  
 2 )  
 3 Plaintiff, ) No. 92-1-07847-0  
 4 )  
 5 v. ) AMENDED INFORMATION  
 6 CURTIS GENE THORNTON )  
 7 )  
 8 )  
 9 Defendant. )  
 10 )

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse CURTIS GENE THORNTON of the crime of Attempted Robbery in the Second Degree, committed as follows:

That the defendant CURTIS GENE THORNTON in King County, Washington on or about November 27, 1992, did unlawfully and with intent to commit theft attempt to take personal property, to-wit: United States currency, from the person and in the presence of Bree Hansen (Stock Market Foods), against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property;

Contrary to RCW 9A.28.020, 9A.56.210 and 9A.56.190, and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse CURTIS GENE THORNTON of the crime of Robbery in the Second Degree, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

AMENDED INFORMATION- 1

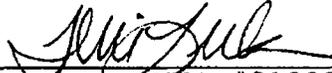
Norm Maleng  
 Prosecuting Attorney  
 W 554 King County Courthouse  
 Seattle, Washington 98104-2312  
 (206) 296-9000

POSTED  
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1 That the defendant CURTIS GENE THORNTON in King County,  
2 Washington on or about November 25, 1992, did unlawfully and with  
3 intent to commit theft take personal property, to-wit: lawful  
4 United States Currency from the person and in the presence of (Ken  
5 Harrison) Kentucky Fried Chicken, against his will, by the use or  
6 threatened use of immediate force, violence and fear of injury to  
7 such person or his property and the person or property of another;

8  
9 Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace  
10 and dignity of the State of Washington.  
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NORM MALENG  
Prosecuting Attorney

By:   
Terri Luken, WSBA #91002  
Deputy Prosecuting Attorney

2 SUPPLEMENTAL CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Terri Luken is a Deputy Prosecuting Attorney for King  
4 County and is familiar with the police report and investigation  
5 conducted in Seattle Police Department case No. 92-411326;

6 That this case contains the following upon which this motion  
7 for the determination of probable cause is made;

8 COUNT II

9 On November 25, 1992, at approximately 8:30 p.m., Charles  
10 Center was working as a cashier at a Kentucky Fried Chicken  
11 restaurant located in Seattle, King County, Washington, when the  
12 defendant approached him, took a gun from the waistband of his pants  
13 and told Center to get his manager. Center then walked to the back  
14 of the restaurant and told his manager, Ken Harrison, about the  
15 defendant.

16 Ken Harrison walked up to the counter, then the defendant  
17 showed Harrison the gun, said, "This is a robbery", and told him to  
18 empty the contents of the cash register into a paper bag. Harrison  
19 was very frightened, believing the gun was real, so he complied with  
20 the defendant's instructions. After Harrison emptied the tills,  
21 which totalled approximately \$250, and gave the money to the  
22 defendant, the defendant instructed Harrison and the other employees  
23 to lay on the ground. When one of the female employees was  
24 hesitating to lay on the ground, the defendant yelled, "Tell the  
25 bitch to get down." No customers were in the restaurant at the  
time.

18 On December 3, 1992, Ken Harrison viewed a line-up organized by  
19 Seattle Police Detective Gagnon, and positively identified the  
20 defendant as the robber. Just prior to the line-up, and against the  
21 advice of his attorney, who was present at the time, the defendant  
22 spontaneously stated to Detective Gagnon that he could not have  
committed either robbery because he was in the Snohomish County Jail  
at the time. Detective Gagnon later checked with the Snohomish  
County Jail and found out that the defendant had not been there  
since 1988.

23 On December 16, 1992, Charles Center viewed photographs of the  
24 line-up, and also positively identified the defendant as the  
25 individual who had robbed the restaurant. Another employee who was  
working during the robbery, Ricardo Graves, viewed the line-up

1 photos on January 6, 1993 and also identified the defendant as the  
2 robber.

3 The State requests that bail be increased to \$25,000 and that  
4 Ken Harrison, Charles Center, Althea and Shereetha Allen, and  
5 Ricardo Garavez be added to the existing No Contact Order. The  
6 defendant is also a suspect in an attempted robbery of a Kentucky  
7 Fried Chicken in the Riverton Heights area of South Seattle just  
8 prior to November 25, 1992.

9 Under penalty of perjury under the laws of the State of Washington,  
10 I certify that the foregoing is true and correct. Signed and dated  
11 by me this 27<sup>th</sup> day of January, 1993, at Seattle, Washington.

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Terri Luken, WSBA #91002

## APPENDIX D

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff

No. 92-1-07847-0

v.

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(Felony)

CURTIS G. THORNTON

Defendant

1. My true name is CURTIS G. THORNTON.
2. My age is 44. Date of Birth 4-7-48.
3. I went through the 6<sup>th</sup> grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is GREG GIRARD.

(b) I am charged with the crime(s) of CT I ATT. Robbery  
2<sup>o</sup> CT II Robbery 2<sup>o</sup>

The elements of this crime(s) are SEE ATTACHED ANSWER  
INFORMATION

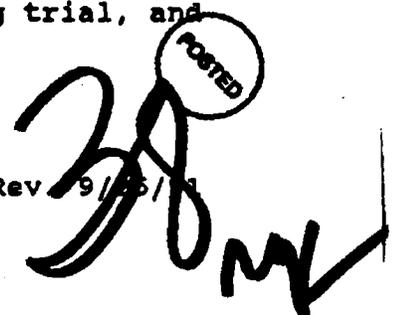
5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY - 1 of 9

SC FORM CLD 100 Rev. 9/85/1



(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of <sup>CR 15</sup> 10 years imprisonment and a \$ <sup>7500</sup> 2000 <sup>CR 12</sup> fine.

The standard sentence range is from <sup>CR 15</sup> 39.75 (days) months to <sup>CR 1</sup> 52.50 (days) months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

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

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

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendation to the judge: 5 1/2 months confinement *Many*

Count 1 only, V.A. Recognition, resolution, NCO with victims *ct*

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

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

(i) The sentence imposed on counts I + II will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

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

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

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

(n) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

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

(p) If this crime involves a sex offense, I will be required to register with the Sheriff of the county in this state where I reside. I must register immediately upon completion of being sentenced if I am not sentenced to begin serving a term of confinement immediately upon completion of being sentenced. Otherwise, I must register within 24 hours of the time of my release if I am sentenced to the custody of the Department of Corrections, Department of Social and Health Services, a local division of youth services, a local jail, or a juvenile detention facility.

If I do not now reside in Washington, but I subsequently move to this state, I must register within 24 hours of the time I begin to reside in this state, if at the time of my move I am under the jurisdiction of the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services. If at the time I move to this state I am not under the jurisdiction of one of those agencies, then I must register within 30 days of the time I begin to reside in this state.

If I subsequently change residences within a county in this state, I must notify the county sheriff of that change of

residence in writing within 10 days of my change of residence. If I subsequently move to a new county within this state, I must register all over again with the sheriff of my new county, and I must notify my former county sheriff (i.e. the county sheriff of my former residence) of that change of residence in writing, and I must complete both acts within 10 days of my change of residence. [If none of the above three paragraphs is applicable, they should all be stricken and initialed by the defendant and the judge.]

7. I plead GUILTY to the crime of CT I ATT. Robbery 2<sup>o</sup> as charged in the Attendant information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

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

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

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

CT I - ON 11-27-92 in Kim County I unlawfully & with the intent to commit theft attempted to take money from the presence of Bras Hanson against his will by the threatened use of force

CT II: ON 11-25-92 in Kim I unlawfully & with the intent to commit theft took money from the presence of Bras Hanson against his will through the threatened use of force.

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

C. L.  
DEFENDANT

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

John J. Bolath - 91602  
PROSECUTING ATTORNEY

[Signature]  
DEFENDANT'S LAWYER

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

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

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

Dated this 19 day of March, 1993.

[Signature]  
JUDGE

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 92-1-07847-0
	)	
v.	)	AMENDED INFORMATION
CURTIS GENE THORNTON	)	
	)	
	)	
Defendant.	)	

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse CURTIS GENE THORNTON of the crime of **Attempted Robbery in the Second Degree**, committed as follows:

That the defendant CURTIS GENE THORNTON in King County, Washington on or about November 27, 1992, did unlawfully and with intent to commit theft attempt to take personal property, to-wit: United States currency, from the person and in the presence of Bree Hansen (Stock Market Foods), against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property;

Contrary to RCW 9A.28.020, 9A.56.210 and 9A.56.190, and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse CURTIS GENE THORNTON of the crime of **Robbery in the Second Degree**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 That the defendant CURTIS GENE THORNTON in King County,  
2 Washington on or about November 25, 1992, did unlawfully and with  
3 intent to commit theft take personal property, ~~to-wit~~ lawful  
4 United States Currency from the person and in the presence of (Ken  
5 Harrison) Kentucky Fried Chicken, against his will, by the use or  
6 threatened use of immediate force, violence and fear of injury to  
7 such person or his property and the person or property of another;

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9 Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace  
10 and dignity of the State of Washington.  
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NORM MALENG  
Prosecuting Attorney

By: \_\_\_\_\_  
Terri Luken, WSBA #91002  
Deputy Prosecuting Attorney

2 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Terri Luken is a Deputy Prosecuting Attorney for King  
4 County and is familiar with the police report and investigation  
5 conducted in Seattle Police Department case No. 92-536036;

6 That this case contains the following upon which this motion  
7 for the determination of probable cause is made;

8 On November 27, 1992, at approximately 9:20 pm, Bree Hansen was  
9 working as a cashier and helping a customer at Stock Market Foods,  
10 located in Seattle, King County, Washington, when the defendant,  
11 Curtis Thornton, pushed the customer aside and told Hansen to "Put  
12 all of the money in a bag, now!" Hansen was confused and did not  
13 know what was happening at first, but when the defendant repeated  
14 his demand, Hansen knew she was being robbed and became very  
15 frightened. Hansen was so scared, she could not open the till,  
16 despite many attempts. Hansen also noticed a gun in the waistband  
17 in the defendant's pants, and was afraid she would be shot if she  
18 could not open the till soon.

19 Another cashier, Lisa Fabatz, who was in the lane next to  
20 Hansen, leaned over and asked if she needed help. Hansen replied  
21 that the defendant wanted money, then Fabatz asked the defendant  
22 what was going on. The defendant mumbled something and pointed to  
23 the cash register. Fabatz thought the defendant was drunk, and did  
24 not know he was trying to rob Hansen, so she got on the intercom and  
25 paged her manager. When the defendant heard this, he fled the  
store. Moments later, a customer approached Hansen and told her  
that he just saw a car leave the parking lot very quickly, with its  
lights off, then he gave her a description of the car and a license  
number. The police were then called.

Seattle Police Officers Jokela and Hackett were working  
undercover in the area of the Sunrise Motel, a short distance from  
Stock Market Foods. The officers heard the police radio broadcast  
of the attempted robbery and a suspect and vehicle description.  
Within minutes, the defendant quickly drove into the parking lot of  
the Sunrise Motel.

Noticing that the description of the vehicle, the suspect, and  
the vehicle license plate number all matched the defendant, the  
officers approached and placed the defendant under arrest. Just  
before contacting him, the officers saw the defendant put something  
in the trunk of his car. After the defendant was arrested, the  
officers asked him if he could look in the trunk of his car, and he

Certification for Determination  
of Probable Cause - 1

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 told them to go ahead. When they looked in the trunk, the officers  
2 discovered a realistic-looking toy gun laying on top of a pile of  
clothes.

3 Hansen was then transported to the scene and positively  
4 identified the defendant as the person who had just tried to rob  
her.

5 The only passenger in the vehicle, Chris Henyard, was advised  
6 of her Miranda rights, which she acknowledged and waived. Henyard  
7 told the officers that the defendant, who had been drinking, drove  
8 her to the parking lot of Stock Market Foods, then he went into the  
9 store and she walked to a nearby bus stop to talk to friends who  
10 were standing there. Henyard then got back in the car and waited  
11 for the defendant. The defendant ran back to the car after a few  
minutes, then drove off at a high rate of speed. Henyard was  
frightened because the defendant had been drinking and was driving  
erratically, at one point striking a parked car and not stopping.  
When Henyard asked the defendant to stop or slow down, he refused,  
saying, "They're after me."

12 The State requests bail in the amount of \$10,000, and a No  
13 Contact Order with Bree Hansen, Lisa Fabatz and Stock Market Foods.  
14 The defendant was committed to prison in 1978 for a conviction for  
Robbery in the First Degree. The defendant is also a suspect in a  
recent robbery of a Kentucky Fried Chicken store, near Stock Market  
Foods, under Seattle Police Department incident number 92-533568.

15 Under penalty of perjury under the laws of the State of Washington,  
16 I certify that the foregoing is true and correct. Signed and dated  
by me this \_\_\_\_ day of December, 1992, at Seattle, Washington.

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Terri Luken, WSBA #91002

Certification for Determination  
of Probable Cause - 2

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

2 SUPPLEMENTAL CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Terri Luken is a Deputy Prosecuting Attorney for King  
4 County and is familiar with the police report and investigation  
5 conducted in Seattle Police Department case No. 92-411326;

6 That this case contains the following upon which this motion  
7 for the determination of probable cause is made;

8 COUNT II

9 On November 25, 1992, at approximately 8:30 p.m., Charles  
10 Center was working as a cashier at a Kentucky Fried Chicken  
11 restaurant located in Seattle, King County, Washington, when the  
12 defendant approached him, took a gun from the waistband of his pants  
13 and told Center to get his manager. Center then walked to the back  
14 of the restaurant and told his manager, Ken Harrison, about the  
15 defendant.

16 Ken Harrison walked up to the counter, then the defendant  
17 showed Harrison the gun, said, "This is a robbery", and told him to  
18 empty the contents of the cash register into a paper bag. Harrison  
19 was very frightened, believing the gun was real, so he complied with  
20 the defendant's instructions. After Harrison emptied the tills,  
21 which totalled approximately \$250, and gave the money to the  
22 defendant, the defendant instructed Harrison and the other employees  
23 to lay on the ground. When one of the female employees was  
24 hesitating to lay on the ground, the defendant yelled, "Tell the  
25 bitch to get down." No customers were in the restaurant at the  
time.

18 On December 3, 1992, Ken Harrison viewed a line-up organized by  
19 Seattle Police Detective Gagnon, and positively identified the  
20 defendant as the robber. Just prior to the line-up, and against the  
21 advice of his attorney, who was present at the time, the defendant  
22 spontaneously stated to Detective Gagnon that he could not have  
23 committed either robbery because he was in the Snohomish County Jail  
24 at the time. Detective Gagnon later checked with the Snohomish  
25 County Jail and found out that the defendant had not been there  
since 1988.

23 On December 16, 1992, Charles Center viewed photographs of the  
24 line-up, and also positively identified the defendant as the  
25 individual who had robbed the restaurant. Another employee who was  
working during the robbery, Ricardo Graves, viewed the line-up

1 photos on January 6, 1993 and also identified the defendant as the  
2 robber.

3 The State requests that bail be increased to \$25,000 and that  
4 Ken Harrison, Charles Center, Althea and Shereetha Allen, and  
5 Ricardo Garavez be added to the existing No Contact Order. The  
6 defendant is also a suspect in an attempted robbery of a Kentucky  
7 Fried Chicken in the Riverton Heights area of South Seattle just  
8 prior to November 25, 1992.

9  
10 Under penalty of perjury under the laws of the State of Washington,  
11 I certify that the foregoing is true and correct. Signed and dated  
12 by me this \_\_\_\_ day of January, 1993, at Seattle, Washington.  
13  
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20  
21  
22  
23  
24  
25

\_\_\_\_\_  
Terri Luken, WSBA #91002

Supplemental Certification for Determination  
of Probable Cause - 2

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

PLEA AGREEMENT /  TRIAL

Date: 3-18-93

Defendant: Curtis Thornton

Cause No: 92-1-07847-0

On Plea To:  As Charged Attempted Robbery 2 CT I  
Robbery 2 CT II

Special Finding/Verdict;  Deadly Weapon (RCW 9.94.125);  School Zone-VUCSA (RCW 69.50) on Count(s) \_\_\_\_\_

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is indicated above and as follows:

- 1.  DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss Count(s): \_\_\_\_\_
- 2.  REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:
  - as set forth in the certification(s) of probable cause filed herein.
  - as set forth in the attached Appendix C.
- 3.  RESTITUTION: Pursuant to RCW 9.94A.140(2), the defendant agrees to pay restitution as follows:
  - in full to the victim(s) on charged counts.
  - as set forth in attached Appendix C.
- 4.  OTHER: \_\_\_\_\_

- 5.  SENTENCE RECOMMENDATION:
  - a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.
  - b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regards to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Maximum on Count I is not more than 5 years and/or \$ 10,000 fine.  
Maximum on Count II is not more than 10 years and /or \$ 20,000 fine.

Mandatory Minimum Term (RCW 9.94A.120(4) only): \_\_\_\_\_

Mandatory license revocation RCW 46.20.285  
Ten years jurisdiction and supervision for monetary payments. RCW 9.94A.120d(9).

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new crimes, fails to appear for sentencing or violates the conditions of his release.

J.C. [Signature]  
Defendant  
[Signature]  
Attorney for Defendant

John J. Belotti 9/1002  
Deputy Prosecuting Attorney  
[Signature]  
Judge, King County Superior Court

**SENTENCING GUIDELINES SCORING FORM**  
**Violent Offenses**

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Bail Jumping with Murder 1; Child Molestation 1; Damaging Building Etc by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Indecent Liberties (with forcible compulsion); Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Rape 2; Rape of a Child 1; Robbery 1; Robbery 2.

OFFENDER'S NAME <i>Curtis Gene Thornton</i>	OFFENDER'S DOB <i>4-7-48</i>	STATE ID # <i>WA10056991</i>
JUDGE	CAUSE # <i>92-1-07847-0</i>	FBI ID # <i>753922 f</i>

**ADULT HISTORY:** (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as ONE offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of Serious Violent and Violent felony convictions ..... 2 x 2 = 4  
 Enter number of Nonviolent felony convictions ..... 2 x 1 = 2

**JUVENILE HISTORY:** (All adjudications entered on the same date count as ONE offense)

Enter number of Serious Violent and Violent felony adjudications ..... \_\_\_\_\_ x 2 = \_\_\_\_\_  
 Enter number of Nonviolent felony adjudications ..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct count in offender score)

Enter number of other Serious Violent and Violent felony convictions CT II ..... 1 x 2 = 2  
 Enter number of other Nonviolent felony convictions ..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSE:**

If on community placement at time of current offense, then add 1 point ..... \_\_\_\_\_

Add the scores in each category ..... **TOTAL OFFENDER SCORE** 8  
 (round down to the nearest whole number)

**STANDARD SENTENCE RANGE CALCULATION\***

<u>Rob 2°</u> CURRENT OFFENSE BEING SCORED	<u>IV</u> SERIOUSNESS LEVEL	<u>8</u> OFFENDER SCORE	<u>53</u> TO <u>70</u> LOW TO HIGH STANDARD SENTENCE RANGE
<u>CT II</u>			

\*Multiply the range by .75 if the current offense is for an attempt, conspiracy, or solicitation

\*Add 24 months to the standard range if the current offense is Robbery 1 AND there is a special verdict finding for deadly weapon

\*Add 12 months to the standard range if the current offense is Assault 2 or Kidnapping 2 AND there is a special verdict finding for deadly weapon

**GENERAL SCORING FORM**  
**Violent Offenses**

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1; Robbery 2

OFFENDER'S NAME CURTIS GAP THURMAN	OFFENDER'S DOB 4-7-48	STATE ID# WA 10056991
JUDGE	CAUSE # 92-1-07847-0	FBI ID # 7539026

**ADULT HISTORY:** (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of other serious violent and violent felony convictions .....  $\frac{2}{2} \times 2 = \frac{4}{3}$   
 Enter number of nonviolent felony convictions .....  $\frac{2}{2} \times 1 = \frac{3}{3}$

**JUVENILE HISTORY:** (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of other serious violent and violent felony adjudications ..... \_\_\_\_\_ x 2 = \_\_\_\_\_  
 Enter number of nonviolent felony adjudications ..... \_\_\_\_\_ x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions C.T. IF .....  $\frac{1}{1} \times 2 = \frac{2}{2}$   
 Enter number of nonviolent felony convictions ..... \_\_\_\_\_ x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point ..... + 1 = \_\_\_\_\_

Add the scores in each category ..... **TOTAL OFFENDER SCORE** 8  
 (round down to the nearest whole number)

**STANDARD SENTENCE RANGE CALCULATION\***

A.D. Rob B. 20  
CURRENT OFFENSE BEING SCORED

LV  
SERIOUSNESS LEVEL

8  
OFFENDER SCORE

$39.75 - 52.5$   
 LOW ----- HIGH  
 STANDARD SENTENCE RANGE  
 $53 - 70$  \*  
 \* months

- \* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.
- \* Add 24 months to the standard range if the current offense is Robbery 1 and includes a deadly weapon finding.
- \* Add 12 months to the standard range if the current offense is Assault 2 or Kidnapping 2 and includes a deadly weapon finding.

**APPENDIX B TO PLEA AGREEMENT  
 PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
 (SENTENCING REFORM ACT)**

Defendant: CURTIS GENE THORNTON Date: 3 Dec 1992

CRIME	DATE OF CONVICTION	PLACE OF CONVICTION	DISPOSITION (Probation and/or incarceration and length) SRA — Counts as Prior
-------	--------------------	---------------------	---

**ADULT FELONIES:**

<u>9-8-66</u>	<u>TAKING MOTOR VEHICLE KING</u>	<u>44595</u>	<u>10 yrs</u>
	<u>Paroled 2-1-67</u>	<u>RETURNED</u>	<u>5-15-68 Paroled 10-17-70</u>
<u>10-24-77</u>	<u>ASSAULTED OFF GRAND LARCENY CITY KING</u>		
	<u>6-15-66</u>	<u>15 yrs</u>	<u>Paroled 4-1-77</u>
<u>3-12-75</u>	<u>Escape Inkomish City</u>	<u>6983</u>	<u>10 yrs dog</u>

**ADULT MISDEMEANORS:**

	<u>PV Paroled</u>	<u>4-4-88</u>	
<u>4-6-78</u>	<u>Robbery King</u>	<u>83581</u>	<u>off Habitual</u>
	<u>CRIMINAL life</u>	<u>Paroled 1-4-88</u>	<u>RETURNED</u>
<u>7-18-88</u>	<u>Paroled</u>	<u>2-2-92</u>	

**JUVENILE FELONIES:**

**JUVENILE MISDEMEANORS:**

\_\_\_\_\_  
 Deputy Prosecuting Attorney

King County Prosecuting Attorney

STATE'S SENTENCE RECOMMENDATION  
(CONFINEMENT OF OVER ONE YEAR)

Date: 12-4-92

Defendant: Thornton

Cause No: 92-1-07847-0

State recommends that the sentence of this defendant be as follows:

**TOTAL CONFINEMENT:** State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

Count I ~~52~~ 53 months/years. Count IV \_\_\_\_\_ months/years.  
Count II \_\_\_\_\_ months/years. Count V \_\_\_\_\_ months/years.  
Count III \_\_\_\_\_ months/years. Count VI \_\_\_\_\_ months/years.

Terms on each count to run concurrently consecutively with each other.  
Terms to be served concurrently/consecutively with: \_\_\_\_\_  
Terms to be consecutive to any other terms(s) not specifically referred to in this form.

**SENTENCE MODIFICATION:** State recommends modification of community supervision on King County Cause Number(s) \_\_\_\_\_ and recommends that terms be run concurrently/consecutively.

**NO CONTACT:** For the maximum term, defendant have no contact with \_\_\_\_\_ ✓

**MONETARY PAYMENTS:** The defendant shall make the following monetary payments under the supervision of the Department of Corrections (RCW 9.94A.120(1)) within 10 years:

- a.  Restitution as set forth on attached page entitled "Plea Agreement/Trial" and  Appendix C.
- b.  Pay Costs, mandatory \$100 Victims Penalty Assessment, recoupment of cost of defense attorney fees, if appointed.
- c.  Pay to King County Local Drug Fund \$ \_\_\_\_\_
- d.  Pay a fine of \$ \_\_\_\_\_;  \$1000, fine for VUCSA;  \$2000, fine for subsequent VUCSA.
- e.  Other \_\_\_\_\_

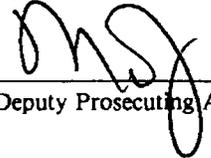
**COMMUNITY PLACEMENT:** For any sex offense, serious violent offense; assault 2°; deadly weapon finding or drug offense under 69.50 or 69.52 RCW (committed after 1 July 1988) defendant be on community placement on conditions set forth in RCW 9.94A.120 8(b) and the following conditions under 8(c) (crime-related prohibitions only): \_\_\_\_\_

**OFF-LIMITS ORDER:** The defendant is a "known drug trafficker" and the state recommends defendant shall neither enter nor remain in the protected against drug trafficking area (described in the attachment) during the term of community placement.

**HIV TESTING:** State recommends HIV testing and counseling.

**EXCEPTIONAL SENTENCE:** This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

Approved by:

  
Deputy Prosecuting Attorney

## APPENDIX E



RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*  
*Seattle*  
98101-4170

DIVISION I  
One Union Square  
600 University Street  
(206) 464-7750  
TDD: (206) 587-5505

December 21, 2006

Curtis G Thornton  
#624308  
1313 N. 13th Ave.  
Walla Walla, WA, 99362

CASE #: 59087-1-I  
Personal Restraint Petition of Curtis G Thornton

Counsel:

Enclosed please find a copy of the Order Dismissing Personal Restraint Petition entered by this court in the above case today.

Pursuant to RAP 16.14(c), "the decision is subject to review by the Supreme Court only by a motion for discretionary review on the terms and in the manner provided in Rule 13.5(a), (b) and (c)."

This court's file in the above matter has been closed.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

law

enclosure

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

In the Matter of the Personal	)	
Restraint Petition of:	)	No. 59087-1-I
	)	
CURTIS THORNTON,	)	ORDER OF DISMISSAL
	)	
Petitioner.	)	
_____	)	

Curtis Thornton filed a "Motion to Modify or Correct Judgment and Sentence, CrR 7.8" in King County Superior Court. The motion was transferred to this court for consideration as a personal restraint petition. Thornton challenges the constitutional validity of two of the three convictions used to find him to be a persistent offender under Washington's Persistent Offender Accountability Act (POAA).

Under the POAA, a persistent offender must be sentenced to life imprisonment. Former RCW 9.94A.120(4). A "persistent offender" is someone who has been convicted on at least three separate occasions of most serious offenses as defined in RCW 9.94A.030(25). RCW 9.94A.030(29).

Thornton contends his 1993 convictions for attempted second-degree robbery and second-degree robbery were constitutionally infirm. Because he was not advised of all the sentencing consequences prior to pleading guilty, Thornton argues, the convictions based on those pleas cannot properly be used as a basis for sentencing him under the POAA. This claim, however, is time-barred.

Personal restraint petitions must generally be filed within one year after the judgment and sentence becomes final. RCW 10.73.090. Based on the Supreme Court's interpretation of the POAA as discussed in State v. Thorne, 129 Wn.2d 736,

777, 921 P.2d 514 (1996), which treats the POAA as a mere amendment of the Sentencing Reform Act of 1981 and not a reenactment of the habitual criminal statute, Thornton's claims of error are subject to the time requirements of RCW 10.73.090. Not only did the Washington Supreme Court in In re Pers. Restraint of Runyan, 121 Wn.2d 432, 450, 853 P.2d 424 (1993) reject the contention that the one-year limit does not apply where the prior convictions are being reused in the sentencing of a SRA offender, but it is also noted that "the very purpose of RCW 10.73.090 is to curtail exactly this type of delay in challenging convictions." 121 Wn.2d at 450; see also State v. Burton, 92 Wn. App. 114, 117, 960 P.2d 480 (1998)(RCW 10.73.190 precludes a defendant in a persistent offender adjudication from collaterally attacking guilty plea-based convictions that were more than one year old). Nor has petitioner persuasively argued either that this case falls under one of the statutory exceptions to the one-year limitations period, State v. Olivera-Avila, 89 Wn. App. 313, 320-22, 949 P.2d 824 (1997)(guilty plea obtained in violation of due process nonetheless subject to the one-year time limit of RCW 10.73.090), or that the doctrine of equitable tolling applies here. See In re Hoisington, 99 Wn. App. 423, 993 P.2d 296 (2000). (RCW 10.73.090).

Thornton also appears to argue that the trial court miscalculated his offender score by erroneously counting his two 1993 convictions for robbery and attempted robbery separately for sentencing purposes. Because sentencing on the prior convictions occurred on the same date, Thornton argues, the multiple offenses encompassed the same criminal conduct and, therefore, should have counted as only one point for sentencing purposes. Thornton fails to indicate whether this issue is being raised for the first time in a personal restraint

proceeding. Unlike on direct appeal, Thornton bears the burden of showing more likely than not he was prejudiced by any sentencing error. See In re Pers. Restraint of Gentry, 137 Wn.2d 378, 409, 972 P.2d 1250 (1999); In re Pers. Restraint of Hagler, 97 Wn.2d 818, 826, 650 P.2d 1103 (1982).

Multiple current offenses are counted as one offense in determining the offender score only if they encompass the same criminal conduct. RCW 9.94A.589(1)(a). To constitute the same criminal conduct for purposes of determining an offender score at sentencing, two or more criminal offenses must involve (1) the same objective intent, (2) the same time and place, and (3) the same victim. RCW 9.94A.589(1)(a). Thornton fails to establish that his two 1993 convictions fit within the statutory definition of "same criminal conduct." Nothing indicates that the sentencing court should have counted them as one offense rather than separate offenses. Perhaps more importantly, there is no showing that Thornton preserved this issue by raising a timely objection. See In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 875, 50 P.3d 618 (2002); State v. Wilson, 117 Wn. App. 1, 21, 75 P.3d 573 (defendant may waive right to assert that trial court should have made "same course of criminal conduct" determination at sentencing); State v. Nitsch, 100 Wn. App. 512, 518-20, 997 P.2d 1000 (2000). Accordingly, Thornton has failed to establish that the sentencing court committed any errors of fact or law when it used Thornton's 1993 robbery and attempted robbery convictions to calculate his offender score.

In sum, Thornton has not established that an error of law or fact exists within the four corners of his judgment and sentence. Nor has Thornton established that his claims fall under any of the other recognized exceptions to

the limitation period. See RCW 10.73.100. Because Thornton filed this personal restraint petition more than one year after his 1993 plea-based convictions became final, the petition is untimely and must be dismissed. See In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 36 P.3d 1005 (2001) (defendant procedurally barred under the one-year statute of limitations from challenging his guilty plea even though plea form failed to advise him of a direct consequence of pleading guilty).

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP

16.11(b).

Done this 21<sup>st</sup> day of December, 2006.

  
Acting Chief Judge

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2006 DEC 21 AM 8:57

CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Jeffrey Ellis, at the following address: Ellis, Holmes & Witchley, 705 Second Avenue, Suite 401, Seattle, WA 98104, attorneys for the petitioner, containing a copy of the State's Response to Personal Restraint Petition in In re Personal Restraint of Curtis Thornton, No. 63345-7-I, in the Court of Appeals of the State of Washington.

I certify under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

W Brame  
Name  
Done in Seattle, Washington

7/2/09  
Date

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2009 JUL -2 PM 3:19