

FILED
SUPREME COURT
STATE OF WASHINGTON
1/29/2021 8:00 AM
BY SUSAN L. CARLSON
CLERK

No. 993769

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

RICHARD VASQUEZ, JR., Petitioner.

ANSWER TO PETITION FOR REVIEW

Tamara A. Hanlon, WSBA #28345
Senior Deputy Prosecuting Attorney
Attorney for Respondent

JOSEPH BRUSIC
Yakima County Prosecuting Attorney
128 N. 2d St. Rm. 329
Yakima, WA 98901-2621

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
A. IDENTITY OF RESPONDENT	1
B. COURT OF APPEALS DECISION	1
C. ISSUE PRESENTED FOR REVIEW	1
D. STATEMENT OF THE CASE	1
E. ARGUMENT WHY REVIEW SHOULD BE DENIED	9
F. CONCLUSION	11

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
State v. Moretti, 193 Wn.2d 809, 446 P.3d 609 (2019).....	10
State v. Teas, 10 Wash. App. 2d 111, 447 P.3d 606 (2019)	9
State v. Vasquez, No. 36281-7-III, 2020 WL 7258650 (Wash. Ct. App. Dec. 10, 2020).....	11
Rules	
RAP 13.4(b).....	1, 11

A. IDENTITY OF RESPONDENT

The Respondent is the State of Washington.

B. COURT OF APPEALS DECISIONS

At issue is the court of appeals decision filed on December 10, 2020 in Division Three of the Court of Appeals.

C. ISSUE PRESENTED FOR REVIEW

1. Does the court of appeals decision meet the criteria for review under RAP 13.4(b)?

D. STATEMENT OF THE CASE

The Appellant, Richard Vasquez, Jr., was convicted of first degree burglary, two counts of first degree kidnapping, two counts of first degree robbery, first degree assault, second degree assault, and first degree unlawful possession of a firearm. CP 235-36. The convictions stemmed from the following facts admitted at trial:

In September of 2014, a 48-year-old adult male, Richard Vasquez, asked his long-time friend, Lawrence Quiroz, if he had any weapons and if he would help him do a home invasion robbery. RP 567-68.¹ Specifically, Vasquez wanted a pistol. RP 568. The home invasion had been planned for some time. RP 571.

¹ The Verbatim Report of Proceedings prepared by Joan E. Anderson will be referenced as "RP __."

The targets were two older individuals who lived in West Valley. RP 548. Vasquez told Mr. Quiroz he was targeting them because they were older and would not put up a fight. RP 569. Vasquez also told him was targeting them for gold, money, jewelry, and similar items. RP 569. Vasquez wanted Mr. Quiroz to be a driver but Mr. Quiroz declined. RP 569. Later on, about two weeks prior to the robbery, Vasquez and another individual, Samuel Crafton-Jones, showed Mr. Quiroz the pistols they acquired. RP 570. Vasquez had a 9mm and Crafton-Jones had a .380. RP 571.

On the morning of October 1, 2014, Kristen Fork and her significant other, Robert Miller, got up around 5:30 in the morning and were getting ready for the day. RP 533. Ms. Fork had a landscaping business and planned to work with a client that day. RP 532-33. It was a beautiful fall day and she was excited to go to work. RP 533. She was in the master bedroom getting laundry ready. RP 532.

Mr. Miller was in another room watching the news. RP 534. At about 6:15 a.m., Mr. Miller heard a knock at the front door. RP 493. He opened the door and a Hispanic man, later identified as Richard Vasquez, was at the door. RP 494. Vasquez claimed his car was overheating. RP 494. Mr. Miller told him to stay where he was, and shut the front door. RP 495.

Mr. Miller then went to the master bedroom and told Ms. Fork, that something was just not right. RP 495. He left and walked into the dining room, at which point Vasquez and another male, later identified as Samuel Crafton-Jones, came through his front door. RP 495. Crafton-Jones held up a gun to Mr. Miller's head and said, "I know you've got money. I know you've got gold." RP 496. Crafton-Jones threatened that he would kill both him and Ms. Fork and that he would kill the police. RP 496.

Both Mr. Miller and Ms. Fork were tied up and threatened repeatedly. RP 338-39, 497-98. Crafton-Jones pistol-whipped Mr. Miller in the back of his head. RP 497, 499. Both victims offered what little cash they had to Vasquez and Crafton-Jones. RP 503. Using a ruse, Ms. Fork was able to escape by jumping out of a bedroom window. RP 541-42. She made it to the front yard where she was pistol-whipped and threatened some more. RP 543-45. Both males kicked and hit her in the face, shattering her cheekbone and dentures. RP 544-45. She continued to yell for help. RP 544. A neighbor came out and Vasquez and Crafton-Jones ran for their van. RP 544. Despite being severely and permanently injured, Ms. Fork was able to memorize the license plate number for the van. RP 545-46.

One of the neighbors, David Gutierrez, woke up to Ms. Fork screaming loudly and heard a truck or van leaving in a hurry. RP 215, 218. He then saw Ms. Fork in the middle of the road. RP 215. She was bleeding profusely from her face and was covered in blood. RP 215. She told him, "Robbie is inside, and they beat him." RP 216. Mr. Gutierrez went to her house and found Mr. Miller walking with his hands tied tightly behind his back. RP 217. Mr. Gutierrez helped untie him. RP 217.

A neighbor called 911 at 6:38 a.m. RP 71, 545-6. Yakima Police Department Officer Hansen responded and contacted both victims. RP 75. Ms. Fork was bleeding from her head and had severe facial injuries, including open lacerations and multiple fractures. RP 75, 77, 102-03, 340-41, 434, 471-72. Mr. Miller also sustained facial injuries, including a detached retina and swelling around his face and the back of his head. RP 104, 110, 290, 311, 510, 516.

Officers observed a significant amount of blood in the front yard, along with a window screen and Ms. Fork's broken glasses and dentures. RP 104, 107-09, 116, 159, 236, 239, 282, 287-90, 329, 555, 561. Inside, the victims' bedrooms were in disarray and looked as if they had been rummaged through. RP 162, 237. A safe was open, coins and other items were strewn about the house, and drawers had been emptied out. RP 162-63, 165, 287-88, 291, 328-29, 342-43, 518. Mr. Miller reported that cash,

collectible coins, and a unique wristwatch were stolen from their home.

RP 241, 248-49, 298.

The suspects left behind a dark knit cap and a purple medical-type glove in the master bedroom. RP 165, 240, 242, 282-83, 291-92, 328, 349-50, 515, 519. The cap and glove were later tested for DNA. RP 399-403. The cap contained DNA matching Vasquez's DNA. RP 400. The glove contained DNA matching that of Crafton-Jones. RP 403.

Officer Hansen stayed at the scene just long enough to get a suspect description. RP 79. That description was "two suspects, possibly Hispanic males, approximately 30 years of age." RP 81. The getaway vehicle was a Ford Aerostar van, license plate AFS8595 registered to Tracy Ellis. RP 81, 120, 129, 134, 231, 345-46.

Two Union Gap police officers, Officer Way and Officer Edwards, went to Ms. Ellis' home at 2115 South Tenth in Union Gap and located the van at 6:45 a.m. RP 90, 120-21, 221-22. The hood of the van was still warm. RP 223. Using a flashlight, the officers saw an empty firearm holster in the van. RP 124, 223, 246-47, 299, 347.

Shortly thereafter, they saw two males, Vasquez and Crafton-Jones walking about thirty feet away from the van. RP 81, 90, 124, 225. The officers approached with guns at low ready and ordered them to stop walking. RP 125, 225. At 6:46 a.m., eight minutes after the 911 call,

Officer Edwards called on the radio that they had two at gunpoint. RP 229. Crafton-Jones was hesitant and did not comply right away. RP 225. Both suspects denied driving the van or knowing who was driving. RP 125. Vasquez began sweating and stated that they had been “tweaking” in a graveyard all night. RP 126.

By 6:49 a.m., Vasquez and Crafton-Jones were both in custody. RP 71. A stun-gun, black gloves, stocking hat, change, including foreign coins, and jewelry were found on Crafton-Jones. RP 127, 226, 308-10, 332-35, 442, 444. Some of the coins were similar to those seen on the floor of Mr. Miller’s bedroom. RP 241, 287. Mr. Miller was transported to the location, which is about a three-minute drive from his home, and positively identified both Vasquez and Crafton-Jones as those involved in the home invasion robbery. RP 83, 92, 112, 132, 144, 146, 507. Mr. Miller and Ms. Fork also later positively identified Vasquez in court. RP 507, 537.

Officers found a blue coat in the back yard of the Union Gap address. RP 180-82, 363, 368. The coat had keys and jewelry inside of it, including a necklace and a watch with the initials R.W.M. RP 180, 363, 368-70. Mr. Miller identified the keys and watch as his items. RP 521-22. Next to the coat was Vasquez’ identification card. RP 182, 363-64.

Multiple search warrants were executed, including warrants for the Union Gap property and the van. RP 84, 146, 157, 169-70, 195, 256, 299-300, 444, 477. In a camp trailer on the Union Gap property, detectives found mail addressed to Vasquez. RP 177, 183, 188. Vasquez had been staying in the trailer for about one month. RP 376. Detectives located a functioning Smith & Wesson 9 mm Luger firearm in a five-gallon bucket near a basement door. RP 174-6, 178, 197, 302, 304, 362-3, 365-6. The magazine and handgun were swabbed for DNA and DNA profiles on each matched that of Ms. Fork. RP 407.

In the van, officers saw a small silver-colored piece of jewelry on the driver's seat and a purple glove on the passenger-side floorboard that was similar to the one left behind in the victims' bedroom. RP 246-48, 347, 358. The black nylon gun holster was collected as well. RP 479-80. The registered owner of the van reported that she would let Vasquez and others drive the van. RP 377.

Photos were taken of Vasquez while he was in custody. RP 191-93. The photos showed a red discoloration on his hands, and a red staining at the end of a finger consistent with blood evidence. RP 192-93, 437-8. In addition, photos were taken of his shoes. RP 353-55. The shoes tested positive for the presence of blood. RP 404. When

deoxyribonucleic acid (DNA) was extracted from the shoes, the major DNA component matched Ms. Fork's DNA. RP 405.

Yakima Police Department's Forensic Lab Supervisor, Kristen Drury, processed the victims' home for fingerprints but none were recovered. RP 156-7.

The case proceeded to trial. The defense did not call any witnesses. RP 617.

The jury deliberated and Vasquez was convicted of first degree burglary, two counts of first degree kidnapping, two counts of first degree robbery, first degree assault, second degree assault, and first degree unlawful possession of a firearm. CP 235-36. He was sentenced to a total term of life imprisonment without the possibility of release or parole. CP 238. The life sentence was based on his two prior convictions for second degree assault, 03-1-01768-5, and first degree robbery while armed with a deadly weapon, 83-1-00019-4. CP 237; Sent. Ex. CC.² Vasquez pled to the prior robbery charge when he was sixteen years of age. Sent. Ex. CC.

Vasquez appealed and his convictions were affirmed. He now seeks discretionary review.

² The exhibits admitted during the sentencing hearing will be referenced as "Sent. Ex. __."

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. Vasquez provides no basis for review under RAP 13.4(b).

Vasquez claims that under article 1, section 14 of the Washington Constitution, his first degree robbery conviction, committed when he was sixteen years old, is categorically barred from qualifying as strike offense for his current sentence. This issue was decided by the Court of Appeals in *State v. Teas*, 10 Wash. App. 2d 111, 131, 447 P.3d 606, 618 (2019), review denied, 195 Wash.2d 1008 (2020). In *Teas*, the court held that such a sentence did not violate article 1, section 14. 10 Wash. at 131. The court first set forth the framework used for assessing a categorial bar challenge:

...we consider “(1) objective indicia of society’s standards to determine whether there is national consensus against sentencing those [of a particular class] to mandatory life imprisonment and (2) our own understanding of the prohibition of cruel punishment.” This second step requires this court to consider “‘the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question’ and ‘whether the challenged sentencing practice serves legitimate penological goals.’”

Id. at 133 (citations omitted). Working within that framework, the court first found that there was no national consensus against sentencing adults

as persistent offenders when their predicate offenses were “youthful.” *Id.*

at 134. The Court of Appeals cited to *State v. Moretti*:

Recently, our Supreme Court held that “[a]rticle I, section 14 of the Washington Constitution does not require a categorical bar on sentences of life in prison without the possibility of parole for fully developed adult offenders who committed one of their prior strikes as young adults.” *State v. Moretti*, 193 Wn.2d 809, 814, 446 P.3d 609 (2019). And review of other jurisdictions’ statutes and case law does not show a national consensus against sentencing adults as persistent offenders when their predicate offenses were “youthful.” Rather, several jurisdictions have rejected this very argument.

Id. at 134. Second, the court held that punishing an adult as a persistent offender when a predicate offense was youthful does not contradict the penological goals of Washington’s Persistent Offender Accountability Act. *Id.* Punishing an adult for continuing to commit violent crimes after being given the chance for rehabilitation supports the penological goal of separating repeat offenders from the rest of society. *Id.* at 135.

Division Three was correct in following *Teas* when it affirmed Vasquez’ convictions. The Court of Appeals stated:

Here, Vasquez was 48 years old when he and his accomplice robbed an elderly couple, repeatedly threatened to kill them, and assaulted the woman. The mitigating

factors of youth were not applicable when he was sentenced for those crimes.

State v. Vasquez, No. 36281-7-III, 2020 WL 7258650, at *6 (Wash. Ct. App. Dec. 10, 2020) (unpublished).

F. CONCLUSION

This case does not meet any of the criteria in RAP 13.4(b). First of all, the decision is not in conflict with a decision of the Supreme Court or another decision of the Court of Appeals. Second, a significant question of law under the Constitution of the State of Washington or of the United States is not involved. Lastly, the petition does not involve an issue of substantial public interest that should be determined by the Supreme Court. Division Three of the Court of Appeals was correct in following *Teas*. As such, the petition for review should be denied.

Respectfully submitted this 28th day of January, 2021,

s/Tamara A. Hanlon
TAMARA A. HANLON, WSBA # 28345
Senior Deputy Prosecuting Attorney
Yakima County, Washington

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on January 28, 2021, via the portal, I emailed a copy of STATE'S ANSWER TO PETITION to: Skylar T. Brett.

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

DATED this 28th day of January, 2021 at Yakima, Washington.

s/Tamara A. Hanlon
TAMARA A. HANLON, WSBA
#28345
Senior Deputy Prosecuting Attorney
Yakima County, Washington
117 N. 3rd Street, Suite 203
Yakima, WA 98901
Telephone: (509) 574-1210
Fax: (509) 574-1211
tamara.hanlon@co.yakima.wa.us

YAKIMA COUNTY PROSECUTING ATTORNEY'S OFF

January 28, 2021 - 5:40 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99376-9
Appellate Court Case Title: State of Washington v. Richard Vasquez Jr.
Superior Court Case Number: 14-1-01397-9

The following documents have been uploaded:

- 993769_Answer_Reply_20210128173528SC406678_2188.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was Vasquez final answer.pdf

A copy of the uploaded files will be sent to:

- Appeals@co.yakima.wa.us
- joseph.brusic@co.yakima.wa.us
- skylarbrettlawoffice@gmail.com
- valerie.skylarbrett@gmail.com

Comments:

Sender Name: Tamara Hanlon - Email: tamara.hanlon@co.yakima.wa.us
Address:
117 N 3RD ST STE 203
YAKIMA, WA, 98901-2766
Phone: 509-574-1210

Note: The Filing Id is 20210128173528SC406678