

NO. 34879-9-II

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

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IN RE THE PERSONAL RESTRAINT OF MICHAEL REISE  
MICHAEL REISE,  
Petitioner.

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SECOND SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUES PRESENTED

1. Whether Mr. Reise should obtain relief from his conviction based on newly discovered evidence despite his "straight" guilty plea?

2. Whether Mr. Reise's guilty plea was rendered involuntary by his counsel's misadvisement regarding direct consequences of the plea?

B. STATEMENT OF THE CASE

Michael Reise and his wife of 32 years, Cheryl Fahlgren, managed the restaurant at Bailey's Motor Inn in Olympia.<sup>1</sup> On October 26, 2004, Mr. Reise called an electrician because the heater was not working. Mr. Reise took the electrician to a stairwell behind the restaurant to show him the furnace and fuse box.<sup>2</sup> As Mr. Reise was helping the electrician, a man who was not a guest in the motel approached Mr. Reise and asked him for a cigarette.

When Mr. Reise told the man he did not have a cigarette, the man became furious.<sup>3</sup> The man attacked Mr. Reise with a club and

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<sup>1</sup> Although they never formally married, Mr. Reise and Ms. Fahlgren lived together as husband and wife.

<sup>2</sup> Appendix E to State's Response to PRP (Hirota police report) at 6; Appendix B to Supp. Br. of Resp't (sentencing hearing) at 21.

<sup>3</sup> Appendix B to State's Supplemental Brief (sentencing hearing) at 21-22.

pinned him to the ground, holding the club across his throat.<sup>4</sup> The electrician rescued Mr. Reise, pulling the man off of him and throwing the club to the side.<sup>5</sup> Mr. Reise asked the man to leave, but he did not.

Mr. Reise went inside and retrieved a telephone and a gun that was kept in the motel. He dialed 911, but the call did not go through.<sup>6</sup> He went back outside and saw that his attacker still had not left the premises. To the contrary, he had retrieved his club and was coming at Mr. Reise with it.<sup>7</sup> Mr. Reise told the man he had called the police, and he showed the man the gun. The man, who was a drug abuser high on illicit substances, continued to approach Mr. Reise and threaten him with the club.<sup>8</sup> He verbally dared Mr. Reise to shoot him.<sup>9</sup>

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<sup>4</sup> Appendix F to State's Response to PRP (King police report) at 3; Petitioner's Supplemental Brief at 6; State's Supplemental Brief at 12; Appendix B to State's Supplemental Brief (sentencing hearing) at 5-6, 23.

<sup>5</sup> Appendix E to State's Response to PRP (Hirotaoka police report) at 6; Appendix B to State's Supplemental Brief (sentencing hearing) at 7, 23.

<sup>6</sup> Petitioner's Supplemental Brief at 7-8.

<sup>7</sup> Appendix B to State's Supplemental Brief (sentencing hearing) at 24.

<sup>8</sup> Appendix E to State's Response to PRP (Hirotaoka police report) at 1, 3, 6; Appendix F to State's Response to PRP (King police report) at 2; Appendix F to State's Response to PRP (King interview of Bridges) at 2; Appendix H to State's Response to PRP (coroner's report) at 2; Appendix B to State's Supplemental Brief (sentencing hearing) at 5-6, 9, 25; Petitioner's Reply to State's Supplemental Brief at 3.

<sup>9</sup> Appendix F to State's Response to PRP (King police report) at 3; Appendix F to State's Response to PRP (King interview of Bridges) at 7.

Mr. Reise shot the man once, and he died.<sup>10</sup> Police officers arrived and talked to several witnesses, but with one exception, nobody had seen the shooting.<sup>11</sup> The one person the officers found who had seen the shooting saw only Michael Reise. He did not see what the other man was doing nor hear what he was saying during the encounter.<sup>12</sup> The witness was also likely under the influence of illicit substances.<sup>13</sup> Thus, nobody could directly confirm or deny Mr. Reise's claim of self-defense. Nevertheless, Mr. Reise was arrested and charged with first-degree murder with a firearm enhancement.<sup>14</sup>

Mr. Reise hired attorney James Dixon to represent him. Mr. Dixon attempted to persuade Mr. Reise that he should accept a guilty plea offer from the State to the amended charge of murder in the second degree with no enhancement. The terms of the offer precluded Mr. Reise from entering an Alford plea.<sup>15</sup>

Mr. Dixon assured Mr. Reise that if he pleaded guilty, the court would impose a sentence of no more than 156 months in

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<sup>10</sup> Appendix B to State's Supplemental Brief (sentencing hearing) at 25.

<sup>11</sup> Appendices E-I to State's Response to PRP (police reports and interview transcripts).

<sup>12</sup> Appendix F to State's Response to PRP (King police report) at 6; Appendix B to State's Supplemental Brief (sentencing hearing) at 8-9.

<sup>13</sup> Appendix B to State's Supplemental Brief (sentencing hearing) at 26.

<sup>14</sup> Appendix A to State's Response to PRP (Information).

<sup>15</sup> Appendix A to Petitioner's Reply to State's Supplemental Brief (affidavit of Michael Reise) at 3.

custody.<sup>16</sup> Mr. Dixon told Mr. Reise and his family that Mr. Reise would receive 1/3 of his sentence off for “good time” and that due to prison overcrowding, he would be home with his family in roughly three years time. Mr. Dixon assured Mr. Reise’s family that this was a very good “deal” and that Mr. Reise would be home “before you know it.”<sup>17</sup>

At sentencing, the prosecutor explained that the State entered into a plea agreement because “a particular weakness in our case that we couldn’t answer to the jury and we were concerned that the jury would not necessarily beyond a reasonable doubt accept [our] version that the defendant wasn’t acting in self-defense.”<sup>18</sup> Mr. Reise’s attorney agreed that due to Mr. Reise’s self-defense claim, “this is a case that could have resulted in an acquittal.”<sup>19</sup> The State recommended the court impose a sentence of 156 months in custody.<sup>20</sup>

The court ruled that it could not find a basis for self-defense, given the plea, and refused to follow the 156-month

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<sup>16</sup> Appendix A to PRP at 1-3; Appendix B to PRP at 1-2; Appendix C to PRP at 1-2.

<sup>17</sup> Appendix B to PRP (Affidavit of Cheryl Fahlgren)

<sup>18</sup> Appendix B to State’s Supplemental Brief (sentencing hearing) at 11.

<sup>19</sup> Appendix B to State’s Supplemental Brief (sentencing hearing) at 27.

<sup>20</sup> Appendix B to State’s Supplemental Brief (sentencing hearing) at 11.

recommendation.<sup>21</sup> The court instead imposed a sentence slightly greater than the middle of the standard sentencing range of 180 months of confinement.<sup>22</sup>

While in jail awaiting a restitution hearing, Mr. Reise met Kenneth Gillaspie.<sup>23</sup> Mr. Gillaspie told him that he had witnessed the incident at Bailey's Motor Inn on October 26, 2004. Mr. Gillaspie said he saw the other man threatening to attack Mr. Reise with the club just before Mr. Reise shot him. Mr. Gillaspie signed a declaration to this effect.<sup>24</sup>

With respect to Mr. Dixon's misadvisement regarding the consequences of his guilty plea, when he was informed by Department of Corrections staff that he would receive a reduction of 1/10, not 1/3 of his sentence, and that no parole system existed in Washington to permit early release, Mr. Reise filed a bar complaint against Mr. Dixon.<sup>25</sup> Mr. Dixon denied that he misadvised Mr. Reise regarding the likelihood of his release, but in the same breath, admitted, "I did advise Mr. Reise, and his family, that, in my personal opinion, the laws with respect to sentencing might change

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<sup>21</sup> Appendix B to State's Supplemental Brief (sentencing hearing) at 39-41.

<sup>22</sup> *Id.*

<sup>23</sup> Supp. Br. of Petitioner at 3.

<sup>24</sup> Appendix F to PRP (Gillaspie Decl.)

<sup>25</sup> Appendix D to PRP at 1-2.

at some point in the future due to the severe overcrowding problem in our institutions.”<sup>26</sup>

Mr. Reise filed a Personal Restraint Petition (“PRP”) alleging ineffective assistance of counsel and newly discovered evidence. The State submitted a response brief in which it conceded that the newly discovered evidence claim should be remanded for a reference hearing.<sup>27</sup> With respect to the ineffective assistance of counsel claim, the State contended defense counsel’s performance was reasonable.

Notwithstanding the State’s concession, this Court ordered the parties to provide supplemental briefing regarding whether a “straight” guilty plea bars a newly discovered evidence claim. Both Mr. Reise and the State submitted response briefs answering this question in the negative. As the State noted, the nature of the plea is but one factor for a court to consider in evaluating a claim for relief based on newly discovered evidence.

This Court then appointed the Washington Appellate Project to represent Mr. Reise and to address whether a “straight” guilty plea bars a newly discovered evidence claim. The order also

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<sup>26</sup> Appendix D to PRP at 11.

<sup>27</sup> State’s response to PRP at 19.

stated that counsel “may brief other grounds.” This second supplemental brief follows.

C. ARGUMENT

1. MR. REISE’S STRAIGHT GUILTY PLEA DOES NOT BAR HIS NEWLY DISCOVERED EVIDENCE CLAIM; RATHER, THE NATURE OF THE PLEA IS ONE OF MANY FACTORS FOR THE TRIAL COURT TO CONSIDER AT A REFERENCE HEARING.

a. A straight guilty plea does not bar a newly discovered evidence claim. An inmate may file a personal restraint petition alleging that “[m]aterial facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction.” RAP 16.4(c)(3). A petition may be filed under this provision regardless of whether the conviction resulted from a jury verdict or a guilty plea. See In re Personal Restraint of Clements, 125 Wn. App. 634, 640, 106 P.3d 244 (2005).

The Criminal Rules clearly allow newly discovered evidence claims for defendants who pled guilty. Under CrR 4.2(f), a defendant must be allowed to withdraw a guilty plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice.”<sup>28</sup> This section further provides, “If the motion for

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<sup>28</sup> Where an individual seeks to withdraw a guilty plea via a personal restraint petition, the “manifest injustice” standard of CrR 4.2(f) merges with the

withdrawal is made after judgment, it shall be governed by CrR 7.8.” Id.

CrR 7.8 provides that a defendant may move to vacate judgment for any of several reasons, including “[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5.” CrR 7.8(b)(2). Thus, by the plain language of the court rules, a straight guilty plea does not bar a newly discovered evidence claim. To the contrary, it is one of the enumerated bases for such a claim.

A new trial should be granted where the defendant shows the newly discovered evidence (1) will probably change the result of the trial, (2) was discovered since trial, (3) could not have been discovered before trial by the exercise of due diligence, (4) is material, and (5) is not merely cumulative or impeaching. State v. Williams, 96 Wn.2d 215, 222-23, 634 P.2d 868 (1981). These factors constitute the standard regardless of the procedural posture. See id. (motion for a new trial); State v. Macon, 128 Wn.2d 784, 800, 911 P.2d 1004 (1996) (motion to vacate judgment); In re Personal Restraint of Lord, 123 Wn.2d 296, 319-20, 868 P.2d 835 (1994) (personal restraint petition); State v.

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“interest of justice” standard under RAP 16.4(c)(3). Clements, 125 Wn. App. at 640.

D.T.M., 78 Wn. App. 216, 219, 896 P.2d 108 (1995) (motion to withdraw plea).

Here, the State agrees that factors 2-5 are satisfied and that the dispositive question is whether Mr. Gillaspie's testimony would probably change the result. Br. of Resp't at 14-16. Whether newly discovered testimony would probably change the result depends on the credibility of the witness and reliability of his testimony. As the State notes, a reference hearing is the appropriate forum in which to address these questions, because credibility and reliability determinations fall within the province of the trial court. Macon, 128 Wn.2d at 801; State v. Smith, 80 Wn. App. 462, 470 n.3, 909 P.2d 1335 (1996); State v. Davis, 25 Wn. App. 134, 137, 605 P.2d 359 (1980); RAP 16.11(b). Although a guilty plea does not bar relief, the nature of the plea is one factor the trial court may consider at the reference hearing when assessing the reliability of the new evidence and whether it would make a difference.<sup>29</sup> See In re Personal Restraint of Bain, 124 Wn. App. 154, 163, 101 P.3d 111

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<sup>29</sup> Other factors include the age of the witness, demeanor, the rationality and consistency of the testimony, the motivation for testifying, whether there was improper influence or coercion, and the strength of the evidence supporting the conviction. See Macon, 128 Wn.2d at 802-04; Clements, 125 Wn. App. at 644 n.3.

(2004); State v. Arnold, 81 Wn. App. 379, 386-87, 914 P.2d 762 (1996); Supp. Br. of Resp't at 9.

A straight guilty plea did not bar the newly discovered evidence claim of Harold Bain, a petitioner who had admitted selling cocaine and methamphetamine but later filed a PRP alleging misconduct by the forensic chemist who had tested the drugs in his case. Bain, 124 Wn. App. 154. To the contrary, the Court of Appeals ordered the relief Mr. Reise seeks here: a reference hearing. Id. at 158. At the reference hearing, the trial court determined that the scientist's malfeasance probably did not occur until after the testing of the substance in question. Id. at 159. This conclusion, combined with the fact that there was a positive field test, a guilty plea, and a separate confession, ultimately resulted in the denial of a new trial. Id. at 163. Thus, Bain teaches that (1) the appropriate first step is a reference hearing, and (2) the fact of a guilty plea is but one consideration in evaluating a newly discovered evidence claim.

Other cases are in accord. In State v. Dixon, for example, this Court implied that a defendant's burden on a newly discovered evidence claim should be lighter if he had entered an Alford plea, but not that there should be a per se bar for those who had entered

straight guilty pleas. Dixon, 38 Wn. App. 74, 76-77, 683 P.2d 1144 (1984). In State v. Arnold, the fact that the defendant had entered a straight guilty plea instead of an Alford plea was but one factor in the denial of new trial. Arnold, 81 Wn. App. at 386-87. Another factor was that sufficient independent evidence existed to support a guilty verdict beyond a reasonable doubt. Id.

Most importantly, in Arnold the trial court had held a hearing in order to listen to the witness and determine the reliability of the new testimony and evaluate the merits of the request for a new trial. Id. at 387; see Clements, 125 Wn. App. at 642 (explaining that in Arnold, the court had affirmed a denial of a motion to withdraw a guilty plea in part because Arnold entered a straight guilty plea but also because independent evidence supported the conviction and “Arnold had failed to persuade the trial court of the credibility or reliability of the recantation testimony”).

A bar against newly discovered evidence claims for individuals who had entered straight guilty pleas would thwart the administration of justice. Imagine, for example, a case in which an innocent defendant pled guilty to rape in order to avoid a longer sentence that would be imposed upon a finding of guilt due to strong circumstantial evidence. Later, new DNA-testing procedures

reveal that the source of the semen in question was another man. Barring a newly discovered evidence claim on the basis that the defendant entered a “straight” plea rather than an Alford plea would result in a manifest injustice. Thus, the cases cited above properly concluded that the type of plea entered is but one factor for a trial court to consider in determining whether newly discovered evidence justifies relief.

Mr. Reise requests the relief that was granted in Bain and Arnold. This case should be remanded to the trial court for a reference hearing at which the court may determine the reliability of the newly discovered evidence and its potential effect on the result.

b. The newly discovered evidence would probably change the result in this case. One open question is the meaning of “will probably change the result” where the conviction is the result of a plea rather than a jury verdict. Arguably, the standard should be analogous to the prejudice prong of an ineffective assistance of counsel claim in this context. That is, relief should be granted where there is a reasonable probability that, had the petitioner been aware of the evidence in question, he would not have pleaded guilty and would have insisted on going to trial. C.f. In re Personal Restraint of Riley, 122 Wn.2d 772, 780-81, 863 P.2d 554 (1993)

(guilty plea may be withdrawn based on ineffective assistance of counsel if the defendant shows “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial”).<sup>30</sup>

In resolving whether there is a reasonable probability that the petitioner would not have pled guilty had he known of the new evidence, the trial court must evaluate the new evidence at the reference hearing. The court would determine the reliability and credibility of the new witness’s testimony, as well as the testimony of the petitioner.<sup>31</sup> The court could also take into account the discovery available at the time the petitioner entered his guilty plea.

Mr. Reise submits this evidence will show that there is a reasonable probability he would not have pled guilty. Although the State claims that Mr. Gillaspie’s statements supporting self defense are unreliable, the discovery shows that the State’s evidence

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<sup>30</sup> Consideration of this question here is complicated by the fact that Mr. Reise would not have accepted a guilty plea to the charge of second-degree murder had his attorney correctly advised him of the direct consequences of the plea. See Argument 2, *infra*; Appendix B to PRP at 2. Thus, this Court must either evaluate the issue in terms of the hypothetical sentence Mr. Reise anticipated based on his attorney’s advice – i.e., a 156-sentence on which he would be entitled to 1/3 “good time” credit and possible parole – or assume that correctly advised, Mr. Reise would not have pleaded guilty at all.

<sup>31</sup> This could include testimony regarding whether or not Mr. Reise was advised of the possibility of an *Alford* plea. Mr. Reise submits he was not. Appendix A to Petitioner’s Supplemental Reply Brief (Affidavit of Michael J. Reise) at 3.

against self defense is weak.<sup>32</sup> Only one witness saw the shooting, and that witness (a) was a drug user and dealer, and (b) saw only Mr. Reise and did not see the victim or hear what he was saying during the incident.<sup>33</sup> Several witnesses saw the victim attack Mr. Reise shortly before the shooting.<sup>34</sup> Thus, Mr. Gillaspie's testimony would tip the scale in favor of proceeding to trial rather than entering a guilty plea.

Some cases appear to apply the same definition for the "will probably change the result" standard regardless of whether the conviction is the result of a plea or a jury verdict. E.g. D.T.M., 78 Wn. App. at 221 ("Since her allegations provided the sole factual basis for D.T.M.'s conviction [via plea], her direct recantation would probably change the outcome of a new trial"). Under this definition, the petitioner would have to show that the new evidence would

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<sup>32</sup> The State claims Mr. Reise's attorney "acknowledged" at sentencing that the State possessed evidence that was inconsistent with a theory of self-defense. Supp. Br. of Resp't at 12-14. However, at the same hearing the prosecutor acknowledged that the "particular weakness" of his case was that "the jury would not necessarily [find] beyond a reasonable doubt that the defendant wasn't acting in self-defense." App. B to Supp. Br. of Resp't at 11.

<sup>33</sup> Appendix F to State's Response to PRP (King police report) at 6; Appendix B to Supp. Br. of Resp't (sentencing hearing) at 8-9, 26. The other witnesses who were at the motel heard the shot but did not see the incident, and most of them were under the influence of controlled substances. See Appendices E-I to State's Response to Personal Restraint Petition; Appendix B to Supp. Br. of Resp't (sentencing hearing) at 26.

<sup>34</sup> Appendix F to State's Response to PRP (King police report) at 3; Supp. Br. of Petitioner at 6; Supp. Br. of Resp't at 12; Appendix B to Supp. Br. of Resp't (sentencing hearing) at 5-6, 23.

probably lead to an acquittal or a conviction on a lesser offense.

Davis, 25 Wn. App. at 139-40. Mr. Reise contends that this definition is inappropriate in the context of a plea, and that it would result in reference hearings turning into trials themselves. Nevertheless, for the reasons given above regarding the weakness of the State's case, Mr. Gillaspie's testimony "would probably change the result" under either definition. In any event, the reliability of the new evidence, the credibility of Mr. Reise, and the relative strength of the State's case are all facts for the trial court to determine at a reference hearing.

In sum, Mr. Reise's guilty plea does not bar his newly discovered evidence claim. His case should be remanded for a reference hearing at which the trial court will consider the nature of his plea as one of several factors in determining whether the new witness's testimony would probably change the result in his case.

2. MR. REISE IS ENTITLED TO WITHDRAW HIS  
GUILTY PLEA BASED ON DEFENSE  
COUNSEL'S MISADVISEMENT REGARDING  
THE DIRECT CONSEQUENCES OF THE PLEA.

In the alternative, Mr. Reise has asked this Court to find his guilty plea was involuntary due to defense counsel's acknowledged

misadvisement regarding the direct consequences of the plea.<sup>35</sup>

The remedy is to permit Mr. Reise to withdraw his guilty plea.

Should this Court determine additional factual resolution is necessary, this Court should remand for a reference hearing on the misadvisement.

Principles of due process require that a guilty plea be knowing, intelligent and voluntary. U.S. Const. amends. 5,<sup>36</sup> 14,<sup>37</sup> Const. art I, § 3,<sup>38</sup> Boykin v. Alabama, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); State v. Chervenell, 99 Wn.2d 309, 312, 662 P.2d 836 (1983). This standard is reflected in CrR 4.2(d), which mandates that the trial court “shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.”

Once a guilty plea is accepted, the court must permit withdrawal of the plea where necessary to correct “a manifest injustice.” CrR 4.2(f). The Supreme Court has identified the

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<sup>35</sup> PRP at 9-10.

<sup>36</sup> The due process clause of the Fifth Amendment provides: “No person shall... be deprived of life, liberty, or property, without due process of law....”

<sup>37</sup> The due process clause of the Fourteenth Amendment reads: “No state shall... deprive any person of life, liberty, or property without due process of law...”

<sup>38</sup> Const. art. 1, § 3 provides, “No person shall be deprived of life, liberty, or property, without due process of law.”

following circumstances as amounting to manifest injustice: the denial of effective counsel, the defendant's failure to ratify the plea, an involuntary plea, and the prosecution's breach of the plea agreement. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006) (citing State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996)).

The failure to notify a defendant of the direct consequences of his guilty plea renders the plea involuntary. In re Personal Restraint of Isadore, 151 Wn.2d 294, 296, 88 P.3d 390 (2004). Likewise, an affirmative misadvisement regarding a direct consequence of the guilty plea constitutes ineffective assistance of counsel that requires the plea be set aside. State v. Walsh, 143 Wn.2d 1, 5, 17 P.3d 591 (2001). A sentencing consequence is direct when "the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (quoting State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)).

In Isadore, the Court clarified that a defendant need not show the misadvisement was material to his decision to plead guilty in order to be entitled to relief. Isadore, 151 Wn.2d at 302. In Isadore, the defendant was not advised of mandatory community

placement. Holding the failure to advise rendered the plea involuntary, the Court granted the defendant's personal restraint petition. 151 Wn.2d at 302. As a remedy, the Court ordered an amended sentence that had corrected the sentence to impose the mandatory community placement term be stricken and the original sentence enforced. Isadore, 151 Wn.2d at 303 (noting, "The defendant has the initial choice of specific performance or withdrawal of the plea" and citing State v. Turley, 149 Wn.2d 395, 399, 69 P.3d 338 (2003) and State v. Miller, 110 Wn.2d 528, 536, 756 P.2d 122 (1988)).

Here, although he did not have to under Isadore, Mr. Reise has established materiality: but for his lawyer's misadvisement, Mr. Reise would not have pleaded guilty and instead would have proceeded to trial.<sup>39</sup> The affidavits submitted by Mr. Reise, Ms. Fahlgren, and Mr. Reise's son, Michael Robert Reise, indicate that in his effort to induce Mr. Reise to plead guilty, Mr. Dixon misinformed not only Mr. Reise himself regarding his anticipated sentence but also Mr. Reise's family.<sup>40</sup>

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<sup>39</sup> Exhibit A to PRP at 2.

<sup>40</sup> Appendix A to PRP at 1-3; Appendix B to PRP at 1-2; Appendix C to PRP at 1-2.

Curiously, although Mr. Dixon disputes that he provided incorrect advice to his client, Mr. Dixon acknowledges having told Mr. Reise and his family that “the laws with respect to sentencing might change at some point in the future due to the severe overcrowding problem in our institutions.”<sup>41</sup> Thus, even if this Court were to discount the sworn affidavits of Mr. Reise and his family members in favor of the assertions contained in Mr. Dixon’s letter, which were not made under oath, the letter lends credence to Mr. Reise’s claim that his lawyer misled him. Because the misadvisement concerns a direct consequence of the plea, Mr. Reise has established a manifest injustice entitling him to withdraw his guilty plea to murder in the second degree. Wakefield, 130 Wn.2d at 472; CrR 4.2(f).

Should this Court determine further factual resolution is necessary in order for this Court to grant relief on Mr. Reise’s ineffective assistance of counsel claim, the appropriate remedy is to remand for a reference hearing.

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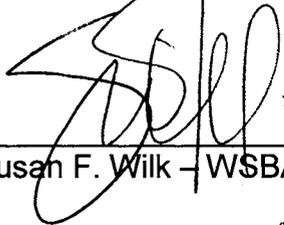
<sup>41</sup> Exhibit A to PRP at 11.

D. CONCLUSION

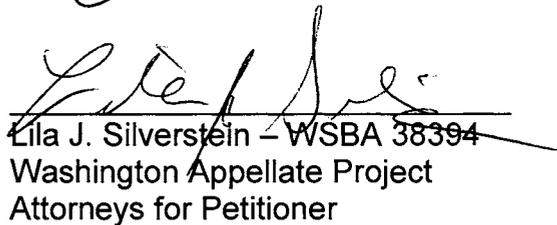
For the reasons set forth above, Mr. Reise respectfully requests that this Court grant relief in the form of a new trial or an evidentiary hearing.

DATED this 12<sup>th</sup> day of December, 2007.

Respectfully submitted,



\_\_\_\_\_  
Susan F. Wilk - WSBA 28250



\_\_\_\_\_  
Lila J. Silverstein - WSBA 38394  
Washington Appellate Project  
Attorneys for Petitioner

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

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IN RE THE PERSONAL RESTRAINT PETITION OF )		
	)	
MICHAEL REISE,	)	NO. 34879-9-II
	)	
	)	
PETITIONER.	)	

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**CERTIFICATE OF SERVICE**

I, MARIA ARRANZA RILEY, CERTIFY THAT ON THE 12<sup>TH</sup> DAY OF DECEMBER, 2007, I CAUSED A TRUE AND CORRECT COPY OF THE **SECOND SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] JAMES POWERS		
THURSTON COUNTY PROSECUTING ATTORNEY	(X)	U.S. MAIL
2000 LAKESIDE DR SW	( )	HAND DELIVERY
OLYMPIA, WA 98502	( )	_____

[X] MICHAEL REISE		
882766	(X)	U.S. MAIL
STAFFORD CREEK CORRECTIONS CENTER	( )	HAND DELIVERY
191 CONSTANTINE WAY	( )	_____
ABERDEEN, WA 98520		



**SIGNED** IN SEATTLE, WASHINGTON THIS 12<sup>TH</sup> DAY OF DECEMBER, 2007.

X \_\_\_\_\_  


**FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2007 DEC 12 PM 4:56**