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FILED
COURT OF APPEALS
DIVISION II
2014 JAN 31 AM 11:23
STATE OF WASHINGTON
BY W
DEPUTY

- THE PERSONAL RESTRAINT PETITION MANUAL
- PERSONAL RESTRAINT PETITION-FORM (RAP 16.3)
- IN FORMA PAUPERIS GUIDE
- IN FORMA PAUPERIS MOTION AND ORDER FORM (ORPRFP)

COURT OF APPEALS
DIVISION _____
OF THE STATE OF WASHINGTON

In the Matter of the Application)
For Release from Personal Restraint)
of:)
)
)
Bobby ZIMMERLE)
Petitioner)
)
)

45868-3

Personal Restraint Petition
Pursuant to (RAP 16.3)

If there is not enough room on this form, use the back of these pages, or other paper. Fill out all of this form and other papers you are attaching before you sign this form in front of a Notary.

A. Status of Petitioner

I, Bobby ZIMMERLE #257213 - G-E-127, WASHINGTON STATE
PENITENTIARY, 1313 N. 13 N. TH AVE, WALLA WALLA, WA 99362
(Full name and address)

Apply for relief from confinement. I am am not [] now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order:

3rd DEGREE ASSAULT.

(Identify type of order)

1. The Court in which I was sentenced is: Cowlitz County

2. I was convicted of the crime(s) of: 3rd DEGREE ASSAULT

3. I was sentenced after trial [], after plea of guilty on: 4-16, 2013
(Date of Sentence) (Year)

The judge who imposed the sentence was _____
(Name of trial court judge)

4. My lawyer at trial was: NONE, THERE WAS A CONFLICT OF INTEREST, I DON'T KNOW HIS NAME TO THIS DAY.
(Name and address if known; if none, write "none")

5. I did did not [] appeal from the decision of the trial court (if the answer is that I did), I appealed to: Cowlitz County Superior Courts, A MOTION TO WITHDRAWEL MY PLEA, IT WAS DENIED, SEE COURT HEARING MINUTES TO SEE WHY.
(Name of court of courts to which appeal was taken)

My lawyer on appeal was: NONE, I'M ASKIN' NOW FOR NEW COUNSEL.
(Name and address if known; if none, write "none")

The decision of the appellant court was was not [] published. If the answer is that it was published, and I have this information, the decision is published in: _____

(Volume number, Washington Appellate Reports or)

(Washington Reports and page number)

6. Since my conviction I have have not [] asked the court for some relief from my sentence other than I have already written above. (If the answer is that I have asked)

The court I asked was: TO GRANT ME A WITHDRAWEL OF PLEA, DUE TO A CONFLICT OF INTEREST, AND CONFLICT WITH THE JUDGE, I DID NOT GET A FAIR HEARING, AND THE PUBLIC ATTORNEY WITHDREW FROM MY CASE AT THE HEARING.
(Name of court or courts in which relief was sought)

Relief was denied granted [] _____

(Grounds of Relief)

Ground 1, ON 4-15-2013, A WOMAN JUDGE DIDN'T NOT TAKE MY PLEA TO SHE DID NOT FEEL COMFORTABLE AND TOLD MY LAWYER AND THE PROSECUTOR THAT SHE WAS GOING TO POSPONES MY PLEA AND SHE WANTED AND TOLD MY LAWYER THAT SHE WANTED HIM TO MAKE ME UNDERSTAND THAT I WAS GOING TO PLEA ~~TO~~ GUILTY TO 43 MONTHS FOR 3RD DEGREE ASSAULT DOES HE UNDERSTAND THAT, AND TOLD HIM SHE WAS GOING TO LET THE JUDGE WHO STARTED THIS CASE TO DEAL WITH IT.

Ground 2, I ASK TO TALK AND SEE MY LAWYER AND HE CAME TO SEE ME AND I TOLD HIM THAT YOU SAID THEY WERE GOING TO DROP THE FELONY HASSASSMENT, AND I DID NOT FEEL COMFORTABLE OR UNDERSTAND WHY YOU WOULDN'T CHECK AND SEE IF I HAD LISEK POINTS, IN FACT I DO NOT WANT TO PLEA GUILTY TO THIS CHARGE YOU WOULDN'T LET ME READ THE POLICE REPORT YOU'VE DONE NOTHING BUT TRIED TO CONVICT ME AND GET ME OUT OF HERE I WANT TO WITHDRAW MY PLEA AND HE SAID I COULDN'T HE WOULDN'T HELD ME WITHDRAWEL MY PLEA, IN FACT HE FLAT RIGHT OUT SAID I COULDN'T DO IT, THAN I TOLD HIM I WOULD NOT PLEA GUILTY IN COURT FOR THIS CHARGE AND I DIDN'T I PLEADED NOT GUILTY IN COWLITZ COUNTY SUPERIOR COURT ROOM; SO WHEN I GOT TO PRISON I FILE A MOTION OF WITHDRAWEL OF PLEA TO COWLITZ COUNTY.

GROUND 3, WHEN I WENT BACK TO COURT BECAUSE I FILE A MOTION OF WITHDRAWAL OF PLED, TO Cowlitz County Courts, GOT BROUGHT BACK AND IN FRONT OF A JUDGE I DON'T KNOW HIS NAME CHECK MINUTES, THE LAWYER THAT MISREPRESENTED WAS THERE THE JUDGE HAD HIM SPEAK FIRST AND THIS PUBLIC OFFENDER SAID AND ADMITTED THERE WAS A CONFLICT OF INTEREST, BETWEEN, TOLD THE JUDGE IF HE GRANTS MY MOTION OF WITHDRAWAL OF PLED, THAT HE COULDN'T REPRESENT ME OR CAN ANY ONE FROM THE Cowlitz County PUBLIC OFFENDER OFFICE DUE TOO ANYONE KNOWS ABOUT THIS CASE AND MATTER, BUT HE DID ADMIT WE HAD A PERSONAL CONFLICT HOW HE STATES IT. THEN THE JUDGE ASK ME TO SPEAK AND ASK ME WHY HE SHOULD GRANT MY MOTION, I SAID FOR ONE THE LAWYER JUST ADMITTED HERE IN FRONT OF YOU AND THE PROSECUTOR THAT THERE WAS A CONFLICT OF INTEREST BETWEEN HIM AND ME, AND I TOLD HIM EVEN THOUGH I SIGN THE JUDGMENT OF ~~SENTENCE~~ SENTANCE IN A ROOM OUTSIDE THE COURT ROOM, I TOLD HIM I DIDN'T UNDERSTAND WHY HE WANTED ME TO PLED GUILTY TO 3rd DEGREE ASSAULT THAT I WANTED TO SEE THE POLICE REPORT HE WOULDN'T LET ME AND HE SAID HE WOULD HELP ME EITHER EXPLAIN TO THE COURTS WHY I DIDN'T WANT TO PLED GUILTY.

Grounds 3, THE JUDGE DENIED MY MOTION
DUE TO HE SAID THE JUDGE THAT SENTENCE
ME ON 4-16-2013 WATCH ME SIGN THE
JUDGEMENT OF SENTENCE IN THE COURT ROOM
ON 4-16-2013 WHICH WAS UNTRUE AND A
LIE, I TOLD THE JUDGE THAT I'M NOT GETTING
A FAIR HEARING HERE YOUR FRIENDS WITH THE
JUDGE WHO SENTENCE ME, THERE FOR I
WOULD LIKE A CHANGE OF VENUE, DENIED,
HE SAID I HAVE TO LET THE COURT OF APPEALS
DEAL WITH THIS MATTER.

(Date of decision, if more than one, dates of all decisions)

7. (If I have answered in question 6 that I have asked for relief), the name of my lawyer in the proceedings mentioned in question 6 was: I DON'T KNOW HIS NAME, HE WITHDREW FROM MY CASE DUE TO A CONFLICT OF INTEREST, ON 12-11-2013
(Name and address if known; if none, write "none")

8. If the answer to the above questions do not really tell about the proceedings and the court, judges and attorneys involved in your case, tell about it here: THERE WAS A CONFLICT OF INTEREST WITH MY LAWYER AND ME, HE WITHDREW AND TOLD THE JUDGE ON 12-11-2013 THERE WAS IN FACT A CONFLICT OF INTEREST, AND THE JUDGE ON THAT DATE DENIED MY MOTION DUE TO A STATEMENT THAT THE JUDGE WHO DID VENEDICTALLY SENTENCE ME, SAID IN THE COURT MINUTES THAT I SIGN THE JUDGMENT OF SENTENCE IN THE COURT ROOM THAT NEVER HAPPEN AT ALL, MY PUBLIC ATTORNEY TRICK ME OF SIGNING THE JUDGMENT OF SENTENCE IN A LITICE ROOM, LIKE A ATTORNEY ROOM NOT THE COURT ROOM.

B. Grounds for Relief

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground," "Second Ground," "Third Ground." Etc.), I claim that I have (number) 3 reason(s) for this court to grant me relief from the conviction described in part A.

Grounds ATTACHED.

(First, Second, etc.)

1. I should be given a new trial or released from confinement because [Here state legal reasons why you think that there was some sort of error made in your case which gives you right to a new trial or release from confinement.]:

BECAUSE I NEVER PLEDED GUILTY TO 3RD DEGREE ASSAULT IN THE SUPERIOR COURT ROOM, AND I HAD A VENEDICTIVE LAWYER WHO JUST WANTED ME TO PLED GUILTY WOULDNT HELP ME AFTER I EXPLAIN TO HIM I DIDNT UNDERSTAND WHAT HE WAS DOING, AND WHY, I JUST WANT A FAIR HEARING, I TRULY BELIEVE IN MY HEART I'M NOT GUILTY FOR 3RD DEGREE ASSAULT, MAYBE SIMPLE ASSAULT BUT NOT 3RD DEGREE ASSAULT. THATS THE TRUTH. THAT COUNTY VENEDICTIVELY CHARGE ME AND FORCE ME TO GET IN TROUBLE IN THAT COUNTY, I SHOULD GET CREDITED FOR TIME I SERVE AND RELEASE. THAT WHAT I SHOULD GET.

2. The following facts are important when considering my case [After each fact statement, put the name of the person or persons who know the facts and will support your statement of the fact. If the fact is already in the record of your case, indicate that also.]:

THE POLICE REPORT, AND THE PERSON WHO THEY SAY I HIT. THATS ALL I CAN SAY, NOT UNLESS THE COURTS GET WHO I HIT TO LEE.

3. The following reported court decisions [include citations if possible] in cases similar to mine show the error I believe happened in my case [if none are known, state "None Known"]:

I'VE ALREADY EXPLAIN WHAT HAPPEN IN MY GROUNDS.
READ AND SEE MINUTES OF ALL COURT HEARING FROM THE
BEGINNING ON 4-15-2013 AND ON 12-11-2013
YOU'LL SEE AND READ WHAT HAPPEN;

4. The following statutes and constitutional provisions should be considered by the court [if none are known, state "None Known"]:

I DON'T TRULY UNDERSTAND THIS QUESTION I EXPLAIN
ALL FACTS OF WHAT HAPPEN.

5. This petition is the best way to get the relief I want and no other way will work as well because:

ONCE AGAIN I'VE EXPLAIN MY REASON WHY I FEEL THE
WAY I DO ABOUT WHAT HAPPEN IN COWLITZ COUNTY COURT
ROOM AND WITH MY LAWYER I TRULY BELIEVE I AM NOT GUILTY
OF 3RD DEGREE ASSAULT. MAYBE SIMPLE ASSAULT BUT THAT'S IT
AFTER I FINALLY GOT TO READ THE POLICE REPORT IT NEVER SAY
I HIT ANYONE

C. Statement of Finances

If you cannot afford to pay the filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do do not ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have \$ NO in my prison or institution account.

3. I do do not ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.

4. I am am not employed. My salary or wages amount to \$ NONE a month.
My employer is:

Bobby ZIMMERLE #257213-G-E-127, WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVE, WALLA WALLA, WA 99362
(Name and address)

5. During the past 12 months I did did not get any money from a business, profession, or other form of self-employment. If I did, it was:

(Kind of self employment)

The total income I got was \$ NONE.

6. During the past 12 months, I:

DID	DID NOT		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Get any rent payment. If so, the total amount I got was	\$ <u> </u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Get any interest. If so, the total amount I got was	\$ <u> </u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Get any dividends. If so, the total amount I got was	\$ <u> </u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Get any other money. If so, the total amount I got was	\$ <u> </u>

E. Oath of Petitioner

THE STATE OF WASHINGTON)
)
COUNTY OF Cowlitz)

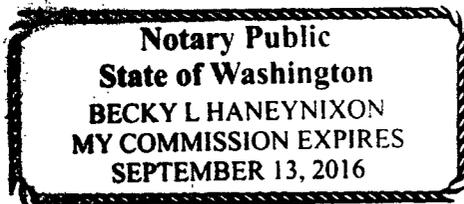
SS

After being first duly sworn, on oath, I dispose and say, that I am the petitioner, that I have read the petition. I know it's contents, and believe that the petition is true.

1-28-2014
Date

Bobby Zimmec
Signature of petitioner

SUBSCRIBED AND SWORN to me this 28th day of January, 2014.



Becky L Haney Nixon
NOTARY PUBLIC in and for the State of Washington
Residing at Walla Walla

My commission expires: 9/13/16

If a Notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary:

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated at _____ on this _____ day of _____,
(City and State)

Signature of Petitioner

Print/Type Name

CMUNDEN

WASHINGTON STATE PENITENTIARY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000257213 Name: ZIMMERLE, BOBBY S
LOCATION: E04-205-MF01

BKG# 101380

Account Balance Today (12/19/2013) Current : 20.42
Hold : 0.00
Total : 20.42

Account Balance as of 12/19/2013 20.42

11/15/2013 12/19/2013

SUB ACCOUNT	START BALANCE	END BALANCE
EDUCATION ACCOUNT	0.00	0.00
SPENDABLE BAL	0.42	0.42
WORK RELEASE SAVINGS	0.00	0.00
MEDICAL ACCOUNT	0.00	0.00
COMM SERV REV FUND ACCOUNT	0.00	0.00
SAVINGS BALANCE	20.00	20.00
POSTAGE ACCOUNT	0.00	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
COPD	COPY COSTS DEBT	08172007	1.70	0.00	0.00
COIS	COST OF INCARCERATION /07112000	09272000	UNLIMITED	157.19	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20061110	UNLIMITED	121.92	0.00
MEDD	MEDICAL COPAY DEBT	06282013	12.00	0.00	0.00
COPD	COPY COSTS DEBT	12272006	2.20	0.00	0.00
POSD	POSTAGE DEBT	11162006	2.52	0.00	0.00
DEND	DENTAL COPAY DEBT	12062000	4.00	3.00	0.00
HYGA	INMATE STORE DEBT	04252007	87.62	8.76	0.00
DEND	DENTAL COPAY DEBT	10062008	7.00	0.00	0.00
MEDD	MEDICAL COPAY DEBT	03302009	6.00	0.00	0.00
POSD	POSTAGE DEBT	11082007	4.96	0.00	0.00
SPOSD	SAPOS POSTAGE DEBT	09042013	22.20	2.60	0.00
TVD	TV CABLE FEE DEBT	07132013	1.00	0.00	0.00
SPOSD	SAPOS POSTAGE DEBT	05132013	31.20	0.00	0.00
COSFD	COS - FELONY DEBT (206)	10102006	0.00	680.00	0.00
LMD	LEGAL MAIL DEBT	12282006	1.35	0.00	0.00
POSD	POSTAGE DEBT	05052008	0.41	0.00	0.00
EL	ESCORTED LEAVE	09-2011	UNLIMITED	0.00	0.00
TVD	TV CABLE FEE DEBT	02102007	3.37	0.00	0.00
CVC	CRIME VICTIM COMPENSATION	09272000	UNLIMITED	16.12	0.00
POSD	POSTAGE DEBT	04062009	1.85	0.00	0.00
MEDD	MEDICAL COPAY DEBT	09282000	42.00	3.00	0.00
POSD	POSTAGE DEBT	01092007	82.58	0.00	0.00
MISCD	MISCELLANEOUS DEBT	11162006	4.81	0.00	0.00

CMUNDEN

WASHINGTON STATE PENITENTIARY

OTRTASTB

TRUST ACCOUNT STATEMENT

6.03.1.0.1.9

DOC# 0000257213 Name: ZIMMERLE, BOBBY S
 LOCATION: E04-205-MF01

BKG# 101380

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
TVD	TV CABLE FEE DEBT	03102001	0.00	1.00	0.00
DEND	DENTAL COPAY DEBT	06062007	2.82	0.00	0.00
COI	COST OF INCARCERATION	09272000	UNLIMITED	0.00	0.00
LMD	LEGAL MAIL DEBT	08162007	3.28	0.00	0.00
COSFD	COS - FELONY DEBT (206)	10262010	0.00	0.00	0.00
MISCD	MISCELLANEOUS DEBT	06242013	12.00	0.00	0.00
HYGA	INMATE STORE DEBT	07102013	0.00	7.17	0.00
CVCS	CRIME VICTIM COMPENSATION/07112000	09272000	UNLIMITED	40.73	0.00
POSD	POSTAGE DEBT	06272013	6.44	0.00	0.00
HYGA	INMATE STORE DEBT	11082000	158.13	28.31	0.00
TVD	TV CABLE FEE DEBT	07142007	2.09	0.00	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	07072009	3.20	0.00	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	01052007	23.82	0.00	0.00
MEDD	MEDICAL COPAY DEBT	06262007	18.00	0.00	0.00
EDCD	EASTERN DISTRICT COURT DEBT	CV-07-338-EF	260.02	89.98	0.00
COSXD	COST OF SUPERVISION DEBT	04192013	409.62	40.00	0.00
UPSD	PERSONAL PROPERTY POSTAGE DEBT	11092000	0.00	3.81	0.00
HYGA	INMATE STORE DEBT	01122007	85.28	19.87	0.00
MEDD	MEDICAL COPAY DEBT	01112007	42.00	0.00	0.00

TRANSACTION DESCRIPTIONS --

EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

11/18/2013	INMATE STORE DEBT (AUTO)		8.61	9.03
11/18/2013	CRS SAL ORD #7514823		(8.61)	0.42
11/18/2013	DENTAL COPAY DEBT		4.00	4.42
11/18/2013	I05 - DENTAL COPAY		(4.00)	0.42
11/21/2013	CSR SAL ORD #7514823		8.61	9.03
11/21/2013	HYGA-CSR SAL ORD #7514823		(8.61)	0.42

TRANSACTION DESCRIPTIONS --

WORK RELEASE SUB-ACCOUNT
SAVINGS

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS --

MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
------	-------------------------	----------	-----------------	---------

TRANSACTION DESCRIPTIONS --

COMM SERV REV SUB-ACCOUNT

CMUNDEN

WASHINGTON STATE PENITENTIARY

OTRTASTB

T R U S T A C C O U N T S T A T E M E N T

6.03.1.0.1.9

DOC# 0000257213 Name: ZIMMERLE, BOBBY S
LOCATION: E04-205-MF01

BKG# 101380

FUND ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			SAVINGS BALANCE	SUB-ACCOUNT
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
TRANSACTION DESCRIPTIONS --			POSTAGE ACCOUNT	SUB-ACCOUNT
DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE

(Copy Receipt)

(Clerk's Date Stamp)

<p>Superior Court of Washington County of <u>Cowlitz</u></p> <p>Petitioner: <u>Bobby Zimmerle</u> D.O.B. <u>3-29-59</u> and Respondent: _____ D.O.B. _____</p>	<p>CASE NO. _____</p> <p>MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS (ORPRFP)</p>
--	---

MOTION

The petitioner moves the court for an order permitting the petitioner to proceed without paying the filing fee.

Type of action I wish to file:

- Civil Anti-Harassment
- Initial Petition for Dissolution/ Separation
- Petition for Modification
- other (specify) A NEW TRIAL.

CERTIFICATE

The undersigned states:

I am the petitioner in this action. I believe that I have valid reasons for bringing this action and that I am entitled to relief. I am unable to pay the filing fee in this proceeding.

My financial statement is attached.

ORDER TO PROCEED IN FORMA PAUPERIS
Page 1 of 3

CI 02.0200
DR 03.0150

FILING A MOTION TO PROCEED IN FORMA PAUPERIS

The court will ask you to pay a filing fee from \$36 to \$250 to begin your family law case. The amount of the fee depends upon the type of case and the county. (For example, the filing fee for modifications in some counties is \$36, and the fee for filing a dissolution action in some counties is \$250.00). If you cannot pay the filing fee or paying it would be hard for you, you can ask the court to waive (not ask for) the filing fee. The court may also waive other costs such as court-certified copies of your papers. To ask for a waiver, you must file a Motion to Proceed in Forma Pauperis. Certain fees, such as the sheriff's charges for serving papers, cannot be waived. This packet can be used for all family law cases except for habeas corpus petitions. There is a separate packet available for those types of actions.

Before filling out these forms, **first check with the Clerk of the Superior Court in your county to find out if they require special forms for this Motion.** Some counties require you to use forms specific to their county. If your county does not have any special requirements for a Motion to Proceed In Forma Pauperis, you may use the enclosed forms. This Motion must be filed and the Order must be signed before you can file your family law petition with the court.

Contact the Superior Court Clerk in your county to find out how to present the Motion to a judge or commissioner and to get the Order signed.

General Instructions

READ THESE INSTRUCTIONS BEFORE YOU BEGIN TO FILL OUT ANY OF THE FORMS

A. **THE CAPTION.** The caption is the name of your case. It appears at the top of the first page of every form.

- **Follow the instructions in the family law packet you are using** to fill in the caption (for example, the *Filing for a Dissolution of Marriage* packet).

B. **CASE NUMBER.** When you file your family law case, the court clerk will give you a case number. Your case number must appear on every form you use. As soon as you get a case number, write it near the top on the right-hand section of the page after "No.". The case number is on the right, above the title. Some counties have stamps with the case numbers on them. This is faster and ensures the case number is consistent and readable. Ask the clerk if s/he has a docket number stamp or if you need to write the number in.

C. **TITLE.** Each form has a title. The title of the form you will be filing has already been filled in: "MOTION AND ORDER TO PROCEED IN FORMA PAUPERIS."

D. **THE CONTENTS.** Fill out each form according to the instructions for that form. You may print or type the information, but it must be readable and you must use **BLACK INK**. After filling out each form, re-read it to be sure you have correctly filled in all the blanks you need to.

I certify under penalty of perjury, under the laws of the State of Washington, that I have read the foregoing statements in the Certificate, and the attached financial statement, know the contents thereof, and believe them to be true and correct.

DATED at WALLA WALLA PENITENTARY on 1-30- 20 14.
(place) (date)

Bobby Zimmerle
Petitioner's Signature

ORDER

It is hereby ordered that:

- The petitioner is permitted to proceed without payment of the filing fee.
- The filing fee shall be paid at the time of the final decree being entered.
- Payment of the filing fee may be reviewed at a subsequent hearing.
- The petitioner shall pay the \$10 surcharge fee.
- Forms shall be provided to petitioner at no cost.
- This is a joint petition; respondent shall pay the filing fee prior to entry of the final orders.
- the Clerk's office shall provide one complete set of copies of the pleading to the petitioner without cost.
- The motion is denied.

Dated: 1-28-, 20 14.

JUDGE/ COURT COMMISSIONER

FINANCIAL STATEMENT

GENERAL INFORMATION

(A) Name: BOBBY ZIMMERLE #257213-G-E-127,

(B) Address: WASHINGTON STATE PENITENTARY
1313 N. 13TH AVE.

Street
WALLA WALLA, WA 99362 (c) Telephone No: ()
City State Zip Code

(D) Social Security No: 532-54-0058 (E) Date of Birth: 3-29-59

(F) Marital Status: Divorced Separation Married Single

Courts.³ There is no PRP in Superior Court (although they continue to accept habeas applications) and there is no writ of habeas corpus in the Court of Appeals (although technically, one may still file for habeas relief in the Supreme Court, in practice such a petition would be considered a PRP and transferred to court of Appeals).⁴

As a procedural device, the PRP is intended as a remedy for all forms of unlawful restraint (as below) which includes invalid or unconstitutional conviction and unlawful or unconstitutional conditions of confinement.⁵ Following the tradition of habeas corpus, the PRP is an informal application for prompt relief from unjust or unlawful restrictions on life, liberty or property. Unlike direct appeal, the PRP imposes stringent and sometimes rigid standards on what issues may “rise” to a level where relief may be granted, but damages are not limited to matters of record at trial.⁶ Unlike a Civil Complaint (tort or civil rights), damages are not recoverable as a normal part of “equitable” relief under a PRP. A PRP is a means to right wrongs by fixing a problem or correcting a mistake - not to recover losses or penalize those who caused the problem.⁷

PRP proceedings are unique, summary (usually done without a hearing), and informal (despite what appear to be “mandatory rules”).⁸ The “swiftness” of a PRP is relative (more turtle than hare), and even more than direct appeal, a successful PRP is rare. There is no constitutional requirement for assignment of counsel in collateral proceedings, consequently, the vast majority of PRPs are filed by prisoners acting on their own behalf (*pro se*). Because many *pro se* prisoners have trouble with reading and writing and most are not adept at law, most PRPs fail to get to first base (or even up to “bat”).

3. A QUICK OVERVIEW OF THE PERSONAL RESTRAINT PETITION:

³See RCW 7.36, et seq.; RAP 16.3.

⁴See RAP 16.3 ©); WASH. CONST. art. I, §13 & IV, §4.

⁵See RAP 16.4, Deskbook, § 32.2 (1); §32.3; Wash Practice. §4905.

⁶See Deskbook, § 32.2 (2)©) at p. 4.

⁷ Although habeas relief was originally limited to “discharge from custody,” that view began to change with an opinion by Justice Douglas in 1952 (*Sweeney v. Woodall*, 344 U.S. 86, 93). See *Proll v. Morris*, 85 Wn.2nd 274, 534 P.2nd 569, 571 (1975), and *In Re Powell*, 92 Wn.2nd 882, 887, 602 P.2nd 711 (1979) and cites therein.

⁸See *Honore v. State Board of Prison Terms*, 77 Wn.2nd 660, 664, 446 P. 485 (1970)(“Sui Generis”); the best indication of a PRP informal and summary nature is that there is no “trial” and no jury. Even the “formal” rules are often waived or applied “loosely.” All petitioners should suggest “liberal interpretation” (*Haines v. Kerner*, 404 U.S. 519 (1972) and emphasize application of RAP 1.2(a) (“promote Justice...Decision of cases on the merits”)

- completeness,
- 3) The Chief Judge (or acting Chief Judge) determines if the petition is facially sufficient (on quick readings, does the petition state a claim upon which PRP relief might be granted? (This is also called "*prima facie*" sufficiency),
 - 4) The court sends a copy to the respondent (either the country prosecutor or the attorney General for the State) and directs them to file a Response Brief within 20 days,
 - 5) The Respondent (after one or more time extensions) submits a Response Brief (which is supposed to comply with the requirements of the rules, RAP 16.9) and provides support for the State's position (documents, policies, records, etc.),
 - 6) Petitioner is served with a copy of the Response and has (by RAP Rule 16.10) 17 days to reply by brief,
 - 7) A month or so after all the briefs are submitted, the Court either dismisses the PRP (ouch), orders a "reference" hearing (where evidence is taken to resolve FACTS in dispute before a Superior Court), directs the parties to provide further support documentation, or grants the relief requested or other equitable relief as may seem just to the court.

This may seem very complex or quite simple; it's a bit of both. The process is rather simple and straight forward (relative to other legal processes), but is full of subtle traps and barriers. More than anything else, this guide hopes to help you avoid those traps and breach those barriers.

4. SEVERAL GUIDING PRINCIPLES:

- 1) Persistence Pays.
- 2) The Squeaky Wheel Gets Greased.
- 3) It Isn't Over 'Til It's Over.
- 4) Proper Prior Planning Prevents Poor Performance.

5. THE FIRST DECISION - WHEN TO SUBMIT A PRP:

This should be a no-brainer, but because of several rules and statutes, deciding when to submit a PRP may involve careful balancing of several heavy factors. First, you need to know that the law favors (because the Courts only want to see) **ONE PRP PER CUSTOMER**. In other words, your pistol may only have one bullet- "**make the best of it.**" ¹⁵ Under the laws and rules governing "subsequent" or "successive" petitions (e.g. RCW 10 73.140/ RAP 16), you must raise all issues available to you at any time you submit a PRP and issues which have been previously raised and determined on their "merits" (facts were found and laws stated by a court of law) may not be again raised in

¹⁵Tom Sellek's words from "Quincy Down Under."

which happened in the trial court or courtroom should be “on the record,” but it is not uncommon for trial attorneys to neglect to identify portions of the trial proceedings when “designating” the record. Jury selection (*voir dire*), opening statements, certain motion, in-chambers discussions, bench discussions, and other trial events are frequently not made part of the record due to attorney oversight. Important discussions regarding witnesses, evidence, plea agreements, and trial preparation may establish error or unfairness, but will not be part of the record. IF such evidence or other matters exist and they are important to your appeal, the best (or only) way to have them considered as part of your direct appeal (which will always be your best hope of reversal) may be through a PRP. (Remember, PRPs are not restricted to matters of record and if you submit a PRP before oral argument of your appeal is set It will very likely be consolidated (joined) with your appeal).²¹

In this manner, that alibi witness that your attorney failed to call or interview (not in the record) could be deposed or provide a sworn affidavit which you could submit with a PRP to demonstrate unfairness and ineffectiveness of counsel (which could then be considered by the judges who have the best view of your case and all the issues before them). The same witness statement might prove far less persuasive if taken alone in a later PRP proceeding.

On the other hand, a PRP should not be wasted to do what may be done via a “Pro Se Supplemental Brief.” if you want to raise issues not raised by appellate counsel which are either in the record of which can be made part of the record (study RAP Title 9-Record On Review), then use the Pro Se Brief to do so. **NEVER forego (waste) any direct appeal opportunity to file a pro se brief) based on the notion that you can always file a PRP.** (Think of direct appeal as a .44 magnum, a PRP is more like a bow and arrow).

The best reason for waiting to submit your PRP until after your direct appeal is decided is the “two shots are better than one” concept. If your appeal fails, you may indeed get another shot at reversal (or, if you believe in miracles - dismissal) from different judges with a PRP. Of course, if it really worked that way, the concept would have greater merit. Instead, you should understand that:

- a) Higher courts try to affirm the lower court if they can²²
- b) PRPs are so often used by prisoners that Judges tend to view them skeptically,
- c) The burden in direct appeal tends to lie upon the state, but in a PRP the burden

²¹This is an example of the “informal” procedure controlling PRPs-although no rule specifically addresses such “joinder” of a PRP and direct appeal, Rule 16.13 seems to allow enough leeway to do so.

²²A higher court can and will affirm the lower court by finding another basis for the lower court’s decision even if they determine that the basis given by the lower court was incorrect. *Ferris v. Blumhardt*, 48 Wn.2nd 395, 293 P.2nd 935 (1956).

One of the most common mistakes made by pro se petitioners is to develop extensive legal arguments while failing to provide sufficient factual information. Remember! **FACTS ARE THE ESSENCE OF A PERSONAL RESTRAINT PETITION!** Assume the reader will ignore your conclusions and allegations and make up his own mind about what happened, and the legal significance of it, based on the facts (because they will). You must, therefore, present sufficient facts to back up your allegations, and present them in a coherent and understandable way. This does not mean that facts alone are enough, but without a proper showing or statement of facts, the best legal argument possible will fail. On the other hand, a proper explanation of facts will reduce the need for legal argument or even make the issue at hand so obvious that little else needs to be said.

Bear in mind, the judges generally know the law (or have law clerks who do) and are not receptive to *pro se* litigants who try to write like lawyers. However, they know nothing about your case or the circumstances surrounding your conviction. You need to provide them with a clear picture of the events which resulted in the error you are claiming and a solid basis for harm or violation of your rights which the error produced. A short example may illustrate the objective:

1. On 1 April, 1997 during my sentencing, Judge Jones computed my SRA offender score as six (6) and ordered a term of imprisonment of 22 months based upon a standard range of 17-22 months for first degree theft.
2. In order to yield a six point offender score, the court included my prior conviction for "vehicle prowl" from June, 1995. (Judgment and sentence attached as Appendix to PRP).
3. I was born on 1 January, 1978 and was therefore 17 years old and a juvenile at the time of that offense and conviction.

The argument might read like this...

1. Vehicle Prowl (RCW 9A. 52.095) is a non-violent felony offense. (SGC 1997, p, IV-60).
2. Per RCW 9.94A.360(7), the offender score should be computed with only ½ point for each prior juvenile nonviolent felony conviction.
3. "The offenders score is the sum of points accrued under this section rounded down to the nearest whole number." (RCW 9.94A.360; emphasis added).
4. The sentencing court erred in failing to notice that the Vehicular Prowl prior convictions was a juvenile conviction and thereby computed the offender score as six instead of 5½ - which must be "rounded down" to 5.
5. The SRA standard range for First Degree Theft and an offender score of 5 is from 14 to 18 months. (RCW 9.94A.310 (1)).
6. Because the sentence imposed is not within the required range, the sentence imposed was unlawful and must be corrected. See....*

You probably don't even need to cite a case supporting this argument. No one is going to

your claim involves significant error (error substantial enough to warrant remedy). To see how this might work, you should read cases which deal with issues similar to yours while paying attention to what the court views as necessary to the state claim. The most common example is related to claims of ineffective assistance of counsel where the courts apply the standard expressed in *Strickland v. Washington*, (80 L. Ed2d 674(1984)). Under this “two prong” test, “the burden is on the defendant...to show deficient representation” by overcoming the presumption of effectiveness through objective criteria based upon professional standards. Then, if one manages to establish counsel’s ineffectiveness, the second test requires that you bear the burden of showing “that the result of the proceeding would have been different but for counsel’s deficient representation”. (*State v. McFarland*, 127 W. 2d 322, 334-337 (1995) citing *State v. Thomas*, 109 W.2d 222, 225-226 (1987)—two “must read” cases for ineffective counsel claims). This same structure or standard is similar to the one you will generally face in any appeal situation (not just in a PRP), you must first prove error under some legal criteria, then you must show how that error substantially effected the outcome of the trial (caused a finding of guilty rather than innocent).

You will need to identify and prove specific facts which show some significant error or deficiency in your proceedings. This flaw must violate some statute or right which applies to you (or your case) and it must have produced some negative effect— beyond mere speculation - which probably (more likely than not) effected the result. The exception to this burden occurs when some substantive constitutional right or procedure essential to protecting a substantive right has been violated. In that case, the court may (should) shift the burden onto the state and one which courts are reluctant to impose).²⁸

In light of these burdens, you should prepare your PRP with the presumption that you will be required to show actual prejudice which should have or reasonably might have changed the verdict. If you are claiming a non-constitutional error, your burden must further expand so that a showing of “complete miscarriage of justice” is required (another very tough standard).²⁹ A failure to argue “prejudice” may result in your winning the battle but losing the war. Appeals of any kind are usually a two step process; if the court finds a mistake was made by a lower court, they then must decide if the mistake changed the outcome. If it did not (if they determine it did not), they will usually affirm the lower court.

8. HOW TO SUBMIT A PERSONAL RESTRAINT PETITION:

²⁸See *In re Farney*, 91 Wn2d 772, 583 P.2d 1210 (1978); *State v. Kitchen*, 110 Wn.2d 403, 413, 756 P.2d 105 (1988); *Brecht v. Abrahamson*, 507 U.S. 619 (1993) and cases cited therein.

²⁹See *Deskbook*, §32.3 (2)(b) and *In re Lord*, 123 W.2nd 296, 303, 868 P.2d 835 (1994) (Appendix: Cases).

allow both the Prosecutor and the Attorney General to submit briefs in opposition).

If you have previously submitted ANY pleading seeking post-conviction relief (habeas corpus, appeal motion for new trial, PRP, etc...), then you should note such in your petition (by attachment and carefully study the rules, statues and cases dealing with "subsequent" or "successive" petitions. You MUST explain why the issues being raised in your PRP were not previously raised or, if they were raised in some prior action, you must provide "good cause" for bringing them back before a court. (The intricacies of this area are too "deep" for this guide, but chances are that the State will argue for dismissal under their interpretation of these rules).

9. PRACTICE POINTER:

Because of their role and nature, PRPs are prone to abuse and misuse. Thus, we are all confronted with courts and state attorneys who are skeptical. Because others have falsely sworn under oath, fabricated case law, misinterpreted and misapplied the law, and used the PRP for invalid purposes, everyone in prison is thought to be a likely abuser of the PRP. Don't be surprised if your evidence is not given the great weight and significance you believe that it's due. Likewise, you should expect Significant opposition from the Respondent (seeking dismissal on technical grounds) and reluctance from the courts (via delays and procedural barriers). Put simply, the system will try to put you off, frustrate and delay you until you make a fatal goof or throw in the towel from legal exhaustion. Try not to let the other side intimidate you. There is no question that a *pro se* inmate's task is more than an uphill battle, but if you let the delays and posturing cause you to throw in the towel, you will only encourage them to do it more.

10. FILLING IN THE GAPS (GETTING MORE INFORMATION):

You're not serious about filing a PRP until you have read the rules which you MUST comply with. The "Washington Rules of Court-State" contain "Title 16" which includes "RAP" rules 16.3-16.15 (approx. 5 pages of "dry" reading). Read them until they make sense. If they don't make sense, then ask someone, such as a law library clerk or librarian, to assist you in figuring them out. Or, try reading one of these other books and then return to rules for another reading.

WASHINGTON PRACTICE- CRIMINAL PRACTICE & PROCEDURE, Vol.13, part 8, Ch. 49 Royce A Ferguson, Jr. (West Pub. 1997), pp. 423-437 with forms. (Reprinted in full in this manual.)

WASHINGTON PRACTICE- RULES PRACTICE, Vol. 3, Title 16, Rules 16.3 16.15, pp.468-527, includes digest of case law. Same book- RAP 10.3 ("content of Brief"), pp. 246-283

WASHINGTON APPELLATE DESKBOOK, Washington State Bar Association, Chapter 32 (42 pages of Pure gold (reproduced in full in this manual)).