**NO. 44500-0-II**

**COURT OF APPEALS OF THE STATE OF WASHINGTON,**

**DIVISION II**

---

**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**TODD McKOWN,**

**Appellant.**

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# BRIEF OF APPELLANT

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### *Assignment of Error*

The trial court erred when it denied as untimely the respondent's motion to dismiss under CR 60(b)(5) because the 2000 Thurston County order committing the respondent as a sexually violent predator was void and could be challenged at any time.

### *Issues Pertaining to Assignment of Error*

Under CR 60(b)(5) may a party at any time challenge an order that is void?

## STATEMENT OF THE CASE

On November 20, 2000, Thurston County Superior Court Judge Richard Strophy entered Findings of Fact, Conclusions of Law and an Order committing Petitioner Todd McKown as a sexually violent predator under RCW 71.09. CP 2-14. The court entered this order pursuant to a Stipulation to Facts signed by the defendant, his attorney, and an Assistant Attorney General, the last of whom had filed the original petition at the request of the Thurston County Prosecutor. *Id.* The stipulation and findings of fact revealed that the petitioner had two prior convictions for sexually violent offenses: (1) 1990 Oregon Juvenile convictions for First Degree Sexual Abuse and First Degree Attempted Sodomy, and (2) a 1995 Skagit County Washington conviction for First Degree Child Molestation. CP 8-9.

On November 30, 2012, Respondent moved to dismiss the order finding him a sexually violent predator. CP 41-47. Petitioner argued that under the Washington Supreme Court decision in *In re Martin*, 163 Wn.2d 501, 182 P.3d 951 (2008), the commitment order was void because RCW 71.09.030 did not authorize the Thurston County Prosecutor to either file the action against Petitioner or ask the Attorney General to file it. *Id.* Following a hearing the Thurston County Superior Court denied the motion. RP 21-23. At the end of the motion and argument by counsel the court stated the following in support of its decision:

THE COURT: I will rule. This motion was brought as a motion to dismiss. Within the context of the motion, as well as in comments today by counsel, it does appear to the Court to be a CR 60 motion.

CR 60 permits relief from a final order upon certain criteria. The Court was most concerned about the subject matter jurisdiction argument, because that, as the Court understands, is not necessarily waivable or consentable.

I hear counsel for Mr. McKown today to concede that this is not a subject matter jurisdiction, and I will say, although I don't need to now, that the Court agrees. The Court agrees based on the reading of *In Re Martin*, and coupling *In Re Martin* together with I believe it is *In Re Doherty*, which is a case cited by *Martin*, that this is not a subject matter jurisdiction issue.

In the Court's opinion, that determines the matter before it today. Without it being a subject matter jurisdiction issue, in the Court's opinion, the aspect of CR 60 that does not permit motions like this brought beyond a lengthy period of time applies and that the 12 years in the interim is too long for the Court to grant the motion to dismiss under CR 60, considering it's not a subject matter jurisdiction issue.

I hear the State conceding that there are problems with the way this was done in 1999, perhaps explainable, perhaps not, given that Martin was some time to be decided, but I don't see those issues with the way this was done in 1999 as something the Court can rectify under CR 60 here some 12 years later.

There are arguments being made to the Court with respect to ongoing jurisdiction that I do agree with the State's counsel is not properly before the Court at this time. Therefore, I'm going to not consider that aspect of the argument for my ruling today. So the respondent's motion is denied.

RP 21-23[1] (italics added for clarity).

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[1]The record on appeal includes a single volume verbatim report of the hearing on the Motion to Dismiss held in the Thurston County Superior Court on February 8, 2012. It is referred to herein as "RP [page #]."

As far as counsel for Mr. McKown can tell from the record below, the trial court has not entered findings of fact or conclusions of law in support of its oral ruling, although the court did sign a two page written order denying the Motion to Dismiss. CP 33-34. Respondent filed timely notice of appeal from this ruling. CP36-39.

## ARGUMENT

**THE TRIAL COURT ERRED WHEN IT DENIED AS UNTIMELY THE RESPONDENT'S MOTION TO DISMISS UNDER CR 60(b)(5) BECAUSE THE 2000 THURSTON COUNTY ORDER COMMITTING THE RESPONDENT AS A SEXUALLY VIOLENT PREDATOR WAS VOID AND COULD BE CHALLENGED AT ANY TIME.**

Civil Rule 60(b) sets out the bases upon which a party in a civil action may obtain relief from a "final judgment, order, or proceeding." It states as follows:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
>
> (2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;
>
> (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
>
> (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (5) The judgment is void;
>
> (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

> (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
>
> (8) Death of one of the parties before the judgment in the action;
>
> (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
>
> (10) Error in judgment shown by a minor, within 12 months after arriving at full age; or
>
> (11) Any other reason justifying relief from the operation of the judgment.
>
> The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

CR 60(b).

As the rule states, a party seeking relief from judgment must bring the motion within a "reasonable time," which cannot exceed one year for the bases listed in sections (1), (2) or (3). This time limit also applies in criminal cases under CrR 7.8(b), which is somewhat more restrictive than CR 60(b) in that the civil rule does include some bases for seeking relief not included under the criminal rule. *State v. Duncan*, 111 Wn.2d 859, 765 P.2d 1300 (1989). Prior to the adoption of the equivalent criminal rule CR 60(b) formed the basis for relief from judgment in criminal cases also. *State v. Scott*, 92 Wn.2d 209, 212, 595 P.2d 549 (1979).

Although CR 60(b) and CrR 7.8(b) require that all motions to vacate a judgment be brought within a reasonable time (not to exceed one year in certain listed instances), a party may seek vacation of a void judgment "regardless of the lapse of time." *Allstate Ins. Co. v. Khani*, 75 Wn.App. 317, 323-24, 877 P.2d 724 (1994) (citing *In re Marriage of Leslie*, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989)). Thus, as the court notes in *Allstate Ins. Co. v. Khani*, "not even the doctrine of laches bars a party from attacking a void judgment.' *Khani*, 75 Wn.App. at 324 (citing *Leslie*, 112 Wn.2d at 619-20). In addition, while ordinarily a trial court's decision to grant or deny a motion to set aside a judgment is reviewed under an abuse of discretion standard, *Khani*, 75 Wn.App. at 323, a trial court has a mandatory duty to vacate void judgments. *Scott v. Goldman*, 82 Wn.App. 1, 6, 917 P.2d 131 (1996); Khani, 75 Wn.App. at 323.

For example, in *Allstate Ins. Co. v. Khani, supra*, the defendant brought a motion under CR 60(b)(5) to vacate a default judgment (and subsequent order of garnishment) plaintiff Allstate Insurance Company obtained against him five years previous following the defendant's involvement in an automobile accident. In support of the motion the defendant argued that the judgment was void because of a defect in service. Although the trial court ultimately accepted the defendant's factual claim on the defect in service, it none the less denied relief on the basis that the

defendant had been aware of the judgement for almost four years and had failed to bring the motion within a "reasonable time" as required under the rule. The defendant then appealed.

The Court of Appeals reversed, finding (1) that both the judgment and subsequent proceedings based upon that judgment were "void" for want of personal jurisdiction, (2) that his action under CrR 7.8(b)(5) was not subject to a time limit, and (3) that the court had a non-discretionary duty to vacate the judgment. The Court of Appeals stated as follows on these issues:

> In the present case, the trial court expressly found Allstate's service of process was defective. Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void. Because a party may move to vacate a void judgment at any time the trial court erred by finding that Khani failed to bring his motion within a reasonable time. Further, as discussed in detail below, the trial court's finding that Khani had actual notice of the default judgment through the DOL notice is irrelevant on these facts. More significantly, the trial court erred by denying Khani's motion because it failed to fulfill its nondiscretionary duty to vacate a void judgment. Thus, the trial court's order must be reversed and the case remanded with instructions to vacate the default judgment and quash the writ of garnishment.

*Allstate Ins. Co. v. Khani*, 75 Wn.App. at 324-325 (quotes and citations omitted).

Generally speaking, a judgment is void if the trial court entered it without personal jurisdiction, without subject matter jurisdiction or without authority, statutory or otherwise. *Dike v. Dike*, 75 Wn.2d 1, 448 P.2d 490

(1968). *See also, Marley v. Department of Labor & Indus.*, 72 Wn.App. 326, 334, 864 P.2d 960 (1993) (A void judgment is one that "exceed[s] . . . statutory authority" while an erroneous judgment is one that "erroneous[ly] interpret[s] . . . the statute . . . .")

For example, in *Doe v. Fife Mun. Court,* 74 Wn.App. 444, 874 P.2d 182 (1994), defendants who had paid court costs under orders of deferred prosecution brought a civil action against the courts that had granted those orders seeking to recover those costs upon a theory that the deferred prosecution statute in effect at the time did not allow for the assessment of costs. In making this argument plaintiffs cited to the decision of the Court of Appeals in *State v. Friend*, 59 Wn.App. 365, 797 P.2d 539 (1990), which held that the deferred prosecution statute did not authorize the imposition of costs.

The defendant Municipal Courts responded by filing motions for summary judgment upon an argument that collateral estoppel barred the relief requested because the plaintiff had failed to seek recovery of the costs during the pendency of the deferred prosecutions where the costs were imposed. Although the defendants did not contest the plaintiffs' interpretation of the decision in *Friend*, they none the less argued that the various impositions of costs were merely erroneous and as such were subject to collateral estoppel. Plaintiffs replied arguing that the impositions of costs

were void, and as such plaintiffs could seek relief from them at any time.

In addressing these arguments the Court of Appeals noted that the validity of the opposing arguments rested upon the determination whether the orders for costs were void or merely voidable or erroneous. In the former case collateral estoppel did not apply while in the latter case it did. The court framed this issue as follows:

> The critical question here is whether the judgment ordering payment of court costs was void or merely erroneous. As we have observed, if the judgments were void, then the [plaintiffs] are not collaterally estopped from maintaining an independent action to recover the costs. If, however, the judgments were merely erroneous, then the [plaintiffs'] action could be barred by principles of collateral estoppel.

*Doe v. Fife Mun. Court*, 74 Wn.App. at 449 (footnote omitted).

In addressing this question, the court first noted that in these cases the trial court did have both personal and subject matter jurisdiction over the plaintiffs when it imposed the costs. However, that did not mean that the imposition of costs, which was in excess of the courts' statutory authority, was not void. The court held:

> Although we recognize that the judgments of the courts of limited jurisdiction were not entirely void, one portion of an order or judgment can be considered void, if a court acted without jurisdiction as to a portion of that order or judgment. *In re Marriage of Leslie*, 112 Wn.2d 612, 618-21, 772 P.2d 1013 (1989). In *Leslie*, the trial court had awarded relief that exceeded the relief requested in the complaint, and the court held that only "that portion" of the judgment was void. *Leslie*, at 618, 772 P.2d 1013. That is the case here. The deferred prosecution orders were valid except for the portion of the

judgments imposing costs, which was void.

*Doe v. Fife Mun. Court*, 74 Wn.App. at 451.

The decision in *In re Marriage of Leslie*, 112 Wn.2d 612, 772 P.2d 1013(1989), is also instructive on what constitutes a void judgment under circumstances in which the court undoubtedly has personal and subject matter jurisdiction over the parties and action. In this case a father who had previously submitted to entry of a default divorce degree much later moved under CR 60(b)(5) to vacate that portion of the decree that required him to pay certain medical expenses. He argued that the imposition of the medical expenses requirement in the original decree was void because it exceeded the scope of the request for relief in the original complaint. The trial court denied the motion on the basis that it had not been brought within a reasonable period of time as is required under CR 60(b). The court also denied relief on the basis of laches, finding that (1) the father had knowledge of the substance of the decree, (2) the father had unreasonably delayed in bringing the motion to vacate, and (3) the mother would suffer damage as a result of this unreasonable delay were the court to grant the relief requested. The father appealed from this order and the Court of Appeals affirmed.

On further review the Washington Supreme Court reversed these rulings, finding the following: (1) a trial court may not grant relief in excess of that requested in the complaint when it enters a default judgment, (2) any

portion of a default judgment that exceeds the relief requested in the complaint is void, and (3) an action under CrR 60(b)(5) to seek relief from the void portion of a judgment may be brought at any time and is not subject to a laches defense.

In the case at bar Mr. McKown's attorney admitted during argument on his motion that the Thurston County Superior Court generally had both subject matter jurisdiction and personal jurisdiction in the case. However counsel argued that under the decision in *In re Martin*, 163 W.2d 501, 182 P.3d 951 (2008), the order of commitment was void because the Thurston County Superior Court exceeded its statutory authority when it heard the case. Thus, counsel argued that the order was void as opposed to merely erroneous and could be brought at any time. The following examines the *Martin* decision.

In *Martin, supra*, the Washington Attorney General (AG) filed a Petition to Commit the respondent as a sexually violent predator in Thurston County Superior Court at the request of the Thurston County Prosecutor. Among other things the petition alleged that the respondent had two prior qualifying sexually violent convictions: one in Oregon and one in Clark County Washington. The Respondent later moved to dismiss the petition on an argument that the Thurston County Prosecutor did not have authority to file it or request that the Attorney General file it. Specifically, Respondent

argued that (1) under RCW 71.09.030 the only party authorized to file or request that the AG file a petition to commit a person as a sexually violent predator was the prosecutor of the Washington county in which one of the underlying offenses was committed, and (2) that since his underlying Washington offense was committed in Clark County, only the Clark County Prosecutor could file the action or request that the AG file it.

The trial court denied the respondent's motion and then entered an order committing the respondent as a sexually violent predator upon stipulated facts. The respondent appealed but the Court of Appeals affirmed. The respondent then sought and obtained review before the Washington Supreme Court. In addressing the issues before it, the court first noted that under the clear language of RCW 71.09.030 only the prosecutor from the Washington County in which one of the underlying offenses was committed had authority to file the action. The court then went on to address the state's argument, adopted by the Court of Appeals, that RCW 71.09.030 created subject matter jurisdiction over commitment proceeding in any Washington Superior Court and merely required that the venue rest in the county in which one of the underlying offenses was committed. Thus, the Court of Appeals held that the respondent's failure to bring a motion for change of venue waived the issue.

Although the Supreme Court agreed with the analysis subject matter

jurisdiction, it found this fact irrelevant. The court stated:

> The State argues RCW 71.09.030 creates subject matter jurisdiction over commitment petitions but does not specify a venue for when the sexually violent offense occurs out-of-state. The Court of Appeals agreed with the State, holding the language in RCW 71.09.030 providing the prosecuting attorney of the county where the respondent was convicted or charged was "only venue language" requiring a motion to change venue.
>
> This argument about subject matter jurisdiction and venue obfuscates the real question before us, which is to determine whom the statute authorizes to file the petition, not where the petition is filed. Certainly naming a specific prosecutor as the filing authority establishes venue; however, venue does not supersede the expression of authority. If the prosecutor who instituted the proceeding was not authorized to do so, "logically it follows that he cannot insist upon a [motion to change venue] any more than he can claim the right to institute the suit in the first instance."

*In re Martin*, 163 Wn.2d at 515 (citations omitted).

The court then reversed the decisions of the trial court and the Court of Appeals. The court's order read as follows:

> We hold RCW 71.09.030 unambiguously authorizes a specific prosecuting attorney to file, or request the filing of, a sexually violent predator petition, namely the prosecuting attorney who convicted or charged the alleged sexually violent predator. The Thurston County prosecutor lacked the authority to commence the commitment proceedings against Martin because the Thurston County prosecutor never convicted or charged Martin. Before the State can commit a person for what may arguably be the remainder of his life, the State must be put through the inconvenience of fully complying with the statute.
>
> We reverse the Court of Appeals decision and remand to Thurston County Superior Court with directions to grant (petitioner's] motion to dismiss the State's petition.

*In re Martin*, 163 Wn.2d at 516.

The relevant facts in the case at bar are essentially identical to those in *Martin*. In both cases the AG filed the petition for commitment in Thurston County Superior Court at the request of the Thurston County Prosecutor. In both cases the state's petition relied upon the respondents' commission of two prior sexually violent offenses. Finally, in both cases neither of those underlying offenses occurred in Thurston County. Thus, in the same manner that the trial court erred when it granted the petition in *Martin*, so the trial court erred when it granted the petition in the case at bar.

Of course there is one salient fact that distinguishes *Martin* from the case at bar. In *Martin* the respondent brought a motion to dismiss during the pendency of the proceedings and in the case at bar the respondent brought a motion to dismiss 12 years after entry of the commitment order. The trial court denied the motion based upon this one fact, holding as follows:

> In the Court's opinion, that determines the matter before it today. Without it being a subject matter jurisdiction issue, in the Court's opinion, the aspect of CR 60 that does not permit motions like this brought beyond a lengthy period of time applies and that the 12 years in the interim is too long for the Court to grant the motion to dismiss under CR 60, considering it's not a subject matter jurisdiction issue.

RP 22.

This ruling by the trial court was erroneous because it failed to recognize that under CR 60(b)(5) a judgment can also be void based upon

want of personal jurisdiction and based upon the court acting without authority. As the decisions in *Doe v. Fife Mun. Court* and *In re Marriage of Leslie* explain, when a court acts in excess of its authority (imposing unauthorized costs in *Doe* and granting relief not requested in a complaint in *Leslie),* that portion of the judgment entered without authority is void. This conclusion follows even though the court might generally have subject matter jurisdiction over the controversy and personal jurisdiction over the parties. Under the decision in *Martin* this is precisely the situation in the case at bar. The trial court acted without authority when it ruled in a case initiated by a party acting without legislative authority to so act. As such, the judgement the court entered was and remains void and may be challenged at any point in time, including 12 years after its entry. Thus, in this case, the trial court erred when it denied the petitioner's motion to vacate the order of commitment.

## CONCLUSION

The order of commitment in this case was and remains void. As a result, the trial court erred when it denied the petitioner's motion to vacate it.

DATED this 18th day of July, 2013.

Respectfully submitted,

John A. Hays, No. 16654
Attorney for Appellant

## APPENDIX

### RCW 71.09.030
### Sexually Violent Predator Petition – Filing

(1) A petition may be filed alleging that a person is a sexually violent predator and stating sufficient facts to support such allegation when it appears that: (a) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement; (b) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement; (c) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released, pursuant to RCW 10.77.086(4); (d) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released, pursuant to RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act.

(2) The petition may be filed by:

(a) The prosecuting attorney of a county in which:

(i) The person has been charged or convicted with a sexually violent offense;

(ii) A recent overt act occurred involving a person covered under subsection (1)(e) of this section; or

(iii) The person committed a recent overt act, or was charged or convicted of a criminal offense that would qualify as a recent overt act, if the only sexually violent offense charge or conviction occurred in a jurisdiction other than Washington; or

(b) The attorney general, if requested by the county prosecuting attorney identified in (a) of this subsection. If the county prosecuting attorney requests that the attorney general file and prosecute a case under this chapter, then the county shall charge the attorney general only the fees, including filing and jury fees, that would be charged and paid by the county prosecuting attorney, if the county prosecuting attorney retained the case.

## CR 60
## RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from

prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order

shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

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

| | |
|---|---|
| **In Re the Detention of,** | |
| | **NO. 4500-0-II** |
| **vs.** | **AFFIRMATION OF SERVICE** |
| **Todd Michael Place - aka McKown, Appellant.** | |

**STATE OF WASHINGTON )**
**) : ss.**
**County of Thurston )**

**CATHY RUSSELL,** states the following under penalty of perjury under the laws of Washington State. That at all times herein mentioned I was and now am a citizen of the United States and resident of the State of Washington, over the age of eighteen and competent to be a witness and make service herein.

On JULY 18th, 2013, I personally placed in the mail the following documents.

1. BRIEF OF APPELLANT

to the following:

ATTY GENERAL'S OFFICE
CRIMINAL JUSTICE DIVISION
800 FIFTH AVE., SUITE 2000
SEATTLE, WA 98104-3188

Dated this 18TH day of JULY, 2013 at LONGVIEW, Washington.

/S/
Cathy Russell
Legal Assistant to John A. Hays

# HAYS LAW OFFICE

# July 18, 2013 - 3:55 PM

**Transmittal Letter**

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Court of Appeals Case Number: 44500-0

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**Comments:**

No Comments were entered.

Sender Name: Cathy E Russell - Email: **jahayslaw@comcast.net**