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No. 83923-9

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

**In re Personal Restraint Petition of
SALVADOR RIVERA**

SUPPLEMENTAL RESPONSE

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ORIGINAL

TABLE OF CONTENTS

A. ISSUES PRESENTED..... 1

B. STATEMENT OF FACTS..... 1

C. ARGUMENT..... 2

1. Recuenco I/III and Williams-Walker do not apply retroactively to Rivera’s judgment which was final before Blakely was decided.4

2. Rivera has failed to meet his burden to demonstrate that the judgment and sentence is invalid on its face.10

3. Rivera has failed to demonstrate actual and substantial prejudice or a fundamental defect.....17

D. CONCLUSION 19

TABLE OF AUTHORITIES

Washington State Court of Appeals

<u>In re Benavidez</u> , 160 Wn. App. 165, 246 P.3d 842 (2011).....	7
<u>In re Personal Restraint of Rivera</u> , 152 Wn. App. 794, 218 P.3d 638 (2009).....	2, 3
<u>In re Personal Restraint of Rowland</u> , 149 Wn. App. 496, 204 P.3d 953 (2009).....	15
<u>In re Personal Restraint of Scott</u> , 149 Wn. App. 213, 202 P.3d 985 (2009), <i>rev. granted</i> 168 Wn.2d 1010 (2010).....	14
<u>State v. Meggyesy</u> , 90 Wn. App. 693, 958 P.2d 319 (1998), <i>rev. den.</i> , 136 Wn.2d 1028 (1998), <i>abrogated by</i> <u>State v. Recuenco</u> , 154 Wn.2d 156, 110 P.3d 188 (2005).....	8, 11
<u>State v. Olney</u> , 97 Wn. App. 913, 987 P.2d 662 (1999), <i>abrogated by</i> <u>State</u> <u>v. Recuenco</u> , 154 Wn.2d 156, 110 P.3d 188 (2005).....	8, 12
<u>State v. Raj</u> , 97 Wn. App. 307, 983 P.2d 712 (1999), <i>abrogated by</i> <u>State v.</u> <u>Recuenco</u> , 154 Wn.2d 156, 110 P.3d 188 (2005).....	8, 12
<u>State v. Rivera</u> , 108 Wn. App. 645, 32 P.3d 292 (2001).....	1
<u>State v. Serrano</u> , 95 Wn. App. 700, 977 P.2d 47 (1999).....	8

Washington State Supreme Court

<u>In re Cruze</u> , 169 Wn.2d 422, 237 P.3d 274 (2010).....	13
<u>In re Domingo</u> , 155 Wn.2d 356, 119 P.3d 816 (2005).....	10
<u>In re Haverly</u> , 101 Wn.2d 498, 681 P.2d 835 (1984).....	17
<u>In re Hinton</u> , 152 Wn.2d 853, 100 P.3d 801 (2004).....	15
<u>In re Markel</u> , 154 Wn.2d 262, 111 P.3d 249 (2005).....	5, 9

<u>In re McKiernan</u> , 165 Wn.2d 777, 203 P.3d 375 (2009)	15
<u>In re Personal Restraint of Clark</u> , 168 Wn.2d 581, 230 P.3d 156 (2010). 14	
<u>In re Personal Restraint of Hemenway</u> , 147 Wn.2d 529, 55 P.3d 615 (2002).....	11
<u>In re Runyan</u> , 121 Wn.2d 432, 853 P.2d 424 (1993).....	10
<u>In re St. Pierre</u> , 118 Wn.2d 321, 823 P.2d 492 (1992).....	5, 17
<u>In re Thompson</u> , 141 Wn.2d 712, 10 P.3d 380 (2000)	14
<u>In re West</u> , 154 Wn.2d 204, 110 P.3d 1122 (2005)	11
<u>In re Woods</u> , 154 Wn. 2d 400, 114 P.3d 607 (2005)	17
<u>State v. Abrams</u> , 163 Wn.2d 277, 178 P.3d 1021 (2008)	5, 8, 9
<u>State v. Evans</u> , 154 Wn.2d 438, 114 P.3d 627 (2005)	5, 8
<u>State v. Recuenco</u> , 154 Wn.2d 156, 110 P.3d 188 (2005), <i>reversed in</i> <u>Washington v. Recuenco</u> , 548 U.S. 212, 216 S.Ct. 2546, 165 L.Ed.2d 466 (2006).....	passim
<u>State v. Recuenco</u> , 163 Wn.2d 428, 180 P.3d 1276 (2008)	passim
<u>State v. Williams-Walker</u> , 167 Wn.2d 889, 225 P.3d 913 (2010).....	passim

Federal Cases

<u>Blakely v. Washington</u> , 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.3d 403 (2004).....	passim
<u>McMillan v. Pennsylvania</u> , 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed 2d 67 (1986).....	10
<u>Teague v. Lane</u> , 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).....	5, 9

Washington v. Recuenco, 548 U.S. 212, 216 S.Ct. 2546, 165 L.Ed.2d 466
(2006)..... 2, 6

Rules and Statutes

RCW 9.94A.125..... 1, 7, 11, 13
RCW 9.94A.310(3)(a) 1, 11, 14
RCW 9.94A.310(4)(a) (1998)..... 11
RCW 10.73.090(3)(b)..... 4
RCW 10.73.100(6)..... 8, 9, 10

A. ISSUES PRESENTED

1. Whether an untimely collateral attack predicated on the lack of a specific jury finding regarding the type of deadly weapon used should be dismissed where Blakely v. Washington¹ does not apply retroactively to cases that were final when it was decided.
2. Whether a judgment and sentence is invalid on its face where the judgment reflects, in accord with the law at the time, that the court made a finding to impose the firearm enhancement and reflects the jury's "deadly weapon" finding.
3. Whether petitioner can demonstrate actual and substantial prejudice from the lack of specificity in the special verdict form regarding the type of deadly weapon used where petitioner was charged with a firearm enhancement, the special verdict instructions only defined the deadly weapon as a firearm and the jury found beyond a reasonable doubt that petitioner shot the victim.

B. STATEMENT OF FACTS

Petitioner Rivera was charged with Murder in the First Degree, while armed with a firearm, pursuant to RCW 9.94A.125 and RCW 9.94A.310(3)(a), for acts that occurred on March 20, 1998. App. B. "The victim, Matt Garza, died from a gunshot wound to the head fired at close range." State v. Rivera, 108 Wn. App. 645, 647, 32 P.3d 292 (2001). Rivera was found guilty at trial and sentenced to 333 months on the offense and 60 months on the firearm deadly weapon enhancement. App.

¹ Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.3d 403 (2004).

B, Judgment and Sentence. Rivera appealed his conviction, which appeal was denied, and the mandate issued on May 17, 2002.² See, State v. Rivera, supra, COA No. 43839-5-I. Rivera filed a prior personal restraint petition in 2003. See COA No. 53052-6-I. On June 4, 2008 Rivera filed the underlying petition, which petition was denied by the Court of Appeals in In re Personal Restraint of Rivera, 152 Wn. App. 794, 218 P.3d 638 (2009).

C. ARGUMENT

Rivera asserts that the Court of Appeals erred in finding that his judgment and sentence is not invalid on its face and asserts under Recuenco I/III³ and State v. Williams-Walker⁴ he is entitled to have his firearm deadly weapon enhancement reduced to a non-firearm deadly weapon enhancement. The alleged errors in Recuenco I and Williams-Walker, the lack of a jury finding to support the firearm enhancement, however were predicated on Blakely which this Court has found does not apply retroactively. Recuenco I and Williams-Walker cannot apply

² The Court of Appeals opinion incorrectly lists the Mandate date as May 28, 2004. The Certificate of Finality for one of Rivera's prior personal restraint petitions (COA No. 53052-6-I) was issued on May 28, 2004.

³ State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005) ("Recuenco I"), *reversed in Washington v. Recuenco*, 548 U.S. 212, 216 S.Ct. 2546, 165 L.Ed.2d 466 (2006); State v. Recuenco, 163 Wn.2d 428, 180 P.3d 1276 (2008) ("Recuenco III").

⁴ State v. Williams-Walker, 167 Wn.2d 889, 225 P.3d 913 (2010).

Blakely was decided. Recuenco III is not applicable to Rivera's case because Rivera was given proper notice that he was charged with a firearm enhancement.

The judgment and sentence is not invalid on its face as Rivera claims because it cites the specific statutory basis for a firearm enhancement, "RCW 9.94A.310(3)(a)a" (*sic*)⁵. Under the law at the time sentence was imposed, the jury was to make the "deadly weapon" finding and the judge was to impose then either a firearm or deadly-weapon-other-than-firearm sentence enhancement. Rivera has failed to meet his burden to show that the judgment and sentence *is* invalid on its face.

Furthermore, Rivera has failed to demonstrate actual and substantial prejudice from his alleged error. While under Williams-Walker harmless error cannot be applied on direct review, in the personal restraint context Rivera still must show at a minimum actual and substantial prejudice from the failure of the special verdict form to specify whether the jury's "deadly weapon" finding was based on the use of a firearm or a deadly-weapon-other-than-firearm. Rivera was on notice that he was charged with a firearm enhancement, and given the instructions, the jury's special verdict and general verdict reflect that it found beyond a

⁵ As the Court of Appeals found, the additional "a" was a typographical error and not a reference to a non-existent statute as Rivera argued below. In re Rivera, 152 Wn. App. at 799 n.4.

reasonable doubt that Rivera used a firearm when he committed the murder. Therefore, Rivera cannot establish actual and substantial prejudice from the special verdict form's failure to specify that the deadly weapon used was a firearm.

1. **Recuenco I/III and Williams-Walker do not apply retroactively to Rivera's judgment which was final before Blakely was decided.⁶**

Rivera asserts that he is not subject to the procedural bar under RCW 10.73.090 for untimely collateral attacks⁷, alleging that his petition is not valid on its face because his sentence enhancement is not authorized by Recuenco and Williams-Walker. Relying upon Recuenco I, Recuenco III, and Williams-Walker, Rivera specifically asserts that the firearm enhancement imposed in his case was not supported by the jury's "deadly weapon" finding. Recuenco I and Williams-Walker are both predicated upon insufficient jury findings to support the sentence enhancement imposed and arise directly as a result of the new rule of criminal procedure announced in the U.S. Supreme Court's Blakely decision. Recuenco I and Williams-Walker cannot be applied retroactively to Rivera's case because Rivera's case was final before Blakely was decided. Moreover, Recuenco

⁶ The Court of Appeals did not reach this issue because it found that Rivera had failed to show that the judgment and sentence was invalid on its face.

⁷ Rivera's judgment became final for purposes of RCW 10.73.090 on May 17, 2002 when the mandate issued. RCW 10.73.090(3)(b).

III does not apply to Rivera's case because Rivera was specifically charged in the information with the firearm enhancement.

In general courts will not apply new decisions of law to cases that were final when the new decision is announced. State v. Evans, 154 Wn.2d 438, 443, 114 P.3d 627 (2005). A case is final for purposes of retroactivity analysis when a "judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari finally denied." In re St. Pierre, 118 Wn.2d 321, 326, 823 P.2d 492 (1992). A new rule is not given retroactive application to cases on collateral review unless the new rule: a) places certain private individual conduct beyond the power of the state to proscribe⁸; or b) requires observance of procedures implicit in the concept of ordered liberty. In re Markel, 154 Wn.2d 262, 268-69, 111 P.3d 249 (2005). New rules that require observance of procedures implicit in the concept of ordered liberty are limited to "watershed rules of criminal procedure," those which alter our understanding of the bedrock procedural elements. State v. Abrams, 163 Wn.2d 277, 291, 178 P.3d 1021 (2008) (*quoting* Teague v. Lane, 489 U.S. 288, 311, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)).

⁸ New rules that fall under subsection (a) only apply to new rules of substantive law, and therefore subsection (a) is inapplicable to this case. In re Markel, 154 Wn.2d 262, 269, 111 P.3d 249 (2005).

In Recuenco I, the court held that the sentencing court's imposition of the greater firearm enhancement, where the jury did not explicitly find beyond a reasonable doubt that the defendant was armed with a firearm but only with a "deadly weapon," violated the defendant's right to a jury under Blakely. Recuenco I, 154 Wn.2d 156, 110 P.3d 188 (2005). The court also found that the error was not subject to harmless error analysis, which holding was overturned in Washington v. Recuenco⁹. *Id.*; *see*, Recuenco III, 163 Wn.2d at 441.

Upon remand the court in Recuenco III found that the error "occurred when the trial judge imposed a sentence enhancement for something the State did not ask for and the jury did not find. Recuenco III, 163 Wn.2d at 442. After finding that the prosecution charged and sought only the lesser "deadly weapon" enhancement, the court found that the "sentencing judge then committed error by imposing a sentence outside the judge's authority, a sentence that was not authorized by the jury." *Id.* at 435-36, 439. The court also concluded that under state law harmless error did not apply because: "it can never be harmless to sentence someone for a crime not charged, not sought at trial, and not found by a jury." *Id.* at 442.

⁹ Washington v. Recuenco, 548 U.S. 212, 216 S.Ct. 2546, 165 L.Ed.2d 466 (2006).

Here, unlike Recuenco III, the State clearly charged and sought the firearm enhancement. The information alleged that the defendant was armed with a deadly weapon, specifically a .22 caliber handgun during the commission of the crime, in violation of RCW 9.94A.125 and 9.94A.310(a), the firearm sentence enhancement statute. App. B. This was sufficient to properly advise Rivera that he was charged with a firearm enhancement. *See, In re Benavidez*, 160 Wn. App. 165, 246 P.3d 842 (2011) (charging document specifically alleging defendant was armed with a firearm, citing the statute authorizing a special deadly weapon verdict is sufficient to provide notice that defendant is charged with firearm enhancement). As Rivera was given proper and sufficient notice of the firearm enhancement allegation, Recuenco III is inapposite to Rivera's case.

In Williams-Walker, the court decided the more narrow question of “whether a trial court may impose a firearm enhancement in the absence of a jury finding *by special verdict* that the defendant used a firearm (or deadly weapon).” Williams-Walker, 167 Wn.2d at 898 (emphasis in the original). It found it did not, holding that guilty verdicts alone are not sufficient to authorize sentence enhancements. *Id.* at 899. It further held that, in the context of a direct appeal, imposition of a firearm enhancement

based upon a deadly weapon special verdict is not subject to harmless error analysis. *Id.* at 901.

The holdings in Recuenco I and Williams-Walker are premised upon the new rule of criminal procedure set forth in Blakely. Prior to Blakely the sentencing court was authorized to make the finding as to whether a firearm or non-firearm deadly weapon enhancement should be imposed based on a jury's "deadly weapon" finding. State v. Meggyesy, 90 Wn. App. 693, 706-08, 958 P.2d 319 (1998), *rev. den.*, 136 Wn.2d 1028 (1998), *abrogated by* State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005)¹⁰. As the sentence here was valid at the time it was entered, there was no basis for asserting that the enhancement was invalid until Blakely was decided. Blakely does not apply retroactively to cases that were final when it was issued and does not fall within the state law exception for retroactive application under RCW 10.73.100(6). Evans, 154 Wn.2d 438 at 448-49; *see also*, State v. Abrams, 163 Wn.2d 277, 178 P.3d 1021 (2010) (new rule requiring jury to find materiality element of perjury instead of judge would not apply retroactively to collateral attacks). Rivera's case was final for purposes of retroactivity analysis in

¹⁰ *See also*, State v. Rai, 97 Wn. App. 307, 983 P.2d 712 (1999), *abrogated by* State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005); State v. Olney, 97 Wn. App. 913, 987 P.2d 662 (1999), *abrogated by* State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005); State v. Serrano, 95 Wn. App. 700, 706-07, 977 P.2d 47 (1999).

2002, before the issuance of Blakely on June 24, 2004 and well before the opinions in Recuenco and Williams-Walker.

Retroactivity is also limited by the statutory limits on collateral attacks under Chapter 10.73 RCW. Abrams, 163 Wn.2d at 291. While Rivera has not asserted that his case falls within the statutory exception under RCW 10.73.100(6)¹¹, even if he were to do so, that provision is interpreted consistent with the retroactivity analysis in Teague. Abrams, 163 Wn.2d at 291-92.

In his Reply to the State's Answer to the Motion for Discretionary Review, Rivera asserts that this Court need not engage in retroactivity analysis because he "was entitled to the protection of Article 1, Section 21 at the time of his trial, and the scope of that constitutional provision has not changed." Reply at 3. For retroactivity purposes, "[a] 'new rule' is one that 'breaks new ground' or 'was not dictated' by precedent existing at the time the defendant's conviction became final." In re Markel, 154 Wn.2d at 270 (*quoting* Teague, 489 U.S. at 301). The law at the time

¹¹ RCW 10.73.100(6) provides an exception to the one year time limit for collateral attacks under RCW 10.73.090 where:

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

Rivera's sentence was final permitted a judge to impose a firearm based on the jury's deadly weapon finding. *See, infra* at 7; *see also*, McMillan v. Pennsylvania, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed 2d 67 (1986) (statute providing for five year mandatory minimum sentence if a judge finds by a preponderance that the person "visibly possessed a firearm" in commission of the crime did not violate 6th Amendment jury trial guarantee). Moreover, if there has not been a significant change in the law, then Rivera is without recourse because he failed to raise this issue on appeal and his collateral attack is untimely. *See, In re Domingo*, 155 Wn.2d 356, 363, 119 P.3d 816 (2005) (before court will address merits of petitioner's claim in untimely collateral attack petitioner must demonstrate that decisions upon which claim is predicated constitute significant changes in the law under RCW 10.73.100(6)); *see also In re Runyan*, 121 Wn.2d 432, 441-43, 853 P.2d 424 (1993) (state constitutional writ of habeas corpus protects only the right to challenge the jurisdiction of the sentencing court).

2. Rivera has failed to meet his burden to demonstrate that the judgment and sentence is invalid on its face.

Rivera asserts the judgment and sentence only references a "deadly weapon" finding and therefore the judgment is invalid on its face because the trial court imposed a 60 month firearm enhancement and not the 24

month non-firearm deadly weapon enhancement. The judgment and sentence, however, does reflect the court's firearm enhancement finding specifically referencing the statute for the firearm enhancement sentence. Moreover, at the time the firearm deadly weapon enhancement was imposed, the enhancement was authorized based on a jury's "deadly weapon" verdict. The judgment and sentence is not invalid on its face because the sentence enhancement was authorized by the law in effect at the time it was imposed.

A judgment and sentence is valid on its face if the judgment and sentence reflects that the sentence imposed was within the trial court's legal authority. In re Personal Restraint of Hemenway, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). In order to determine whether the trial court exceeded its statutory authority in imposing sentence, the court looks to the relevant sentencing provisions at the time the defendant was convicted. *See, In re West*, 154 Wn.2d 204, 211-12, 110 P.3d 1122 (2005). Under the statutes at the time, if the jury returned a deadly weapon special verdict finding, the trial court had authority to impose a five year enhancement where the deadly weapon was a firearm and a two year enhancement if a deadly-weapon-other-than-firearm was used. RCW 9.94A.125; RCW 9.94A.310(3)(a); RCW 9.94A.310(4)(a) (1998); Meggyesy, 90 Wn. App.

at 706-08¹². In fact, at the time, caselaw required a court to impose a firearm enhancement where the uncontested facts were that the deadly weapon was a firearm. State v. Olney, 97 Wn. App. 913, 987 P.2d 662 (1999), *abrogated by* State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005); State v. Rai, 97 Wn. App. 307, 312, 983 P.2d 712 (1999), *abrogated by* State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005).

The judgment and sentence shows that the judge explicitly found that the applicable deadly weapon enhancement was the firearm enhancement, specifically the five year enhancement. The judgment and sentence here states:

II. FINDINGS

Based on the testimony heard, statements by the defendant and/or victims, argument of counsel, the presentence report and case record to date, **the Court finds:**

CURRENT OFFENSE(S): The defendant was found GUILTY on October 13, 1998, by JURY VERDICT of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon):

Count No. I

Crime: MURDER IN THE FIRST DEGREE
RCW: 9A.32.030(1)(a), 9.94A.125, and 9.94A.310(3)(a)a (sic)
Crime Code: Class "A" Felony
Date of Crime: 3/20/08
Incident No. 98A-5437

¹² See also, footnote 10.

(XX) with a special verdict/finding for use of deadly weapon on Count(s): I.

App. A at 1-2 (emphasis added). Moreover, there is no reference in the judgment and sentence to RCW 9.94A.310(4)(a) as there would be if the court was finding and imposing the “deadly-weapon-other-than-firearm” enhancement. The judgment and sentence specifically references the statutory basis for the firearm deadly weapon enhancement. There is no error on the face of the judgment.

Rivera asserts that the references to “deadly weapon,” as opposed to “firearm,” in the judgment and sentence render the judgment and sentence invalid on its face. However, this ignores the fact that the statutory scheme in effect at the time was that RCW 9.94A.125 authorized the “deadly weapon finding” by the jury, while RCW 9.94A.310 set forth the specific enhancement times depending upon whether or not the deadly weapon was a firearm. *See, In re Cruze*, 169 Wn.2d 422, 429-31, 237 P.3d 274 (2010) (Hard Time for Hard Crime Act created two separate sentence enhancements, one for firearms and one for deadly-weapons-other-than-firearms, and a jury’s special “deadly weapon” verdict authorized a “deadly weapon enhancement” which included both the firearm and other-than-firearm deadly weapon enhancements). A firearm is a type of deadly weapon under RCW 9.94A.125, and at the time a

“deadly weapon” finding or the use of the term “deadly weapon” did not mean that the deadly weapon used was a *non*-firearm deadly weapon.

The judgment’s specific finding that the deadly weapon fell under RCW 9.94A.310(3)(a) distinguishes this case from In re Personal Restraint of Scott, 149 Wn. App. 213, 202 P.3d 985 (2009), *rev. granted* 168 Wn.2d 1010 (2010). The court there found that the judgment and sentence misstated the jury’s special verdict and that the jury had only found that the defendant was armed with a non-firearm deadly weapon and not a firearm deadly weapon. *Id.* at 220. The court noted that while the sentencing court had the authority under the law at the time to impose a firearm enhancement upon a jury returning a “deadly weapon” special verdict, the court had failed to make and to memorialize any such finding. *Id.* at 221-22. Therefore, it found the judgment and sentence invalid on its face, and the petition not time-barred. *Id.*

Rivera asserts that the Court should consider the special verdict form in this case in deciding whether the judgment and sentence is invalid on its face. A judgment and sentence is constitutionally invalid on its face only if the judgment “*without further elaboration* evidences infirmities of a constitutional magnitude.” In re Thompson, 141 Wn.2d 712, 718, 10 P.3d 380 (2000) (emphasis added); *accord*, In re Personal Restraint of Clark, 168 Wn.2d 581, 587, 230 P.3d 156 (2010). If a defendant has to

resort to documents other than the judgment and sentence in order to establish invalidity, then the judgment and sentence is not invalid on its face. In re Clark, 168 Wn.2d at 588. Only in limited cases are documents other than the judgment and sentence considered in order to determine if the judgment and sentence is valid on its face, and usually only in cases where there was a plea. In re Personal Restraint of Rowland, 149 Wn. App. 496, 504-05, 204 P.3d 953 (2009); *but see*, In re Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004) (information, plea statements and jury instructions were considered to determine if the conviction was for a nonexistent crime, thus rendering the judgment and sentence invalid on its face). To the extent that a court references other documents, it may do so only if those documents are relevant to determining whether the judgment and sentence itself is facially invalid. In re McKiernan, 165 Wn.2d 777, 782, 203 P.3d 375 (2009).

If this court were to go beyond the four corners of the judgment and sentence to determine facial validity, the jury's special and general verdicts based on the instructions given, show that the jury found Rivera was armed with a firearm when he committed first degree murder. The special verdict instruction *only* defined the deadly weapon as a firearm. App. C (Instr. No. 37). The to-convict instruction on Murder in the First Degree required the jury to find beyond a reasonable doubt that Rivera

shot the victim. App. C (Instr. No. 14). The jury's general and special verdicts clearly provided the basis for the court's lawful imposition of the 60 month firearm enhancement.

Rivera asserts that under Williams-Walker the sentencing judge is bound by the jury's special verdict form, which he asserts was merely the "deadly weapon" finding. Again this ignores the fact that a "deadly weapon" finding at the time could mean either a firearm or a non-firearm deadly weapon finding: a "deadly weapon" finding at the time the sentence was imposed did not mean a "deadly-weapon-other-than-a-firearm" finding. The special verdict form does not show that the court imposed a sentence enhancement that was not authorized at the time it was imposed. Moreover, Williams-Walker is a case that was decided on direct review, not on collateral attack, and does not apply retroactively to Rivera's sentence. At the time the sentence was imposed in this case, the law did not bind a sentencing court to the jury's special verdict form.

Rivera has failed to meet his burden to demonstrate that the judgment and sentence is invalid on its face. The sentencing court's imposition of a firearm enhancement was within its authority at the time it was imposed. It is not enough to allege that the judgment and sentence is ambiguous, he must demonstrate that it is *in fact* facially invalid. He has not and his petition is time-barred.

3. Rivera has failed to demonstrate actual and substantial prejudice or a fundamental defect.

Rivera seeks a two year deadly-weapon-other-than-firearm enhancement rather than a five year firearm enhancement because the special verdict form asked whether the defendant was armed with a "deadly weapon," rather than more specifically a firearm. He is not entitled to such relief because he has failed to establish that the alleged error is a constitutional error that resulted in actual and substantial prejudice, or a fundamental defect that inherently results in a complete miscarriage of justice.

"In order to prevail on a personal restraint petition, a petitioner must establish that there was a constitutional error that resulted in actual and substantial prejudice or that there was a nonconstitutional error that resulted in a fundamental defect which inherently results in a complete miscarriage of justice." In re Woods, 154 Wn. 2d 400, 409, 114 P.3d 607 (2005). Errors that are not subject to harmless error analysis on appeal are not necessarily considered prejudicial per se on collateral attack. In re St. Pierre, 118 Wn.2d at 329; *see also*, In re Haverly, 101 Wn.2d 498, 504-06, 681 P.2d 835 (1984) (petitioner still must show actual prejudice from unconstitutional intent instruction although on direct appeal error would

be presumed prejudicial).¹³ While Williams-Walker held that imposition of a firearm enhancement based upon a “deadly weapon” special verdict is not subject to harmless error analysis, that case was a direct appeal, not a collateral attack. Rivera still must show actual and substantial prejudice and he cannot do so.

Here, Rivera had notice that he was charged with a firearm enhancement, and the special verdict instruction only defined “deadly weapon” as a firearm: “A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.” App. C (Instr. No. 37). The to-convict instruction on Murder in the First Degree required that the jury find beyond a reasonable doubt that Rivera shot the victim. Given the instructions, the jury’s general and special verdicts demonstrate that the jury found beyond a reasonable doubt that Rivera was armed with a firearm when he shot and killed Garza.

Rivera cannot establish that imposition of the firearm enhancement, an enhancement he was properly charged with and which was proven to a jury beyond a reasonable doubt, based on the jury’s

¹³ In his Motion for Discretionary Review Rivera argues that there was no jury instruction requiring the jury to find that the firearm he used was operable. Even if failure to adequately define “firearm” were an issue he could assert for the first time in a collateral attack, it is certainly the type of error subject to harmless error analysis, and the jury here specifically found that Rivera *shot* Garza.

“deadly weapon” special verdict resulted in actual and substantial prejudice, or a complete miscarriage of justice.

D. CONCLUSION

Rivera’s personal restraint petition should be dismissed because it is predicated on Recuenco I and Williams-Walker which both arise from Blakely. As Blakely cannot be applied retroactively to Rivera’s sentence neither can those cases. Rivera has also failed to demonstrate that the judgment and sentence is facially invalid. Even considering documents outside the four corners of the judgment and sentence, the firearm enhancement was within the court’s sentencing authority at the time it was imposed. He has suffered no actual or substantial prejudice from imposition of a firearm enhancement. His personal restraint petition should be denied.

DATED this 20th day of October, 2011.

Respectfully submitted,


HILARY A. THOMAS, WSBA No. 22007
Appellate Deputy Prosecutor
Attorney for Respondent

CERTIFICATE

I certify that on this date I placed in the mail a properly stamped and addressed envelope, or otherwise caused to be delivered, a copy of the document to which this Certificate is attached to this Court and Petitioner's counsel, addressed as follows:

Nancy P Collins
~~Washington Appellate Project~~
1511 3rd Ave Ste 701
Seattle WA 98101-3635

Sydney A. Koss
LEGAL ASSISTANT

10/20/2011
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SUPR CT No. 83923-9

In re Personal Restraint Petition of Salvador Rivera

Supreme Court No. 83923-9

Attached please find Respondent, State of Washington's, Supplemental Response Brief in the above-referenced matter. Appendices have been placed in the mail to this Court this date. A full copy has been placed in the mail to Petitioner's counsel.

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