

NO. 68740-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

In re Personal Restraint Petition of

BENJAMIN SMALLS,

Petitioner.

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STATE'S RESPONSE TO PETITIONER'S OPENING BRIEF

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A. ISSUES PRESENTED

1. A claim that the judgment and sentence is not valid on its face is an exception to the general one-year time limit for collateral attacks. A judgment and sentence is not invalid merely because the court committed some legal error. A facial invalidity exists only where the court actually exceeded its authority.

A court lacks authority to enter a judgment and sentence for a charge filed outside the statutory charging period. Petitioner Smalls' judgment and sentence and the documents of his plea reflect that his second-degree assault conviction was filed beyond the statutory limitation period. Should Smalls' assault conviction be vacated where the court did not have authority to entertain that charge?

The judgment and sentence also reflects that Smalls' offender score for his second-degree murder conviction erroneously included two points for the assault conviction. The remedy for a facial invalidity is correction of the error that rendered the judgment and sentence facially invalid. A claim that a plea was entered into involuntarily is not an error of facial invalidity and is subject to the one-year time bar. Should this court reject Smalls' untimely claim that he be allowed to withdraw his guilty plea to second-degree murder? Instead, should this Court hold that the remedy for his incorrect offender score is resentencing with the correct offender score?

2. A claim that the judgment and sentence was not rendered by a court of competent jurisdiction is an exception to the general one-year time limit for collateral attacks. A sentence that is in excess of the court's jurisdiction is also exempted from the one-year time bar. Subject matter jurisdiction exists where the court has the authority to adjudicate the type of controversy at issue. A court does not lose its jurisdiction merely by interpreting the law erroneously. The superior court is not divested of its jurisdiction merely because the statute of limitations has run. Additionally, there is no statute of limitation for second-degree murder. Should this Court reject Smalls' claim that the trial court was not a court of competent jurisdiction and that his sentence was in excess of the court's jurisdiction?

B. STATEMENT OF THE CASE

In his own words, Benjamin Smalls shot and killed Stephen Kirk in 2002 because Kirk "was trying to call down my name" and "I ain't no sucka[.]" See State's Response to Pet. at 2-4. However, according to witnesses, Smalls murdered an unarmed man who spoke up for a woman that Smalls had threatened with, "Shut up bitch[,] I should have socked you in your face." Id.

Due to Smalls' threats, eyewitnesses refused to cooperate with the investigation for a significant period of time. See State's Response

to Pet. at 2-4. It was not until some five and a half years after the crime that the State was able to amass sufficient evidence to charge Smalls with Kirk's murder. Id. Indeed, the eyewitnesses' fear of Smalls was well-founded; in the years following his slaying of Kirk, Smalls continued to commit violent crimes. He was charged with and convicted of a variety of drug and assault crimes. In fact, he was pending trial on charges of second-degree domestic violence assault when the State filed the homicide charge in this case. Appendix B to State's Response to Pet. (pg. B8).

Pursuant to plea negotiations, Smalls pled guilty to second-degree murder for Kirk's homicide, and also to second-degree assault for pointing a firearm at witness King. Appendix E to State's Response to Pet. The State agreed to dismiss the domestic violence felony assault charges, and later agreed to the destruction of the evidence in that case. Appendix C to State's Response to Pet. (pgs. C5-C7).

Having had an apparent change of heart, Smalls attempted to undo his pleas with various claims, including that he was not competent, that post-plea changes to the community custody laws rendered his pleas involuntary, that the pleas lacked a sufficient factual basis, that his plea statements were not written in his own handwriting, and that he received ineffective assistance of counsel.

All of these claims were dismissed. See State's Response to Pet. at 5. Smalls then filed this untimely collateral attack in the superior court, and it was transferred to this Court for consideration as a personal restraint petition.

C. ARGUMENT

More than a year after his judgment and sentence became final, Smalls launched an untimely attack on the legitimacy of his guilty pleas. Specifically, he alleges that because his *assault* conviction was charged outside the statutory period, he should be allowed to withdraw his plea to *second-degree murder*.

However, Smalls' attempt to challenge his murder plea fails because it is untimely. With good reason, the legislature has imposed a strict time period on defendants who wish to challenge the voluntariness of their pleas. Smalls is entitled to vacation of his assault conviction, and he is entitled to be resentenced on his murder conviction with an offender score that does not include points for the assault. However, no other remedy is authorized by the relevant statutes and cases interpreting them.

1. THE INVALIDITIES THAT APPEAR ON THE FACE OF THE JUDGMENT DO NOT ENTITLE SMALLS TO WITHDRAW HIS PLEA TO MURDER.

Because Smalls filed this petition more than one year after his judgment became final,¹ he must demonstrate that one of the statutory exceptions to the time bar set out in RCW 10.73.090 and .100 applies. State v. Schwab, 141 Wn. App. 85, 90, 167 P.3d 1225 (2007), rev. denied, 164 Wn.2d 1009 (2008). He has not done so.

RCW 10.73.090 states the general rule that personal restraint petitions must be filed within one year once the judgment and sentence becomes final. See In re Pers. Restraint of Coats, 173 Wn.2d 123, 131, 267 P.3d 324 (2011) (A conviction “may be collaterally challenged on any grounds for a year after it is final.”). After one year, a petitioner may challenge a judgment and sentence only upon specifically enumerated statutory bases.

RCW 10.73.100 lists six grounds upon which a judgment can be challenged at any time. Additionally, RCW 10.73.090 “specif[ies] two preconditions in order for the time limit to apply: (1) that the judgment and sentence be ‘valid on its face’ and (2) that the judgment and sentence be ‘rendered by a court of competent jurisdiction.’”

¹ A judgment becomes final on the date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction. RCW 10.73.090(3). Thus, Smalls' judgment became final on March 18, 2011, when this Court issued its mandate. Appendix F to State's Response to Pet. Smalls concedes that this petition was filed more than one year after finality. Pet.'s Opening Brf. at 5.

In re Pers. Restraint of Adams, Slip Op. No. 87501-4, 2013 WL 4857948, *3 (Wn.2d Sept. 12, 2013). These preconditions are treated as two “additional, narrow ‘exceptions’ to the time limit.” Adams, 2013 WL 4857948 at *4 (citations omitted).

A judgment and sentence is not facially invalid merely because the court makes a legal error. In re Pers. Restraint of Scott, 173 Wn.2d 911, 916, 271 P.3d 218 (2012). Generally, a judgment and sentence is facially invalid only where “it demonstrates that the trial court did not have the power or the statutory authority to impose the judgment or sentence.” Id.

Imposing a judgment and sentence for a crime charged outside of the statute of limitation is not simply a legal error; rather, the court has no authority to entertain the charge. Scott, 173 Wn.2d at 916 (citing In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 353-54, 5 P.3d 1240 (2000)). Here, the second-degree assault charge was filed after the statutory charging period had expired.² As a result, the trial court had no authority to entertain that charge, and Smalls’ judgment

² The State concedes that the assault was charged outside the statutory charging period. However, it would not always be the case that such an infirmity would be apparent from the face of the judgment and sentence and related plea documents. For instance, the statute of limitations is tolled during any time that the defendant “is not usually and publicly resident within this state.” RCW 9A.04.080(2). Although alleging tolling in the information would avoid a claim that the charging document was insufficient, it is not required. State v. Walker, 153 Wn. App. 701, 705-06, 224 P.3d 814 (2009).

and sentence is facially invalid as to that charge. He is entitled to have his second-degree assault conviction vacated.

However, even where a portion of a judgment and sentence is invalid on its face and must be corrected, such a finding “does not affect the finality of that portion of the judgment and sentence that was correct and valid at the time it was pronounced.” In re Pers. Restraint of Carle, 93 Wn.2d 31, 34, 604 P.2d 1293 (1980). The trial court must correct only the erroneous portion of the petitioner’s judgment and sentence. Id.

As discussed in the State’s original response, the relief granted to the petitioner in Stoudmire, supra, is instructive. Stoudmire raised numerous challenges to his convictions, including an argument that two of the charges had been filed after the expiration of the statute of limitations. Stoudmire, 141 Wn.2d at 354. Stoudmire was entitled to have those two counts vacated because the court lacked authority to impose a judgment and sentence as to charges that were filed outside the statutory charging period. Id. at 355. However, Stoudmire’s claim that his plea to other counts was involuntary was dismissed on procedural grounds (the court found that although the claim might fall into RCW 10.73.100(6)’s exception for significant changes in the law, the petition was “mixed,” and the claim was dismissed). Id. at 350. Significantly, the court did *not* find that the court’s lack of authority to

impose a judgment and sentence on counts that were barred by the statute of limitations entitled Stoudmire to withdraw his pleas to other counts.

The same must hold true here. The trial court had the authority to impose a judgment and sentence for the second-degree murder charge. It did not lose that authority merely because it did not have authority over the assault charge, or because it imposed a sentence on the murder based on an erroneous offender score. See Scott, 173 Wn.2d at 916 (“A trial court does not lose its authority because it commits a legal error, and most legal errors must be addressed on direct review or in a timely personal restraint petition or not at all.”).

Although the court had the authority to impose a judgment and sentence for Smalls’ murder conviction, it erred when it included two points in Smalls’ offender score for the assault charge. A sentence that is imposed based on an erroneous offender score is facially invalid. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002). Because Smalls’ offender score for his murder conviction includes two points for the assault charge, his judgment is facially invalid in that regard.

However, because the precondition for the one-year time limit relating to a facially invalid judgment and sentence is itself merely an additional exception to the time limit, the remedy must be narrowly

tailored to the error that rendered the judgment and sentence facially invalid. Adams, 2013 WL 4857948 at *4. Stated differently, the exception for facially invalid judgments allows a personal restraint petitioner to seek relief beyond the one-year time limit “only for the defect that renders the judgment not valid on its face” and does not trigger a new one-year time limit to bring otherwise time-barred claims. Adams, 2013 WL 4857948 at *4; see also Coats, 173 Wn.2d at 141 (claim that the judgment and sentence is facially invalid may not be used to make an end run around the time limit for personal restraint petitions).³

The remedy for an erroneous offender score is resentencing based on the correct score. Adams, 2013 WL 4857948 at *5. In Adams, the defendant filed an untimely CrR 7.8 collateral attack in the trial court challenging his offender score. The State agreed that Adams' offender score was incorrect and Adams was resentenced. Following resentencing, Adams filed a personal restraint petition raising an ineffective assistance of trial counsel claim (Adams was convicted following a trial, rather than a plea). Adams, 2013 WL 4857948 at *1-2. The court determined that although the miscalculated offender score constituted a sentencing error that had

³ Smalls' argument that this language in Coats is merely dicta is not persuasive following the court's express adoption of the same conclusion in Adams. 2013 WL 4857948 at *4-5.

rendered the judgment and sentence facially invalid, the remedy was limited to correcting that sentencing error. Id. at *5. The fact that Adams was resentenced to correct the sentencing error did *not* restart the one-year clock for other, time-barred claims. Id.

Although Smalls disavows an attempt to use facial invalidity as a gateway to reach the merits of his otherwise time-barred challenge to his plea, his analysis speaks to the contrary. He argues that “it is apparent from the face of the judgment and sentence that the plea bargain itself exceeded the trial court’s authority.” Pet.’s Opening Brf. at 9. Smalls points to RCW 9.94A.431(1) and CrR 4.2, and their requirements that the court accept only plea bargains that are made voluntarily, with an understanding of the nature of the charge and the consequences of the plea, and that are consistent with the interests of justice. He contends that the facial invalidities in his case “are the direct product of the pleas and involve the very acceptance of those pleas.” Pet.’s Opening Brf. at 14.

Smalls’ argument that an involuntary plea renders the judgment and sentence facially invalid has been soundly rejected. The exception for facial invalidity “does not provide a way for a petitioner to avoid the one year time limit for motions to withdraw a guilty plea on the theory that the judgment and sentence is not valid on its face because it is the product of an involuntary plea.” Scott, 173 Wn.2d

at 917 (citing In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002)). Contrary to Smalls' assertions, even if he has established that his plea to second-degree murder was involuntary, "The trial judge still has the authority to render judgment and any error must be raised in a timely challenge or a timely motion to withdraw the plea." Scott, 173 Wn.2d at 917. Put another way, the validity of a plea agreement is an issue distinct from the validity of the judgment and sentence. In re Pers. Restraint of Toledo-Sotelo, 176 Wn.2d 759, 770, 297 P.3d 51 (2013). An involuntary plea does not create a facial invalidity and cannot be raised in an untimely petition absent some other applicable statutory exception. Id.; see also Adams, 2013 WL 4857948 at *4 (a petitioner raising a claim of facial invalidity does not open the door to other time-barred claims).

In Hemenway, supra, the petitioner filed a personal restraint petition contending that his plea was involuntary because he was not informed of a direct consequence (that community placement was a mandatory requirement for his crime of conviction). 147 Wn.2d at 530. Indeed, the documents of the plea demonstrated that he was not so informed. Id. Hemenway was sentenced to community placement. Id. at 531. In an untimely personal restraint petition, he argued that his *judgment and sentence* was invalid on its face because it was clear from the relevant documents that his *plea* was invalid. Id. at 533. The

court rejected that argument, clarifying that facial invalidity applies only to the judgment and sentence, not the plea. The fact that Hemenway's plea was involuntary was of no consequence to the facial validity analysis of RCW 10.73.090(1). Id.; see also In re Pers. Restraint of McKiernan, 165 Wn.2d 777, 782-83, 203 P.3d 375 (2009) (affirming the holding of Hemenway that an involuntary plea is not, by itself, sufficient to render a judgment and sentence facially invalid).

Our supreme court has continued to reject such arguments. In Coats, the court pointed out that even though Hemenway would likely have prevailed in a timely personal restraint petition, when determining facial validity for purposes of the time-bar exception, "[W]e may examine a plea statement to evaluate a claim that a judgment and sentence is not valid on its face, but not the other way around." 173 Wn.2d at 141-42.

Smalls attempts to distinguish his case from Hemenway, McKiernan, and Coats with the broad argument that in his case there exists a facial invalidity on the judgment and sentence, where in those prior cases, there did not. Smalls implies that the court would have granted the petitioners *plea withdrawal* in the previous cases had they found a facial invalidity. However, when all three opinions in Coats are read in conjunction with the more recent majority opinion in Adams, such a conclusion is unwarranted.

The majority in Coats determined that the error regarding the maximum sentence did not constitute a facial invalidity. Even so, it spoke to what the appropriate remedy would be in such a case, concluding that the “not valid on its face” exception was not a device to circumvent the time bar. Coats, 173 Wn.2d at 143-44. Moreover, both Justice Madsen and Justice Stephens in their concurrences believed that the trial court *had* exceeded its authority when it proclaimed that the maximum sentence was higher than that authorized by statute. Although they found Coats to have suffered no prejudice from the facial invalidity, both justices continued on to conclude that the remedy for such a facial invalidity was correction of the maximum sentence—not withdrawal of the plea, as Coats had requested. Coats, 173 Wn.2d at 162-63 (Madsen, J. concurring); Coats, 173 Wn.2d at 167-70 (Stephens, J. concurring).

Coats pled guilty with a misunderstanding of the sentencing consequences with respect to his maximum sentence, and that misunderstanding was reflected on the judgment and sentence. According to Smalls’ argument, the judgment and sentence in Coats therefore “revealed on its face that it was the product of an invalid plea.” However, as noted, *none* of the justices believed plea withdrawal to be the appropriate remedy, even though the infirmity in

the plea was evident on the face of the judgment and sentence. As pointed out by Justice Stephens in her concurrence:

The one-year time bar in RCW 10.73.090 presupposes that some, if not many, meritorious claims will be barred from consideration when petitioners fail to raise the claims in a timely manner. Thus, in the vast majority of cases, the interests of finality and efficiency that justify the one-year time bar will prevail over a petitioner's interest in having his meritorious claim heard. . . . There is no indication that the legislature intended an invalidity in the judgment and sentence to have the sweeping effect Coats attributes to it—that is, to waive the time bar for all untimely claims regardless of whether they relate to the validity of the judgment and sentence. . . . [T]o open the door to claims that do not fall within one of the enumerated exceptions in RCW 10.73.090 or RCW 10.73.100 would require us to ignore the interests of finality in situations where the legislature intended finality to carry the day.

Coats, 173 Wn.2d at 169-70 (Stephens, J. concurring). Justice Stephens' reasoning was recently expressly adopted by a majority of the court in Adams, where a facial invalidity was found. 2013 WL 4857948 at *5. Adams clearly pronounced that the facial invalidity exception is a narrow one, where the remedy is limited to correction of the error that rendered the judgment and sentence facially invalid in the first instance. Adams, 2013 WL 4857948 at *4-5. Thus, this Court should reject Smalls' argument that plea withdrawal is the appropriate remedy whenever a facially invalid judgment and sentence also reveals an invalid plea.

Essentially, Smalls asserts that despite the time-bar, a personal restraint petitioner may *always* withdraw his plea whenever the face of the judgment and sentence discloses that it followed from an invalid plea.⁴ When extended to a logical degree, the flaws of this argument are apparent.

A guilty plea that is not knowing, intelligent, and voluntary is invalid. State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996). A plea is not knowingly made when the defendant is misadvised as to the sentencing consequences. In re Pers. Restraint of Isadore, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). Thus, a guilty plea predicated on the defendant's misunderstanding of his offender score is invalid. State v. Walsh, 143 Wn.2d 1, 7-8, 17 P.3d 591 (2001).

To adopt Smalls' theory, if the defendant's misunderstanding regarding the offender score is carried over onto the judgment and sentence (as it often is), the defendant would be able to withdraw his plea, *no matter how much time had passed*, simply because the erroneous offender score was apparent from the face of the judgment and sentence. Any interpretation of the "not valid on its face" exception of RCW 10.73.090 that would allow all defendants who pled guilty to erroneous offender scores (and who were sentenced based

⁴ "[W]hen the judgment reveals on its face that it is the product of invalid pleas, only withdrawal of the pleas will rectify the error." Pet.'s Opening Brf. at 15.

on those scores) to withdraw their pleas regardless of how much time had passed, is flatly inconsistent with the above-cited cases, and with the legislature's clear intention to limit the availability of collateral relief.

Moreover, the conclusion that a challenge to a plea must be brought within one year of finality makes sense. Any invalidity regarding a plea is something that a defendant should easily recognize or discover within one year from his judgment and sentence becoming final. Additionally, there are important policy concerns that weigh in favor of a one-year time limit for involuntary plea claims. Limiting a defendant's ability to collaterally attack the voluntariness of his plea to a timely-filed petition is appropriate given the critical importance of finality in guilty plea cases. When a case is resolved by way of a plea, the evidence is generally not preserved, and there is no sworn testimony of witnesses that can be memorialized for later use. A defendant should not be encouraged to wait until the evidence is destroyed and then file a collateral attack claiming that his plea was involuntary.⁵

⁵ A defendant may not be entitled to withdraw his plea when there are compelling reasons not to allow it. Walsh, 143 Wn.2d at 8-9. Here, the evidence in Smalls' felony domestic violence assault case was destroyed following its dismissal pursuant to the plea agreement in the homicide case. See Appendix C to State's Response to Pet. (pgs. C6-C7). It would be unfair to allow Smalls to withdraw his plea in such circumstances.

Here, the facial invalidity of the judgment and sentence as it relates to Smalls' murder conviction involves only the calculation of his offender score. The remedy for such a facial invalidity is resentencing with the correct score. Because his petition is untimely, Smalls may not challenge the validity of his plea to second-degree murder on the basis that his judgment and sentence is facially invalid.⁶

2. SMALLS' JUDGMENT AND SENTENCE WAS RENDERED BY A COURT OF COMPETENT JURISDICTION AND HIS SENTENCE WAS NOT ENTERED IN EXCESS OF THE COURT'S JURISDICTION.

Smalls points to a line of cases that has been interpreted as holding that the statute of limitations for criminal cases is jurisdictional.⁷ From this premise, he concludes that RCW 10.73.090(1)'s exception to the time bar for a judgment and sentence not "rendered by a court of competent jurisdiction" entitles him to relief.

⁶ Even if this Court were to address the merits of Smalls' claim, he must still demonstrate actual prejudice from the entry of an involuntary plea. In re Pers. Restraint of Fawcett, 147 Wn.2d 298, 302, 53 P.3d 972 (2002); In re Pers. Restraint of Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). Precedent appears to stand for the proposition that whether or not the misinformation as to a direct consequence was a material part of the defendant's decision to plead guilty is irrelevant to the question of prejudice. Isadore, 151 Wn.2d at 302; In re Pers. Restraint of Bradley, 165 Wn.2d 934, 940, 205 P.3d 123 (2009). However, it is hard to imagine that Smalls, having agreed to plead guilty to second-degree murder and assault, would have refused to plead guilty to second-degree murder alone, with fewer offender score points.

⁷ Smalls cites to State v. Hodgson, 108 Wn.2d 662, 740 P.2d 848 (1987), State v. Walker, 153 Wn. App. 701, 224 P.3d 814 (2009), State v. Novotny, 76 Wn. App. 343, 884 P.2d 1336 (1994), State v. Eppens, 30 Wn. App. 119, 633 P.2d 92 (1981), and State v. Glover, 25 Wn. App. 58, 604 P.2d 1015 (1979).

Smalls also uses this authority to support the argument that his petition is timely under RCW 10.73.100(5), which provides that a petition is not time-barred if “[t]he sentence imposed was in excess of the court’s jurisdiction.”

Smalls is incorrect on both fronts. First, this argument has no bearing on Smalls’ second-degree murder conviction and sentence, for which there is no statute of limitations,⁸ and for which the court clearly had jurisdiction. Second, this Court recently disclaimed the notion that a trial court acts without subject matter jurisdiction when it enters a judgment and sentence for charges filed outside the statute of limitations. State v. Peltier, Slip. Op. No. 68942-8-I (Div. I, Sept. 16, 2013).

Subject matter jurisdiction exists “where the court has the authority to adjudicate the *type of controversy* in the action, and it does not lose subject matter jurisdiction merely by interpreting the law erroneously.” Stoudmire, 141 Wn.2d at 353 (citing State v. Moen, 129 Wn.2d 535, 545, 919 P.2d 69 (1996)) (emphasis added). The superior court has original subject matter jurisdiction over all felony criminal charges. Wash. Const. art. 14, § 6. The legislature may “impinge on the constitutionally-established subject matter of the superior court only where it simultaneously grants that subject matter jurisdiction to

⁸ RCW 9A.04.080(1)(a)(i).

some other court[,]” which a criminal statute of limitations clearly does not do. Peltier, No. 68942-8-I at 13 (citing Young v. Clark, 149 Wn.2d 130, 133-34, 65 P.3d 1192 (2003)).

While the superior court has no authority to enter a judgment and sentence for a crime that was charged outside the statutory period, it is not divested of its jurisdiction merely because the statute of limitations has run. Peltier, No. 68942-8-I at 15-18. Thus, Smalls’ claim that the trial court was not a court of competent jurisdiction must be rejected. RCW 10.73.090(1)’s exception for judgment and sentences that were not “rendered by a court of competent jurisdiction” has no applicability to Smalls’ petition.

For the same reasons, Smalls’ argument as it relates to the exception in RCW 10.73.100(5) must also be rejected. Again, there can be no dispute that the trial court had subject matter jurisdiction over Smalls’ murder charge, for which there is no statute of limitations. RCW 9A.04.080(1)(a)(i). And this Court has previously held that “jurisdiction” as used in RCW 10.73.100(5) means personal and subject matter jurisdiction. In re Pers. Restraint of Vehlewald, 92 Wn. App. 197, 200-01, 963 P.2d 903 (1998). As outlined above, the superior court had subject matter jurisdiction over Smalls’ case. Personal jurisdiction arises when the defendant is present in court on

the date of the arraignment. State v. Day, 46 Wn. App. 882, 896, 734 P.2d 491 (1987). Thus, the superior court had both subject matter and personal jurisdiction at the time that sentence was imposed in Smalls' case.

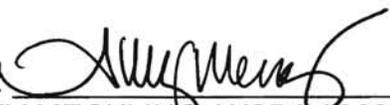
D. CONCLUSION

For all of the above-stated reasons, this Court should dismiss Smalls' personal restraint petition because it is time-barred.

DATED this 4th day of October, 2013.

Respectfully submitted,

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Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the petitioner, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the STATE'S RESPONSE TO PETITIONER'S OPENING BRIEF, in IN PERSONAL RESTRAINT OF BENJAMIN SMALLS, Cause No. 68740-9-1, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington

Date

10-04-13