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

*In re the Personal Restraint Petition of*  
HUBBA TEAL,  
Petitioner.

NO. 60720-1-I  
SUPPLEMENTAL BRIEF

FILED  
CLERK OF APPELLATE COURT  
STATE OF WASHINGTON  
2009 JUL 23 AM 10:46

I. INTRODUCTION

This Supplemental Brief addresses the relevance of the holding in *Personal Restraint of McKiernan*, 165 Wn.2d 777, 203 P.3d 275 (2009). In short, the recent *McKiernan* decision has no impact on this case for one simple reason: in *McKiernan*, the Supreme Court of Washington reviewed the judgment and found *no* error.

Here, there is an obvious error on Teal's judgment—a point conceded by the State. In addition, that plain error clearly produced an injurious effect. Teal received a sentence in excess of what was permitted by law—not once, but twice.

Further, although not discussed herein, even assuming that Teal's judgment is not facially invalid because he was not informed of the time limits on collateral attacks when he was sentenced on this case, his petition is timely because he was *not* given proper notice.

1 II. ARGUMENT

2 In his PRP, Teal contends in part that his petition is not time barred because the  
3 one-year time limit does not apply to a judgment invalid on its face. RCW 10.73.090; *In*  
4 *re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002).  
5

6 Teal's judgment states that his standard range 10-15 months. Teal was sentenced  
7 to 15 months. The order amending the judgment sentences Teal to 14 months, what was  
8 then believed to be the correct top end of the range. Instead, Teal's true standard range  
9 was 9.75 to 12.75 months.  
10

11 Teal's judgment remains facially invalid after *McKiearnan*, *supra*.  
12

13 In *McKiearnan*, Petitioner was told that the maximum was "20 to life," and  
14 consequently was "aware of the maximum amount of time he could serve in  
15 confinement." In other words, McKiearnan's judgment set the maximum possible term  
16 at life—which was correct. While the judgment incorrectly expressed the maximum as a  
17 range, McKiearnan "was aware of the standard range sentence he would receive and that  
18 he could be sentenced up to a maximum term of life imprisonment." *Id.* The Court  
19 continued:  
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23 In this case, pursuant to the provisions of former RCW 9.94A.120, had the  
24 sentencing court found a substantial and compelling reason to do so it could have  
25 sentenced McKiearnan to a term within the standard range, to life imprisonment,  
26 or anywhere in between. The maximum was life in prison whether he was  
27 informed that the maximum sentence was 1 year to life, 10 years to life, or 20  
28 years to life.

29 *Id.* In short, the Court found no error on the judgment. The Court continued:

30 To be facially invalid, a judgment and sentence requires a more substantial

1 defect than a technical misstatement that had no actual effect on the rights of the  
2 petitioner. Even as misstated, McKiearnan was aware of the maximum amount of  
3 time he could serve in confinement. We hold that McKiearnan has failed to  
4 establish that the judgment and sentence was facially invalid and his PRP is  
therefore time barred under RCW 10.73.090.

5 *Id.* McKiearnan's requirement of "more than a technical defect" in order to  
6 constitute a facial invalidity should not be read as a new element required for a facial  
7 invalidity showing (especially where the Court cites to no authority and would, if read in  
8 that manner, be overruling past precedent *sub silentio*), but should instead be understood  
9 as part of the Court's entire discussion about why there was no error on McKiearnan's  
10 judgment.  
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14 Incidentally, although the Supreme Court did not reach the issue of whether  
15 McKiearnan's guilty plea was invalid, it suggested that it would have so found if it had  
16 been able to reach the issue. *See* 203 P.3d at 376-77 ("But an invalid plea agreement  
17 cannot on its own overcome the one year time bar or render an otherwise valid judgment  
18 and sentence invalid. The plea documents are only relevant to help determine if the  
19 judgment and sentence itself is facially invalid.").  
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22 Here, Teal's judgment is clearly erroneous—a point not in dispute. Thus, it is  
23 facially invalid because the judgment contains an error which can be discerned from the  
24 "face" of the judgment. However, even if the Supreme Court added a new element to  
25 facial invalidity review in *McKiearnan*, Teal can show that the error in this case was  
26 "more than a technical defect."  
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1           Teal’s judgments both reference a standard range higher than authorized by law.  
2 As a result of this error, Teal received sentences which exceeded the lawful authority of  
3 the court. A sentence in excess of what is permitted by law certainly constitutes more  
4 than a technical defect.  
5

6           The Supreme Court’s decision reversing a facially invalid judgment of conviction,  
7 *In re Restraint of Bradley*, \_\_ Wn.2d \_\_, 205 P.3d 123 (2009), provides further proof for  
8 Teal’s position.  
9

10           In that case, Bradley’s offender score was miscalculated (at the time of the plea  
11 and sentencing) for one of his two crimes of conviction. The miscalculation had no  
12 “actual effect” on his sentence because his offender score was correct on the more serious  
13 offense and Bradley’s lesser sentence (on the offense with the miscalculated offender  
14 score) ran concurrently with the greater sentence. In short, the error produced no  
15 practical harm.  
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18           Nevertheless, the Supreme Court started from the proposition that the judgment  
19 was facially invalid because it contained an error obvious from the “face” of the  
20 document. If *McKiearnan* had changed the law, *Bradley* would have been time barred.  
21

22           The fact that the *Bradley* court found a facial invalidity despite the fact that the  
23 error had no negative effect on Bradley reinforces the conclusion that *McKiearnan* does  
24 not require some additional showing of contemporaneous harm.  
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27           Likewise, in evaluating the voluntariness of the underlying guilty plea, the *Bradley*  
28 court continued to refuse to apply a subjective standard:  
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1 In *Isadore*, we held that a court will not speculate on the possible outcomes had  
2 the defendant been properly advised on the direct consequences of his plea. *Id.* at  
3 302, 88 P.3d 390. Thus, we reject the State's invitation to consider the practical  
4 effect of Bradley's actions, as well as what the State itself might have done under  
5 other circumstances. This court cannot rewind the clock and put itself in the  
6 shoes of the prosecutor and the defendant as they entered into this plea agreement.  
7 As we observed in *Isadore*: 'This hindsight task is one that appellate courts  
8 should not undertake. A reviewing court cannot determine with certainty how a  
9 defendant arrived at his personal decision to plead guilty, nor discern what weight  
10 a defendant gave to each factor relating to the decision.' *Id.* This exercise is  
11 tantamount to examining the practical effects of information on a plea under the  
12 materiality test we rejected in *Isadore*.

10 205 P.3d at 123.

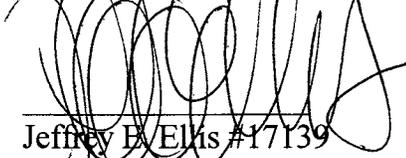
11  
12 Reading both *McKiernan* and *Bradley* together makes it clear that Teal is entitled  
13 to relief. Teal's judgment contains a plain error. McKiernan's judgment contained no  
14 error. Bradley's plea and judgment both contained an error, although the error produced  
15 no practical negative effect. Nevertheless, Bradley was permitted to bring an otherwise  
16 untimely PRP and was granted relief. Teal's judgment produced a clear negative,  
17 unlawful outcome. His guilty plea contained the same error, rendering the plea  
18 involuntary. Teal is obviously entitled to relief.

### 21 III. CONCLUSION

22 Teal has demonstrated that his judgment is erroneous—all that is needed for a  
23 facial invalidity showing. Thus, his petition is timely.  
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1 Examining Teal's guilty plea reveals that it was invalid. Thus, he is now entitled  
2 to withdraw his plea.  
3

4 DATED this 22<sup>nd</sup> day of July, 2009.

5   
6  
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**CERTIFICATE OF SERVICE**

I, Vance G. Bartley, Paralegal for Law Offices of Ellis, Holmes & Witchley, PLLC, certify that on July 22, 2009 I served the parties listed below with a copy of *Supplemental Brief* as listed below:

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