

1 Appendix B. On the same day, the court imposed a stipulated exceptional sentence of 65
2 years. Appendix A & C.

3 After the State decided that it was not going to seek the death penalty, petitioner
4 reached an agreement with the State to resolve the charges against him. The State agreed
5 to reduce the charges to one count of first degree murder for the death of Arlene Koestner
6 (Count I) and attempted first degree murder for the attack on Scott Sander (Count II), in
7 exchange for petitioner's guilty plea and a stipulation to an exceptional sentence of 65
8 years on each count to be served concurrently. Appendix D. The relevant charging
9 language on this second count in the amended information read as follows:

10 That THOMAS WILLIAM SINCLAIR RICHEY, in Pierce
11 County, Washington, on or about the 28th day of March, 1986, did
12 unlawfully and feloniously with premeditated intent to cause the
13 death of another person, did shoot Scott Jacob Sanford, thereby
14 attempting to cause the death of Scott Jacob Sanford, a human
15 being, and/or while committing or attempting to commit the crime
16 of Robbery in the First Degree, and in the course of or furtherance
of said crime or in the immediate flight therefrom did shoot Scott
Jacob Sanford, a human being, not a participant in such crime,
thereby attempting to cause the death of Scott Jacob Sanford,
contrary to RCW 9A.28.020 and 9A.32.030(1)(a)(c), and against
the peace and dignity of the State of Washington.

17 Appendix D (Amended Information).

18 In addition to the statement in the guilty plea form, petitioner further stipulated to
19 the following real facts regarding his crime:

20 [O]n March 28, 1986, the defendant entered the Military
21 TV and Stereo store on Pacific Highway Southwest in Pierce
22 County, Washington, to purchase a television set. He had
23 concealed on his person a loaded .22 caliber Beretta handgun. He
24 had earlier that day secretly removed this gun from Ft. Lewis and
25 used it for target practice. In the store, the defendant negotiated
with Arlene Koestner for the purchase of the color television with
a listed price of \$599.00. Upon learning that the terms of his time
payment contract would result in a total price in excess of \$700.00,
the defendant became upset. He pulled out his gun, pointed it at
Mrs. Koestner, and ordered her to a back room. As she complied

1 the defendant noticed another employee, Scott Jacob Sanford, and
2 ordered him at gunpoint to accompany Mrs. Koestner.

3 As they approached the back room, the defendant
4 demanded to be told where the money was. However, before any
5 reply was made and upon entering that room, the defendant shot
6 each victim once in the head. Mrs. Koestner, who was shot in the
7 back of the head, died very shortly thereafter. Mr. Sanford was
8 facing the defendant and moved slightly to protect himself. He
9 survived the gunshot wound to the brain.

10 The defendant then gathered up all the paperwork that
11 would have traced him to the crime and took it with him. He stole
12 a stereo cassette player and a pair of speakers. He later burned the
13 paperwork. The stolen property was found secreted in a ceiling
14 space over his bunk at Ft. Lewis during a later search.

15 Appendix C (Stipulation to Sentence in Excess of Presumptive Range and To Real Facts).

16 After engaging in a colloquy with petitioner, the trial court accepted petitioner's
17 plea. It was clear that the benefit that the agreement gave petitioner was that it eliminated
18 the risk of being convicted of a crime that carried a sentence of life without possibility of
19 parole. The trial court proceeded immediately to sentencing and followed the joint
20 recommendation. The court imposed an exceptional sentence of 65 years on each count, to
21 be served concurrently. Appendix A. Petitioner did not file a notice of appeal within
22 thirty days of the entry of judgment.

23 The court file reflects that four years after sentencing, petitioner wrote to the trial
24 court seeking assistance with a reduction in his sentence in order to facilitate a desired
25 transfer to a British prison under the 1983 Repatriation Act. In the letter dated November
10, 1991, petitioner acknowledges that he shot his two victims and states:

I did not go to trial. I decided to plead guilty so the families I hurt
would not endure the pain of a trial. At the time I was
unconcerned over the sixty-five year plea bargain sentence I'd
receive, (which is the reason I did not attempt to bargain the
sentence lower) because I knew I deserved punishment.

Appendix E.

1 According to ACORDS, petitioner has filed four personal restraint petitions in case
2 numbers, 15638-5, 16022-6, 27491-4, and 35212-5-II (this case). The first of these
3 personal restraint petitions, filed December 23, 1991, alleged that the court erred in
4 imposing the exceptional sentence. The Court of Appeals, Division II, dismissed the
5 petition as time-barred on April 6, 1992. According to ACORDS, the next two personal
6 restraint petitions, which were served upon the Office of the Attorney General for
7 response, were also dismissed.

8 In January 2005, nearly 18 years after the entry of defendant's judgment and
9 sentence, defendant moved the Court of Appeals for an extension of time beyond the 30
10 day time limit to file his notice of appeal. The Court of Appeals denied defendant's
11 motion. Appendix F. The Supreme Court granted discretionary review and issued an
12 order remanding this case to the Superior Court "for a hearing to determine whether the
13 Petitioner knowingly, intelligently and voluntarily waived his right to appeal his
14 conviction after his guilty plea. If, after conducting a hearing, the Pierce County Superior
15 Court determines the appeal should be reinstated, then said court shall entertain a motion
16 for an order of indigency relative to appeal." Appendix F. The trial court conducted the
17 hearing and concluded that petitioner knowingly, voluntarily, and intelligently waived his
18 right to appeal. Appendix I. Petitioner next filed a motion in the Supreme Court to set a
19 briefing schedule to re-instate his appeal. Appendix G. The Supreme Court rejected the
20 motion as it considered the case a "closed matter." Appendix G.

21 Petitioner then filed a notice of appeal from the remand hearing in this Court.
22 Appendix F. This Court issued a ruling dismissing the appeal. Appendix F.

23 On July 14, 2006, petitioner filed this Motion to Vacate Judgment and Sentence
24 and to Withdraw Plea of Guilty in Superior Court. This petition, his fourth, was forwarded
25 to this Court for disposition. The petition is time-barred.

1
2 C. ARGUMENT:

3 1. THE PETITION MUST BE DISMISSED BECAUSE
4 PETITIONER HAS FILED THREE PRIOR
5 PETITIONS AND HAS FAILED TO COMPLY
6 WITH THE PROVISIONS OF RCW 10.73.140.

7 RCW 10.73.140 provides:

8 If a person has previously filed a petition for personal restraint, the
9 court of appeals **will not consider the petition** unless the person
certifies that he or she has not filed a previous petition on similar
grounds, and shows good cause why the petitioner did not raise the
new grounds in the previous petition. ...

10 [Emphasis added.] Petitioner has failed to file a certificate that he has not filed a previous
11 petition on similar grounds. In fact, the majority of these claims were litigated in some
12 form or other in his recent efforts to reinstate his appeal rights. See case number 32793-7-
13 II. Here, petitioner merely recasts the same assertions under the guise of newly framed
14 issues.

15 Petitioner cannot show good cause as to why these claims were not made in prior
16 petitions. Rather, petitioner is attempting to use appellate proceedings as leverage to force
17 Gerald Horne, Pierce County Prosecutor, to acquiesce to his demands. He threatens to
18 continue to litigate this matter unless Mr. Horne capitulates to his demand of a transfer to
19 the United Kingdom's prison system. In July of 2006, petitioner wrote to Mr. Horne:

20 What can be predicted for certain is that I will be returning to
21 Pierce County for further proceedings.

22 ...

23 I'm prepared to withdraw the enclosed motion and all further legal
24 challenges in exchange for your recommendation I be transferred
25 to a UK prison. The ball is in your court.

Appendix H.

Summary dismissal is appropriate under RCW 10.73.140 where petitioner has
previously filed a personal restraint petition or where the petition is based on frivolous

1 grounds. In re Personal Restraint of Bailey, 141 Wn.2d 20, 22, 1 P.3d 1120 (2000). This
2 Court should refuse to consider the petition.

3 2. THE PETITION MUST BE DISMISSED BECAUSE
4 IT IS TIME-BARRED UNDER RCW 10.73.090(1).

5 RCW 10.73.090(1) bars review of an untimely collateral attack of a judgment and
6 sentence. "No petition or motion for collateral attack on a judgment and sentence in a
7 criminal case may be filed more than one year after the judgment becomes final if the
8 judgment and sentence is valid on its face and was rendered by a court of competent
9 jurisdiction." RCW 10.73.090(1); RAP 16.4 incorporates the requirements of RCW
10 10.73.090.

11 If a judgment is invalid on its face, there is no time limit to file a personal restraint
12 petition under RCW 10.73.090(1). To obtain relief, petitioner has the burden to show the
13 judgment and sentence is invalid under RCW 10.73.090(1). In Re PRP of Turay, 150
14 Wn.2d 71, 82, 74 P.3d 1194 (2003), cert. denied, 544 U.S. 952, 125 S. Ct. 1704, 161
15 L.Ed.2d 531 (2005). A judgment and sentence is invalid on its face when "the judgment
16 and sentence evidences the invalidity without further elaboration." In Re PRP of
17 Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). The documents considered as part
18 of a plea agreement can be used to determine the facial validity of the judgment and
19 sentence. Id. at 532-33.

- 20 a. Petitioner pleaded guilty to an information
21 alleging more than one means of committing
22 attempted first degree murder. Therefore he
23 pleaded guilty to that crime and not merely
24 one alternative.

25 Petitioner claims that because he pleaded guilty to a non-existent crime (attempted
first degree felony murder) in Count II that his judgment and sentence is invalid on its face.
PRP at 13. In presenting this argument to the Court, petitioner fails to address the fact that
the amended information, Count II, alternatively charged him with committing attempted

1 first degree intentional murder. Petitioner does not assert that this crime does not exist.
2 The amended information alleged alternative means of committing this offense, repeating
3 the language of the original information: “did unlawfully and feloniously with
4 **premeditated intent** to cause the death of another person, did shoot Scott Jacob Sanford,
5 thereby attempting to cause the death of Scott Jacob Sanford, a human being, **and/or....”**
6 Appendix D (Emphasis added).

7 When petitioner entered his plea, he pleaded guilty to the entire amended
8 information. State v. Bowerman, 115 Wn.2d 794, 799-801, 802 P.2d 116 (1990). The
9 statutory right to plead guilty does not give a defendant the right to plead guilty to only one
10 alternative means out of several that are charged. Id. at 801. When an information alleges
11 more than one means of committing a single crime, the right to plead guilty is to the one
12 crime charged.” Id. Petitioner cannot now claim that he pleaded guilty to only one
13 alternative means of the amended information. Petitioner entered a plea to the crime of
14 attempted first degree murder based on either of two alternative means. That one of these
15 means may be subject to attack does not invalidate the other. See In re PRP of Fuamaila,
16 131 Wn.App. 108, 131 P.3d 318 (2006).

17 In Fuamaila, the Court of Appeals held that where there are two or more alternative
18 ways to commit a crime, it is permissible to charge both alternatives in the same count and
19 “[a] defendant does not have the right to plead guilty to just one of the alternatives means.”
20 Id. at 918, citing Bowerman, 115 Wn.2d at 799, and State v. Duhaime, 29 Wn. App. 842,
21 854-55, 631 P.2d 964 (1981). Similar to this case, Fuamaila was charged with second
22 degree murder committed by the alternative means of intentional murder and felony
23 murder predicated on assault. Fuamaila at 915. The Court of Appeals noted that the
24 language in Fuamaila’s Statement of Defendant on Plea of Guilty, which he signed,
25 reiterated that he was pleading guilty “as charged” in the third amended information.

1 Thus, the record established that Fuamaila therefore understood he was pleading guilty to
2 both felony murder and intentional murder. *Id.* at 919-20.

3 Here, petitioner also signed the plea form which stated, "I plead GUILTY to the
4 crime(s) of MURDER IN THE FIRST DEGREE, COUNT [sic] and ATTEMPTED
5 MURDER IN THE FIRST DEGREE, COUNT II *as charged* in the Amended
6 information." Appendix B, Statement of Defendant on Plea of Guilty, page 3 [bold italics
7 added]. The crime of attempted intentional first degree murder exists and defendant
8 entered a plea to that crime.

9 In Fuamaila, the plea of guilty "as charged" to two alternative means, one of which
10 remained a valid charge, resulted in the court holding that Fuamaila "fails to show the
11 judgment and sentence is invalid within the meaning of RCW 10.73.090(1). *Id.* at 920.

12 The same is true in this case: Although one of the means is a non-existent crime, the other
13 charge remains valid, and therefore, the judgment and sentence is not invalidated by the
14 non-existent crime.

15 While holding that his collateral attack was time-barred, the Fuamaila court
16 nonetheless addressed his substantive arguments only because he was alleging a significant
17 change in the law which is an exception to the one-year time limit under RCW
18 10.73.100(6) . Unless petitioner can show the decisions in Andress¹ and Hinton² are a
19 significant change in the law that is material to *his* conviction, his collateral attack is time-
20 barred. Turay, 150 Wn.2d at 74. Here, petitioner does not assert any such exception,
21 relying on his claim of facial invalidity which must fail.

22
23
24
25 ¹ 147 Wn.2d 602, 56 P.3d 981 (2002)

² 152 Wn.2d 853, 100 P.3d 801 (2004)

1
2 b. Petitioner may use clerical error to bootstrap
3 into a showing of facial invalidity on his
4 judgment and sentence.

5 Petitioner claims that the incorrect statutory reference on the judgment and
6 sentence, RCW 9A.32.030(1)(c)+.020, shows that the parties and the court all understood
7 that the plea was to attempted first degree felony murder only. PRP at 14. This argument
8 is without merit. As stated above, the amended information clearly charged the crime in
9 the alternative.

10 In re PRP of Mayer, 128 Wn.App. 694, 700, 117 P.2d 353 (2005), the Court of
11 Appeals held that an obvious scrivener's error does not render the plea invalid. In Mayer,
12 defendant pleaded guilty to second degree murder under both the intentional murder and
13 felony murder alternatives. Id. at 698-99. The amended information used an incorrect
14 statutory reference, RCW 9A.32.030(1)(a) and (b), whereas the correct cite for second
15 degree murder alternatives was RCW 9A.32.050(1)(a) and (b). Id. at 698. Mayer's
16 judgment and sentence contained the same statutory citation error as the amended
17 information. Id. at 699.

18 Mayer, whose judgment became final in 1993, claimed that the statutory citation
19 error in the amended information rendered his plea involuntary because the citation was to
20 the first degree murder statute and his plea statement stated that the plea was to second
21 degree murder. Mayer at 700. Mayer urged the court to conclude that this ambiguity
22 precludes a valid plea to second degree murder. The Court of Appeals disagreed, holding
23 that an obvious scrivener's error does not render the plea invalid. Id.

24 The present case is similar to Mayer. Petitioner's judgment became final on April
25 24, 1987. See RCW 10.73.090(3)(a). Petitioner's judgment and sentence also contains an
incorrect statutory reference. However, unlike Mayer, the amended information in the

1 present case correctly reflects the statutory citations and the elements of each alternative
2 charged. Appendix D.

3 The remedy for the incorrect statutory citation is to remand to the trial court for
4 correction of the clerical/scrivener error in the judgment and sentence. Mayer at 701-02.

5 Petitioner attempts to bootstrap his claim of facial invalidity by claiming that there
6 was no factual basis to support his plea to attempted intentional first degree murder. PRP
7 at 6. However, the underlying documents may not be used in such a fashion to assess
8 whether the judgment and sentence is valid on its face. That is bootstrapping. The
9 Supreme Court has stated:

10 We take this opportunity to make clear that plea documents are
11 relevant only to the question under RCW 10.73.090(1) insofar as
12 they bear on the facial validity of the judgment and sentence.

13 In re PRP of Hemenway, 147 Wn.2d 529, 533 n. 2, 55 P.3d 615 (2002), citing In re
14 PRP of Goodwin, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002). The Mayer court, in its
15 facial invalidity analysis, refused to consider Mayer's claim that the amended information
16 was defective because "this contention is untimely under RCW 10.73.090(1), not within
17 any RCW 10.73.100 exception to the time bar, and frivolous in any event." Mayer at 702.
18 The Mayer court did, however, address the merits of Mayer's claim that there was
19 insufficient factual basis to support a plea to intentional second degree murder, but only
20 because there existed another basis for Mayer to collaterally attack his judgment and
21 sentence. The court noted:

22 This shifts the procedural focus away from the facial validity of
23 the judgment and theoretically invokes consideration under the
24 intervening case law exception to the one-year time bar for
25 collaterally attacking a judgment. See RCW 10.73.100(6).

26 Mayer at 705, n. 3. Here, petitioner has no RCW 10.73.060 exception to the one year time
27 limit. Therefore, this Court is limited to the facial invalidity analysis which prohibits
28 granting relief for errors outside the judgment and sentence. "The question is not,

1 however, whether the plea documents are facially invalid, but rather whether the judgment
2 and sentence is invalid on its face.” In re PRP of Hemenway, 147 Wn.2d at 533.³

3 To the extent that petitioner shows a facial invalidity, the error does not render his
4 plea invalid, but rather the remedy is merely to correct the scrivener’s error. See Mayer.

5 c. The remainder of petitioner’s claims are not
6 within to any exception to the one-year time
7 bar.

8 Because the scrivener’s error does not affect the validity of the plea and because
9 there are no RCW 10.73.100 exceptions that apply, petitioner’s claims are time-barred.
10 Therefore, the State does not address the merits of other issues raised by petitioner, but
11 reserves the right to do so should this Court find there exists an exception to the one year
12 time-bar.

13 This Court should note, however, that petitioner’s claim (1) that the trial court erred
14 in imposing an exceptional sentence; (2) that he received ineffective assistance of counsel;
15 and (3) the trial court improperly relied on certain facts at sentencing were raised and
16 rejected by this Court in at least one prior PRP. No. 15638-5-II.

17 Until recently, petitioner has never disputed the validity of his plea and sentence.
18 His goal has been to serve his sentence in Scotland. In 1991, petitioner wrote:

19 I did not go to trial. I decided to plead guilty so the families I hurt
20 would not endure the pain of a trial. At the time I was unconcerned
21 over the sixty-five year plea bargain sentence I’d receive, (which is
22 the reason I did not attempt to bargain the sentence lower) because I
23 knew I deserved punishment.

24 Appendix E.

25 ³ The State asserts there is a sufficient factual basis for petitioner’s plea to attempted intentional first degree
murder. Petitioner only refers to his statement in the plea form, ignoring his stipulation to real facts and the
reasonable inferences that can be drawn therefrom. Appendix C.

1 This petition is disingenuous. Since being denied his transfer to Scotland,
2 petitioner has challenged his plea at every level and has been rejected at every level.
3 Petitioner has used appellate proceedings in an effort to force Gerald Horne, Pierce County
4 Prosecutor, to acquiesce to his demands. He threatens to continue to litigate this matter
5 unless Mr. Horne capitulates to his demand of a transfer to the United Kingdom's prison
6 system. In July of 2006, he wrote:

7 I'm prepared to withdraw the enclosed motion and all further legal
8 challenges in exchange for your recommendation I be transferred
9 to a UK prison. The ball is in your court.

9 Appendix H.

11 D. CONCLUSION:

12 The petition must be denied and this matter remanded to the trial court for the sole
13 purpose of correcting the statutory citation clerical error in the judgment and sentence.
14 The statutory citation for count II should read as follows: "RCW 9A.32.030(1)(a), RCW
15 9A.28.020".

16 DATED: October 20, 2006.

17 GERALD A. HORNE
18 Pierce County
19 Prosecuting Attorney

20 *Grace Kingman by K. Roeth*
21 P. GRACE KINGMAN 14811
22 Deputy Prosecuting Attorney
23 WSB # 16717
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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10.20.07
Date Signature

FILED
COURT OF APPEALS
DIVISION II

06 OCT 20 PM 2:03

STATE OF WASHINGTON

BY 
DEPUTY

APPENDIX “A”

Judgment and Sentence

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON VOL 220 PAGE 364
FOR THE COUNTY OF PIERCE

THE STATE OF WASHINGTON

Plaintiff,

vs.

THOMAS WILLIAM SINCLAIR RICHEY
Defendant.

NO. 86-1-00658-5

JUDGMENT AND SENTENCE

SID NO. WA13216058
DOB: 1-25-68 M W

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 24 1987 P.M.
PIERCE COUNTY, WASHINGTON
TED GULLI RCW CLERK
4/23/87

This court having conducted a sentencing hearing pursuant to RCW 9A.170 on

upon defendant's conviction(s) of the crime(s) set forth below, and the court having heard from the parties and considered the presentence reports and the records and files herein, and otherwise being fully advised, now makes the following findings:

1. PARTIES PRESENT: Present at the sentencing hearing were the defendant, the defendant's attorney, LARRY NICHOLS, Deputy Prosecuting Attorney CARL T. HULTMAN

2. CURRENT OFFENSE(S): The defendant has been convicted of the following current offense(s) upon a plea of guilty/conviction by the court, on the 23rd day of April, 19 87.

Count I Crime: MURDER IN THE FIRST DEGREE
RCW: 9A.32.030 (1) (c) Crime Code:
Date of Crime: 3-28-86
Incident Number: 86-087-532
Special Finding:

Count II Crime: ATTEMPTED MURDER IN THE FIRST DEGREE
RCW: 9A.32.030 (1) (c) + .020 Crime Code:
Date of Crime: 3-28-86
Incident Number: 86-087-532
Special Finding:

Count Crime:
RCW: Crime Code:
Date of Crime:
Incident Number:
Special Finding:

[] Additional current offenses attached as Appendix A.

This court has jurisdiction of the defendant and the subject matter. It is ADJUDGED that the defendant is guilty of the current offenses set forth above.

6978 1/24/2005 140061

The following group(s) of current offenses encompassed the same criminal conduct and should be counted as one crime in determining the offender score (RCW 9.94A.400 (1)): N.A.

The following counts in the _____ information are hereby dismissed: _____

3. CRIMINAL HISTORY: This Court finds that the defendant has the following criminal history used in calculating the offender score pursuant to RCW 9.94A.360:

Sentencing Date	Crime	Adult/Juvenile	Crime Date	Crime Type
1. Ct. II	Att. Murder 1°	ADULT	3-28-86	SV
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____

The defendant's criminal history is attached in Appendix B and incorporated by reference into this Judgment and Sentence.

4. SENTENCE DATA:

	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
Count I	3	XIII	271-362 mos	LIFE
Count II	0	XIII x .75	180-240 mos	LIFE
Count _____	_____	_____	_____	_____

Presumptive data score sheet(s) is attached as Appendix C and is incorporated by reference into this judgment:

5. SENTENCE ALTERNATIVE FINDINGS:

A. FIRST TIME OFFENSE: The defendant qualifies as a first-time offender pursuant to RCW 9.94A.120 (5). The first-time offender waiver is/is not used in this sentence.

B. EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify a sentence above ~~the~~ the standard range for count(s) I & II. Findings of Fact and Conclusions of Law pursuant to RCW 9.94A.120 (3) and Stipulations as to real and material facts, if any, are attached as Appendix D.

C. SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE: The defendant has been convicted of a felony sexual offense as specified in RCW 9.94A.120 (7) (a) and is eligible for use of the special sexual offender sentencing alternative. The defendant and the community will/will not benefit from use of the alternative.

D. SEXUAL OFFENDER TREATMENT PROGRAM: The defendant has been convicted of a felony sexual offense, does not qualify for the special sexual offender sentencing alternative, and is to be sentenced to a term of confinement of more than one year but less than six years. The defendant shall/shall not be ordered committed for evaluation for treatment pursuant to RCW 9.94A.120 (7) (b).

973 140061

[] E. RESTITUTION: Based on information concerning restitution attached in Appendix E, the defendant is responsible for payment of restitution:

[] For offenses adjudicated herein pursuant to RCW 9.94A.140 (1).

[] For offenses which were not prosecuted and for which the defendant agreed to make restitution in a plea agreement, which is attached to Appendix E.

[] To be set by later order of court.

6. [] MONETARY PAYMENTS JUDGMENT AND SENTENCE: The defendant is ADJUDGED to be responsible for making monetary payments as stated below, within ten years, under the supervision of the Department of Corrections. The defendant is ORDERED to make the following monetary payments:

[X] A. COSTS: Court costs in the amount of \$ 70

[X] B. VICTIM ASSESSMENT: Penalty assessment pursuant to RCW 7.68.035: \$ 70.00

[] C. RESTITUTION: Restitution payments to: (subject to modification based on failure of co-defendants to pay):

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

[] Restitution information attached in Appendix E - - total amount ordered: \$ _____

[] D. RECOUPMENT: Recoupment for defense attorney's fees of \$ _____

[X] E. FINE: A monetary fine in the amount of \$ 365.00¹⁴⁰

[] F. DRUG ENFORCEMENT FUND: Reimbursement in the amount of \$ _____

[] G. OTHER: Other costs in the amount of \$ _____

for _____ T \$ 505.00

The above payments shall be made to the Pierce County Superior Court Clerk, 110 County-City Building, Tacoma, Washington 98402, and the Clerk of the Court shall credit monetary payments to the above obligations in the above listed order according to the rules of the clerk and according to the following terms:

[] Terms to be set by defendant's Community Correction Officer.

Provided that no forfeiture proceedings are pending at the date of this order, bail or bond is exonerated.

(SENTENCE OVER ONE YEAR)

7. DETERMINATE JUDGMENT AND SENTENCE: The court having determined that no legal cause exists to show why a further judgment should not be pronounced, it is therefore ORDERED, ADJUDGED and DECREED the defendant serve the determinate sentence and abide by the conditions set forth below.

The defendant is sentenced to a term of total confinement in the custody of the Department of Corrections for 65 years or 780 months months on Count I, 65 years or 780 months months on Count II, _____ months on Count III, with credit for time 1 year & 25 days days/months served prior to this date.

the terms in counts I & II are concurrent.
 the terms in counts _____ are consecutive, for a total term of _____ months.

The following appendices are attached to this Judgment and Sentence and are incorporated by this reference:

- Appendix A, Current Offenses
- Appendix B, Current History
- Appendix C, Sentence Scoring Worksheet(s)
- Appendix D, Exceptional Sentence
- Appendix E, Restitution

DONE IN OPEN COURT this 23 day of April, 1987.

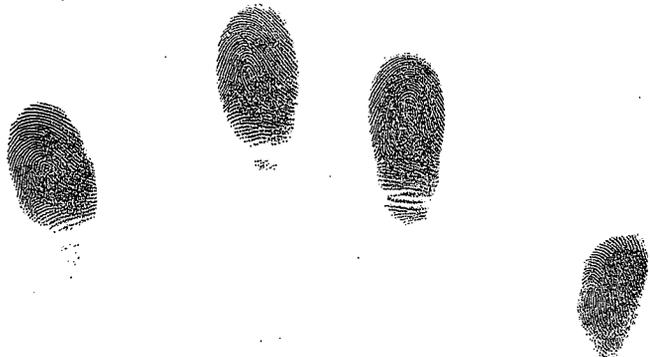
[Handwritten Signature]
JUDGE

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 24 1987 P.M.
PIERCE COUNTY, WASHINGTON
Approved as to Form by CO. CLERK

Presented by:
[Handwritten Signature]
Deputy Prosecuting Attorney

[Handwritten Signature]
Attorney for Defendant

6970 1/24/2005 14078



Fingerprint(s) of: THOMAS WILLIAM SINCLAIR RICHEY
 Attested by: Jerry Brewer JA
 CLERK
 By: _____ Date: 4-23-87
 DEPUTY CLERK

CERTIFICATE

I, _____, Clerk of this court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____

Clerk

By: _____

Deputy Clerk

OFFENDER IDENTIFICATION

State I.D. Number WA13216058

Date of Birth 1-25-68

Sex Male

Race White

6978 1/24/2884 14871

APPENDIX "B"

Statement of Defendant on Plea of Guilty – 4/24/87

COURT OF THE STATE OF WASHINGTON

FOR PIERCE COUNTY



86-1-00658-5 22428087 STDFG 01-21-05

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 24 1987 P.M.
PIERCE COUNTY, WASHINGTON
6978 1/18 REV 60. CLERK'S
By [Signature] APR 24 1987

STATE OF WASHINGTON,

Plaintiff,

vs.

THOMAS WILLIAM SINCLAIR RICHEY,

Defendant.

NO. 86-1-00658-5

STATEMENT OF DEFENDANT ON PLEA OF GUILTY (Felony)

1. My true name is Thomas William Sinclair Richey.
2. My age is 19.
3. I went through the 12 grade in school.
4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: LARRY NICHOLS
5. I have been informed and fully understand that I am charged with the crime(s) of MURDER IN THE FIRST DEGREE, COUNT I and ATTEMPTED MURDER IN THE FIRST DEGREE, COUNT II

The elements of the crime(s) are: COUNT I: that on or about March 28, 1986, in Pierce County, Wa., Arlene Rae Koestner was killed; the defendant was committing or attempting to commit the crime of Robbery in the First Degree; the defendant caused the death of Arlene Koestner in the cause of and in furtherance of such crime. She was not a participant in said crime. COUNT II: that on or about March 28, 1986, in Pierce County, Wa., the defendant did shoot Scott Jacob Sanford attempting to cause the death of Scott Jacob Sanford while committing or attempting to commit the crime of Robbery in the First Degree or in the cause of or furtherance of such crime. Scott Jacob Sanford was not a participant in said crime.

The maximum sentence(s) is (are): LIFE, AT TO EACH COUNT
years and \$ 50,000.00, AS TO EACH COUNT
fine(s).

In addition, I understand that I must have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is/are at least COUNT I: 271 mos COUNT II: 180 mos and no more than COUNT I: 361 mos COUNT II: 240 mos.

6978 1/24/2005 150001

based upon my criminal history which I understand the Prosecutor presently knows to be:

SENTENCING DATE	CRIME	ADULT/JUVI	CRIME DATE	
Ct. II	Att. Murder 1°	adult	3/28/86	S/V

Criminal history attached as Appendix _____ and incorporated by reference.

I have been given a copy of the information.

And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. I have been informed and fully understand that:

(a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.

- (b) I have the right to remain silent before and during trial, and I need not testify against myself.
- (c) I have the right to hear and question any witness who testifies against me.
- (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.
- (f) I have the right to appeal a determination of guilt after a trial.
- (g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

6978 1/24/2005 150002

7. I plead GUILTY to the crime(s) of MURDER IN THE FIRST DEGREE, COUNT I and ATTEMPTED MURDER IN THE FIRST DEGREE, COUNT II

_____ , as charged in the Amended information.

- 8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court: stipulated exceptional sentence upward of 65 years DOC, costs \$70, fine \$365, CVPA \$70

5978 1/24/2005 150003

12. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions of guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the Prosecuting Attorney's recommendation increases: _____

NO PRIORS

13. I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I also understand that the court must sentence to a mandatory minimum term, if any, as provided in paragraph 14 and that the court may not vary or modify that mandatory minimum term for any reason.

14. I have been further advised that the crime(s) of _____

with which I am charged carries with it a term of total confinement of not less than 6970 1/24/2005 150084 years.

I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge).

15. I have been advised that the sentences imposed in Counts I and Count II

will run consecutively/concurrently unless the court finds substantial and compelling reasons to run the sentences concurrently/~~consecutivley~~.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement: ON MARCH 28TH 1986 I WENT INTO MILITARY TV/STEREO STORE, WITH THE INTENT TO BUY A T.V. AS I HAD TRIED TO DO IN A PREVIOUS STORE THAT DAY. PRIOR TO GOING INTO THE STORE I HAD TAKEN LSD. DURING THE NEGOTIATIONS TO BUY THE TV, SOMETHING CLICKED IN MY HEAD, AND I TOOK ARLENE KOESTNER TO THE BACK ROOM AND WHEN I GOT THERE SCOTT SANDFORD WAS ALREADY PRESENT. I ASKED HIM WHERE THE MONEY WAS AND THEN HE TURNED AROUND STARTLING ME I THEN SHOT HIM ONCE IN THE HEAD THEN SHOT ARLENE IN THE HEAD BOTH SHOTS WERE INSTANTANIOUS. ON MY WAY OUT OF THE STORE I TOOK STEREO EQUIPMENT AND A CONTRACT WITH MY SIGNATURE ON IT. THIS HAPPENED IN PIERCE COUNTY.

19. I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and have received a copy of this "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the court.

6978 1/24/2005 150085

SCANNED

Thomas Richey
THOMAS RICHEY Defendant

Carl T. Huliman
Deputy Prosecuting Attorney
CARL T. HULIMAN

Larry Nichols
Defendant's Attorney
LARRY NICHOLS

The foregoing statement was read by or to the defendant and signed by the defendant in the presences of his or her attorney, and the undersigned Judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

Further, the court finds that acceptance of this plea is consistent with prosecuting standards and the interests of justice.

Dated this 23 day of April, 1987

FILED
IN COUNTY CLERK'S OFFICE
APR 24 1987 P.M.
PIERCE COUNTY, WASHINGTON
TED RUT, CO. CLERK

[Signature]
Judge

I KNOW I HAVE BY RIGHT TO A PRE-SENTENCE REPORT, BUT I WISH TO WAIVE MY RIGHT AND BE SENTENCED TODAY.

23 APRIL 1987

Thomas Richey

APPENDIX "C"

Stipulation to Sentence In Excess of Presumptive Range and to Real Facts – 4/24/87

S.H. APR 24 1987

SCANNED



86-1-00658-5 22428049 STP 01-21-05

FILED IN COUNTY CLERK'S OFFICE APR 24 1987 P.M. PIERCE COUNTY, WASHINGTON TED RUTTS, CO. CLERK 1/24/2005 150074

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

THOMAS WILLIAM SINCLAIR RICHEY,

Defendant.

NO. 86-1-00658-5

STIPULATION TO SENTENCE
IN EXCESS OF PRESUMPTIVE
RANGE AND TO REAL FACTS

It is hereby stipulated by and between the parties as follows:

That this court should sentence the defendant to a term of confinement of 65 years, a sentence which is in excess of the presumptive standard range, based on aggravating circumstances pursuant to RCW 9.94A.390 as follows:

(1) The defendant's conduct during the commission of the current offenses manifested deliberate cruelty to the victims in that both victims were shot directly in the head at close range; and

(2) The operation of the concurrent sentencing requirements of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of the Sentencing Reform Act of 1981.

It is further stipulated and agreed to by the defendant and his attorney that the court may consider real facts that support a more serious crime than that pled to in Count I in imposing this sentence

STIPULATION - 1

APPENDIX D (Part I)

1 which goes outside the presumptive sentence range pursuant to RCW
2 9.94A.370.

3 It is further agreed that the real facts the court may consider
4 are that on March 28, 1986, the defendant entered the Military TV and
5 Stereo store on Pacific Highway Southwest in Pierce County,
6 Washington, to purchase a television set. He had concealed on his
7 person a loaded .22 caliber Beretta handgun. He had earlier that day
8 secretly removed this gun from Ft. Lewis and used it for target
9 practice. In the store, the defendant negotiated with Arlene Koestner
10 for the purchase of a color television with a listed price of \$599.00.
11 Upon learning that the terms of his time payment contract would result
12 in a total price in excess of \$700.00, the defendant became upset. He
13 pulled out his gun, pointed it at Mrs. Koestner, and ordered her to a
14 back room. As she complied the defendant noticed another employee,
15 Scott Jacob Sanford, and ordered him at gunpoint to accompany Mrs.
16 Koestner.

17 As they approached the back room, the defendant demanded to be
18 told where the money was. However, before any reply was made and upon
19 entering that room, the defendant shot each victim once in the head.
20 Mrs. Koestner, who was shot in the back of the head, died very shortly
21 thereafter. Mr. Sanford was facing the defendant and moved slightly
22 to protect himself. He has survived the gunshot wound to the brain.

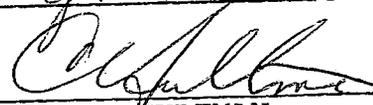
23 The defendant then gathered up all the paperwork that would have
24 traced him to the crime and took it with him. He also stole a stereo
25 cassette player and a pair of speakers. He later burned the
26
27
28

STIPULATION - 2

SCANNED

1 paperwork. The stolen property was found secreted in a ceiling space
2 over his bunk at Ft. Lewis during a later search.

3 DATED this 23rd day of April 1987 8978 1/24/2005 150076

4 
5 CARL T. HULTMAN
6 Deputy Prosecuting Attorney

7 
8 LARRY NICHOLS
9 Attorney for Defendant

10 
11 THOMAS WILLIAM SINCLAIR RICHEY
12 Defendant

11 crt

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FILED
IN COUNTY CLERK'S OFFICE
A.M. APR 24 1987 P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT, CO. CLERK
By _____

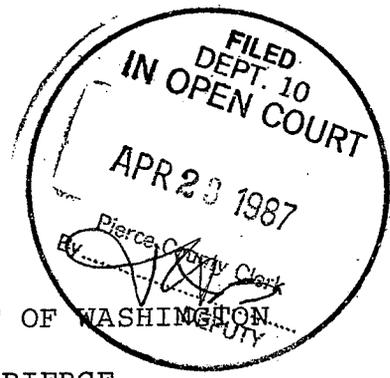
STIPULATION - 3

APPENDIX "D"

Amended Information 4/23/87



86-1-00658-5 22465690 AMINF 01-28-05



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

8	STATE OF WASHINGTON,)	
)	
9	Plaintiff,)	NO. 86-1-00658-5
)	
10	vs.)	AMENDED
)	INFORMATION
11	THOMAS WILLIAM SINCLAIR RICHEY,)	
)	
12)	
	Defendant.)	
13)	

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse THOMAS WILLIAM SINCLAIR RICHEY of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That THOMAS WILLIAM SINCLAIR RICHEY, in Pierce County, Washington, on or about the 28th day of March, 1986, did unlawfully and feloniously while committing or attempting to commit the crime of Robbery in the First Degree, and in the course of or furtherance of said crime or in immediate flight therefrom, shot Arlene Rae Koestner, a human being, not a participant in such crime, thereby causing the death of Arlene Rae Koestner, on or about the 29th day of March, 1986, contrary to RCW 9A.32.030(1)(c), and against the peace and dignity of the State of Washington.

AMENDED
INFORMATION - 1

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402
Telephone: 591-7400

COUNT II

1
2 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
3 accuse THOMAS WILLIAM SINCLAIR RICHEY of the crime of ATTEMPTED MURDER
4 IN THE FIRST DEGREE, a crime of the same or similar character, and/or
5 so closely connected in respect to time, place and occasion that it
6 would be difficult to separate proof of one charge from proof of the
7 others, committed as follows:

8 That THOMAS WILLIAM SINCLAIR RICHEY, in Pierce County,
9 Washington, on or about the 28th day of March, 1986, did unlawfully
10 and feloniously with premeditated intent to cause the death of another
11 person, did shoot Scott Jacob Sanford, thereby attempting to cause the
12 death of Scott Jacob Sanford, a human being, and/or while committing
13 or attempting to commit the crime of Robbery in the First Degree, and
14 in the course of or furtherance of said crime or in immediate flight
15 therefrom, did shoot Scott Jacob Sanford, a human being, not a
16 participant in such crime, thereby attempting to cause the death of
17 Scott Jacob Sanford, contrary to RCW 9A.28.020 and 9A.32.030(1)(a)(c),
18 and against the peace and dignity of the State of Washington.

19 DATED this 10th day of April, 1987.

20
21 JOHN W. LADENBURG

22
23 PROSECUTING ATTORNEY IN AND FOR
SAID COUNTY AND STATE.

24 crt
25 By: 

CARL T. HULTMAN

Deputy Prosecuting Attorney

26
27
28 AMENDED
INFORMATION - 2

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402
Telephone: 591-7400

APPENDIX "E"

Letter to Judge Steiner dated 11/10/91 filed 2/14/06

RE: DISCRETIONARY-REVIEW

11-10-91

DEAR JUDGE STEINER

I HAVE BEEN INCARCERATED NOW FOR ALMOST SIX YEARS, SINCE MARCH 1986. IN MARCH 1987, I PLED GUILTY TO FIRST DEGREE MURDER AND ATTEMPTED MURDER. YOU SENTENCED ME TO SIXTY-FIVE YEARS IN PRISON AGED 18 AT THE TIME I COMMITTED MY CRIME, I HAD NO PRIORS NEVER EVEN A JAYWALKING TICKET.

I AM A U.K. CITIZEN. SINCE 1987 I'VE PURSUED A TRANSFER TO THE UNITED KINGDOM UNDER THE "1983 REPATRIATION ACT." AFTER MUCH HOPE I RECEIVED MY ANSWER YESTERDAY. MY TRANSFER WAS FINALLY DENIED. I WAS INFORMED BY THE DEPT. OF CORRECTIONS THAT I COULD NOT TRANSFER TO MY HOME UNLESS I CAN GET A REDUCTION IN SENTENCE. A SENTENCE THAT CONFORMS WITH THE SENTENCING GUIDELINES, BECAUSE THE UNITED KINGDOM CANNOT AGREE TO KEEP ME IN PRISON UNTIL THE YEAR 2032 (MY PRESENT RELEASE DATE)

I AM AN EX-U.S. ARMY RANGER. PEER PRESSURE GOT ME INVOLVED WITH S.D. AND WHILE ON THE L.S.D I SHOT TWO PEOPLE. I FEEL THAT THE MINUTING DRUG, THE STUPIDITY OF AN EIGHTEEN YEAR OLD AND THE GUNG-HO MENTALITY DRILLED INTO ME BY THE ARMY PLAYED A MAJOR FACTOR IN MY ACTIONS. I HAD NO PREVIOUS CRIMINAL RECORD. I DID NOT GO TO TRIAL. I DECIDED TO PLEAD GUILTY SO THE FAMILIES I HURT WOULD NOT ENDURE THE PAIN OF A TRIAL. AT THE TIME I WAS UNCONCERNED OVER THE SIXTY-FIVE YEAR PLEA-BARGAIN SENTENCE I'D RECEIVE, (WHICH IS THE REASON I DID NOT ATTEMPT TO BARGAIN THE SENTENCE LOWER) BECAUSE I KNEW I DESERVED PUNISHMENT.

SIR, I'AM NOT THE AVERAGE CRIMINAL. I DO NOT HAVE A CRIMINAL'S MENTALITY. I JUST MADE A HUGE MISTAKE. DRUGS AND GUNS DON'T MIX. I FEEL REMORSEFUL. FROM DAWN TO DUSK MY CHEST ACHES FOR THOSE I HURT.

I HAD NO RIGHT TO TAKE ANYONES LIFE OR CAUSE ANYONE SUCH PAIN AND
ORROW. INFACT, IN 1987, I WORKED WITH MY VICTIMS ATTORNEYS IN
HELPING THEM IN THEIR LAWSUITS AGAINST THE ARMY. BUT I AM AWARE
THAT NO AMOUNT OF MONEY CAN COMPENSATE FOR THE DEVIATION I INFLICTED.
MUST LIVE WITH IT DAILY.

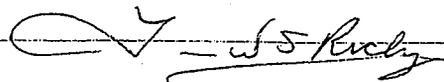
I DO BELIEVE I DESERVE A SECOND CHANCE A CHANCE TO RETURN
HOME, TO SEE MY FAMILY, DO MY PRISON SENTENCE (AT MINIMUM A
MANDATORY TWENTY YEARS), THEN EARN MY KEEP AS ANY CONTRIBUTING
MEMBER OF SOCIETY. (BRITISH SOCIETY, AS I'LL NEVER BE PERMITTED
TO RETURN TO THE U.S.A.) AT THE SAME TIME, MY TRANSFER WOULD
MEAN A OPEN BEDSPACE FOR AN EVERGROWING PRISON POPULATION, AND A
SAVING OF TAXPAYERS MONEY.

HOWEVER, I CANNOT TRANSFER WITHOUT A REDUCTION OF SENTENCE
THAT CONFORMS WITH THE GUIDELINES.

SIR, I AM REQUESTING A DISCRETIONARY-REVIEW FOR A SENTENCE
REDUCTION. I DO HOPE YOU TAKE ALL THE CIRCUMSTANCES INTO
CONSIDERATION BEFORE MAKING YOUR DECISION. I.E MY YOUTH AT THE
TIME OF THE CRIME, MY LACK OF PRIOR CRIMINAL ACTIVITY, MY LACK
OF CRIMINAL SOPHISTICATION ETC. PLEASE, GRANT ME A DISCRETIONARY
REVIEW.

I ANXIOUSLY AWAIT YOUR RESPONSE.

RESPECTS



THOMAS W.S. RICHEY

APPENDIX “F”

Ruling Dismissing Appeal – COA 6/20/06

Kit/Grace

file

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
 Respondent,
 v.
 THOMAS W.S. RICHEY,
 Appellant.

No. 32793-7-II
 RULING DISMISSING APPEAL

COPY RECEIVED
[Signature]
 JUN 21 2006
 GERALD A. HORNE
 PIERCE COUNTY PROSECUTING ATTORNEY
 APPELLATE DIVISION
 BY DEPUTY
 STATE OF WASHINGTON
 06 JUN 20 PM 2:38
 FILED
 COURT OF APPEALS
 DIVISION II

On January 19, 2005, Thomas Richey filed a notice of appeal from his criminal appeal, Pierce County Cause No. 86-1-00658-5. This court assigned cause number 32793-7-II to the appeal and, on February 4, 2005, denied Richey's motion to file a late notice of appeal.

On July 13, 2005, the Supreme Court, under cause number 76661-4, granted Richey's motion for discretionary review "and remanded to Pierce Co Superior Court for a hearing to determine whether the Petitioner knowingly, intelligently and voluntarily waived his right to appeal his conviction after his guilty plea. If after conducting a hearing, the Pierce Co Superior Court determines the appeal should be reinstated, then said court shall entertain a motion for an order of indigency relative to appeal."

The superior court held such a hearing on April 14 and 28, 2006. After taking testimony and evidence, the court concluded that "Defendant knowingly, voluntarily and intelligently waived his right to appeal."

Richey then filed a notice of appeal from this remand hearing. This court deems this new notice of appeal as a reasserted motion to file a late notice of appeal under cause number 32793-7-II and again denies Richey's motion to file a late notice of appeal. Accordingly, this matter is dismissed.

2006 Decision
 Spindle
 No Costs

ORDERED that this appeal is dismissed.

DATED this 20th day of June, 2006.

Eric B. Schmidt
COURT COMMISSIONER

Sheryl Gordon McCloud
Attorney at Law
1301 5th Ave Ste 3401
Seattle, WA, 98101-2630

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

Pierce County Clerk

Thomas W.S. Richey
DOC# 929444
Clallam Bay CC
1830 Eagle Crest Way
Clallam Bay, WA 98326

APPENDIX "G"

Supreme Court Letter dated 6/2/06 filed 6/6/06



86-1-00658-5 25591767 LTRSC 06-07-06

THE SUPREME COURT
STATE OF WASHINGTON



RONALD R. CARPENTER
DEPUTY CLERK/CHIEF STAFF ATTORNEY

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
Fax (360) 357-2102
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

IN COUNTY CLERK'S OFFICE

June 2, 2006

A.M. JUN 06 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
DEPUTY

Sheryl Gordon McCloud
Attorney at Law
1301 5th Ave Ste 3401
Seattle, WA 98101-2630

Kathleen Proctor
Pierce County Prosecuting Atty Ofc
930 Tacoma Ave S, Rm 946
Tacoma, WA 98402-2102

David Ponzoha, Clerk
Division II, Court of Appeals
950 Broadway, Ste. 300
Tacoma, WA 98402

Honorable Kevin Stock, Clerk
Pierce County Superior Court
930 Tacoma Ave S. Rm 110
Tacoma, WA 98402-2177

Re: Supreme Court No. 76661-4 - State of Washington v Thomas W.S. Richey
Court of Appeals No. 32793-7-II
Pierce County No. 86-1-00658-5

Clerks & Counsel:

The "MOTION TO SET A BRIEFING SCHEDULE RE MOTION TO REINSTATE APPEAL AND FOR APPOINTMENT OF COUNSEL" (motion) was received on this date. After both the Court Commissioner and I reviewed said pleading, it was concluded that it must be rejected for filing. It has been placed in our rejected pleadings drawer. In that regard please note that Supreme Court cause number 76661-4 is a closed matter in which a mandate was filed on October 13, 2005; see RAP 12.7(b).

I do note in closing that any request to review the trial court's most recent decision would presumably need to take the form of a notice seeking review that was timely filed with the trial court pursuant to RAP 5.1.

Sincerely,

Ronald R. Carpenter
Supreme Court Deputy Clerk

RRC:jlb

APPENDIX "H"

Letter to Mr. Horne dated 7/11/06 filed 7/24/06

TM4

Thomas WS Richey
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326. USA.

11 July 2006

Mr Horne,

I never tried to evade my moral obligations to account for my actions in 1986. I didn't attempt to flee the country and return to the UK, when I had the means and opportunity to do so. I met with Detective Tom Lawrence and I dutifully fell on the sword. I expected I would be given a realistic chance for parole at some point if I deserved it. I did not expect to face the ridiculous sentencing practices that discourage self improvement. But in spite of that, I've progressed as a human being anyway.

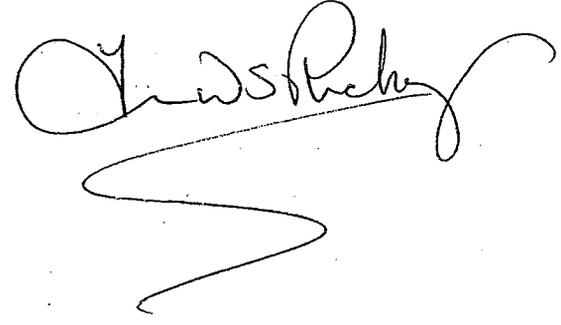
I would prefer to transfer to the UK under my current sentence rather than go through further court battles. You temporarily stopped my right to reinstate my appeal, but that won't bar the enclosed motion. I think you'll find the issues are strong. What can be predicted for certain is that I will be returning to Pierce County for further proceedings. My Judgment & Sentence specifically convicts me of only one crime at Count II. It is a nonexistent crime. You will argue that it is a clerical error and I will argue that it is a judicial error. The evidence supports the latter. If the court's agree, I will withdraw my plea of guilty, or insist upon resentencing within the guidelines. Either way, the outcome will probably spell my release.

God knows, I'm deserving of this outcome. I've served my entire adulthood in prison, grown into a responsible person, and became a published author. I expect no mercy from you or your office. I've never witnessed it to date. But I hope, after you've considered the enclosed motion, you'll reach the logical conclusion that it would be judicially prudent to acquiesce to my transfer to Britain rather than face the possibility that I'll walk free from the courtroom.

I certainly hold no bitterness nor wish to embarrass your office. My goal is simply to return home to the UK and never return. I've served more time than most people convicted of similar crimes, and there's nothing more for me to gain in further confinement in Washington.

I'm prepared to withdraw the enclosed motion and all further legal challenges in exchange for your recommendation I be transferred to a UK prison. The ball is in your court.

Sincerely,



APPENDIX “I”

Findings of Fact and Conclusions of Law Re: Remand Hearing 5/12/06

FILED
DEPT. 10
IN OPEN COURT
MAY 12 2006
Pierce County Clerk
By: [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
THOMAS WILLIAM RICHEY,
Defendant.

CAUSE NO. 86-1-00658-5
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
RE: REMAND HEARING

THIS MATTER having come on before the Honorable D. GARY STEINER, Judge of the above entitled court, for a remand hearing on the 14th and 28th days of April, 2006, the defendant having been present and represented by attorneys THOMAS W. HILLIER, II, and WAYNE C. FRICKE, and the State being represented by Deputy Prosecuting Attorneys GERALD T. COSTELLO and P. GRACE KINGMAN, and the court having observed the demeanor and heard the testimony of the witnesses and having considered all the evidence and the arguments of counsel and being duly advised in all matters, the Court makes the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT

I.

On July 13, 2005, the Supreme Court of Washington filed an Order requiring this court to conduct a hearing to determine whether Petitioner (defendant) knowingly, intelligently and voluntarily waived his right to appeal his conviction after his guilty plea.

II.

On April 23, 1987, defendant pleaded guilty to MURDER IN THE FIRST DEGREE and ATTEMPTED MURDER IN THE FIRST DEGREE. A sentencing hearing was conducted on the same day.

III.

Defendant was represented by Larry Nichols of the Department of Assigned Counsel. Mr. Nichols thoroughly went over the Statement of Defendant on Plea of Guilty with defendant, reading aloud the entire document to him.

IV.

Mr. Nichols thoroughly advised defendant of his right to appeal and the time limits associated therewith.

V.

Defendant is very intelligent.

VI.

Defendant is from Scotland. Early on, defendant wished to pursue transfer of his sentence, under an international treaty, so that he could serve his sentence in Scotland. He was anxious to serve his time there. For years, he actively pursued this option.

86-1-00658-5

VII.

1 Defendant understood that he could not pursue a transfer to Scotland if he had an appeal
2 pending. Defendant understood that he had the choice of pursuing the transfer, or filing an
3 appeal. Defendant further understood that applying for a transfer was an option he had, but that
4 it was not mandatory for him to do so.
5

VIII.

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7 By defendant's own testimony, by May 23, 1989, defendant realized that there was a time
8 limit to the filing of appeals. He acknowledged that he knew, back in 1989, that time was of the
9 essence for filing an appeal.

IX.

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11 Defendant chose to pursue a transfer to Scotland instead of appealing his case.

X.

12
13 Defendant wrote to this court on November 10, 1991 (Plaintiff's Exhibit #1) indicating
14 his transfer was "finally denied", "unless I can get a reduction in sentence". At no time did
15 defendant allege any defect in his case or express a desire to appeal. In 1991 and 2006,
16 defendant was still pursuing a transfer to Scotland.
17

XI.

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19 In 1992, defendant wrote to the Court of Appeals (Plaintiff's Exhibit #2) asking for
20 additional time to file his notice of appeal, claiming that he could not file an appeal "because of
21 his transfer process". He did not claim that he was not advised of the time limits for appeal.

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XII.

On April 26, 1999, defendant wrote to the Superior Court Clerk again. (Plaintiff's Exhibit #3.) He still held out hope of a successful transfer to a Scotland prison and was actively pursuing this option.

XIII.

In 2006, defendant's attorneys continued to negotiate with Pierce County Prosecutor Gerald Home to try to effectuate defendant's transfer to Scotland.

XIV.

Attorney Larry Nichols is a credible witness.

XV.

Defendant is not credible in his assertion that he had never received appellate advice from his attorney, Larry Nichols.

XVI.

Defendant filed a notice of appeal on January 18, 2005, nearly 18 years after his judgment and sentence was filed.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction of the parties and subject matter.

*
*

86-1-00658-5

II.

That defendant has not shown extraordinary circumstances for failure to file a notice of appeal within 30 days of the entry of his Judgment and Sentence.

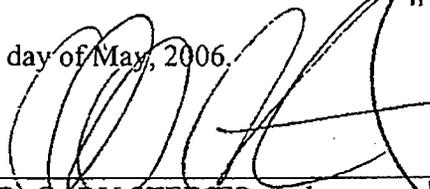
III.

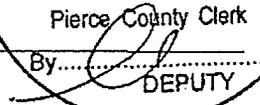
That defendant has not shown a gross miscarriage of justice herein.

VI.

Defendant knowingly, voluntarily and intelligently waived his right to appeal

DONE IN OPEN COURT this 12 day of May, 2006.


D. GARY STEINER, Judge

FILED
DEPT. 10
IN OPEN COURT
MAY 12 2006
Pierce County Clerk
By  DEPUTY

Presented by:


P. GRACE KINGMAN
Deputy Prosecuting Attorney
WSB # 16717


GERALD T. COSTELLO
Chief Criminal Deputy Prosecuting
Attorney, WSBA #15738

Approved as to Form:

WAYNE C. FRICKE
Attorney for Defendant
WSB # 16550

THOMAS W. HILLIER, II
Attorney for Defendant
WSB #5193

pgk