

90174-1

Received
Washington State Supreme Court

CASE # 311660-III

APR 24 2014

Ronald R. Carpenter
Clerk

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

ROCKY R. KIMBLE, Petitioner

PETITION FOR REVIEW

PETITIONER-

Rocky R. Kimble, DOC# 808179

Airway Heights Corrections Center

PO Box 2049/ R-unit 18 lower

Airway Heights, WA 99110-2049

Table of Authority Contents

Anders v. Cal.	386	US	738	(1967)	p. 6,9
Gore	143	Wn2d	288	(2001)	p. 5
Hainston	133	Wn2d	534	(1997)	p. 9
Hughes	154	Wn2d	118	(2005)	p. 5
Ford	137	Wn2d	472	(1999)	p. 11
Williams	176	WnApp	138	DIV III (2013)	p. 8

Appendix: #

Documents Attached:

- 3/20/2014 ① COA - Div III - Order Denying Motion to Modify
- 12/6/2013 ② Appellants Attorney's - Motion to Modify Commissioner's Ruling
- 11/6/2013 ③ COA - Div III - Commissioner's Ruling
- 10/28/2012 ④ Notice of Appeal to COA DIV III - Findings of Fact and Conclusions of Law
- Judge Nielsens decision - Transfer.
- 8/29/2012 ⑤ Superiors Courts Decision - Judge Nielsen - Hearing, Findings of Fact, Conclusions of Law and Ruling.
- 4/20/2000 ⑥ Superior Courts - Judgement and Sentence
- 4/16/2000 ⑦ Plea Agreement Contract

RCW 9.94A.400 Page 4
RCW 10.73.090 p. 5

A. IDENTITY OF PETITIONER

Rocky R. Kimble respectfully asks this court to accept review of the Court of Appeals Decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner Kimble respectfully requests this Court review the Court of Appeals decision to deny petitioner's motion to modify and the underlying Commissioner's Ruling to affirm the trial court's decision and to dismiss Kimble's direct appeal.

C. ISSUES PRESENTED FOR REVIEW

1. Is the Court of Appeals decision in conflict with State v. Hairston, 133 Wn2d 534 (1997), because the Court of Appeals did not comply with the mandate clearly established in Anders v. California 386 US 738 (1967)?

2. Is a post conviction trial court allowed to separate current offenses determined to be "same criminal conduct" by the sentencing court in order to determine an incorretly calculated offender score as corredct?

3. Can an offender score be determined to be correct when a prior foreign conviction in the criminal history has not received a legal comparability analysis, even when challenged post conviction?

D. STATEMENT OF THE CASE

In April of 2012 Kimble filed a motion to withdraw his guilty plea alleging that his plea was invalid , and his decision to plead guilty was not knowing, willing, or voluntary. (Please see CrR 7.8 MOTION TO VACATE & WITHDRAW GUILTY PLEA)

Kimble argues that his judgment & sentence is invalid on its face because it shows obvious error in the form of an incorrectly calculated offender score, and includes a prior out-of-state conviction of robbery, in Wisconsin that did not receive the required comparability analysis to be included in the records and on his criminal history.

The trial court appointed Kimble counsel to represent on the CrR 7.8 MOTION and the matter was set for hearing. However, Kimble's appointed counsel did not file any pleading on Kimble's behalf, nor did counsel prepare or present any argument on the merits of Kimble motion.

Kimble has argued that the trial court's decision rests on ineffective assistance of counsel in violation of his due process & equal protection right to be heard upon a fair hearing with effective representation.

Nevertheless, hearing took place on August 21, 2012 and the only issue discussed was venue and Kimble's CrR 7.8 motion was determined untimely and transferred by the trial court to be heard as a PRP in the Court of Appeals. (Please see Rp 8-21-2012 & Cp 91-93)

In the hearing on August 21, 2012 Kimble's appointed counsel Mr. Wasson, stated that he wasn't prepared to argue the half dozen or so issues... to argue the withdrawal of his guilty plea..." (Rp 8-21-2012) Mr. Wasson made no presentation on Kimble's claim of an incorrect offender score, and that an unuseable prior Wisconsin conviction should not be included in the criminal history without a legal comparability analysis. Offender score - criminal history are questions of fact.

On August 29, 2012 the Honorable Judge Nielsen of Stevens County Superior Court entered an order titled HEARING, FINDINGS OF FACT, CONCLUSIONS OF LAW AND RULING (Cp 91-93)

Judge Nielsen entered a finding of fact that the offender score is correct at 3 upon a " for the robbery in Wisconsin "... and a 1 for ... residential burglary."(Cp 91-92) If this was true fact than the residential burglary would only have a 2 on the Judgment & Sentence and on the felony plea agreement.

However, on 4-20-2000 when Kimble was sentenced the sentencing court found the multiple current offenses count 1 and count 2 to be "same criminal conduct" and thus count as one offense for sentencing. (Please see Judgment & sentence proceeding 4-20-2000 page 2((RCW 9.94A.400))

Judge Nielsen cannot undo what the sentencing court did, and count the current offenses separately . Judge Nielsen entered findings of fact on several issues. Yet, concluded that no factual hearing was required! (Cp 91-93)

Judge Nielsen concluded that the motion was untimely under CrR 7.8 (c)(2) & 10.73.090. (Cp 91-93) It should be noted that notwithstanding the contention an offender score & criminal history- Kimble has asserted that the termination of his first direct appeal rests upon an "overturned" case state v. Gore, 143 Wn 2d 288 (2001) from Hughes 154 Wn2d 118 (2005). Thus the mandate is null and void and time limitation of RCW 10.73.090 cannot start or attach. Also in violation of Kimble's 6th Amendment of the U.S. constitutional rights and the appendi rule. Attached to appendix 4 (Cp 94-96).

Kimble's motion was transferred and designated as a PRP in the Court of Appeals, no:311007-III. That PRP was withdrawn because on Sept. 27 2012 Kimble filed a NOTICE OF APPEAL ON the trial court's FINDINGS OF FACT AND CONCLUSIONS OF LAW transferring Defendant's CrR 7.8 motion as untimely. (see Cp 89 NOTICE OF APPEAL filed 9-27-2012) and (Declaration of Kimble) Therefor appealing his findings and the transfer. (Cp 90)

On September 27, 2012 Janet Gemberling was appointed as appellate counsel to represent Kimble on appeal, under Case # 311660.

Appellate's counsel Gemberling filed an Anders brief contending that she could find no legal issues with merit for appeal. The prosecutor added his approval and arguments. (please see Cp BRIEF OF RESPONDENT Mathew Enzler April 15, 2013)

Petitioner Kimble filed his own REPLY BRIEF demonstrating that the appeal has merit, based upon at least 7 of the assignments of error. (Please see REPLY BRIEF OF APPELLANT OPPOSITION TO ANDERS BRIEF)

On November 27, 2013 Honorable Commissioner Joyce Mccown ruled on Kimbles appeal.

On the first page of the commissioners ruling states: "The decision of the trial court is affirmed." (Commissioners ruling 11-27-13) Thus, clearly the Commissioner ruled on the trial courts decision on the merits. The Commissioner no where in her ruling states that she conducted an independent review of the entire record before relieving counsel or finding the appeal to be wholly frivolous.

In fact no where does the Commissioner rule or state the appeal as wholly frivolous, as stated in attorney Janet Gemberlings MOTION TO MODIFY states. To the contrary , on page 3 the Commissioner begins to evaluate and analyze the merits of the appeal identifying that: " the only issue before this Court is whether the trial court erred by making such a transfer." (Commissioners Ruling pg. 3, at see attached) A legal issue with merit.

It should be undisputed that this is a direct appeal proceeding with appointed appellate counsel assigned at public expense. Once appointed counsel moved the Court under Anders v. Cal., to withdraw. This became an Anders proceeding.

Instead of reviewing the record as required by Anders to determine the appeal as wholly frivolous, the Commissioners ruling on the appeal affirmed the trial courts decision ont the merits. As a reminder was rendered in the trial court level without briefing on the merits. Hence a factual hearing on the merits.

On page 3 & 4 the Commissioner analyzes the timeliness of the CrR 7.8 motion, and affirms the trial courts decision regarding time bar, substantial showing to entitlement to relief, and that a factual hearing was not required.(Commissioner's Ruling, @ Page 3&4) Again, on the merits, yet not on the merits?

On page 5 the Commissioner concludes that "... the trial court properly applied CrR 7.8 (c)(2) ... and that ... This Court would have considered and ruled on the substantive issues raised in the MOTION TO WITHDRAW GUILTY PLEA except that Mr. Kimble decided and this Court directed that he withdraw the motion to withdraw the guilty plea / PRP, and therefore there is nothing before this Court to decide..." (Commissioners Ruling Id.)

There is much for the Court of Appeals to decide under Anders & Hairston. However, then the Ruling states: " IT IS ORDERED, the decision of the trial court is affirmed." (Co Commissioners Ruling @ page 5)

It appears that the Commissioner ruled on the merits of the trial court without briefing on the merits from appointed appellate counsel, nor opportunity for Kimble to file appeal brief on the merits.

Had the Court of Appeals conducted independent review of the record the Court would discover that the sentencing documents and court record reflect the finding of same criminal conduct on current offenses count 1&2. Therefore, they together score as one offense a 0 in the offender score calculation at sentencing.

The Record also reflects that no comparability analysis was conducted on the prior robbery conviction in Wisconsin, and on its face can only be multiplied to a 2 toward offender score. This appeal of the trial courts 2013 decision to count 2pts. for the robbery & 1pt. for the Res. burglary is contrary to the original sentencing court's finding and imposed sentence on "same criminal conduct. The offender score should be a 2 for both current counts. "Robbery under any scenario can have an offender score of 3" Williams 176 WnApp 138 Division III (2013) second [FN1] at the end of the Williams opinion. It so happens Judge Nielsen from Stevens County Superior Court presided over this same legal error.

Kimble moved to modify the Commissioners ruling, which was denied with out opinion on March 20, 2014. Hence, this petition for review.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

ISSUE No. 1

Is the Court of Appeals decision to affirm the trial court decision in conflict with State v. Hairston, 133 Wn2d 534 (1997) & Anders v. Cal. , 386 US 738 (1967)?

The Court of Appeals ruled on the merits of the trial courts decision and affirmed it with out briefing on the merits. The Court of Appeals said nothing to respect to the issues raised by Kimble, or his appointed counsel's Ander brief.

The record reflects that the Court of Appeals did not conduct an independent review of the record, nor did it state that it found Kimble's appeal to be Wholly Frivolous.

Hairston requires the Court to conduct an independent review of the entire record before relieving counsel and dismissing an appeal as frivolous.

Here the Court of Appeals did not conduct independent review of the record, did not find the appeal to be wholly frivolous, and did not dismiss the appeal, but rather affirmed the trial court's decision on the merits.

I humbly ask this court to accept review under RAP 13.4 (b) (1) finding the decision of the Court of Appeal's in conflict with Hairston & Anders v. Cal.

ISSUE No. 2

Is a post conviction trial court allowed to separate current offenses determined to be "same criminal conduct" by the sentencing court in order to determine an incorrect calculated offender score as correct?

Here the sentencing court on 4-20-2000 determined Kimble's current offenses to be "same criminal conduct". (Please see Judgment & Sentencing & Sentencing Rp) The record reflects that the sentencing court incorrectly calculated Kimble's offender score to be a 3 on one lone prior robbery conviction. Which, could only be multiplied as a 2. Kimble's plea documents reflect the same error- incorrect offender score and incorrect standard range sentence.(Please see sentence Rp, J&S, and felony plea agreement) Record shows score of 3 on both counts, which should be a 2 for each count)

Eleven years later, the post-conviction trial court separated the two current offenses, applying a 2 to count 1, and a 1 to count II to yield an offender score of 3. With out a factual hearing. (Cp 90-91)

This issue involves an issue of substantial public interest that should be determined by this Court, and I again humbly ask review be accepted under RAP 13.4 (b)(4)

If post conviction or review courts are allowed to separate prior determined offenses of "same criminal conduct", then the public must be informed.

ISSUE NO. 3

Can an offender score be determined to be correct when a prior out-of-state conviction in the criminal history has not received a comparability analysis, even when challenged post conviction?

Here Kimble's prior out-of-state conviction for robbery in Wisconsin has never received a legal comparability analysis, at sentencing, nor on post conviction review in the trial court. Hence No certified documents or records in the sentencing court of 4-20-2000 refuting this fact. The state cannot produce them because they do not exist.

I Graciously ask this Court to accept review under RAP 13.4 (b)(1) because the Court of Appeals decision is in conflict with State v. Ford, 137 Wn2d 472 (1999) and its progeny.

F. CONCLUSION

This Court should appoint counsel under RAP Rule 15.2(f) even before accepting review, due to the fact this is a critical stage in my appeal. Secondly I do beg this Court to find that my appeal has merit and accept review on the above issues to serve the ends of justice.

Respectfully submitted this 21st day of April, 2014



Rocky R. Kimble, Petitioner-Pro Se

APPENDIX 1

FILED
MARCH 20, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 31166-0-III
)	
Respondent,)	
)	
v.)	ORDER DENYING
)	MOTION TO MODIFY
ROCKY R. KIMBLE,)	
)	
Appellant.)	

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of November 6, 2013, filed by Janet G. Gemberling on December 6, 2013, and appellant's response to motion to modify filed by Mr. Rocky R. Kimble on December 20, 2013 and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify is hereby denied.

DATED: March 20, 2014

PANEL: Judges Korsmo, Siddoway, Fearing

FOR THE COURT:



KEVIN M. KORSMO, Chief Judge

APPENDIX 2

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



November 6, 2013

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Spokane, WA 99201-1905

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<http://www.courts.wa.gov/courts>

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E-Mail

Timothy Rasmussen
Mathew J. Enzler
Stevens County Prosecutor
215 S Oak St
Colville, WA 99114-2862

CASE # 311660
State of Washington v. Rocky Rhodes Kimble
STEVENS COUNTY SUPERIOR COURT No. 991002215

Counsel:

Enclosed is a copy of a Commissioner's Ruling filed in this Court today.

The attention of appellant's counsel is directed to RAP 18.3(a)(3)(4) and State v. Folden, 53 Wn. App. 426, 767 P.2d 589 (1989). Counsel's affidavit complying with RAP 18.3(a)(3)(A) or (B) must be filed by **December 6, 2013**. If objections to the ruling are to be considered, they must be made by way of a motion to modify. A motion to modify must be filed (original and one copy) within thirty (30) days of the filing of the ruling. If a motion to modify is filed, it must be filed by the attorney of record. An Appellant's pro se motion to modify will not be accepted unless the attorney has filed his affidavit. State v. Romero, 95 Wn. App. 323, 975 P.2d 564 (1999).

If a motion to modify is not timely filed, appellate review is terminated.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:jcs
Enclosure

E-Mail

c: Honorable Allen C. Nielson, Superior Court Judge

c: Rocky Rhodes Kimble
808179
Airway Heights Corrections Center
PO Box 2049
Airway Heights, WA 99001

No. 31166-0-III

appealed his conviction to this Court, Cause Number 19317-9-III, challenging his exceptional sentence. In July of 2001, this Court affirmed his conviction.

Nearly 11 years later, in 2012, Mr. Kimble moved in the trial court to withdraw his guilty plea. On August 29, 2012, finding the offender score was correctly calculated, that the motion was untimely, and no factual hearing was necessary, the trial court transferred the matter to this Court to be treated as a personal restraint petition. The personal restraint petition was assigned Cause No. 31100-7-III, and Mr. Kimble was directed to either pay the filing fee or submit a statement of finances to this Court. He did neither, and in fact, did not respond at all to this Court. Therefore, the personal restraint petition was set on the Commissioner's docket for dismissal for failure to pay the filing fee.

On September 27, 2012, while the personal restraint petition was still pending in this Court, Mr. Kimble filed a notice of appeal of the trial court's order transferring his CrR 7.8 motion to this Court to be treated as a personal restraint petition. This Court opened a file on the notice of appeal of the order transferring, Cause No. 31166-0-III, and once Mr. Kimble obtained an order of indigency, appointed counsel to represent him. However, the case was not linked to Mr. Kimble's personal restraint petition.¹

¹ It should be noted that the usual procedure followed by this Court when a petitioner files a notice of appeal or an objection to the transfer of their CrR 7.8 motion is to link or consolidate the appeal with the transferred personal restraint petition so that the challenge to the transfer can be decided by the Chief Judge when he/she decides the issues raised in the personal restraint petition. Unfortunately, for unknown reasons that did not happen here and the problem was compounded by this Court's order granting Mr. Kimble's motion to modify the Commissioner's ruling and directing Mr.

Subsequently, since Mr. Kimble did not pay the filing fee or submit a statement of finances, the personal restraint petition was dismissed on December 12, 2012. On January 18, 2013, Mr. Kimble moved to modify the dismissal of his personal restraint petition. This Court granted the motion to modify and directed Mr. Kimble to withdraw his personal restraint petition on the grounds that he had a direct appeal pending in the matter (Cause No. 31166-0-III), and counsel had been appointed to represent him in that direct appeal. Therefore, the personal restraint petition was dismissed and this appeal proceeded.

The trial court's decision to transfer the CrR 7.8 motion to withdraw was correct for the following reasons. First, Mr. Kimble has already had a direct appeal of his 2000 conviction. He cannot use this appeal of the trial court's decision to transfer his CrR 7.8 motion to withdraw his guilty plea to again raise issues challenging his conviction and the sentence imposed when such issues were or could have been raised in his initial appeal.

Second, since this appeal is only of the order transferring Mr. Kimble's CrR 7.8 motion to this Court to be treated as a personal restraint petition, the only issue before this Court is whether the trial court erred by making such a transfer.

CrR 7.8(c)(2) provides that the trial 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 time 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.

Since Mr. Kimble entered a guilty plea in 2000 and his appeal of that decision was affirmed by this Court and the appeal mandated in September of 2001, the CrR 7.8 motion was time barred under RCW 10.73.090(1). Nonetheless, unless his judgment and sentence was facially invalid, entered without competent jurisdiction, or his motion to withdraw was based solely on one or more of the exceptions to the time bar as set forth in RCW 10.73.100(1)-(6), the trial court could not transfer the motion to this Court to be treated as a personal restraint petition.

A judgment is valid on its face unless the trial court exercised authority it did not have, and even if the petitioner can show an error that might have received relief if it had been raised in the direct appeal or in a timely personal restraint petition, the judgment and sentence is still valid on its face. *In re Scott*, 173 Wn.2d 911, 917, 271 P.3d 218 (2012).

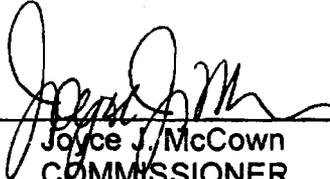
Here, the trial court, when transferring the CrR7.8 motion to this Court, determined that Mr. Kimble did not make a substantial showing that he was entitled to relief. This is correct because he had raised the same issues in his direct appeal in 2001 and this court affirmed the trial court and determined the sentence imposed was appropriate. Additionally, the trial court determined a factual hearing was not required. This determination was also correct since Mr. Kimble not only entered a plea of guilty and agreed to the facts as presented at his guilty plea hearing and in his Statement of Defendant on Plea of Guilty, but also because the issues he raised in his petition were purely legal.

No. 31166-0-III

Contrary to Mr. Kimble's argument, that the trial court erred by failing to consider and decide the various issues he raised in his motion to withdraw his guilty plea, the trial court properly applied CrR 7.8(c)(2) in transferring the motion to this Court. This Court would have considered and ruled on the substantive issues raised in the motion to withdraw his guilty plea, except that Mr. Kimble decided and this Court directed that he withdraw the motion to withdraw the guilty plea/personal restraint petition, and therefore there is nothing before this Court to decide. Mr. Kimble may attempt to file a personal restraint petition with this Court and pay the filing fee or a statement of finances in order to possibly receive consideration by this Court of his issues.

IT IS ORDERED, the decision of this Court is affirmed. Counsel's motion to withdraw is conditioned upon her compliance with RAP 18.3(a)(3).

November 6 , 2013.



Joyce J. McCown
COMMISSIONER

APPENDIX 3

FILED
Dec 06, 2013
Court of Appeals
Division III
State of Washington

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

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 311660
)	
v.)	MOTION TO MODIFY
)	COMMISSIONER'S
ROCKY R. KIMBLE,)	RULING
)	
Appellant.))	

I. IDENTITY OF MOVING PARTY

Appellant Rocky R. Kimble asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Modify the ruling of the Commissioner filed on November 6, 2013. The ruling affirmed the judgment of the Stevens County Superior Court. This court should modify the Commissioner's Ruling and reverse the judgment.

III. FACTS RELEVANT TO MOTION

In 2012, Mr. Kimble filed a motion to withdraw his guilty plea, alleging that his conviction was invalid on its face because it was

based on an incorrectly calculated offender score and standard range sentence. (CP 59-63) Mr. Kimble argued that a prior robbery conviction had washed out or, alternatively, it was not a serious violent offense and therefore should not have counted for 3 points in his offender score. (RP 72-76) He further argued that his guilty plea was involuntary because not only was the standard range improperly calculated but additionally his trial counsel had failed to inform him that in pleading guilty he would be waiving the right to have his sentence decided by a jury. (CP 75-78)

Finding the offender score had been correctly calculated and the motion had not been timely filed, the superior court transferred the matter to this court. (CP 91-92) I was appointed to represent Mr. Kimble in this court. Having failed to identify any issue for which I could make a good faith argument on appeal, I moved to withdraw as counsel and asked this court

to determine whether the appeal was wholly frivolous.

The Commissioner has ruled that the appeal is frivolous and has granted my motion to withdraw. The Commissioner's ruling details and analyzes the possible issues identified by appellate counsel and Mr. Kimble.

IV. GROUNDS FOR RELIEF

Const. art. 1, § 22, which guarantees the right of appeal in criminal cases, establishes a criminal defendant's right to review of a commissioner's ruling on the merits of an appeal by a panel of judges. *State v. Rolax*, 104 Wn.2d 129, 133-34, 702 P.2d 1185 (1985).

The right to appeal includes a defendant's right to effective assistance of counsel. *Evitts v. Lucey*, U.S., 83 L. Ed. 2d 821, 105 S. Ct. 830, 836 (1985). Counsel is obliged to ascertain the wishes of the defendant concerning the motion to modify, and should then follow those wishes. Since the decision to appeal must be made personally by the defendant, the

decision to move to modify should also be made by the defendant.

Id. at 135.

In cases where counsel has moved to withdraw and filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), this court has identified the procedure which must be followed in order to ensure that the defendant is afforded the benefits of this right:

Defense counsel *shall notify his client*, who already has received "a copy of the Commissioner's ruling along with a notice explaining that failure to file a motion to modify terminates appellate review," *that counsel is there to assist him in preparation of the motion. . . .*

Should the client decide to file a motion to modify, *counsel is responsible for the preparation and filing of that motion with a copy to his client. . . . [C]ounsel's obligation is not completed by compliance with the Commissioner's ruling if his client decides to proceed with a motion to modify.*

State v. Folden, 53 Wash.App. 426, 428-29, 767

P.2d 589, review denied, 112 Wn.2d 1022

(1989) (emphasis added). This court further held

that counsel's duties are not completed upon the filing of the motion to modify:

[W]hile we hold appointed counsel is not entitled to withdraw before that appeal is concluded in the Court of Appeals, he need not continue his appointed representation thereafter. *Upon denial of a motion to modify, counsel should advise his client of his right to petition for a review before the State Supreme Court.*

53 Wash.App. 426, 430-31.

This motion is submitted in compliance with the requirements of *Folden* to ensure that Mr. Kimble receives the full benefit of his constitutional right to appeal, including careful consideration of his case by a panel of judges and the continuing assistance of counsel until the appeal is concluded.

V. CONCLUSION

The Commissioner's Ruling affirming the trial court's actions should be modified on any grounds supported by the record and applicable case law, and the judgment should be reversed.

Alternatively, if this court denies the motion to modify, counsel should be notified so that Mr. Kimble can be advised of his right to file a petition for review.

Respectfully submitted on Friday, December 06, 2013.

Janet Gemberling, P.S.

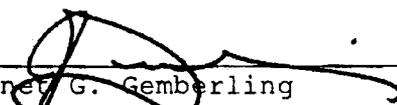


Janet G. Gemberling, #13489
Attorney for Appellant

CERTIFICATION

I certify under penalty of perjury under the laws of the State of Washington that the facts set out in part III above are true.

Signed on December 6, 2013.

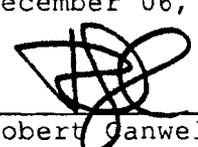


Janet G. Gemberling
PO Box 9166
Spokane, WA 99209

I certify under penalty of perjury under the laws of the State of Washington that on this day I served a copy of this document by email on the attorney for the respondent, receipt confirmed, pursuant to the parties' agreement:

Timothy Rasmussen
trasmussen@co.stevens.wa.us

Signed at Patnem Beach, India on Friday,
December 06, 2013.



Robert Canwell
Legal Assistant

APPENDIX 4

MP
W
D

FILED
IN SUPERIOR COURT
STEVENS COUNTY
2012 SEP 27 AM 10:46
PATRICIA A. CHESTER
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
FOR STEVENS COUNTY

STATE OF WASHINGTON,	:	NO. 99-1-00221-5
	:	
Plaintiff	:	NOTICE OF APPEAL TO COURT
	:	OF APPEALS DIVISION III
v.	:	
	:	
ROCKY R. KIMBLE,	:	
	:	
Defendant	:	

Defendant Rocky R. Kimble, pro se, seeks review by the designated appellate court of the trial court's Findings of Fact and Conclusions of Law transferring Defendant's CrR 7.8 motion, entered on August 27, 2012.

A copy of the decision is attached to this notice. See Declaration of Rocky R. Kimble, attached hereto.

DATED this 24th day of September, 2012.

Rocky Kimble
Rocky R. Kimble, DOC #808179
Airway Heights Corrections Center
PO Box 2049, MB-60
Airway Heights, WA 99001

County of Stevens

NOTICE OF APPEAL
No. 99-1-00221-5

I the Undersigned County Clerk and Clerk of the Superior Court for Stevens County, State of Washington, hereby certify that this instrument is a true and correct copy of the original on file in my office

Dated this 28 day of Sept 12

Patricia A. Chester, Clerk
Patricia A. Chester

89

SUPERIOR COURT OF WASHINGTON
FOR STEVENS COUNTY

STATE OF WASHINGTON, : NO. 99-1-00221-5
 :
 Plaintiff : DECLARATION OF
 : ROCKY R. KIMBLE
 v. :
 :
 ROCKY R. KIMBLE, :
 :
 Defendant :
 :
 _____ :

I, ROCKY R. KIMBLE, hereby declares:

1. I am the Defendant appearing pro se in the above entitled cause, I am over the age of 18 years, I have personal knowledge of the matters herein, and I am competent to testify thereto.

2. On August 21, 2012, a hearing was held in Stevens County Superior Court before the Honorable Judge Allen C. Nielsen to decide my Motion to Withdraw Plea of Guilty.

3. On August 27, 2012, Judge Nielsen entered the decision upon which I am filing this notice of appeal. The decision was made ex-parte and entered as Findings of Fact and Conclusions of Law.

4. I have made three requests for a copy of said decision

DECLARATION OF ROCKY R. KIMBLE 1
No. 99-1-00221-5

Cp 90

SCANNED

~~_____~~
with no copy provided. In order to submit a timely notice of appeal, this declaration accompanies said notice.

DATED this 24th day of September, 2012, at Airway Heights, Spokane County, Washington.

Rocky Kimble
Rocky R. Kimble

APPENDIX 5

Cp 91-93

M.
W.D.
X from Copy

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FILED
IN SUPERIOR COURT
STEVENS COUNTY

2012 AUG 29 PM 4 07

PATRICIA A. CHESTER
COUNTY CLERK

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

STATE OF WASHINGTON,

Plaintiff,

v.

ROCKY RHODES KIMBLE,

Defendant.

NO. 99-1-00221-5

HEARING, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RULING

I. HEARING

On July 17, 2012, the Court heard argument on defendant's Motion to Withdraw Guilty Plea under CrR 7.8. The Court heard argument by deputy prosecuting attorney, Mathew Enzler, and defendant's attorney, Paul Wasson, with the defendant on the telephone. The Court also reviewed the file. Based on the hearing, the Court makes the following:

II. FINDINGS OF FACT

1. The offender score of 3 was comprised of a 2 for the "robbery" in Wisconsin, namely a robbery in the second degree which was a violent felony, and a 1 for

HEARING, FINDINGS OF FACT, CONCLUSIONS
OF LAW AND RULING

Page 1

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Cp 91

1 the other current felony of residential burglary. The standard range was correct at 120-160
2 months. Accordingly, Rocky Rhodes Kimble was not misinformed of a direct consequence
3 of his plea; the offender score was not miscalculated; he knowingly, voluntarily and
4 intelligently waived his right to a jury trial; the plea was not inconsistent with the interests of
5 justice; and counsel correctly informed Rocky Rhodes Kimble of the offender score and
6 standard range.
7

8 2. The issue of whether the prosecuting attorney breached the plea agreement
9 by "introducing alleged additional facts" is resolved by the record of the change of plea and
10 sentencing and appears to have been looked at on direct appeal – see Commissioner's
11 Ruling dated July 26, 2001, and in particular the footnote.

12 3. The direct appeal mandate was issued September 4, 2001, and the Motion to
13 Withdraw Guilty Plea filed April 27, 2012.
14

15 III. CONCLUSIONS OF LAW

16 The Motion to Withdraw Guilty Plea was not timely filed, CrR 7.8(c)(2) and RCW
17 10.73.090. Further, the defendant has not made a substantial showing that he is entitled to
18 relief, or that a factual hearing is required.

19 IV. RULING UNDER CrR 7.8(c)(2)

20 The Motion to Withdraw Guilty Plea shall be transferred to the Court of Appeals,
21 Division III.

22 DATED this 29th day of August, 2012.

23
24 
25 ALLEN C. NIELSON
Superior Court Judge

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CERTIFICATE OF MAILING/DELIVERY

I hereby certify, under penalty of perjury of the laws of the State of Washington, that I am a U.S. citizen and neither a party to nor interested in the above-entitled action and that a true copy of the Hearing, Findings of Fact, Conclusions of Law and Ruling, was mailed by U.S. Mail, postage prepaid, or hand delivered to the following parties on the date shown below:

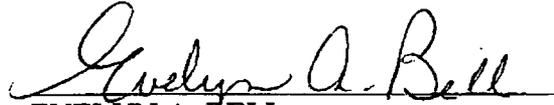
Mathew J.ENZLER
Deputy Prosecuting Attorney
215 S. Oak St., 1st Floor
Colville, WA 99114

U.S. Mail
 Hand delivery

Paul J. WASSON
Attorney at Law
2521 W. Longfellow Ave.
Spokane, WA 99205

U.S. Mail
 Hand delivery

DATED this 29th day of August, 2012.


EVELYN A. BELL

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FILED
IN SUPERIOR COURT
STEVENS COUNTY

SEP 6 11 19 AM '01

PATRICIA A. CHESTER
COUNTY CLERK

Appellate Decided
June 26 2001
New law during
Direct Review/ Appeal

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

ROCKY RHODES KIMBLE,
Appellant.

MANDATE

No. 19317-9-III

Stevens County No. 99-1-00221-5

The State of Washington to: The Superior Court of the State of Washington,
in and for Stevens County

This is to certify that the ruling of the Court of Appeals of the State of Washington, Division III, filed on July 26, 2001 became the decision terminating review of this court in the above-entitled case on August 25, 2001. The cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the ruling.

In testimony whereof, I have hereunto set my hand and affixed the seal
of said Court at Spokane, this 4th day of September, 2001.

Patricia A. Chesler
Clerk of the Court of Appeals, State of Washington
Division III

cc: Rocky Rhodes Kimble
Paul J. Wasson
John G. Wette
Hon. Rebecca Baker
Indeterminate Sentence Review Board
Department of Corrections



60

Cp 94

The Court of Appeals
of the
State of Washington
Division III

F I L E D

JUL 26 2001

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

By _____

STATE OF WASHINGTON,)

Respondent,)

v.)

ROCKY RHODES KIMBLE,)

Appellant.)

No. 19317-9-III

COMMISSIONER'S RULING

Rocky Rhodes Kimble appeals from the sentence imposed upon his guilty plea to one count of first-degree rape and one count of residential burglary. He contends his sentence in particular and the Sentencing Reform Act of 1981 are unconstitutional under Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and Jones v. United States, 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), because the factual basis for his sentence

upward was not charged, submitted to the jury or proved beyond a reasonable doubt.¹

Relying on State v. Gore, 143 Wn.2d 288, 21 P.3d 262 (2001),^{overturned by Hughes 154 Wn2d 118 (2002)} the Respondent State of Washington has moved on the merits to affirm. RAP 18.14. Because the Supreme Court in Gore rejected arguments like those of Mr. Kimble here, the State's motion on the merits is granted, and the judgment of the Superior Court is affirmed.

As the Supreme Court said in Gore, supra at 312, while the Fifth Amendment due process clause requires that every fact necessary to a conviction be proved beyond a reasonable doubt,

¹ Mr. Kimble assigns error to several of the trial court's findings supporting its imposition of an exceptional sentence, but he does not argue any issues related to them on the theory that since, in his view, the sentence and statutory sentencing scheme are unconstitutional, there is no need to specifically address them. Of course, State v. Gore, infra, resolves the constitutional issues against Mr. Kimble. So, this Court has reviewed the record to determine whether the court's findings are supported. They are. The prosecutor essentially recited the facts provided in the presentence investigation to which Mr. Kimble did not object. The court may rely upon that report.

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No. 19317-9-III

not every fact relevant to sentencing is subject to that dictate. "Sentencing courts necessarily consider the circumstances of an offense in selecting the appropriate punishment, and we have consistently approved sentencing schemes that mandate consideration of facts relating to the crime ... without suggesting that those facts be proved beyond a reasonable doubt" Id. At 312-13 (quoting McMillan v. Pennsylvania, 477 U.S. 79, 92, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986)).

Reasoning that since aggravating factors used to support an exceptional sentence "neither increase the maximum sentence nor define a separate offense calling for a separate penalty," the Supreme Court found Apprendi inapposite. State v. Gore, supra at 314. The court said that since the state statutory scheme permits a judge to impose an exceptional sentence after considering the circumstances of the offense (within the range determined by the legislature and not exceeding the maximum as proscribed by Apprendi), it may do so without the factual determinations being charged, submitted to the jury or proved beyond a reasonable doubt. Id.

The judgment of the Superior Court is affirmed.

July 26, 2001.


COMMISSIONER

Recall Mandate RAP 12.9 Raby R. Kull 4/20/14
Violated 6th Amendment and Apprendi Rule. Accept Review

and it provides a sufficient basis for the findings supporting the exceptional sentence. The findings, in turn, support the conclusions justifying the exceptional sentence.

APPENDIX 6

Rcvd
Entered
Filed

FILED
IN SUPERIOR COURT STEVENS COUNTY
APR 20 2000
PATRICIA A. CHESTER
COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
COUNTY OF STEVENS**

STATE OF WASHINGTON,
vs.
ROCKY RHODES KIMBLE
SID/DOB: /12/17/75

Plaintiff,
Defendant.

No. 99-1-00221-5

JUDGMENT AND SENTENCE (JS)

[x] Prison

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 3/16/2000

by [X] plea [] jury-verdict [] bench trial of:

2000 9 00214 2

COUNT	CRIME	RCW	DATE OF CRIME
1	RAPE IN THE FIRST DEGREE	9A.44.040(1)(a) and/or (d)	11/6/1999
2	RESIDENTIAL BURGLARY	9A.52.025	11/6/1999
3			
4			
5			
6			

as charged in the FIRST Amended Information.

- [] A special verdict/finding for use of **firearm** was returned on Count(s) _____ RCW 9.94A.125, .310
- [] A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____ RCW 9.94A.125, .310
- [] A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.127
- [] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) _____

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2000 9 00214 2
43

RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A. _____.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 ROBBERY	3/22/94	MILWAUKIE COUNTY WIS	12/31/93	A	V
2					
3					
4					
5					
6					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2

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2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS -NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	3	XII	120-160 MOS	N/A	120-160 MOS	Life, \$50,000
2	3	IV	13-17 MOS	N/A	13-17 MOS	10 yrs., \$20,000
3	0					
4	0					
5	0					
6	0					

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520
 Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence
 above within below the standard range for Count(s) 1, 2, 3 *RMB*. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142
 The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): _____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The Court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RESTITUTION

AMOUNT	TO
\$ <u>0</u>	E.R. BROWN, 4485 LINCOLN ST. #24, Clayton, WA 99110

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 STEVENS COUNTY PROSECUTING ATTORNEY
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 Colville, WA 99114
 (509) 684-7500 fax (509) 684-8310

1 \$ _____
 2 \$ _____

(Name and Address—address may be withheld and provided confidentially to Clerk's Office)

3	\$ 500.00	Victim assessment	RCW 7.68.035
4	\$ 110.00	Court Costs	RCW 9.94A.030 & .120, 10.01.160, 10.46.190
5	\$	6 Fees for court appointed attorney <i>waived</i>	RCW 9.94A.030
6	\$	Court appointed defense expert and other defense costs	RCW 9.94A.030
7	\$	Fine RCW 9A.20.021; [] VUCSA additional fine deferred due to indigency	RCW 69.50.430
8	\$	Drug enforcement fund of	RCW 9.94A.030
9	\$	Crime lab fee [] deferred due to indigency	RCW 43.43.690
10	\$	Extradition costs	RCW 9.94A.120
11	\$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
12	\$	Other costs for:	

13 \$ *610.00* TOTAL *+ Restitution to be determined* RCW 9.94a.145

14 The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142.
 15 A restitution hearing:
 16 [] shall be set by the prosecutor
 17 is scheduled for *JUNE 9, 2011 at 9:00 A.M.*

18 [] RESTITUTION. Schedule attached, Appendix 4.1.
 19 [] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
			PMB

23 [] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

25 All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$..... per month commencing RCW 9.94A.145

30 JOHN G. WETLE
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1 [] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay
2 for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145
3 [] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW
36.18.190

4 The financial obligations imposed in this judgment shall bear interest from the date of the Judgment
5 until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on
6 appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

- 7 4.2 [X] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as
8 soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340
9 [X] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification
10 analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or
11 Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's
12 release from confinement. RCW 43.43.754

- 13 4.3 The defendant shall not have contact with Evelyn R Brown (8/29/81) (name, DOB) including, but not
14 limited to, personal, verbal, telephonic, written or contact through a third party for LIFE (not to
15 exceed the maximum statutory sentence).
16 [] Domestic Violence Protection Order or Anti-Harassment Order attached as Appendix 4.3.

17 4.4 OTHER: *offered sex offense treatment while in prison*
18 *participate in a rehab and drug counseling as directed by DDC*
19 *participate in substance abuse treatment while in prison*
20 *Subject to random urinalysis and breath testing*
21 *to follow recommendations of community corrections officer while on*
22 *community custody including treatment, counseling and other ap*

- 23 4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:
24 (a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total
25 confinement in the custody of the Department of Corrections:

26 36 months on Count 1 _____ on Count 4
27 17 months on Count 2 _____ on Count 5
28 _____ on Count 3 _____ on Count 6

29 Actual number of months of total confinement ordered is: 36 months
30 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2 3, Sentencing Data, above).

1 All counts shall be served concurrently, except for the portion of those counts for which there is a
2 special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for
3 the following counts which shall be served consecutively:

4 The sentence herein shall run consecutively with the sentence in cause number(s)

5 but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400
6 Confinement shall commence immediately unless otherwise set forth here:

7 (b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely
8 under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the
9 credit for time served prior to sentencing is specifically set forth by the court:

10 4.6 [] **COMMUNITY PLACEMENT** is ordered on Counts _____ for _____ months
11 [X] **COMMUNITY CUSTODY** is ordered on Count 1 for 36 months
12 or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer,
13 and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) for community placement
14 offenses-- serious violent offense, second degree assault, any crime against a person with a deadly
15 weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex
16 offense --RCW 9.94A.120(10). Use paragraph 4.7 to impose community custody following work ethic
17 camp.]

18 While on community placement or community custody, the defendant shall: (1) report to and be
19 available for contact with the assigned community corrections officer as directed; (2) work at
20 Department of Corrections-approved education, employment and/or community service; (3) not
21 consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully
22 possess controlled substances while in community custody; (5) pay supervision fees as determined by
23 the Department of Corrections; (6) perform affirmative acts necessary to monitor compliance with the
24 orders of the court as required by the Department of Corrections. The residence location and living
25 arrangements are subject to the prior approval of the Department of Corrections while in community
26 placement or community custody. Community custody for sex offenders may be extended for up to the
27 statutory maximum term of the sentence. Violation of community custody imposed for a sex offense
28 may result in additional confinement.

29 [X] The defendant shall not consume any drugs or alcohol.

30 [X] Defendant shall have no contact with Evelyn R. Brown (8/29/81) *for life. RMB*

[] Defendant shall remain [] within [] outside of a specified geographical boundary, to wit:

[] The defendant shall participate in the following crime-related treatment or counseling
services:.....

[] The defendant shall comply with the following crime-related prohibitions: _____

6
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1 Other conditions may be imposed by the court or Department during community custody, or are set forth
2 here: **Obtain approval for residence and living arrangements from Community Corrections**
3 **Officer; Submit to polygraph, ordered by Community Corrections Officer**

4 4.7 [] **WORK ETHIC CAMP.** RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is
5 eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve
6 the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be
7 released on community custody for any remaining time of total confinement, subject to the conditions
8 below. Violation of the conditions of community custody may result in a return to total confinement for
9 the balance of the defendant's remaining time of total confinement. The conditions of community
10 custody are stated above in Section 4.6.

11 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to
12 the defendant while under the supervision of the County Jail or Department of Corrections: _____
13 _____

14 V. NOTICES AND SIGNATURES

15 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this
16 judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus
17 petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to
18 arrest judgment, must be filed within one year of the final judgment in this matter, except as provided
19 for in RCW 10.73.100. RCW 10.73.090

20 5.2 **LENGTH OF SUPERVISION.** The defendant shall remain under the court's jurisdiction and the
21 supervision of the Department of Corrections for a period up to ten years from the date of sentence or
22 release from confinement, whichever is longer, to assure payment of all legal financial obligations.
23 RCW 9.94A.145

24 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate
25 notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue
26 a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly
27 payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010.
28 Other income-withholding action under RCW 9.94A may be taken without further notice. RCW
29 9.94A.200030

30 5.4 **RESTITUTION HEARING.**
[X] Defendant waives any right to be present at any restitution hearing (sign initials): *PK* *J*

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per
violation. RCW94A.200

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1
2 **5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own,**
3 **use or possess any firearm unless your right to do so is restored by a court of record.** (The court
4 clerk shall forward a copy of the defendant's license, identicard, or comparable identification, to the
5 Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

6 **Cross off if not applicable:**

7 **5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.**

8 Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first
9 degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40
10 RCW where the victim is a minor and you are not the minor's parent), you are required to
11 register with the sheriff of the county of the state of Washington where you reside. If you are not
12 a resident of Washington but you are a student in Washington or you are employed in Washington
13 or you carry on a vocation in Washington, you must register with the sheriff of the county of your
14 school, place of employment, or vocation. You must register immediately upon being sentenced
15 unless you are in custody, in which case you must register within 24 hours of your release.

16 If you leave the state following your sentencing or release from custody but later move back
17 to Washington, you must register within 30 days after moving to this state or within 24 hours
18 after doing so if you are under the jurisdiction of this state's Department of Corrections. If you
19 leave this state following your sentencing or release from custody but later while not a resident of
20 Washington you become employed in Washington, carry out a vocation in Washington, or attend
21 school in Washington, you must register within 30 days after starting school in this state or
22 becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you
23 are under the jurisdiction of this state's Department of Corrections.

24 If you change your residence within a county, you must send written notice of your change of
25 residence to the sheriff within 72 hours of moving. If you change your residence to a new
26 county within this state, you must send written notice of your change of residence to the sheriff
27 of your new county of residence at least 14 days before moving, register with that sheriff within
28 24 hours of moving and you must give written notice of your change of address to the sheriff of
29 the county where last registered within 10 days of moving. If you move out of Washington state,
30 you must also send written notice within 10 days of moving to the county sheriff with whom you
last registered in Washington state.

If you are a resident of Washington and you are admitted to a public or private institution of
higher education, you are required to notify the sheriff of the county of your residence of your
intent to attend the institution within 10 days of enrolling or by the first business day after arriving
at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within
24 hours of release in the county where you are being supervised if you do not have a residence at
the time of your release from custody or within 14 days after ceasing to have a fixed residence. If
you enter a different county and stay there for more than 24 hours, you will be required to register
in the new county. You must also report in person to the sheriff of the county where you are

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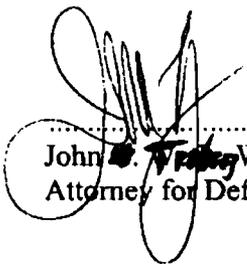
1 registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly
2 basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may
3 be considered in determining a sex offender's risk level.

4 5.8 OTHER: _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____

13
14 DONE in Open Court and in the presence of the defendant this date: 4/20/00

15 
16 JUDGE REBECCA BAKER

17
18 
19 _____
20 John G. Wetle, WSBA #7533
21 Prosecuting Attorney

22 
23 _____
24 John R. Wetle, WSBA #7533
25 Attorney for Defendant 11576

26 *defendant elected*
not to sign PWS
27 _____
28 Defendant
29 Rocky R. Kimble
30

31 Translator signature/Print name: _____
32 I am a certified interpreter of, or the court has found me otherwise qualified to interpret the _____
33 Language, which the defendant understands. I translated this Judgment and Sentence for the defendant into
34 that language.

1 CAUSE NUMBER of this case: 99-1-00221-5

2 I, Patrica A. Chester, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the
3 Judgment and Sentence in the above-entitled action, now on record in this office.

4 WITNESS my hand and seal of the said Superior Court affixed this date:

5 Clerk of said County and State, by:, Deputy Clerk

6 **IDENTIFICATION OF DEFENDANT**

7 SID No. (If no SID take fingerprint card for State 8 Patrol)	Date of Birth: 12/17/75
9 FBI No. 677120WA4	Local ID No. KIMBLRR12171975
10 PCN No. 004310977	Other

11 Alias name, SSN, DOB:

12 Race:		13 Ethnicity:		14 Sex:
14 <input type="checkbox"/> Asian/Pacific Islander	15 <input type="checkbox"/> Black/African- American	16 <input checked="" type="checkbox"/> Caucasian		17 <input type="checkbox"/> Hispanic
18 <input type="checkbox"/> Native American	19 <input type="checkbox"/> Other: _____	20 <input checked="" type="checkbox"/> Non- Hispanic		21 <input type="checkbox"/> Female

22 **FINGERPRINTS** I attest that I saw the same defendant who appeared in Court on this document affix
23 his or her fingerprints

24 and signature thereto. Clerk of the Court: Patricia A. Chester, *Patricia A. Chester* Deputy Clerk. Dated: *4-20-00*

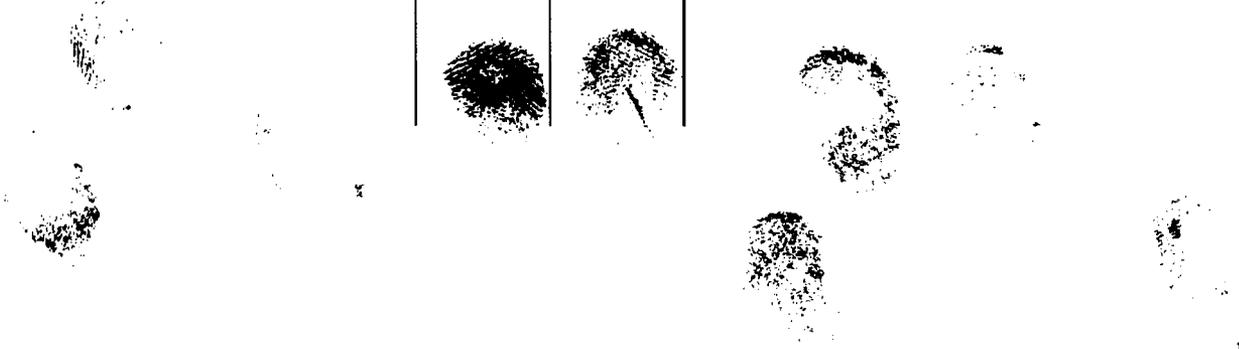
25 DEFENDANT'S SIGNATURE: _____

26 Left four fingers taken simultaneously

27 Left Thumb

28 Right Thumb

29 Right four fingers taken simultaneously



30 **JOHN G. WETLE**
 STEVENS COUNTY PROSECUTING ATTORNEY
 P.O. BOX 390
 Colville, WA 99114
 (509) 684-7500 fax (509) 684-8310

APPENDIX 7

Reviewed f
Entered f
Verified M

FILED
IN SUPERIOR COURT STEVENS COUNTY
MAR 16 2000
PATRICIA A. CHESTEF
COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
COUNTY OF STEVENS**

STATE OF WASHINGTON,

vs.

ROCKY RHODES KIMBLE,
DOB: 12/17/75

Plaintiff,

Defendant.

No. 99-1-00221-5

PLEA AGREEMENT
(FELONY)

I. PLEA AGREEMENT

The State of Washington and the defendant, ROCKY RHODES KIMBLE, enter into this Plea Agreement which is accepted only by a guilty plea. This agreement may be withdrawn at anytime prior to entry of the guilty plea. The Plea Agreement is as follows:

1.1 *PLEA*: The defendant shall plead guilty to:

COUNT	CRIME
1	RAPE IN THE FIRST DEGREE
2	RESIDENTIAL BURGLARY
3	
4	
5	
6	

1.2 *SPECIAL FINDING*: The defendant agrees that there should be a special finding pursuant to RCW 9.94A.125 for use of deadly weapon on Count No(s) .

1.3 *DISMISS*: Upon disposition of the above (Count(s)), the State moves to dismiss Count No(s).

1.4 *CRIMINAL HISTORY*: The defendant agrees that the prosecutor's statement of defendant's criminal history set forth in paragraph 1.11, below, is accurate, and that the defendant was represented by counsel or waived counsel at the time of each prior conviction.

1.5 *DEFENDANT HAS NO CRIMINAL HISTORY OF WHICH THE PROSECUTOR KNOWS WHICH WOULD COUNT UNDER THE SRA; AND DEFENDANT REPRESENTS THAT HE/SHE HAS NOT BEEN CONVICTED OF A CRIME WHICH WOULD COUNT UNDER THE SRA* (defendant's attorney has told him/her which crimes which would count at sentencing under the SRA in this case).

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35

*added in
Letter to [unclear]
[unclear]*

1 1.6 **REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES:** In accordance
2 with RCW 9.94A.370, the parties agree that the court, in sentencing, may consider as real and material
3 facts, the information set forth in materials issued as discovery in this case.

4 1.7 **RESTITUTION:** The defendant agrees to pay total restitution of TBD.
5 Defendant waives his presence at entry of the restitution order in this case and authorizes his attorney
6 to approve any restitution order on his behalf.

7 1.8 **OTHER:** _____
8 _____

9 1.9 The defendant agrees to the Prosecutor's statement of defendant's criminal history set forth in
10 paragraph 1.11, below, and the State makes the sentencing recommendation set forth below.

11 The defendant disputes the Prosecutor's statement of defendant's criminal history set forth in
12 paragraph 1.11, below, and the State makes no agreement with regard to a sentencing recommendation
13 and may make a sentencing recommendation for the full penalty allowed by law.

14 1.10 The State's recommendation will increase in severity if additional criminal convictions are found or if the
15 defendant commits any new crime(s), fails to appear for sentencing or violates the conditions of his or her
16 release.

17 1.11 **PROSECUTOR'S STATEMENT OF DEFENDANT'S CRIMINAL HISTORY**

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 ROBBERY	3/22/94	MILWAUKIE COUNTY WIS	12/31/93	A	V
2					
3					
4					
5					
6					

25
26
27
28
29
30

1 1.12 SENTENCING DATA

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus Enhancement for Firearm (F), other deadly weapon finding (D) or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	3	XII	120-160 MOS	N/A	120-160 MOS	Life, \$50,000
2	3	IV	13-17 MOS	N/A	13-17 MOS	10 yrs., \$20,000
3	0					
4	0					
5	0					
6	0					

11 II. STATE'S SENTENCING RECOMMENDATION

12 2.1 MONETARY PAYMENTS: The State recommends that the defendant pay to the Clerk of the Court:

- 13 \$ 110.00 Court Costs,
- 14 \$ 500.00 Crime Victim's Fund Assessment,
- 15 \$ TBD Restitution,
- 16 \$ TBD. Appropriate recoupment for attorney's fees,
- 17 \$ _____ Fine,
- 18 \$ _____ Drug enforcement fund: _____
- 19 \$ _____ Other: _____

20 The State recommends that a payment schedule, if any is necessary, be set by the Department of Corrections.

21 The State recommends that the court retain jurisdiction over the defendant for a period of ten years to assure payment of the above monetary obligations.

22 2.2 CONFINEMENT: The state recommends that the defendant be sentenced to:

23 jail prison for a term of total confinement as follows:

Count	Recommendation	Count	Recommendation
1	160 MONTHS	4	
2	17 MONTHS	5	
3		6	

- 27 The terms in counts 1 AND 2 to be concurrent for a total term of: 160 MONTHS
- 28 This sentence should run concurrently/consecutively with the sentence in:

29
30

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 Colville, WA 99114
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1 [X] Credit should be given for (time) (_____ day(s)) served awaiting sentence.

2 2.3 [] *ALTERNATIVE CONVERSION PURSUANT TO RCW 9.94A.380*: The State recommends that 30
3 days of confinement be converted to 240 hours community service to be completed as ordered by the
4 Department of Corrections.

5 [X] *OTHER*: NO CONTACT WITH E. R. B. (DOB: 8/29/81) FOR LIFE

6
7 2.4 [] *EXCEPTIONAL SENTENCE*: The State recommends an exceptional sentence based on: _____

8
9 2.5 [] *FIRST OFFENDER OPTION*: The State recommends that the standard sentence range be waived
10 and a range of 0-90 days be substituted pursuant to RCW 9.94A.120(5). This will also allow for
11 affirmative conditions on community supervision, and up to 24 months (rather than 12 months)
community supervision.

12 2.6 [] *COMMUNITY SUPERVISION*: The State recommends that the defendant serve [] 12 [] 24
13 months of community supervision and that the defendant comply with all rules, regulations and
14 requirements of the Department of Corrections, as well as pay all applicable fees.

15 [] *CRIME RELATED PROHIBITIONS*: _____

16
17 [] *AFFIRMATIVE CONDITIONS* (first offender only): _____

18
19
20 2.7 [X] *COMMUNITY PLACEMENT AND/OR COMMUNITY CUSTODY*: RCW 9.94A.120.

21 Community placement is ordered for a community placement eligible offense or community custody is
22 ordered for a sex offense or to follow work ethic camp if it is imposed, and standard mandatory
23 conditions are ordered. Community placement or community custody is ordered for the period of time
24 provided by law (i.e. 36 months or up to the period of earned early release awarded, whichever is
longer). While on community placement or community custody, the defendant shall:

25 (1) report to and be available for contact with the assigned community corrections officer as directed;

26 (2) work at Department of Corrections-approved education, employment and/or community service;

27 (3) not consume controlled substances except pursuant to lawfully issued prescriptions;

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1 (4) not unlawfully possess controlled substances while in community custody;
2

3 (5) pay supervision fees as determined by the Department of Corrections.

4 (6) polygraph tests as ordered by the DOC Corrections Officer.
5

6 **III. STATUTORY PROVISIONS**

7
8 **3.1 COST OF INCARCERATION**

Pursuant to RCW 9.94A.145(2), if the court at the time of sentencing determines that the offender has the means to pay for the cost of his/her incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration.
10

11 **3.2 PAYROLL WITHHOLDING**

Pursuant to RCW 9.94A.145(3), payroll deduction may be issued or other income-withholding action may be taken without further notice to the offender if a monthly court-ordered legal financial obligation payment is not made when due, and an amount equal to or greater than the amount payable for one month is owed.
14

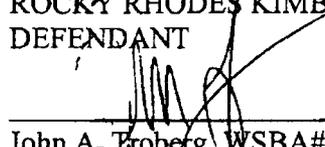
15 **3.3 FIREARMS**

Pursuant to RCW 9.41.040 all offenders sentenced for any felony offense shall not own, use or possess firearms or a concealed pistol license. Offenders who own, use, or are found to be in actual or constructive possession of firearms or a concealed pistol license shall be subject to the appropriate violation process and sanctions.
18

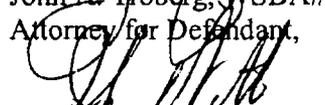
19 Dated: 3/16/00


ROCKY RHODES KIMBLE
DEFENDANT

22 Dated: 3/16/00


John A. Troberg, WSBA# 11548
Attorney for Defendant,

25 Dated: Feb 25, 2000


John G. Wetle, WSBA #7533
Prosecuting Attorney

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JOHN G. WETLE
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IV. COURT APPROVAL (RCW 9.94A.090)

Revised

The court, having reviewed the above Plea Agreement and having heard the statements of counsel regarding the reasons for the above Plea Agreement, finds:

- The Plea Agreement is consistent with the interests of justice and the prosecutorial standards.
- The Plea Agreement is not consistent with the interests of justice and prosecutorial standards. Neither party is bound by the Plea Agreement, and the defendant may withdraw the plea of guilty.

Date: 3/17/00

Rebecca M. Pore
JUDGE

Rocky R. Kimble 808179
AHCC RA-18-upper
PO Box 2049
Airway Heights, 99001
Clerk of the Court
Patty A. Chester
215 S. Oak St. Rm. 206
Colville, WA 99114-2862

April 20, 2014

Received
Washington State Supreme Court

APR 24 2014

Clerk of the Court
Ronald Carpenter
PO Box 40929
Olympia, WA 98504

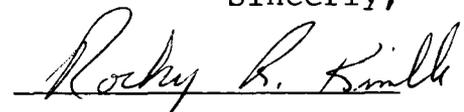
Ronald R. Carpenter
Clerk

Re: Case #99-1-00221-5, Court of Appeals # 311660, Petition
for Review to THE SUPREME COURT OF WASHINGTON.

Dear Clerk of the Court,

Please find enclosed my Petition for Review, Certificate
of Mailing. I am also asking the court to continue my order
of indingency under RAP Rule 15.2 (f) and please appoint me
an attorney at this critical stage in my appeal.

Sincerly,



Rocky R. Kimble-Pro se Petitioner

4/21/2014 RK

Received
Washington State Supreme Court

APR 24 2014

Ronald R. Carpenter
Clerk

STATE OF WASHINGTON
SUPREME COURT

STATE OF WASHINGTON)
 Respondent)
 v.)
ROCKY R. KIMBLE)
 Petitioner)

Case# 311660
CERTIFICATE OF SERVICE

I, Rocky R. Kimble, Petitioner in the above entitled cause, under the penalty of perjury, so hereby certify that on the date noted below, I sent copies of:

PETITION FOR REVIEW WITH NOTICE
CERTIFICATE OF SERVICE

To:

Stevens County Prosecutor's office
Mathew J. Enzler
215 S. Oak St. 1st floor
Colville, WA 99114

SUPREME COURT OF WASHINGTON
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

By processing as Legal mail with first class postage affixed there to, at the Airway Heights Correctional Center PO Box 2049/ R-Unit Airway Heights, WA 99110 Dated this 21 day of April, 2014.

Respectfully Submitted,



Rocky R. Kimble, Pro-se Petitioner
DOC # 808179