

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2015 MAY -6 PM 1:03

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
Steven E. Pink)
(your name))
)
Appellant.)

STATE OF WASHINGTON
No. 46850-1-RTI PA
DEPUTY
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Steven E. Pink, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

See attached

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 5/3/15

Signature: SE Pink

STATE OF WASHINGTON
RESPONDENT

COA NO. 46858-1-II
ADDITIONAL GROUNDS

VS.

STEVEN E. PINK
APPELLANT

RAP 10.10

1. Identity of appellant: Mr. Pink, Pro Se, files the following additional grounds for review:

2. Statement of Relief Sought: Mr. Pink requests his sentence be vacated, and remanded for resentencing with the exclusion of 2 points for the state relying on the out-of-state Oregon conviction that is unconstitutional on its face.

3. Facts: Mr. Pink plead guilty to first degree assault, and objected and challenged his 1995 conviction, and the out-of-state Oregon conviction, and now appeals.

4. Argument and Authorities:

1. The 1983 out-of-state conviction for Robbery was obtained in violation of Mr. Pink's constitutional rights, and is thus invalid on its face.

Mr. Pink and trial counsel Mr. Baum objected and challenged the above conviction, in that the court failed to read defendant the constitutional required rights prior to accepting the guilty plea as follows:

On its face the conviction shows Mr. Pink plead guilty September 15, 1983 to Robbery 2nd and the judgement on November 1, 1983. But looking solely at the documents submitted by the state as required by case law, the conviction was obtained in violation of the constitution, and is invalid on it face, because

there is no evidence in said documents (Ex 1-2), that Mr. Pink was made aware of his required constitutional rights, and that he would be giving up his rights, or knew the consequences of the plea, any punishment that may follow, and the fact that the crime had a mandatory minimum sentence of five years prior to pleading guilty.

There is no evidence that he proceeded freely and voluntarily, he was not threatened, or improper promises made as inducements, and no evidence of a factual basis for finding guilt.

There is no evidence that this conviction could be used against him in future proceedings for sentencing purposes, or informed of possible immigration consequences, loss of gun rights, voting rights, or the conviction could be used against him in a persistent offender allegation, or required to pay fines and restitution.

There is no evidence he was informed of his rights to a speedy public trial by an impartial jury, rights to remain silent before and during trial, rights to refuse to testify against himself, rights at trial to hear and question and confront witnesses against him, rights to have witnesses testify for him, that he is presumed innocent until the charge is proven beyond a reasonable doubt or upon entering a plea of guilty, and the right to appeal.

For the above listed reasons the Oregon conviction was obtained in violation of Mr. Pink's constitutional rights, and is thus invalid on its face and should have not been included in calculation of his offender score with the additional two points, causing prejudice by the elevation of the offender score from 6 to 8, and increased punishment from 162 to 216 months, to 209 to 277 months.

In dispute, the state submitted (Ex. 2) a non-certified clerk's paper,

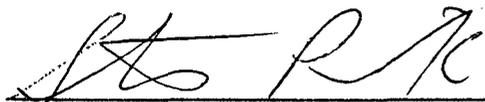
claiming Mr. Pink's attorney read him said rights, but this does not establish the trial court read said rights in open court, or embodied within the statement on plea of guilty, or plea agreement itself.

A good example for this court's review would be under State v Holsworth, 93 Wn.2d 148, 607 P.2d 845 (1980) and cases cited therein.

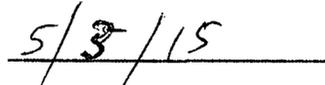
The Washington State Supreme Court reversed defendant's habitual offender findings, based on the same constitutional error as herein.

The court set aside the prior conviction, and excluded it, thus reversing the sentence.

Mr. Pink would thus request this court to set aside the out-of-state conviction, remand for resentencing, with the exclusion of two points from his offender score, and request resentencing with an offender score of 6, and a sentence of 216 months accordingly.



Steven E. Pink



Date

Exhibits 1

JA

REEL PAGE
188 2196

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MARION COUNTY

FILED
SEP 19 6 03 PM '83
TRIAL
BY _____

THE STATE OF OREGON,

Plaintiff,

vs.

STEVEN E. PINK,

Defendant.

No. 143,876

ORDER

On this 15 day of September, 1983, the State of Oregon appearing by JOHN WILSON, Deputy District Attorney, _____, and the defendant Steven E. Pink, _____ appearing in person (and Tim O'Neill _____) and the defendant having this day pleaded guilty to the crime of ROBBERY II.

IT IS ORDERED by the Court that this matter be continued _____ and the Court hereby requests a presentence investigation and report by the Oregon State Board of Parole and Probation.

September 15, 1983

Richard A. Boush

Circuit Judge

Sentencing set: October 27, 1983 at 8:30 A.M.

M.A.M.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

No. 143,876

RECEIVED
OCT 3 2000
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY

1
2
3
4 THE STATE OF OREGON,)
5)
6 Plaintiff,))
7 vs.)
8 STEVEN E. PINK,)
9 Defendant.))

JUDGMENT

10 This matter coming on regularly before the Court on the
11 27th day October, 1983; the State of Oregon appearing by John B.
12 Wilson, Deputy District Attorney for Marion County, and the
13 defendant, above-named, appearing in open court in person and by
14 his attorney, Tim O'Neill; and

15 IT APPEARING TO THE COURT that on the 15th day of
16 September, 1983, the defendant entered a plea of guilty to the
17 criminal offense of ROBBERY IN THE SECOND DEGREE, and the Court
18 having inquired of the defendant of the facts and circumstances
19 surrounding the charge and his plea; and the Court having
20 inquired of the defense attorney and the prosecutor concerning
21 the facts and circumstances surrounding the charge; and the Court
22 being fully advised in the premises accepted the plea of guilty
23 and ordered a Pre-Sentence Investigation; NOW, THEREFORE,

24 IT IS HEREBY ORDERED AND ADJUDGED that the plea of
25 guilty be and it hereby is, entered of record; and

26 IT IS FURTHER ORDERED AND ADJUDGED that the defendant,
27 above-named, is guilty of the criminal offense of ROBBERY IN THE

CHRIS VAN DYKE
DISTRICT ATTORNEY FOR MARION COUNTY, OREGON
MARION COUNTY COURTHOUSE
SALEM, OREGON 97301

1 SECOND DEGREE; and

2 IT IS FURTHER ORDERED AND ADJUDGED that the defendant be
3 committed to the legal and physical custody of the Oregon State
4 Corrections Division for an indeterminate period of time, the
5 maximum of which is ten (10) years; and

6 IT IS FURTHER ORDERED AND ADJUDGED that the State Board
7 of Parole shall not release the defendant on parole until he has
8 served a mandatory minimum of five (5) years imprisonment, pur-
9 suant ot ORS 161.610; the Court finding beyond a reasonable doubt
10 that the defendant used a firearm during the commission of the
11 criminal offense in this case, and there were no mitigating
12 circumstances; and

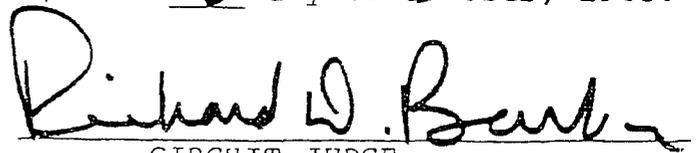
13 IT IS FURTHER ORDERED AND ADJUDGED that upon parole,
14 the defendant shall pay restitution, through the Trial Court
15 Clerk, in the amount of \$180.00 to the U.S. Postal Office and
16 \$328.00 to American Economy Insurance Co.; and

17 IT IS FURTHER ORDERED AND ADJUDGED that the Trial Court
18 Clerk shall disburse said restitution as follows:

19 U. S. Postal Office
20 West Sayton Contract Station
21 West Stayton, Oregon.....\$180.00

22 American Economy Insurance Co.
23 c/o Commack Insurance Agency
24 First Street
25 Stayton, Oregon.....\$328.00

26 Dated at Salem, Oregon, this 1st day of Nov., 1983.

27 
28 CIRCUIT JUDGE

CHRIS VAN DYKE
DISTRICT ATTORNEY FOR MARION COUNTY, OREGON
MARION COUNTY COURTHOUSE
SALEM, OREGON 97301

Exhibits 2

143,876

STEVEN E. PINK ✓

ROBBERY II
~~ROBBERY I~~

TIM O'NEILL ✓

②

September 15, 1983

JUDGE RICHARD D. BARBER ✓

BEV BOSAK, COURT REPORTER

D.A. JOHN WILSON ✓

X

amended indictment by
interlineation to: ROBBERY II
change plea to Guilty
rights given

Pre-Sentence Report Ordered
Sentencing set:

OCTOBER 27, 1983
@ 8:30 A.M.

(ADD ON)

CUSTODY