

NO. 88698-9

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SUPREME COURT
STATE OF WASHINGTON
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SUPREME COURT OF THE STATE OF WASHINGTON

THOMAS WILLIAM SINCLAIR RICHEY,

Petitioner-Appellant,

v.

SANDRA DIMMEL,

Respondent-Appellee.

BRIEF OF RESPONDENT-APPELLEE

ROBERT W. FERGUSON
Attorney General

ALEX KOSTIN, WSBA #29115
Assistant Attorney General
Corrections Division
PO Box 40116
Olympia WA 98504-0116
360-586-1445
OID #91025

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I. ISSUES PRESENTED

Should this Court dismiss this appeal because RCW 10.73.090 one-year statute of limitations bars Mr. Richey's state habeas corpus petition?

II. STATEMENT OF THE FACTS

A. Procedural History

Petitioner-Appellant Mr. Richey is in the Department of Corrections' custody pursuant to a valid Pierce County conviction. In 1987, Mr. Richey pled guilty to first-degree murder and attempted first-degree murder. CP 4. His Earned Early Release Date (ERD) is July 21, 2038. CP 4.

In *In re Richey*, 162 Wn.2d 865, 175 P.3d 585 (2008), this Court held that the offense of attempted first-degree felony murder did not exist in Washington, but Mr. Richey's conviction of first-degree murder, by plea, was facially valid and his personal restraint petition filed more than one year after his judgment became final was untimely.

On August 26, 2010, the superior court corrected Mr. Richey's judgment and sentence. CP 4.

To avoid the successive petition bar of RCW 10.73.140 prohibiting filing successive petitions in the courts of appeals, Mr. Richey filed twenty

one (21) personal restraint petitions directly in this Court. *See* Appendix 1, ACORDS Search Results for Thomas WS Richey at 1-2.

Mr. Richey admits his “numerous collateral challenges were all dismissed as time-barred.” Appeal Brief at 9. Respondent-Appellee agrees with that statement. In 2012, this Court dismissed several personal restraint petitions as time-barred. Appendix 2, ACORDS docket printout for Washington Supreme Court Cause No. 87348-8 (personal restraint petition filed on 5/8/2012 was dismissed as time-barred on 11/26/2012); Appendix 3, ACORDS docket printout for Washington Supreme Court Cause No. 87458-1 (personal restraint petition filed on 6/8/2012 was dismissed as time-barred on 11/26/2012); and Appendix 4, ACORDS docket printout for Washington Supreme Court Cause No. 87457-3 (the second personal restraint petition filed on 6/8/2012, simultaneously with the personal restraint petition in Washington Supreme Court Cause No. 87458-1, was dismissed on 11/26/2012 as time-barred).

This appeal is an example of Mr. Richey’s tactic of avoiding RAP 16.4(b)’s prohibition of filing successive petitions in this Court by filing a state habeas corpus petition in the superior court and then appealing the dismissal directly to this Court. *See* RAP 16.3 (b) stating RAP provisions applicable to personal restraint petitions filed directly in this Court do not apply to habeas corpus proceedings initiated in the superior court.

In December of 2012, just days after this Court dismissed three of his personal restraint petitions, *above*, as time-barred, Mr. Richey filed a state habeas corpus petition in Clallam County calling it “the petition for constitutional writ of habeas corpus ad subjiciendum” [sic]. CP 68.

In her response Respondent-Appellee argued this petition was time barred. CP 4.

In March of 2013, after the Clallam County Superior Court denied his petition as time barred under RCW 10.73.090, Mr. Richey appealed to this Court.

III. ARGUMENT

A. RCW 10.73.090 Bars Mr. Richey’s Habeas Corpus Petition

Mr. Richey is aware his petition is time barred. *See* Appeal Brief at 1. Mr. Richey is also very well aware that RCW 7.36.130 prohibits state courts from reviewing state habeas corpus petitions *unless* they raise constitutional violation issues *and* were filed within the one year time limit prescribed by RCW 10.73.090 and no exceptions prescribed in RCW 10.73.100 apply. *Id.*

Mr. Richey states Respondent-Appellee conceded in the lower court that his 1987 conviction was obtained without due process and/or that Respondent-Appellee not disputing his claims amounted to her conceding them. Appeal Brief at 1, 6. Respondent-Appellee never

conceded that Mr. Richey's conviction violated due process. Respondent-Appellee's position is, and has been, that Washington State courts should not review Mr. Richey's claims because the petition is time-barred. CP 4.

To get around the statute of limitations, Mr. Richey claims this petition is not a "statutory" habeas corpus petition but a "constitutional" one because he presents federal constitutional violation claims. *See* Appeal Brief at 2, 10-11. With no case or statutory law to support this claim, he argues "constitutional" petitions can never be time-barred. Appeal Brief at 2.

Mr. Richey frivolously argues that the one-year statute of limitations for state habeas corpus petitions "suspends" habeas corpus, because RCW 7.36.140 states that if the federal claim is raised in "any" state habeas corpus petition considered by this Court, this Court should determine whether the constitutional right was denied. Appeal Brief at 9.

This Court's threshold determination that this petition is time-barred by RCW 10.73.090's one-year statute of limitations, applicable to all collateral challenges including state habeas corpus petitions, should preclude review of any additional arguments Mr. Richey is presenting. Mr. Richey, obviously fully aware of this fact, does not even attempt to argue in his brief that any of RCW 10.73.100's exceptions apply.

Contrary to Mr. Richey's arguments, there are no separate "constitutional" habeas corpus petitions that are not subject to the one-year statute of limitations in Washington. All collateral challenges are subject to the one-year statute of limitations of RCW 10.73.090. The statute includes state habeas corpus petitions in the list of collateral challenges subject to the one-year statute of limitations:

1) No *petition or motion for collateral attack* on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "*Collateral attack*" includes, but is not limited to, a personal restraint petition, a *habeas corpus petition*, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(emphasis added).

RCW 7.36.130(1) states that:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge the party when the term of commitment has not expired, in either of the cases following:

(1) *Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100.*

(emphasis added).

Thus, this petition is a collateral challenge to Mr. Richey's conviction, it is subject to the one-year statute of limitations and is now time-barred. As Respondent-Appellee stated above, Mr. Richey does not even argue in his brief that any RCW 10.73.100 exceptions to the one-year statute of limitations apply in his case.

Mr. Richey's argument that the one-year statute of limitations "suspends" habeas corpus is frivolous as well. RCW 7.36.130 does not prevent Mr. Richey from filing a state habeas corpus petition, but he has to do that within the RCW 10.73.090 one year limit or must show that one of the RCW 10.73.100 exceptions applies.

IV. CONCLUSION

This Court should hold that since this petition is a collateral challenge to Mr. Richey's 1987 conviction, RCW 10.73.090 and 10.73.100 apply to it. It should hold that RCW 10.73.090's one-year statute of limitations bars Mr. Richey's collateral challenge. It should also

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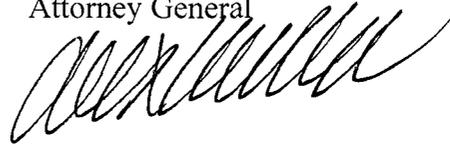
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hold that Mr. Richey's argument that his "constitutional" state habeas corpus petition is exempt from the one-year statute of limitations applicable to state habeas corpus petitions, is frivolous.

RESPECTFULLY SUBMITTED this 20th day of November,
2013.

ROBERT W. FERGUSON /
Attorney General



ALEX KOSTIN, WSBA #29115
Assistant Attorney General
Corrections Division
PO Box 40116
Olympia WA 98504-0116
360-586-1445
OID #91025

V. CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing document on all parties or their counsel of record as follows:

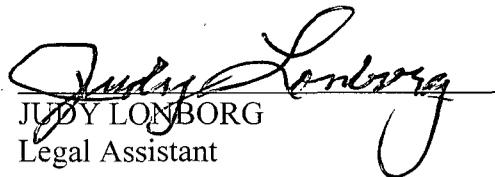
- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

TO:

THOMAS WILLIAM SINCLAIR RICHEY, DOC #929444
WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA WA 99362

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

EXECUTED this 20th day of November, 2013, at Olympia, WA.


JUDY LONBORG
Legal Assistant

APPENDICES

APPENDIX 1

WELCOME TO THE STATE OF WASHINGTON ACORDS
APPELLATE COURT SYSTEM

Welcome to ACORDS

Search Results

Appellate Case #	Review Type	Appellate Case Title	Trial Case
<u>894507</u>	NOA	Thomas William Sinclair Richey v. Pat Glebe	132004743
<u>892679</u>	EPF	State of Washington v. Thomas William Sinclair Richey	861006585
<u>891176</u>	DCP	Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>886989</u>	NOA	Thomas William Sinclair Richey v. Sandra Dimmel	132000191
<u>886938</u>	PRP	In re the Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>886920</u>	PRP	In re the Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>886661</u>	EPF	State of Washington v. Thomas William Sinclair Richey	861006585
<u>886202</u>	MMR	Thomas W. S. Richey v. Honorable Judge George Wood, Clallam County Superior Court	-
<u>885982</u>	MMR	Thomas W. S. Richey v. J. Van Deren, Judge	-
<u>885851</u>	OAS	Thomas W. S. Richey v. Steven Goff, Supreme Court Commissioner	-
<u>885303</u>	MMR	Thomas W. S. Richey v. D. Gary Steiner (Or Successor) Pierce County Superior Court	-
<u>884188</u>	PRP	In re the Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>883505</u>	PRP	In re the Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>881600</u>	DCA	State of Washington v. Thomas William Sinclair Richey	861006585
<u>877190</u>	MMR	Thomas William Sinclair Richey v. Ronald E. Culpepper, Judge	-
<u>874751</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>874620</u>	DCP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>874611</u>	DCP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>874603</u>	DCP	Personal Restraint Petition of: Thomas William Sinclair Richey	861006585
<u>874581</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	-
		Personal Restraint Petition of Thomas William	

APPENDIX 

<u>874573</u>	PRP	Sinclair Richey	-
<u>873488</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>867445</u>	DCA	State of Washington v Thomas William Sinclair Richey	-
<u>863776</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	-
<u>863555</u>	MMR	Thomas Richey v. Judge Garold Edwin Johnson	-
<u>861897</u>	MMR	Thomas William Sinclair Richey v. Superior Court Judge Garold Johnson	-
<u>857971</u>	DCA	State of Washington v. Thomas William Sinclair Richey	861006585
<u>835217</u>	DCP	Personal Restraint Petition of: Thomas William Richey	-
<u>828741</u>	MMR	THOMAS RICHEY V. HONORABLE D. GARY STEINER, JUDGE	-
<u>811580</u>	PRV	State of Washington, Respondent v Thomas William Sinclair Richey, Petitioner.	-
<u>766614</u>	DCA	State of Washington v Thomas W.S. Richey	861006585
<u>450852</u>	NDR	State of Washington, Respondent v. Thomas Richey, Petitioner	861006585
<u>447363</u> 	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>446871</u> 	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>440491</u>	NOA	State of Washington, Respondent v Thomas William Sinclair Richey, Appellant	861006585
<u>440245</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>439883</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>433826</u>	PRP	Personal Restraint Petition of: Thomas William Sinclair Richey	861006585
<u>432421</u>	PRP	Personal Restraint Petition of Thomas William Sinclair Richey	861006585
<u>427699</u>	NOA	State of Washington, Respondent v Thomas William Sinclair Richey, Appellant	861006585
<u>420864</u>	PRP	Personal Restraint Petition of: Thomas William Sinclair Richey	861006585
<u>410362</u>	NOA	State of Washington, Respondent v. Thomas William Richey, Appellant	861006585
<u>354331</u>	NOA	State of Washington, Respondent v Thomas W.S. Richey, Appellant	861006585
<u>327937</u>	NOA	State of Washington, Respondent v Thomas W.S. Richey, Appellant	861006585

APPENDIX 2

CASE EVENTS # 873488

Date	Item	Action	Participant
02/20/2013	Disposed	Status Changed	
02/20/2013	Certificate of Finality <i>Comment: Pursuant to Rule of Appellate Procedure 14.6(c) and the CLERK'S RULING ON COSTS dated December 27, 2012, costs are taxed as follows: Costs in the amount of \$1,144.00 are awarded to Respondent, Pierce County Prosecuting Attorney's Office, to be paid by Petitioner, Thomas Richey. 152/21</i>	Filed	CARPENTER, RONALD R
01/28/2013	Motion to Modify Ruling Hearing Location: None Motion Status: No Action Necessary <i>Comment: to Clerk's Ruling on Costs DUE</i>	Not filed	
12/27/2012	Ruling on cost Bill <i>Comment: Accordingly, it is my determination that the Respondent, the Pierce County Prosecuting Attorney, should be awarded costs in the total amount of \$1,144.00 to be paid by the Petitioner, Thomas Richey. A person aggrieved by this ruling may file a motion to modify the ruling not later than 30 days after this date; see RAP 17.7. 653/59</i>	Filed	CARPENTER, RONALD R
12/26/2012	Motion to Modify Ruling Hearing Location: None Motion Status: No Action Necessary <i>Comment: DUE to Comm'r 11/26/12 ruling</i>	Not filed	
12/05/2012	Objection to Cost Bill Service Date: 2012-12-05 <i>Comment: Petitioner's Objection to Cost Bill</i>	Filed	Richey, Thomas William Sinclair
11/29/2012	Cost Bill Service Date: 2012-11-29 <i>Comment: Cost Bill - \$724.00 (emailed)</i>	Filed	PROCTOR, KATHLEEN
11/26/2012	Decision Filed	Status Changed	
11/26/2012	Ruling terminating Review <i>Comment: The personal restraint petitions are dismissed as time-barred. 649/139</i>	Filed	GOFF, STEVEN M
08/28/2012	Reply to Response to Prp Service Date: 2012-08-28 <i>Comment: Reply to State's Response to Personal Restraint Petition</i>	Filed	Richey, Thomas William Sinclair

APPENDIX 

08/20/2012	Supplemental Pleadings <i>Comment: Appendices attached to State's Response to Personal Restraint Petition</i>	Filed	TRINEN, STEPHEN D
08/20/2012	Submitted	Status Changed	
08/17/2012	Response to Personal Restraint Petition <i>Comment: State's Response to Personal Restraint Petition</i>	Filed	TRINEN, STEPHEN D
07/10/2012	Motion to Extend Time to File Service Date: 2012-07-10 Motion Status: Decision filed <i>Comment: Motion for Extension of Time to File State's Response Brief [email]</i>	Filed	TRINEN, STEPHEN D
07/10/2012	Ruling on Motions <i>Comment: "Motion granted. The State's response should be served and filed by August 7, 2012." [to Motion for Extension of Time filed 7/10/12]</i>	Filed	CARLSON, SUSAN
05/09/2012	Letter <i>Comment: Acknowledging receipt of "Petition for Writ of Habeas Corpus" and redesignating as a personal restraint petition. A response is due within 60 days.</i>	Sent by Court	CARLSON, SUSAN
05/08/2012	Case Received and Pending	Status Changed	
05/08/2012	Motion to file W/o Prepayment of Fil Fee Motion Status: Decision filed	Filed	Richey, Thomas William Sinclair
05/08/2012	Ruling on Motions	Filed	CARLSON, SUSAN
05/08/2012	Personal Restraint Petition	Filed	Richey, Thomas William Sinclair

APPENDIX 3

CASE EVENTS # 874581

Date	Item	Action	Participant
02/20/2013	Disposed	Status Changed	
02/20/2013	Certificate of Finality <i>Comment: Pursuant to Rule of Appellate Procedure 14.6(c) and the CLERK'S RULING ON COSTS dated December 27, 2012, costs are taxed as follows: Costs in the amount of \$1,144.00 are awarded to Respondent, Pierce County Prosecuting Attorney's Office, to be paid by Petitioner, Thomas Richey. 152/21</i>	Filed	CARPENTER, RONALD R
01/28/2013	Motion to Modify Ruling Hearing Location: None Motion Status: No Action Necessary <i>Comment: to clerk's ruling on costs DUE</i>	Not filed	
12/27/2012	Ruling on cost Bill <i>Comment: Accordingly, it is my determination that the Respondent, the Pierce County Prosecuting Attorney, should be awarded costs in the total amount of \$1,144.00 to be paid by the Petitioner, Thomas Richey. A person aggrieved by this ruling may file a motion to modify the ruling not later than 30 days after this date; see RAP 17.7. 653/59</i>	Filed	CARPENTER, RONALD R
12/26/2012	Motion to Modify Ruling Hearing Location: None Motion Status: No Action Necessary <i>Comment: DUE to Comm'r 11/26/12 ruling</i>	Not filed	
12/05/2012	Objection to Cost Bill Service Date: 2012-12-05 <i>Comment: Petitioner's Objection to Cost Bill</i>	Filed	Richey, Thomas William Sinclair
11/29/2012	Cost Bill Service Date: 2012-11-29 <i>Comment: Cost Bill - \$716.00 (emailed)</i>	Filed	PROCTOR, KATHLEEN
11/26/2012	Decision Filed	Status Changed	
11/26/2012	Ruling terminating Review <i>Comment: The personal restraint petitions are dismissed as time-barred. 649/138</i>	Filed	GOFF, STEVEN M
08/28/2012	Reply to Response to Prp Service Date: 2012-08-28 <i>Comment: Reply to State's Response to Personal Restraint Petition</i>	Filed	Richey, Thomas William Sinclair

APPENDIX 3

08/20/2012	Supplemental Pleadings <i>Comment: Appendices to State's Response to Personal Restraint Petition</i>	Filed	TRINEN, STEPHEN D
08/20/2012	Submitted	Status Changed	
08/17/2012	Response to Personal Restraint Petition <i>Comment: State's Response to Personal Restraint Petition</i>	Filed	TRINEN, STEPHEN D
06/08/2012	Letter <i>Comment: Acknowledging receipt of personal restraint petition. The Petitioner's declaration of mailing indicates a copy was sent to Mr. Stephen Trinen at the Pierce County Prosecutor's Office. A response is due within 60 days. Because Mr. Richey filed two petitions on this date, I note that the issue raised in this petition is whether due process was "violated when a trial court adds a conviction to a judgment & sentence with a nunc pro tunc order..."</i>	Sent by Court	CARLSON, SUSAN
06/08/2012	Motion to file W/o Prepayment of Fil Fee Motion Status: Decision filed	Filed	Richey, Thomas William Sinclair
06/08/2012	Ruling on Motions	Filed	CARLSON, SUSAN
06/08/2012	Case Received and Pending	Status Changed	
06/08/2012	Personal Restraint Petition	Filed	Richey, Thomas William Sinclair

APPENDIX 4

CASE EVENTS # 874573

Date	Item	Action	Participant
02/20/2013	Disposed	Status Changed	
02/20/2013	Certificate of Finality <i>Comment: Pursuant to Rule of Appellate Procedure 14.6(c) and the CLERK'S RULING ON COSTS dated December 27, 2012, costs are taxed as follows: Costs in the amount of \$1,144.00 are awarded to Respondent, Pierce County Prosecuting Attorney's Office, to be paid by Petitioner, Thomas Richey. 152/21</i>	Filed	CARPENTER, RONALD R
01/28/2013	Motion to Modify Ruling Hearing Location: None Motion Status: No Action Necessary <i>Comment: to clerk's ruling on costs DUE</i>	Not filed	
12/27/2012	Ruling on cost Bill <i>Comment: Accordingly, it is my determination that the Respondent, the Pierce County Prosecuting Attorney, should be awarded costs in the total amount of \$1,144.00 to be paid by the Petitioner, Thomas Richey. A person aggrieved by this ruling may file a motion to modify the ruling not later than 30 days after this date; see RAP 17.7. 653/59</i>	Filed	CARPENTER, RONALD R
12/26/2012	Motion to Modify Ruling Hearing Location: None Motion Status: No Action Necessary <i>Comment: DUE to comm'r 11/26/12 ruling</i>	Not filed	
12/05/2012	Objection to Cost Bill Service Date: 2012-12-05 <i>Comment: Petitioner's Objection to Cost Bill</i>	Filed	Richey, Thomas William Sinclair
11/29/2012	Cost Bill Service Date: 2012-11-29 <i>Comment: Cost Bill - \$728.00 (emailed)</i>	Filed	PROCTOR, KATHLEEN
11/26/2012	Decision Filed	Status Changed	
11/26/2012	Ruling terminating Review <i>Comment: The personal restraint petitions are dismissed as time-barred. 649/140</i>	Filed	GOFF, STEVEN M
08/27/2012	Reply to Response to Prp <i>Comment: Reply to State's Response to Personal Restraint Petition</i>	Filed	Richey, Thomas William Sinclair

APPENDIX 4

08/20/2012	Supplemental Pleadings <i>Comment: Appendices attached to State's Response to Personal Restraint Petition</i>	Filed	TRINEN, STEPHEN D
08/20/2012	Submitted	Status Changed	
08/17/2012	Response to Personal Restraint Petition <i>Comment: State's Response to Personal Restraint Petition</i>	Filed	TRINEN, STEPHEN D
06/08/2012	Letter <i>Comment: Acknowledging receipt of personal restraint petition. The Petitioner's declaration of mailing indicates a copy was sent to Mr. Stephen Trinen at the Pierce County Prosecutor's Office. A response is due within 60 days. Because Mr. Richey filed two petitions on this date, I note that the issue raised in this petition is whether a trial court violates state and federal law if it ignores court rules and takes arbitrary action.</i>	Sent by Court	CARLSON, SUSAN
06/08/2012	Motion to file W/o Prepayment of Fil Fee Motion Status: Decision filed	Filed	Richey, Thomas William Sinclair
06/08/2012	Ruling on Motions	Filed	CARLSON, SUSAN
06/08/2012	Case Received and Pending	Status Changed	
06/08/2012	Personal Restraint Petition	Filed	Richey, Thomas William Sinclair