

No. 98552-9

**RECEIVED**  
MAY 18 2020

Washington State  
Supreme Court

**IN THE SUPREME COURT OF  
THE STATE OF WASHINGTON**

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**STATE OF WASHINGTON**

**v.**

**SHAWN ALAN STAHLMAN**

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**PETITION FOR DISCRETIONARY REVIEW  
(36845-9-III)**

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**Presented By:  
Shawn Alan Stahlman, Pro Se**

**Shawn Alan Stahlman, 818612  
Monroe Correctional Complex  
P.O. Box 888  
Monroe, WA 98272**

**The distinct line between an indigent defense  
and prestigious counsel. We pray for acceptance.**

TABLE OF CONTENTS

I. IDENTITY.....1  
II. RELIEF SOUGHT.....1  
III. QUESTION(S) RAISED.....1  
IV. PROCEDURAL FACTS.....1-4  
V. ARGUMENT AND CONFLICTING CASE LAW.....4-7  
VI. CONCLUSION.....7-8

TABLE OF CASES

In Re Pers. Restrain of Dove, 196 Wn. App. 148,  
381 P.3d 1280 (2016).....4,5,8  
State v. Easterling, 157 Wn.2d 167, 173-74,  
137 P.3d 825 (2006).....6  
State v. Frawley, 181 Wn.2d 452, 458-59,  
334 P.3d 1022 (2014).....6,7  
State v. Irby, 170 Wn.2d 874, 880-81,  
246 P.3d 796 (2011).....6  
State v. Stahlman, \_\_\_ Wn. App. \_\_\_, (36845-9-III).....1-8

Supreme Court Cases

Boneclub.....7  
Presley V. Georgia, 558 U.S. 209, 215, 130 S. Ct. 721,  
175 L. Ed. 2d 675 (2010).....7  
Rushen V. Spain, 464 U.S. 114, 117, 104 S. Ct. 453,  
78 L. Ed. 2d 267 (1983).....6-7  
Snyder V. Massachusetts, 291 U.S. 97, 105-06,  
54 S. Ct. 330, 78 L. Ed. 674 (1934).....7

Other Authority

Wash. Const. art. 1 § 10 .....6  
Wash. Const. art. 1 § 22 .....6  
U.S. Const 14th amend. ....6  
RCW 10.73.090(1), 100, .....5  
CrR 7.8(a).....5

ATTACHMENT-A (ORDER AMENDING J&S)  
ATTACHMENT-B (DOC Staff Emails from Records Department)  
ATTACHMENT-C (UNPUBLISHED OPINION 36845-9-III)

I. IDENTITY

Shawn Alan Stahlman, appellant pro se, hereby brings forth this Petition For Discretionary Review and asks for the Relief Sought in Part II.

II. RELIEF SOUGHT

Mr. Stahlman respectfully asks the Supreme Court of Washington to accept review of this petition to settle the conflict of opinion between the courts as it relates to his issue.

III. QUESTION(S) RAISED

1. May a county prosecutor motion the superior court to resentence an individual after reviewing the sentencing transcripts and discovering that the transcripts reflected a "consecutive sentence" but the judgment and sentence reflects a "concurrent sentence", (more than one-year after the judgment became final)?
2. Did Mr. Stahlman have the right to be present when the Superior Court elected to allow a review of the sentencing transcripts, which resulted in a sentence increase upward of (4) years, and in which the sentencing court excercised its discretion to resentence Mr. Stahlman and eliminate his LFO's?

IV. PROCEDURAL FACTS

(i) Appellant Stahlman entered a plea of guilty to three counts of second degree theft and one

count of theft of a firearm on June 10, 2016.

The state and Mr. Stahlman agreed that for pleading guilty, Mr. Stahlman could argue for concurrent sentences.

(ii) Mr. Stahlman did argue on his own behalf at sentencing for concurrent sentences and the sentencing Judge appeared to argue or decide against Mr. Stahlman. However, when Mr. Stahlman received his Judgment and Sentence Court document, it reflects that no consecutive sentences requirements were ordered. Mr. Stahlman believed the Judge changed his mind or did not want the state to know.

(iii) More than a year later, after having relationship troubles, Mr. Stahlman's ex girlfriend contacted the county prosecutor out of spite and informed the prosecutor that Mr. Stahlman's Judgment and Sentence paperwork should have been marked consecutive like she thought the Judge had said.

(iv) On March 26th, 2018, more than (21) months later, and upon being petitioned by the Kittitas county prosecutors office, the Superior Court Amended Mr. Stahlman's Judgment and Sentence,

which increased the sentence he had come to accept by (4) years, and exercised its discretion and eliminated his discretionary LFO's and interest accrual provisions.

(v) The court of appeals states in its opinion that Mr. Stahlman was represented by an attorney at the hearing. However, the ORDER AMENDING Mr. Stahlman's Judgment does not memorialize any counsel present at the hearing to represent Mr. Stahlman, and was presented by the State. SEE ATTACHMENT-A (ORDER RE:)

(vi) Mr. Stahlman finally received notice of what the state and court had done on April 1st, 2019, and promptly filed an appeal. The state and the court initially said he was time barred, but the court extended the time for which to file an appeal. But the Courts ORDER extending the time in which to file was not needed, as Mr. Stahlman can demonstrate by DOC documents and staff, that he was not made aware of what happened until after April 1, 2019. SEE ATTACHMENT-B (DOC STAFF EMAILS from records department)

(vii) Upon hearing from Mr. Stahlman's estranged ex girlfriend, the Kittitas County Prosecutors Office, reviewed Mr. Stahlman's sentencing transcripts looking for the part of the record that talked about sentencing. After finding what Mr. Stahlman assumes was excuse to attack his valid judgment and sentence, the state petitioned the superior court behind his back and changed his valid judgment and sentence.

#### V. ARGUMENT AND CONFLICTING CASE LAW

(i) The case law seems to be clear on the subject. "Facial invalidity of a criminal judgment and sentence may not be found on the basis of review of the report of proceedings from a sentencing hearing. Nor may a court find facial invalidity on the basis of a determination that the report of proceedings from a sentencing hearing does not support an express finding that the sentencing court made on the face of the judgment and sentence." In Re Pers. Rstraint of Dove, 196 Wn. App. 148, 381 P.3d 1280 (2016).

(ii) The Court of Appeals states that the the provision on the June 10, 2016 judgment and sentence was clearly an oversight. (Op. Page 4). The COA cites CrR 7.8(a) as authority to correct a mistake at any time. However, Mr. Stahlman has been under the impression that the judge simply changed his mind at the last minute. And this ignores the fact that the state went "fishing" in the report of proceeding to find this alleged mistake.

(iii) At the hearing the court held to change Mr. Stahlman's Judgment and Sentence, the court excercised its discretion and eliminated some discretionary LFO's, thus making it more than merely a ministerial act.

(iv) The state was barred from fishing in the transcripts for errors, Dove, 196 Wn. App. 148, supra., and additionally barred from attacking his valid judgment and sentence more than one-year after the judgment became final, if it was rendered by a court of competent jurisdiction. RCW 10.73.090(1),100.

(v) Mr. Stahlman additionally argued in his appeal and motion for reconsideration that he was entitled to be present at the hearing in which his judgment and sentence was changed and the interests accrual provision and discretionary LFO's were eliminated.

(vi) Mr. Stahlman cites Wash. Const. art 1 § 22, in all prosecutions the defendant shall enjoy the right to appear and defend in person..., and art 1 § 10 guarantees that justice in all cases shall be administered openly. State v. Frawley, 181 Wn.2d 452, 458-59, 334 P.3d 1022 (2014). See also U.S. Const. 14th amend., and State v. Easterling, 157 Wn.2d 167, 173-74, 137 P.3d 825 (2006), "Whether a defendant's public trial right has been violated is reviewed de novo."

(vii) Stahlman argued concurrent sentences at sentencing, and that is how it later appeared in judgment. When the court resentenced him, it violated his right to be present. "A criminal defendant has a fundamental right to presence at all "critical stages" of a trial." State v. Irby, 170 Wn.2d 874, 880-81, 246 P.3d 796 (2011), citing Rushen V. Spain, 464 U.S. 114, 117, 104 S. Ct. 453 78



L.Ed.2d 267 (1983). A "critical stage" is one at which the defendant's presence has a relation reasonably substantial to the fullness of his opportunity to defend against the charge. Quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105-06, 54 S. Ct. 330, 78 L. Ed. 674 (1934).

(viii) To Mr. Stahlman, the court was essentially "closed" to him in violation of Boneclub. "[A] closure unaccompanied by a Boneclub analysis on the record will almost never be considered justified." *Frawley*, supra., citing *Presley v. Georgia*, 558 U.S. 209, 215, 130 S. Ct. 721, 175 L. Ed. 2d 675 (2010).


## VI. CONCLUSION

In summary, the prosecutors went fishing in Mr. Stahlman's sentencing transcripts on a tip from his estranged ex girlfriend. Upon finding, (we assume), part of the record in which the judge may have said no to Mr. Stahlman's request for concurrent sentences, they motioned the sentencing court behind Mr. Stahlman's back and amended his valid judgment and sentence, ("albeit after 21 months") COA Op. Page 5. They motioned the court and held the hearing outside Mr. Stahlman's presence, never giving him the opportunity to appear

and defend in person. Because the prosecutors had to go fishing in the sentencing transcripts to find the alleged error, the Courts UNPUBLISHED Opinion in State v. Stahlman, \_\_\_ Wn. App. \_\_\_, (36845-9-III) is in CONFLICT with the courts holdings in In Re Dove, 196 Wn. App. 148, supra..

Mr. Stahlman therefore respectfully asks this Supreme court of Washington to accept review of the unpublished decision in 36845-9-III and to apply the relevant controlling federal case law, to exhaust the remedies necessary to give the states highest court a full and fair opportunity to decide the merits of the issues in dispute. Mr. Stahlman asks the court to reverse the COA and to reinstate the original valid judgment and sentence, prior to the states fishing expedition into the report of proceedings. In the alternative, he asks that the decision be reversed, and that a new sentencing is ordered where he may be present in court.

Respectfully submitted this 13th day of May, 2020.

  
Shawn A. Stahlman, Appellant pro se

No. 36845-9-III

ATTACHMENT-A

PETITION FOR DISCRETIONARY REVIEW



ATTACHMENT

(A)

818612

FILED

18 MAR 25 PM 3:36

KITTITAS COUNTY  
SUPERIOR COURT CLERK

at Barscnaw, Clerk of the above-entitled Court  
hereby certify that the ensuing instrument is  
true and correct copy of the original now on file  
in my office. IN WITNESS WHEREOF, I hereunto set  
my hand and the seal of said Court this 26  
day of March 2018.  
ALBARSCHAW  
y: Glen M. Ellensburg Deputy  
G. Loates

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

State of Washington )  
vs. Shawn )  
Stahlman )

NO. 15-1-00265-1  
ORDER RE: Amend 1 & 5

THIS MATTER having come on for hearing before the undersigned Judge of the above-entitled court, IT IS HEREBY ORDERED THAT:

sentence in 15-00265-1 is to run  
consecutively to Yakima County  
case 15-1-01489-2.

RECEIVED  
MAR 27 2018

DOC-ELLENSBURG

DONE IN OPEN COURT this 26<sup>th</sup> day of March, 2018.

JUDGE [Signature]  
Approved as to form:

Presented by: [Signature]  
Attorney for

Attorney for

No. 36845-9-III

ATTACHMENT-B

PETITIONER FOR DISCRETIONARY REVIEW

**Burns, Shawn M. (DOC)**

---

**From:** Prohn, Allison N. (DOC)  
**Sent:** Monday, April 22, 2019 8:55 AM  
**To:** Burns, Shawn M. (DOC); Bahner, Parker (DOC)  
**Subject:** RE: STAHLMAN 818612

Hey Shawn,

It looks like it was received by DOC Ellensburg on 3/27/18. MCC-TRU received it on the chain on 4/1/19 where the Amended Order was caught and changes were made.

Thanks,

Allison Prohn, **CRTL**

**Twin Rivers Unit – Records (H-O)**

Monroe Correctional Complex

(360) 794-2566

*"The two most important days in your life are the day you are born and the day you find out why". – Mark Twain*

---

**From:** Burns, Shawn M. (DOC)  
**Sent:** Monday, April 22, 2019 8:48 AM  
**To:** Bahner, Parker (DOC) <pbahner@DOC1.WA.GOV>  
**Cc:** Prohn, Allison N. (DOC) <anprohn@DOC1.WA.GOV>  
**Subject:** RE: STAHLMAN 818612

Thanks, I made him aware of this. He is now asking when we received this, as it relates to legal action he is taking on it.

---

**From:** Bahner, Parker (DOC)  
**Sent:** Tuesday, April 16, 2019 9:45 AM  
**To:** Burns, Shawn M. (DOC) <smburns@DOC1.WA.GOV>  
**Subject:** STAHLMAN 818612

Hi Burns,

So I know I just corrected the jail credits on this offender's sentence which pushed his ERD out a month. Well.. I received an order from the superior courts and the judge has strictly written out that his sentences now need to run consecutive to each other. So now AI&Aj will run, and then AK&AL start running after the longest running count in the other cause which is AJ. If the offender asks I just wanted you to be aware of this.

The order is attached for reference.

File: Amended186.pdf

Thanks!

*Parker Bahner* | Correctional Records Technician

Monroe Correctional Complex

Twin Rivers Unit – Records(P-Z)

(360) 794-2415 - 📞 | (360) 794-2365 – fax

[pbahner@doc1.wa.gov](mailto:pbahner@doc1.wa.gov)

My hours are 0600-1530

<< OLE Object: Picture (Device Independent Bitmap) >>

No. 36845-9-III

ATTACHMENT-C

PETITION FOR DISCRETIONARY REVIEW



**FILED**  
**FEBRUARY 27, 2020**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	
	)	No. 36845-9-III
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
SHAWN ALAN STAHLMAN,	)	
	)	
Appellant.	)	

FEARING, J. — Shawn Stahlman appeals from the amended judgment and sentence entered for his Kittitas County convictions on plea of guilty to three counts of second degree identity theft and one count of theft of a firearm. He contends, and the State concedes, that a remand is necessary to strike the \$200 criminal filing fee, \$100 DNA collection fee, and the interest accrual provision on legal financial obligations (LFOs). We agree and remand accordingly. We reject Mr. Stahlman’s contention raised in a statement of additional grounds for review.

**FACTS AND PROCEDURE**

In light of the limited issues raised, the facts leading to Shawn Stahlman’s identity theft and theft of a firearm convictions are unimportant to this appeal. After Stahlman pled guilty, the court imposed concurrent sentences totaling 77 months for those crimes. The court also expressly stated that the sentence would run consecutively to his existing

No. 36845-9-III  
*State v. Stahlman*

sentence in a Yakima County case. The court found him indigent and imposed legal financial obligations that included a \$500 victim penalty assessment, \$200 criminal filing fee, and \$100 DNA collection fee. A boilerplate paragraph in section 4.3 of the judgment and sentence required accrual of interest on all financial obligations:

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

Clerk's Papers at 40. The judgment and sentence was entered on June 10, 2016.

Due to clerical oversight, the consecutive sentencing was not memorialized on the judgment and sentence document. On March 13, 2018, the State filed a motion to amend the 2016 judgment and sentence to reflect that the 77-month sentence runs consecutively to the Yakima County sentence. The court entered an order amending the judgment and sentence on March 26, 2018. Shawn Stahlman was not personally present at the hearing but was represented by counsel.

Shawn Stahlman did not file a notice of appeal until May 22, 2019. Our commissioner granted his motion to extend the time for filing the notice of appeal. The trial court found him indigent for purposes of appeal.

#### ANALYSIS

Shawn Stahlman contends the \$200 criminal filing fee, \$100 DNA fee, and interest accrual provision must be struck from his judgment and sentence based on *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). The State concedes. We agree.

No. 36845-9-III  
*State v. Stahlman*

House Bill 1783, which became effective June 7, 2018, prohibits trial courts from imposing discretionary LFOs on defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 6(3); *Ramirez*, 191 Wn.2d at 746. *Ramirez* held that the amendment applies prospectively and is applicable to cases pending on direct review and not final when the amendment was enacted. Among the changes was an amendment to former RCW 36.18.020(2)(h) (2015) to prohibit the imposition of the \$200 criminal filing fee on indigent defendants, an amendment to former RCW 43.43.7541 (2015) to make the DNA database fee no longer mandatory if the State has previously collected the offender's DNA as a result of a prior conviction, and an amendment to RCW 10.82.090(1) to provide that "[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations." LAWS OF 2018, ch. 269, §§ 1, 17(2)(h), 18.

*State v. Ramirez* controls Shawn Stahlman's appeal. He was indigent throughout the trial court proceedings and remains indigent on appeal. The State acknowledges that his DNA has previously been collected pursuant to a felony conviction and concedes that the judgment language requiring interest on his legal financial obligations is error. Accordingly, the \$200 criminal filing fee, \$100 DNA collection fee, and interest accrual provision on Stahlman's financial obligations should be struck pursuant to *Ramirez*.

Given that the corrections will involve no exercise of the court's discretion, Stahlman's presence is not required. See *State v. Ramos*, 171 Wn.2d 46, 48, 246 P.3d 811 (2011).

No. 36845-9-III  
*State v. Stahlman*

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Shawn Stahlman filed a statement of additional grounds, raising one ground for review. He contends that the March 26, 2018 order amending his June 10, 2016 judgment and sentence to run his sentence consecutively to the Yakima County sentence should be invalidated and the original 77-month sentence reinstated because the amendment was untimely. He reasons that the trial court was required to correct any mistakes on the judgment and sentence within 90 days and the time limit for collateral attack is one year, whereas the State waited 21 months to seek the amendment. He states that neither he nor the Department of Corrections was notified of the amendment until April 2019 and this puts a strain on him and his loved ones because his release date is now changed from 2021 to 2025. His arguments do not merit relief.

CrR 7.8(a) provides in pertinent part:

Clerical mistakes in judgments . . . 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.

(Emphasis added.)

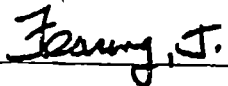
Here, the sentencing court's omission of the consecutive sentence provision on the June 10, 2016 judgment and sentence was clearly an oversight, as the court expressly pronounced the consecutive sentence during the original sentencing hearing. CrR 7.8(a) sets no time limit to correct a clerical mistake. The court, thus, properly corrected the

No. 36845-9-III  
*State v. Stahlman*

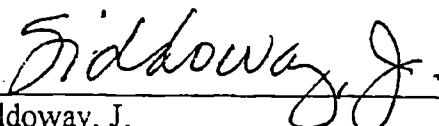
clerical error when notified, albeit after 21 months. Shawn Stahlman was represented by counsel at the hearing, and his notice of appeal shows that the DOC received the order amending the judgment and sentence on March 27, 2018, the day after entry. Stahlman is required to serve the lawfully imposed sentence, as amended. He shows no error.

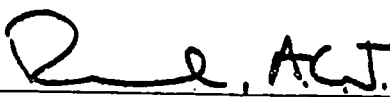
Remanded to strike the \$200 criminal filing fee, \$100 DNA collection fee, and interest accrual provision from the judgment and sentence. The judgment and sentence as amended is otherwise affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Fearing, J.

WE CONCUR:

  
\_\_\_\_\_  
Siddoway, J.

  
\_\_\_\_\_  
Pennell, A.C.J.

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MAY 18 2020

Washington State  
Supreme Court

36845-9-III

STATE OF WASHINGTON )

v. )

SHAWN ALAN STAHLMAN )

NO.

AFFIDAVIT OF SERVICE  
BY MAILING

I, SHAWN ALAN STAHLMAN do hereby certify that I have served the following documents.

**PETITION FOR DISCRETIONARY REVIEW**

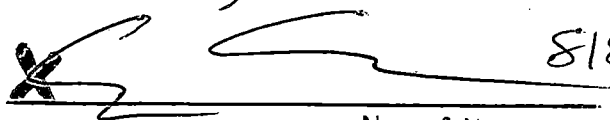
Upon; Washington Court of Appeals  
Division Three  
500 N. Cedar St.  
Spokane, WA 99201-1905

WASHINGTON STATE SUPREME COURT  
TEMPLE OF JUSTICE  
P.O. BOX 40929  
OLYMPIA, WA 98504

By placing same in the United States mail at:

Shawn A. Stahlman, WDOC# 818612  
MCC/TRU/B-620-1  
P.O. Box 888  
Monroe, WA 98272

On this 13 day of May, 2020.

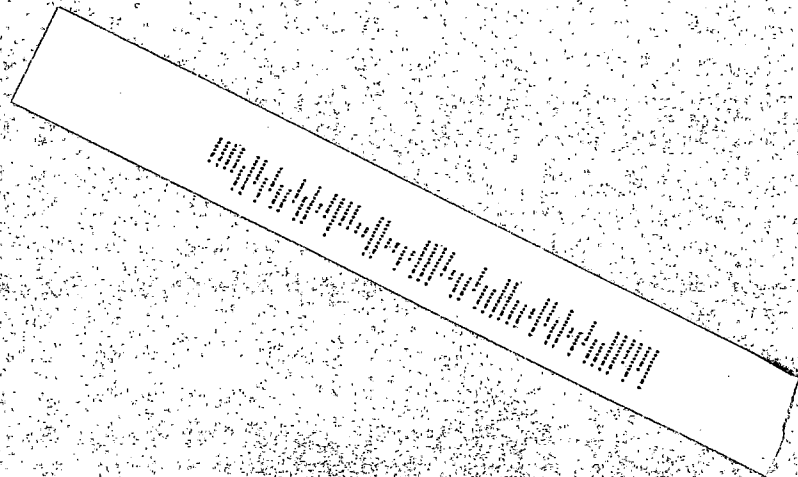
 818612

Name & Number

Affidavit pursuant to 28 U.S.C. 1743. Dickerson v. Wainwright 625 F.2d 1184 (1980): Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

Shawn A. Stahlman # 818612  
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Monroe, WA 98272

Washington State  
Temple of J  
P.O. Box 400  
Olympia, W



per 5/13/2020