

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

In re the Personal Restraint	)	No. _____
Of	)	
	)	PERSONAL RESTRAINT
	)	PETITION AND
SHAMARR PARKER,	)	STATEMENT OF
	)	FINANCES/REQUEST
<u>Petitioner.</u>	)	TO WAIVE FEES

A. STATUS OF PETITIONER

Comes now the petitioner, Shamarr Parker, by and through his attorney, Kathryn Russell Selk of RUSSELL SELK LAW OFFICE, and applies for relief from unlawful restraint. He is currently in custody serving a term of 246 months (a little more than 20 years) in custody, imposed after convictions for first-degree kidnapping and first-degree robbery, both charged with firearm enhancements. See Judgment and Sentence, attached hereto, as Appendix A.

1. The sentence of 246 months was imposed in Pierce County Superior Court on May 28, 2010. See App. A.

2. Petitioner was charged by information with first-degree kidnapping and first-degree rape of A.W., both with a deadly weapon enhancement. See Information, attached hereto as Appendix B. On July 10, 2009, an Amended Information was filed adding an additional alternative charge for count II, as well as a third charge of first-degree

robbery with a deadly weapon enhancements for the same date in 2008.

See Amended Information, attached hereto as Appendix C. In addition, a count of first-degree kidnapping, first-degree rape, and first-degree robbery of R.G. on a date in 2006 were added, all with deadly-weapon enhancements. Id. A Second Amended Information was filed on January 12, 2010, in which the prosecutor dismissed all of the allegations involving R.G., explaining that the victim had only identified the defendant's cousin as involved, was "adamant" that he was the perpetrator and there was a "lack of physical evidence linking the defendant to the scene." Second Amended Information, attached as Appendix D; Prosecutor's Statement, attached as Appendix E. Parker was found guilty after jury trial of first-degree kidnapping with intent to facilitate a robbery and while armed with a deadly weapon, as well as first-degree robbery with a deadly weapon enhancement. Verdict forms, attached as Appendix F. The jury was unable to reach a conclusion on the rape count, and an Order dismissing that count without prejudice was filed on May 28, 2010. Order, attached as Appendix G. For the robbery count, the jury specifically answered "no" when asked if it unanimously agreed "that the defendant was armed with a deadly weapon during the commission of the crime of robbery or in immediate flight therefrom," but "yes" when asked if they "unanimously

agree that the defendant displayed what appeared to be a firearm or deadly weapon during the commission of the crime of robbery or in immediate flight therefrom. App. F at Interrogatories – count III.

3. Petitioner was sentenced on May 28, 2010, after trial before the Honorable Judge Bryan E. Chuschcoff on April 1, 5, 8, 12, 13, 14, 19, 20 and 21, 2010. App. A; see RP 1, 79, 89, 218, 361, 538, 637, 784, 806, 2RP 634.<sup>1</sup> Petitioner filed a notice of appeal on May 28, 2010, and this Court affirmed his convictions in an unpublished opinion on January 31, 2012. See Notice of Appeal, attached as Appendix H; Unpublished Opinion, attached as Appendix I. The Supreme Court denied the Petition for Review, filed under No. 87083-7, on June 5, 2012, and the Mandate issued on July 11, 2012. See Mandate, attached as Appendix J.

4. Petitioner's attorney at trial was Leslie Tolzien, whose office address in Tacoma, Washington is currently listed by the Washington State Bar Association directory as 901 South Street, Suite 201, Tacoma, Washington 98405. See Defendant's Trial Brief, attached as Appendix K; WSBA website printout, attached as Appendix L.

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<sup>1</sup> The verbatim report of proceedings was prepared in the direct appeal under cause number 40793-1-II. A motion to transfer the transcript from that cause number to this proceeding is being filed herewith. The volumes of the transcript will be referred to as follows:  
the 10 chronologically paginated volumes containing the proceedings of April 1, 5, 8, 12, 13, 14, 20, 21 and 22, and May 28, 2010, as "RP;"  
the separately paginated proceedings of April 19, 2010, numbered 634-765, as "2RP."

5. Petitioner's appeal from the decision of the trial court was decided by this Court, Division Two of the court of appeals in an unpublished decision issued January 31, 2012. See App. I. Appointed counsel for that case was Rebecca Wold Bouchey, Attorney at Law, P.O. Box 1401, Mercer Island, Washington, 98040. See Perfection letter, attached as Appendix M. Counsel for the current Personal Restraint Proceeding is Kathryn Russell Selk of RUSSELL SELK LAW OFFICE, Post Office Box 31017, Seattle, Washington, 98103.

6. Parker's Petition for Review of the court of appeals decision was denied by the Supreme Court on June 5, 2012, and the Mandate issued on July 11, 2012. See App. J. A copy of the opening brief on appeal filed on Parker's behalf is attached as Appendix Q. A copy of the response filed by the prosecution is attached as Appendix R.

B. GROUND FOR RELIEF

Petitioner Shamarr Parker was ordered to serve a sentence of 246 months in custody after he was convicted of first-degree kidnapping with a deadly weapon enhancement and first-degree robbery, also with a deadly weapon enhancement, with a mistrial declared on a count involving an allegation of rape, dismissed without prejudice as a result. See App. A, App. F, App. G.

Parker's direct appeal was timely filed and ultimately relief was denied by this Court, the court of appeals, Division Two. See App. H, App. I. In that appeal, the only issue was raised was whether there was sufficient evidence to prove the kidnapping offense. See App. I, App. Q, App. R. The Supreme Court did not grant review and the Mandate issued on July 11, 2012. See App. J.

Mr. Parker is entitled to relief from the unlawful restraint he is suffering. See Brief in Support of Personal Restraint Petition, filed herewith. Further, this Court has the authority to grant him that relief under the Rules of Appellate Procedure Title 16, RCW Title 10.73 and the relevant caselaw. See id.

Arguments and legal authorities in support of these points are contained in Mr. Parker's Brief in Support of Personal Restraint Petition, filed herewith pursuant to RAP 16.10. Mr. Parker respectfully incorporates the materials in that Brief into this Petition in order to avoid undue repetition. Based upon that briefing, he asks the Court to grant him relief from the unlawful restraint which he is suffering and which has caused actual and substantial prejudice to his constitutional rights and resulted in a complete miscarriage of justice.

C. STATEMENT OF FINANCES

1. Petitioner Parker respectfully asks this Court to waive the filing and other fees for this Personal Restraint Petition and the subsequent proceedings, pursuant to RAP 16.15(h).

2. Mr. Parker's financial situation at the time of the direct appeal was such that he was entitled to appointed counsel. See, Order of Indigency entered on direct appeal, attached as Appendix N.

3. Mr. Parker's financial situation has only gotten worse since appointment of counsel for the direct appeal, because he has been in custody since then. Specifics regarding his property of value, employment, and debts are set forth separately, in the Petitioner's Statement of Finances Pursuant to RCW 9A.72.085, attached hereto as Appendix O. The information contained in that Declaration is incorporated herein. An official declaration of account from the Department of Corrections is attached as Appendix P.

4. Mr. Parker is not asking the Court to appoint counsel for him, although he is so poor he cannot personally afford one. He is already being represented by counsel.

D. REQUEST FOR RELIEF

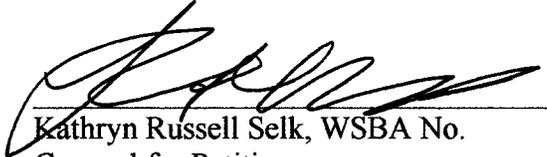
For the reasons stated in the Brief in Support of Petition being filed

along with this petition, Mr. Parker respectfully asks the Court to grant him relief from the unlawful restraints he is suffering.

E. OATH

After being first duly sworn, on oath, I depose and say: That I am the attorney for the Petitioner, Shamarr Parker, that I have read the petition, know its contents, and I believe the petition is true.

DATED this 11 day of July, 2013.

  
Kathryn Russell Selk, WSBA No.  
Counsel for Petitioner

Subscribed and sworn to before me this 11th day of July, 2013.



  
Notary Public in and for the State of  
Washington, residing at Seattle, WA

# RUSSELL SELK LAW OFFICES

## July 11, 2013 - 3:30 PM

### Transmittal Letter

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Court of Appeals Case Number:

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Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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#### Comments:

Appendices to PRP

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