NO. 48846-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

LA'JUANTA L. CONNER,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court erred when it refused to grant the defendant an evidentiary hearing on his timely filed motion for relief from judgment under CrR 7.8(b) because the defendant's supporting affirmation sets out a factual basis for relief under a claim of ineffective assistance of counsel.

2. This court should not impose costs on appeal if the state substantially prevails.

Issues Pertaining to Assignment of Error

1. In a case in which the affirmation given in support of a timely filed CrR 7.8(b) motion alleges that (1) trial counsel failed to communicate a plea offer to the defendant, (2) that had trial counsel communicated that offer defendant would have accepted it, and (3) that the defendant's sentence under that plea offer would have been significantly shorter than the effect life sentence the trial court imposed following trial, does a trial court err if it refuses to grant an evidentiary hearing on the motion, rule on the motion or remand it to the court of appeals to be handled as a Personal Restraint Petition?

2. Should an appellate court impose costs on appeal if an indigent client has no present or future ability to pay those costs?

STATEMENT OF THE CASE

On July 27, 2012, the Kitsap County Superior Court sentenced the defendant to an effective life sentence of a combined total of 1,148½ months in prison following his convictions after jury trial on eight counts of first degree robbey, six counts of first degree burglary, four counts of theft, three counts of possession of a stolen firearm, two counts of unlawful possession of a firearm, and one count of theft of a firearm. CP 56-71. The sentence included 13 five year firearm enhancements. *Id.* The defendant was 21-years-old at the time he committed these offenses and had one prior conviction for first degree theft. CP 60. CP 10-32. These charges arose out of five separate home invasion robberies as well as a further burglary. CP 33-55.

Following imposition of sentence the defendant appealed, making a number of substantive arguments, as well as an argument that the trial court had erred when it imposed sentence in that (1) it imposed a firearm enhancement on one of the burglary charges because there was no finding by the jury that he had been armed with a firearm during the commission of that offense, and (2) it failed to address an argument that a number of the counts involved the same criminal conduct. CP 73-104. In a part published opinion, this division of the court of appeals vacated one of the defendant's theft convictions on a double jeopardy finding, rejected most of the defendant's

substantive arguments, and found the remaining proven errors harmless. *Id.*

This court also vacated the defendant's sentence upon its belief that the trial court had imposed 13 firearm enhancements when only 12 were alleged and proven. ("We remand for resentencing on the remaining convictions and twelve firearm enhancements.") CP 104. Given the fact that the court had remanded for resentencing, the court did not address the defendant's argument that the trial court had erred when it failed to address the claims that some of the counts constituted the same criminal conduct. (Conner also argues that the trial court erred by not conducting a same criminal conduct analysis. Because we remand for resentencing, we do not address this issue.") CP 100.

Prior to the resentencing hearing the defendant filed a hand written Motion for Relief from Judgment under CrR 7.8(b)(2) along with a hand written supporting affirmation alleging ineffective assistance of counsel. CP 107-124, 125-158. The defendant's affirmation stated as follows:

> 1. I am the Defendant in the above-camptioned case, am over 18 years of age, and competent to testify in this action.
>
> 2. Clayton Longacre was my trial counsel in this action.
>
> 3. Mr. Longacre never informed me of any plea offers during the litigation of this case.
>
> 4. Mr. Longacre never informed me I was facing a standard range of 95 years.

> 5. Mr. Longacre never informed me that I was facing firearm enhancements that totaled a mandatory sentence of 65 years.
>
> 6. I only discovered the prosecution offered me a plea bargain of 10 years about one week prior to my resentencing hearing.
>
> 7. I have since discovered that Mr. Longacre had his license suspended on a prior occasion, and since my conviction has had his license revoked for malpractice.
>
> 8. Had I know of any plea offer from the prosecution with the overwhelming evidence against me, I would have accepted the offer or offers provided to Mr. Longacre by the State.

CP 125-127.

On March 25, 2016, the parties appeared before the Superior Court for resentencing and or argument on the defendant's CrR 7.8(b) motion. RP 1-40. At the beginning of the hearing the defendant's new appointed attorney moved that the court set an evidentiary hearing on the defendant's CrR 7.8(b) claim. RP 1-3. The prosecutor responded that he knew the defendant's original trial attorney "had an issue with that in the past" referring to that attorney's failure to communicate plea offers to criminal clients. RP 4. In fact a review of the Washington State Bar Association's website shows that the defendant's prior attorney was suspended for 60 days on 11/10/05, reprimanded on 1/20/10 and disbarred on 12/27/2012. *See* Disciplinary History for Clayton Longacre at *https://www.mywsba.org; See also In re Disciplinary Proceeding Against Longacre*, 155 Wn. 2d 723, 742, 122 P.3d 710, 719 (2005) . One of the reasons for the suspension was the attorney's

failure to inform a client of a plea offer the state had extended, as well as the failure to inform the defendant of the applicable standard range. *Id.*

After noting that the defendant's prior attorney had history of failing to communicate plea offers to his clients, the prosecutor stated that he was aware of this problem and that he believed he had put the state's plea offer to the defendant on the record in court. RP 4. Specifically, the prosecutor believed that offer had been for 45 years. *Id.* The court responded by noting that the minute sheet for 9/16/11 stated that "a plea agreement to Mr. Longacre before the next hearing" but that there was no mention in the subsequent minutes sheets about the state having extended any plea offer. RP 5. The prosecutor then reiterated his familiarity with prior trial counsel's failure to inform clients of plea offers and the prosecutor's practice of putting the plea offers on the record in open court with the defendant present. 5-6. The prosecutor stated the following on this point:

> MS. LEWIS: Well, Your Honor, as I said, I specifically recall saying, you know, I know the Court doesn't want to get involved in the plea negotiations in this, but I wanted to make sure it was on the record what our offer was because of the history that Mr. Longacre had, so I know I specifically put that on the record.

RP 5.

When given an opportunity to speak, the defendant denied that the prosecutor had put a plea offer on the record. The defendant then reiterated his claims that (1) his prior attorney had not informed him of any plea

bargain, (2) that his prior attorney had not informed him of the applicable standard range, and (3) that had his attorney taken both of these steps he would have plead guilty. RP 23-29. The defendant then echoed his attorney's request for an evidentiary hearing. RP 29-30. Ultimately, the trial court refused to address the defendant CrR 7.8(b) motion. RP 30, 33. The court stated:

> THE COURT: All right. I'm not going to address the 7.8 issue that was raised by Mr. Conner with respect to whether Mr. Longacre did or didn't advise him of the plea offer that was from the State.
>
> I do accept Ms. Lewis' statement for the record, and that's in large part because I'm also very familiar with Mr. Longacre and the ways that the prosecutor's office needed to conform their practice to deal with him. But having said that – and I accept her representation – you will need to get transcripts in order to be able to perfect that issue for review.

RP 30.

A few minutes later the court again noted its refusal to address the defendant CrR 7.8(b) motion. The court stated:

> THE COURT: . . . Mr. Conner, I can't possibly know what occurred between you and Mr. Longacre in terms of your discussions with him and your trial strategy, how much of this was him, how much of this was you, and that is not in any record before me. Given that, I'm not going to address it so that you still have the opportunity to perfect that issue, if you wish.
>
> THE DEFENDANT: Referring to the 7.8; right?
>
> THE COURT: Right. But this is not the place to start that issue.
>
> THE DEFENDANT: Okay. That's why I sent you the motion.

> THE COURT: I'm not going to address it because it's not properly before me.
>
> THE DEFENDANT: So who exactly would I need to send it to?
>
> THE COURT: You need to talk to Mr. Valley and appellate attorneys about that issue.

RP 33.

Although the court refused to address the defendant's CrR 7.8(b) motion, it did reimpose the same sentence as before, rejecting the defendant's request that the court impose a sentence below the standard range based upon the defendant's youth. RP 10-22, 30-35; CP 134-149. Following imposition of this amended sentence the defendant filed timely notice of appeal and the court entered a new order of indigency. CP 154-155.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT REFUSED TO GRANT THE DEFENDANT AN EVIDENTIARY HEARING ON HIS TIMELY FILED MOTION FOR RELIEF FROM JUDGMENT UNDER CrR 7.8(b) BECAUSE THE DEFENDANT'S SUPPORTING AFFIRMATION SETS OUT A FACTUAL BASIS FOR RELIEF UNDER A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

Under CrR 7.8(b), a trial court has authority to grant post-conviction relief under a number of limited circumstances. The procedures governing the trial court's authority to act are set out in CrR 7.8(c). Upon its original adoption the rule allowed a trial court to deny the motion without a hearing if the facts or law alleged in the pleadings did not establish a basis for relief. *State v. Smith*, 144 Wn. App. 860, 184 P.3d 666 (2008) (discussing former CrR 7.8(c)). In September of 2007 the Washington Supreme Court amended subsection (c) of the rule so as to specifically define those circumstances under which the trial court had authority to grant relief. Subsection (c) as amended states:

> (1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.
>
> (2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

> (3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

CrR 7.8(c).

Under this amended rule, the trial court must take one of two steps in addressing a Motion for Relief from Judgment under CrR 7.8(b). First, the court must determine whether or not the motion is timely (i.e., not barred by RCW 10.73.090). If the court finds the motion untimely, it must transfer it to the Court of Appeals to be handled as a Personal Restraint Petition (PRP). Second, if the court finds the motion timely, it must then determine whether or not it is either (a) "meritorious" or (b) potentially "meritorious" if the facts alleged in support of it are proven. If it is neither "meritorious" nor potentially "meritorious," then the court must transfer the case to the Court of Appeals to be handled as a PRP. By contrast, if the court finds the motion "meritorious" or potentially "meritorious", then the trial court has the duty to either rule on the motion in the former instance, or hold a fact-finding hearing and then rule on it in the latter instance.

In the case at bar the trial court did not take any of these steps. First, the court did not determine if the motion was timely although there should be little question that it is. Under CrR 7.8(b) and RCW 10.73.090 motions for relief from judgment must be brought within one year after the judgement

becomes final. In this case the judgment became final on February 1, 2016, upon the filing of the mandate. CP 73. The defendant filed his CrR 7.8(b) motion on February 29, 2016, only 28 days after the judgement became final. CP 107-124.

Second, in this case the trial court did not determine whether or not the motion was meritorious or potentially meritorious if the facts alleged were proven. Rather, the court simply refused to take any action at all. When a trial court fails to follow mandatory procedures set out in a court rule such as CrR 7.8, it necessarily abuses its discretion. *State v. Flaherty*, 177 Wn.2d 90, 92-93, 296 P.3d 904 (2013) (trial court erred in refusing to follow directives of CrR 7.8(c)(2)); *State v. Smith*, 144 Wn. App. at 864 (trial court acted without authority when it failed to follow dictates of CrR 7.8). Under these circumstances the appropriate remedy is normally to vacate the trial court's order and remand with instructions to follow the procedures required under CrR 7.8(c).

However in this case the defendant's affidavit, the prosecutor's admissions on the record, and the trial court's statements amply reveal that the defendant's motion was both timely and potentially meritorious. Under these circumstances, the trial court should have held a fact-finding hearing and then ruled on the motion depending upon the findings entered. Thus, the appropriate remedy in this case is to remand back to the trial court with

instructions to hold a fact-finding hearing and then rule on the motion. The following sets out this argument in support of this conclusion.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is "whether counsel's conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel's assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel's performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel's conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is "whether there is a reasonable probability that, but for counsel's errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at 694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the

Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel's ineffective assistance must have caused prejudice to client).

In this case the defendant sought relief under CrR 7.8(b) on a claim of ineffective assistance of counsel. Specifically, he argued that his trial attorney was ineffective when he failed to inform the defendant of the minimum mandatory sentence upon conviction and when he failed to convey an offer from the prosecutor. As to this latter claim the Washington State Supreme Court stated as follows in a disciplinary hearing against the defendant's attorney in a case involving another client: "It is beyond well-established that defense lawyers must communicate all plea offers to their clients." *In re Disciplinary Proceeding Against Longacre*, 155 Wn. 2d 723, 742, 122 P.3d 710, 719 (2005) (citing *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971) and *State v. Osborne*, 102 Wn.2d 87, 684 P.2d 683 (1984). Thus, the failure to communicate a plea offer to a client falls below the standard of a reasonably prudent attorney. *Id.* In *Longacre* the court explains the prejudice that occurs for both the defendant as well as the court and the prosecution when a defense attorney fails to communicate an offer to a defendant. In that case the court noted:

The result of Longacre's failure to communicate is that Tripp [the

> defendant], the prosecutor's office, and the superior court all actively participated in and spent valuable resources on a criminal trial only to have a new trial ordered due to ineffective assistance of counsel after which Tripp agreed to the very same offer that was made prior to the first trial.

In re Disciplinary Proceeding Against Longacre, 155 Wn. 2d at 742.

The decision in *In re Personal Restraint of McCready*, 100 Wn.App. 259, 996 P.2d 658 (2000), also illustrates this principle. In *McCready* the state charged the defendant with first degree assault with a firearm enhancement. The minimum mandatory sentence upon conviction with the enhancement included was 120 months. After charging, the state offered to allow the defendant to plea to second degree assault with a firearm enhancement, which would have yielded a maximum possible sentence of under 60 months. Although defendant's attorney communicated this offer to the defendant, he did not inform the defendant of the mandatory minimum sentence of 120 months were he to go to trial and lose. Following conviction, the defendant brought a PRP, arguing that his attorney's failure to inform him of the minimum mandatory sentence upon conviction fell below the standard of a reasonably prudent attorney, and that this failure caused him prejudice because he would have accepted the state's offer had he been properly informed of the potential minimum mandatory sentence.

The Court of Appeals found the defendant's factual claims sufficient to require a reference hearing and remanded it back to the trial court for that

hearing. Following testimony at the reference hearing the trial court found that the defendant's counsel had failed to inform him of the 120 months minimum mandatory sentence upon conviction. Based upon this finding, the Court of Appeals ruled that the trial attorney's conduct fell below the standard of a reasonably prudent attorney. The court held:

> With respect to the performance prong, as applied to Mr. McCready's petition, his counsel was under an ethical obligation to discuss plea negotiations with him. And, he had to provide him with sufficient information to make an informed decision on whether or not to plead guilty. Because counsel did not inform Mr. McCready of the maximum and minimum sentences that could be imposed for the offenses charged by the State, he did not make an informed decision regarding the plea offer. . . .This failure to advise Mr. McCready of the available options and possible consequences constitutes ineffective assistance of counsel. Stated differently, Mr. McCready's rejection of the plea offer was not voluntary because he did not understand the terms of the proffered plea bargain and the consequences of rejecting it.

In re McCready, 100 Wn.App. at 263 (citations omitted).

The case at bar involves even more egregious conduct by the original trial attorney. In this case the defendant's affirmation alleges that (1) his trial counsel did not inform him of the minimum mandatory sentence he was facing, and (2) that his trial counsel did not inform him of the state's offer. Under the decision in *McCready*, these allegations were more than sufficient to require a fact finding hearing. However, in the case at bar the defendant's claims made in his supporting affirmation were themselves supported by both the prosecutor and the court. The prosecutor admitted that his office did not

trust the defendant's trial attorney to communicate plea offers to his clients. The court also noted that while the minute sheets did indicate that the state had said it would communicate a plea offer, there was no further mention of any such offer having been made or communicated to the defendant.

While the prosecutor in argument claimed that he had stated the offer on the record, he did not present any transcripts or minutes sheets in support of this claim. However, even had he done so, it would not have substituted for the defendant's right to have his attorney communicate the minimum mandatory sentence upon conviction as well as the specifics of the offer made. Thus, in the case at bar, the trial court erred when it refused to order a fact finding hearing upon the defendant's CrR 7.8(b) motion because the defendant's affirmation set out a basis for relief. This court should remand this case to the trial court with instructions to grant the defendant a fact finding hearing and then rule on the motion.

II. THIS COURT SHOULD NOT IMPOSE COSTS ON APPEAL.

The appellate courts of this state have discretion to refrain from awarding appellate costs even if the State substantially prevails on appeal. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); *State v. Sinclair*, 192 Wn. App. 380, 382, 367 P.3d 612, 613 (2016). A defendant's inability to pay appellate costs is an important consideration to

take into account when deciding whether or not to impose costs on appeal. *State v. Sinclair, supra*. In the case at bar the trial court found Jesse Wilkins indigent and entitled to the appointment of counsel at both the trial and appellate level. CP 3, 165-166. In the same matter this Court should exercise its discretion and disallow trial and appellate costs should the State substantially prevail.

Under RAP 14.2 the State may request that the court order the defendant to pay appellate costs if the state substantially prevails. This rule states that a "commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review." RAP 14.2. In *State v. Nolan, supra*, the Washington Supreme Court held that while this rule does not grant court clerks or commissioners the discretion to decline the imposition of appellate costs, it does grant this discretion to the appellate court itself. The Supreme Court noted:

> Once it is determined the State is the substantially prevailing party, RAP 14.2 affords the appellate court latitude in determining if costs should be allowed; use of the word "will" in the first sentence appears to remove any discretion from the operation of RAP 14.2 with respect to the commissioner or clerk, but that rule allows for the appellate court to direct otherwise in its decision.

State v. Nolan, 141 Wn. 2d at 626.

Likewise, in RCW 10.73.160 the Washington Legislature has also

granted the appellate courts discretion to refrain from granting an award of appellate costs. Subsection one of this statute states: "[t]he court of appeals, supreme court, and superior courts ***may*** require an adult offender convicted of an offense to pay appellate costs." (emphasis added). In *State v. Sinclair*, *supra*, this Court recently affirmed that the statute provides the appellate court the authority to deny appellate costs in appropriate cases. *State v. Sinclair*, 192 Wn. App. at 388. A defendant should not be forced to seek a remission hearing in the trial court, as the availability of such a hearing "cannot displace the court's obligation to exercise discretion when properly requested to do so." *Supra.*

Moreover, the issue of costs should be decided at the appellate court level rather than remanding to the trial court to make an individualized finding regarding the defendant's ability to pay, as remand to the trial court not only "delegate[s] the issue of appellate costs away from the court that is assigned to exercise discretion, it would also potentially be expensive and time-consuming for courts and parties." *State v. Sinclair*, 192 Wn. App. at 388. Thus, "it is appropriate for [an appellate court] to consider the issue of appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellate brief." *State v. Sinclair,* 192 Wn. App. at 390. In addition, under RAP 14.2, the Court may exercise its discretion in a decision terminating review. *Id.*

An appellate court should deny an award of costs to the state in a criminal case if the defendant is indigent and lacks the ability to pay. *Sinclair, supra*. The imposition of costs against indigent defendants raises problems that are well documented, such as increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration. *State v. Sinclair*, 192 Wn.App. at 391 (citing *State v. Blazina*, *supra*). As the court notes in *Sinclair*, "[i]t is entirely appropriate for an appellate court to be mindful of these concerns." *State v. Sinclair*, 192 Wn.App. at 391.

In *Sinclair*, the trial court entered an order authorizing the defendant to appeal *in forma pauperis*, to have appointment of counsel, and to have the preparation of the necessary record, all at State expense upon its findings that the defendant was "unable by reason of poverty to pay for any of the expenses of appellate review" and that the defendant "cannot contribute anything toward the costs of appellate review." *State v. Sinclair*, 192 Wn. App. at 392. Given the defendant's indigency, combined with his advanced age and lengthy prison sentence, there was no realistic possibility he would be able to pay appellate costs. Accordingly, the Court ordered that appellate costs not be awarded.

Similarly in the case at bar, the defendant is indigent and lacks an ability to pay. First, the trial court found the defendant indigent and unable

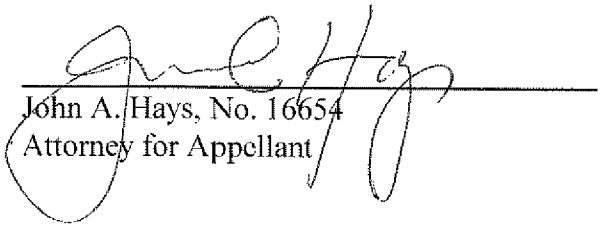
to pay the costs of either the trial or the appeal. Second, the trial court imposed a effective sentence of life without the possibility of release in this case. Given these factors, it is unrealistic to think that the defendant will be able to pay appellate costs. Thus, this court should exercise its discretion and order no costs on appeal should the state substantially prevail.

CONCLUSION

The trial court erred under CrR 7.8(c) when it refused to rule on the defendant's motion and when it failed to order an evidentiary hearing. As a result this court should remand this case back to the trial court with instructions to hold an evidentiary hearing and then rule on the motion.

DATED this 26th day of August, 2016.

Respectfully submitted,



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Attorney for Appellant

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 22

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

UNITED STATES CONSTITUTION,
SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

RULE CrR 7.8
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

RCW 10.73.090
COLLATERAL ATTACK - ONE YEAR TIME LIMIT

(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 post conviction 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.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

COURT OF APPEALS OF WASHINGTON, DIVISION II

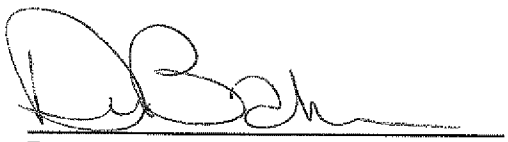
STATE OF WASHINGTON, **Respondent,** **vs.** **LA'JUANTA L. CONNER,** **Appellant.**	**NO. 48846-9-II** **AFFIRMATION OF SERVICE**

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Ms Tina R. Robinson
   Kitsap County Prosecuting Attorney
   614 Division Street
   Port Orchard, WA 98366
   kcpa@co.kitsap.wa.us

2. La'Juanta L. Conner, No.359680
   Washington State Penitentiary
   1313 North 13th Avenue
   Walla Walla, WA 99362

Dated this 26th day of August, 2016, at Longview, WA.



Donna Baker

HAYS LAW OFFICE

August 26, 2016 - 12:30 PM

Transmittal Letter

Document Uploaded: 4-488469-Appellant's Brief.pdf

Case Name: State vs La'Juanta L. Conner
Court of Appeals Case Number: 48846-9

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Brief of Appellant for La'Juanta L. Conner 48846-9-II

Sender Name: John A Hays - Email: jahayslaw@comcast.net

A copy of this document has been emailed to the following addresses:

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