

30200-8-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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Court of Appeals  
Division III  
State of Washington

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STATE OF WASHINGTON,

Respondent,

v.

RICHARD WILLIAM JOYNER, JR.,

Appellant.

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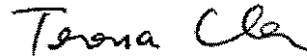
DIRECT APPEAL  
FROM THE SUPERIOR COURT  
OF WALLA WALLA COUNTY

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RESPONDENT'S BRIEF

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Respectfully submitted:



by: Teresa Chen, WSBA 31762  
Deputy Prosecuting Attorney

P.O. Box 5889  
Pasco, Washington 99301  
(509) 545-3561

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## **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

## **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the sentencing of the Appellant.

## **III. ISSUE**

Is the criminal defendant's criminal history sufficiently proven (by a preponderance of the evidence) with the presentment of the judgment and sentence displaying the defendant's admitted name and date of birth as well as the detective's statement under penalty of perjury that the defendant was serving his sentence under that judgment and sentence at the Washington State Penitentiary at the time of the current offense?

## **IV. STATEMENT OF THE CASE**

The Defendant Richard William Joyner, Jr. is convicted in this matter of custodial assault occurring during his incarceration at the Washington State Penitentiary in Walla Walla. CP 1-3, 98-112.

The Defendant struck a seated Correctional Officer LeLand Weber in the back, neck, and chin with a sharpened toothbrush producing “little prick marks” and some redness. CP 1-2; RP 49-53, 60-62, 64-66. The officer stood up, and the Defendant was restrained. CP 2; RP 50-51, 60-61. Despite the videotape of the assault and the testimony of correctional officers, the Defendant maintained his belief that he had knocked the officer to the ground. CP 2; RP 57.

The Defendant was found guilty by a jury and sentenced to six months confinement consecutive to the sentence he is currently serving at the Washington State Penitentiary. CP 98, 104; RP 112-15, 131-33.

On appeal, the Defendant challenges the sufficiency of the evidence for his offender score. Appellant’s Brief at 1, 3. Specifically, he challenges that he is the Richard Joyner who was convicted of the rape and robbery in Snohomish County. *Id.*

The Defendant has an offender score of two, based on prior convictions for rape in the first degree and robbery in the first degree out of Snohomish County. CP 100. This criminal history was proven at sentencing by the presentment of the 2001 judgment and sentence for the Snohomish County case, No. 00-1-0430-8. CP 86-97. The 2001 judgment and sentence

indicates that it is for Richard William Joyner, DOB 07/19/1982. CP 86.

With a 231 month sentence for the rape and robbery (CP 90), the Defendant's earliest possible release date would have been January 25, 2020 (assuming good behavior). CP 2. The Defendant has repeatedly challenged this release date and denied that he is the person who has been convicted of the Snohomish county rape and robbery -- for which he is being held at the Washington State Penitentiary. CP 1-3, 17-29, 32-33, 44-47, 59-64; RP 4, 6, 7, 13, 79-82, 86-87, 93-94, 116-118.

The Defendant spent the first twenty minutes of his police interrogation challenging his release date. RP 38. In fact, he justified the custodial assault as a means of drawing attention to this complaint. CP 2 ("Inmate Joyner claimed that he had been held past his release date, which was [according to Joyner] supposed to have occurred in 2006, and that after numerous correspondences, he decided that the way to get attention was to assault a correctional officer.") *See also* RP 95. However, during the investigation of the custodial assault and before the case was charged, the Washington State Patrol 10 print lab performed a fingerprint comparison and confirmed that the person arrested for rape and robbery is the same person who was transferred to DOC on the sentence which the Defendant is currently

serving. CP 3.

The Defendant believes that the person who actually committed the rape and robbery “used his name and had possibly burned his fingerprints off.” CP 32. A psychological report from 2006 states that back then the Defendant was making the same claims of being falsely sentenced for a crime he did not commit, while discussing his female victim (who he believed could view his perspective from the cameras in his eyes) – apparently the rape victim. CP 33. Despite, his significant criminal history (CP 2-3) and his admission that he should have been held until 2006 (CP 2), the Defendant has also denied having any criminal history whatsoever. RP 89.

At the Defendant’s first appearance on September 13, 2010, he confirmed his full name and date of birth (7/19/82). RP 1-2. The trial court explained that defense counsel would investigate and prepare appropriate motions “[if] he thinks that is a matter that needs to be taken up with the Court.” RP 7-8. Defense counsel did not find any validity to the claim. CP 40 (“Mr. Joyner is obsessed with being illegally held (which he is not)”); RP 14, ll. 12-13; RP 15, ll. 1-2. Instead defense counsel’s decision was to seek two competency evaluations of his client. CP 9-10, 39-40; RP 16.

## V. ARGUMENT

THE SENTENCING COURT DID NOT ERR IN FINDING THAT THE STATE HAD PROVEN THE CRIMINAL HISTORY BY A PREPONDERANCE.

The law requires that a sentencing court be satisfied with the validity of the defendant's criminal history by a preponderance of the evidence.

... A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. ...

RCW 9.94A.500. *See also State v. Weaver*, 140 Wn. App. 349, 352, 166 P.2d 761 (2007) (disputed facts including criminal history must be proven by a preponderance of the evidence). The state's burden is "easily met," requiring only the production of "some evidence." *State v. Payne*, 117 Wn. App. 99, 105, 69 P.3d 889 (2003). The best evidence of a conviction is a certified copy of the judgment and sentence. *Id.*

The Appellant's references to the "beyond a reasonable doubt" standard set forth in *State v. Santos*, 163 Wn. App. 780, 260 P.3d 982 (2011) and *State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005) are not relevant here. *State v. Santos* regards the standard for proving the *elements of the*

*crime* of felony DUI. *State v. Santos*, 163 Wn. App. at 782. For that particular offense, the criminal history (specifically four or more qualifying prior offenses) is an element of the offense. RCW 46.61.502(6); *State v. Castle*, 156 Wn.App. 539, 543, 234 P.3d 260 (2010). And *State v. Huber* regards the standard for proving the identity of the accused person of the *current offense*, not the criminal history.

The correct standard for proving criminal history to be used in the offender score is “by a preponderance of the evidence” as set forth at RCW 9.94A.500. The record before the sentencing judge was sufficient to meet that standard.

The State produced the judgment and sentence of the prior convictions. CP 86-97. The Defendant’s full name and birth date, which the Defendant admitted, were in the heading of that judgment and sentence. CP 86; RP 1-2. The Washington State Patrol had compared the Defendant’s fingerprints at arrest and conviction. CP 3. The investigating detective’s sworn statement states that the Defendant is incarcerated at the penitentiary on the Snohomish rape and robbery. CP 2-3. Defense counsel had acknowledged that his client’s incarceration was lawful. CP 40. Counsel could not find support for his client’s belief. Faced with his client’s

obsession, counsel repeatedly asked for competency evaluations.

On appeal, Defendant's new counsel can only point to his client's unproven and bizarre claims. But the Defendant's credibility and judgment is suspect. Certainly, the unsubstantiated allegations are self-serving, reflecting an attempt to avoid incarceration. CP 34. Moreover, many of his claims appear paranoid on their face.

Incredibly, he believes that the person who actually committed the rape and robbery "used his name and had possibly burned his fingerprints off." CP 32. He believes he knocked the correctional officer to the ground, when the video proves he did not. He believes the videotape had been altered in this regard, although there is no apparent purpose for the DOC to alter the tape in such a manner as to minimize the offense.

On the one hand, he denies any convictions whatsoever. RP 89. On the other, he appears to think he was properly incarcerated up until September 21, 2006. RP 125.

He believes that an amicable relationship between his counselor and trial counsel has caused his counselor to refuse to meet with him. RP 123.

He believes the prison is stealing his mail. RP 124. He claims his "victim" – "he married the cousin of Ron Jensen." RP 126. Alternately his

victim (“the penitentiary guard?” – RP 126) is Ron Jensen’s brother. RP 125-26. It is unclear who Ron Jensen is. However, the very same Richard Joyner who challenges his release date has spoken to a counselor about a *female* victim (CP 33) – apparently not Ron Jensen, and logically the victim of the rape conviction.

He claims three judges can confirm his release date. RP 125. And yet five years after he claims he should have been released, he remains incarcerated.

At least one of the Defendant’s challenges regarding his prior conviction can be resolved by looking only to the law. The Defendant questions how he can be held on an adult matter when he was only 17 at the time of the offense. RP 122. We cannot tell the date of charging from the judgment, and it is possible that the crime was not charged until after the Defendant turned 18. However, assuming he was 17 on the date of charging, under Washington law, there would have been automatic and exclusive adult jurisdiction based on his age and the particular offenses. RCW 13.04.030(1)(e)(v)(A) and (C); RCW 9.94A.030(45)(a)(vii).

Counsel on appeal argues that his client’s bizarre claims are enough to overcome the state’s evidence. The trial judge disagreed. So should this

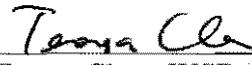
Court. The State's burden is "some evidence." It is more than met.

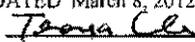
**VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction and sentence.

DATED: March 8, 2012.

Respectfully submitted:

  
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Teresa Chen, WSBA#31762  
Deputy Prosecuting Attorney

<p>Dennis W. Morgan 120 W. Main Street Rizville, WA 99169</p> <p>Richard William Joyner, Jr., #822414 Washington State Penitentiary 1313 N 13<sup>th</sup> Avenue, IMU-S/C-09-L Walla Walla, WA 99362</p>	<p>A copy of this brief was sent via U.S. Mail as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.</p> <p>DATED March 8, 2012, Pasco, WA</p> <p> Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p>
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