

No. 82363-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL RESTRAINT PETITION OF:

RONNIE JACKSON JR.,

PETITIONER.

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STATE OF WASHINGTON
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PERSONAL RESTRAINT PETITION

Jeffrey E. Ellis #17139
Attorney for Mr. Jackson

Law Offices of Ellis,
Holmes & Witchley, PLLC
705 Second Ave., Ste. 401
Seattle, WA 98104
(206) 262-0300 (ph)
(206) 262-0335 (fax)

A. STATUS OF PETITIONER

Ronnie Jackson, Jr. (hereinafter "Jackson") challenges his 1996 Pierce County convictions for Attempted Murder in the First Degree, Robbery in the First Degree, and Assault in the Second Degree (96-1-04688-6). More specifically, Jackson challenges the imposition of the portion of his sentences for "firearm" enhancements after Jackson's jury returned the "deadly weapon" verdicts requested by the State. Jackson remains incarcerated serving the 324-month sentence imposed by the trial court.

This is *not* Jackson's first collateral attack on this judgment. Jackson has previously filed two *pro se* PRP in the Court of Appeals' attacking this judgment. In the second PRP, Jackson attacked the imposition of firearm enhancement sentences based on deadly weapon verdicts. The Court of Appeals dismissed the petition, without reaching the merits, ruling that it was untimely. Copies of both orders of dismissal are attached as Appendix A.

B. FACTS

Jackson was charged by *Amended Information* with Attempted Murder and Robbery (both in the First Degree) and Assault in the Second Degree. Each charge alleged that Jackson was armed with a "deadly weapon, to wit: a handgun, that being a firearm as defined in RCW 9.41.010...." *Information* attached as Appendix B. At trial, jurors were

instructed that, in addition to receiving verdict forms for the crimes, they would receive “special verdict forms,” (*Instruction No. 44*, attached as Appendix C), which asked jurors whether they found beyond a reasonable doubt “that the defendant or an accomplice was armed with a deadly weapon.” Instruction No. 45 further defined a deadly weapon by noting that a “pistol, revolver or any other firearm is a deadly weapon only if it is operable. A firearm does not need to be loaded to be considered a deadly weapon.” The special verdict forms themselves asked jurors to answer whether the defendant was “armed with a deadly weapon.”

Jackson’s jury found him guilty on November 3, 1997, of Attempted Murder and Robbery in the First Degree (counts I and III) and Assault in the Second Degree (count II). *See Judgment and Sentence* attached as Appendix D. On each of the three special verdict forms (one for each count), the jury answered, “yes.” *See Special Verdict Forms* attached as Appendix C.

Because of an invalidity in his original sentence, Jackson was re-sentenced on October 4, 2002. The *Judgment and Sentence* entered on that date correctly notes that Jackson was convicted of a “deadly weapon” enhancement on Count I (specified as “DWSE” on the judgment), but then incorrectly states that Counts II and III involved a “firearm” enhancement (“FASE”). *See Judgment*, § 2.1. In the boxes below the named crimes, the section reading “(a) special verdict/finding for use of a firearm was returned

on Counts I, II, and III,” was incorrectly checked. The *Judgment* also indicates that the Court found the attempted murder and robbery constitute the “same criminal conduct.” However, the *Judgment* later imposes a (concurrent) sentence on the robbery count.

In section 2.3, the Judgment repeats the “firearm” enhancement errors (this time using the initials “FA”). Further, that section correctly lists a \$20,000 fine as part of the maximum term for second-degree assault, but fails to list any possible fine for the attempted murder and robbery counts.

Finally, Jackson was sentenced to 264 months on the attempted murder, plus 60 months for a “firearm” enhancement on that count. Jackson received a 60 month enhancement on the robbery count and a 36 month term on the assault count. The three enhancements were ordered to run concurrently with each other pursuant to *In re Charles*, 135 Wn.2d 239, 955 P.2d 758 (1998).

C. ARGUMENT

1. INTRODUCTION

This case is legally indistinguishable from *State v. Recuenco*, 163 Wn.2d 428, 180 P.3d 1276 (2008) (*Recuenco III*). Like Recuenco, Jackson was charged by the prosecutor and convicted by his jury of three crimes each involving deadly weapon enhancements. At no point prior to trial did the State seek to amend the information and submit “firearm” special

verdicts to the jury. Nevertheless, Jackson was sentenced by a judge for three “firearm” enhancements. This error is *per se* harmful: “We conclude it can never be harmless to sentence someone for a crime not charged, not sought at trial, and not found by a jury. In this situation, harmless error analysis does not apply.” *Recuenco*, 163 Wn.2d at 442.

This case is also similar to *In re Restraint of Lavery*, 154 Wn.2d 249, 111 P.3d 837 (2005). Like Lavery, Jackson has previously raised the claim he raises here—only to have it rejected. Nevertheless, Lavery persisted. Ultimately, this Court found that Lavery’s previously rejected claim of error had been since “vindicated,” and therefore reached the merits and granted relief despite the successor posture of Lavery’s claim. Jackson, like Lavery, should also be “vindicated” and the obvious sentencing error corrected.

2. JACKSON WAS CHARGED AND CONVICTED OF DEADLY WEAPON” ENHANCEMENTS. IT WAS *PER SE* ERROR TO SENTENCE HIM FOR A “FIREARM” ENHANCEMENT.

Jackson was charged and convicted of one set of “enhancements” and sentenced on others. This error can never be harmless as this Court recently held in *Recuenco III*.

Despite the long legal history that preceded the decision, or perhaps because of it, this Court’s decision in *Recuenco III* rests on a simple proposition: a defendant cannot be charged and convicted of one crime and

sentenced on another. The same rule should apply to Jackson, especially given that Jackson's case is legally indistinguishable from Recuenco's case.

Arturo R. Recuenco was involved in an altercation with his wife and threatened her with a handgun. Based on this incident, Recuenco was charged by information with second degree assault "with a deadly weapon, to-wit: a handgun." *Id.* at 431. At the completion of the trial, the jury was given a special verdict form directing it to make a specific finding regarding whether Recuenco was "armed with a deadly weapon at the time of the commission of the crime." *Id.* at 431. The jury, in addition to finding Recuenco guilty of second degree assault, returned a special verdict finding that Recuenco was armed with a "deadly weapon" during the commission of the second degree assault. At sentencing, the trial court imposed a 36-month firearm enhancement instead of the 12-month deadly weapon enhancement charged in the information and found by the jury. *Id.*

Based on these facts, this Court found that the error could never be harmless. "Recuenco was charged with second degree assault with a deadly weapon, a special verdict form was submitted regarding a deadly weapon finding, and the jury found guilt as to the properly submitted sentencing enhancement of "deadly weapon." We recognize here that the harmless error doctrine simply does not apply because no error occurred in the jury's determination of guilt." *Id.* at 441.

Just like Recuenco, Jackson was charged with a deadly weapon enhancement. His charging document, which is virtually identical to Recuenco's, alleged that he was "armed with a deadly weapon, to wit: a handgun." It is important to note that the *Recuenco* court rejected the argument the "information, liberally construed, was sufficient to pass the test for postverdict challenges to information because it includes the necessary fact of being armed with a handgun." *Id.* at 449 (Fairhurst, J. dissenting). Just like Recuenco, Jackson's jury was only instructed about a "deadly weapon" enhancement. Both the instruction defining the special verdict and the verdict forms themselves expressed referred to "deadly weapon" enhancements. Just like Recuenco, Jackson's judge imposed "firearm" enhancements, in place of the jury findings.

Thus, like Recuenco, Jackson is entitled to relief. *Id.* at 440 ("In this case, Recuenco had a right to have a jury determine beyond a reasonable doubt if he was guilty of the crime and sentencing enhancement charged. Without a jury determination that he was armed with a "firearm," the trial court lacked authority to sentence Recuenco for the additional two years that correspond with the greater enhancement.").

It is important to note that *Recuenco* did not establish a new rule. In fact, this Court relied on state law precedent pre-dating *Apprendi* and *Blakely*:

We examined a similar issue in an earlier case, *State v. Theroff*, 95 Wash.2d 385, 622 P.2d 1240 (1980), in which the defendant was charged by information with two counts of first degree murder. At that time, the State filed a separate notice advising the defendant that it would seek a firearm and a deadly weapon enhancement. The State subsequently amended the information by realleging the two counts of first degree murder and adding a count of second degree murder. However, the State did not file another notice of intent to seek enhanced penalties in conjunction with the amended information, and no intention to seek an enhanced penalty under any of the counts was indicated in either information. The defendant was found guilty of second degree felony murder, and by special interrogatory, the jury found petitioner was armed with a deadly weapon, a firearm, at the time of the commission of the crime. However, the State neglected to provide the defendant with notice that it intended to seek an enhanced penalty in its information. We remanded for resentencing because “[w]hen prosecutors seek enhanced penalties, notice of their intent must be set forth in the information.” *Theroff*, 95 Wash.2d at 392, 622 P.2d 1240. Thus, unless a complaint is properly amended, once the State elects which specific charges it is pursuing and includes elements in the charging document, it is bound by that decision. We have not altered this requirement.

Recuenco’s case is similar because it also involves a charging decision made by the State. The prosecutor chose to charge the lesser enhancement of “deadly weapon.” Former RCW 9.94A.310(4)(b). This provided Recuenco with notice of the charged offense and the ability to prepare a defense, as required by our state and federal constitutions. Moreover, consistent with the specific charge brought, the jury was instructed on the deadly weapon enhancement and specifically found Recuenco guilty of second degree assault while armed with a deadly weapon. There is nothing erroneous about that finding.

Id. at 435-6. Jackson’s case is completely on “all fours” with this precedent.

However, if there is any doubt about whether Jackson was charged with a firearm enhancement, the jury instructions unambiguously

demonstrate that the State elected to proceed only on the deadly weapon allegation. “The error in this case occurred when the trial judge imposed a sentence enhancement for something the State did not ask for and the jury did not find. The trial court simply exceeded its authority in imposing a sentence not authorized by the charges.” *Id.* at 442.

2. THIS PETITION IS NEITHER TIME NOR SUCCESSOR BARRED.

Introduction

A post-conviction petitioner must address possible procedural limitations in a case where, like here, a conviction is more than one year old and where Petitioner (albeit acting *pro se*) has previously collaterally attacked his conviction. However, because Jackson is able to maneuver the procedural roadblocks that would otherwise prevent correction of this error, this Court can consider Jackson’s petition on its obvious merits.

Jackson begins by discussing the exceptions to the time bar that apply.¹

Facial Invalidity of the Judgment

Jackson’s *Judgment* contains several errors, obvious both from a review of the document alone, as well from a cursory review of the verdict forms supporting the judgment.

¹ The Court of Appeals’ order dismissing Petitioner’s previous PRP attacking his firearm enhanced sentence only discusses the “change in the law” exception, which it unfortunately conflates with a flawed “retroactivity” analysis. It is unfortunate that the lower court did not appoint counsel for Jackson so that the issues could be presented in a complete and thorough manner.

It is now well-established that a PRP is timely if it attacks a facially invalid judgment. *See State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719 (1986) (defining “invalid on its face”). For example, a judgment and sentence is invalid on its face where a petitioner's washed out convictions were considered in calculating an offender score. *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002) (“Initially, the State appropriately concedes that Goodwin may challenge his sentence despite the one-year bar of RCW 10.73.090 because the judgment and sentence appears invalid on its face.”). *See also In re LaChapelle*, 153 Wn.2d 1, 6, 100 P.3d 805 (2004). In other words, a judgment is “invalid on its face” if an affirmative error is apparent from the face of the judgment.

Jackson's judgment is facially invalid in several respects. Jackson's judgment begins by noting that he was convicted of Attempted Murder in the First Degree “DWSE,” or deadly weapon special enhancement. This portion of the judgment is correct. However, the judgment then later imposes a “firearm” enhancement sentence. This incongruity alone renders the judgment invalid.

However, this Court can also review supporting documents in determining whether a judgment is invalid. *In re Hinton*, 152 Wn.2d 853, 100 P.3d 801 (2004). Here, comparing the special verdict forms with the judgment reveals that the judgment is invalid regarding all three counts

because it notes that Jackson's jury returned "firearm" verdicts when, in fact, the verdicts were for "deadly weapon" enhancements..

The fact that Jackson's judgment is facially invalid provides an exception to the time bar—one not considered by the Court of Appeals in its decision dismissing Jackson's PRP.

Sentence in Excess of Jurisdiction

Jackson can also rely on the exception set out in RCW 10.73.100(5) because the sentence imposed was in excess of the court's jurisdiction. *In re Perkins*, 143 Wn.2d 261, 263, 19 P.3d 1027 (2001). Here, the court imposed a sentence that exceeded the maximum authorized by his jury. This Court made it plain in *Recuenco III*: "The trial court simply exceeded its authority in imposing a sentence not authorized by the charges." *Id.* at 442.

Change in the Law

A third exception to the time bar applies: the law changed. This Court expressly noted in *Recuenco II*: "Cases that allowed judges to impose firearm enhancements where juries found only the presence of deadly weapons are no longer good law." *State v. Recuenco*, 154 Wn.2d 156, 162 n.2, 110 P.3d 188 (2005), *overruling State v. Meggyesy*, 90 Wash.App. 693, 958 P.2d 319, *review denied*, 136 Wash.2d 1028, 972 P.2d 465 (1998); *State v. Rai*, 97 Wash.App. 307, 983 P.2d 712 (1999); *State v. Olney*, 97 Wash.App. 913, 987 P.2d 662 (1999).

“[W]here an intervening opinion has effectively overturned a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a ‘significant change in the law...’” *In re Pers. Restraint of Greening*, 141 Wash.2d 687, 697, 9 P.3d 206 (2000).

“One test to determine whether an [intervening case] represents a significant change in the law is whether the defendant could have argued this issue before publication of the decision.” *In re Pers. Restraint of Stoudmire*, 145 Wash.2d 258, 264, 36 P.3d 1005 (2002).

For example, in *In re Restraint of Lavery*, 154 Wn.2d 249, 111 P.3d 837 (2005), Lavery repeatedly complained that his federal bank robbery conviction was not a comparable offense. Initially, his claims were rejected. Then, following a Court of Appeals decisions which held in favor of Lavery’s position, he filed a successive PRP, more than one year after his conviction was final. The State, as they most certainly will do here, argued that the PRP was time and successor barred. This Court unanimously disagreed: “Because *Freeburg* represents a significant change in the law that was material to Lavery’s sentence, we hold that his PRP is not time barred.” *Id.* at 261.

Jackson’s case is similar. *Recuenco II* clearly overrules past precedent and constitutes a change in the law. *Recuenco III* makes it clear, however, that the change in the law is not from a new rule, but rather the

correct application of old law to this situation. *Recuenco III*'s relies on *Theroff* and state charging document law, rather than depending on *Blakely*.

Of course, this Court only needs to find that one exception to the time bar applies. Jackson simply gives this Court three to choose from. Jackson now moves from the time to the successor bar.

3. GOOD CAUSE FOR THIS SUCCESSOR PETITION

“If a person has previously filed a petition for personal restraint, the 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.” RCW 10.73.140.

The bar on successive petitions under RCW 10.73.140, however, does not apply to the state Supreme Court. *In re Pers. Restraint of Johnson*, 131 Wash.2d 558, 566, 933 P.2d 1019 (1997).

Thus, the question is whether this is a second petition must be dismissed as an improper successor petition. The answer is “no,” for two reasons. RAP 16.4(d) bars consideration of a second petition “for similar relief” without a showing of good cause. Following the definition of “similar relief” in *Sanders v. United States*, 373 U.S. 1, 14, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963), this court in *In re Personal Restraint of Haverty*, 101 Wash.2d 498, 502-03, 681 P.2d 835 (1984), stated that a successive petition could be dismissed only where the prior application had been

denied on grounds previously heard and determined on the merits. Since the Court of Appeals did not consider Jackson's most recent PRP on its merits, this is not a petition seeking similar relief as the last. *See In re Stoudmire*, 145 Wash.2d 258, 36 P.3d 1005 (2001). Jackson's first PRP did not raise this issue, so did not seek similar relief.

In any event, Jackson can show "good cause." "Good cause" is shown where the petitioner demonstrates that a material intervening change in the law has occurred. *In re Restraint of Jeffries*, 114 Wash.2d 485, 488, 789 P.2d 731 (1990). In *Lavery*, this Court held: "Because we find that *Freeburg* represents a material intervening change in the law, we hold that Lavery has shown good cause, and that his PRP is not barred as successive." *Id.* at 261. The same is true, here.

Abuse of the Writ

Finally, Jackson must show that this PRP does not constitute an abuse of the writ.

In determining whether a second or subsequent petition constitutes an abuse of the writ, Washington courts look to the federal "cause and prejudice" doctrine discussed in *McCleskey v. Zant*, 499 U.S. 467, 494, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991).

This Court has held that "if the [defendant] was represented by counsel throughout post-conviction proceedings, it is an abuse of the writ for him or her to raise...a new issue that was 'available but not relied upon

in a prior petition.’ ” *Jeffries*, 114 Wash.2d at 492, 789 P.2d 731 (quoting *Kuhlmann v. Wilson*, 477 U.S. 436, 444 n. 6, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986)). However, where a defendant filed a *pro se* petition, he can show the requisite cause for not raising this issue in the prior PRP. *In re Turay*, 153 Wn.2d at 859-60, n.4. Because Jackson was *pro se*, he satisfies the “cause” requirement.

The second prong of the test—prejudice—requires proof that the error worked to petitioner’s actual and substantial disadvantage. Where there is an especially strong showing of prejudice, a corresponding finding of cause is more easily found. *See Wainwright v. Sykes*, 433 U.S. 72, 95-96 (1977) (Stevens, J. concurring); *Caly v. Director*, 749 F.2d 427, 434 (7th Cir. 1984) (“if prejudice is high, cause will be more easily found.”). Where a defendant has been convicted based on legally insufficient evidence he is necessarily prejudiced. The merits of Jackson’s claim easily establish the prejudice requirement.

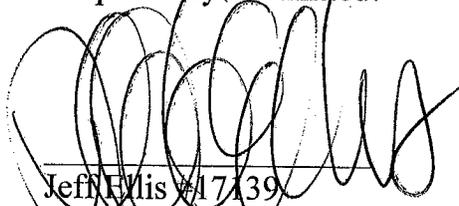
Having successfully navigated the possible procedural roadblocks, it is clear that Jackson is entitled to have his erroneous sentence corrected.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate Jackson’s judgment for firearm enhancements and remand this case to Pierce County Superior Court for resentencing.

DATED this 31st day of October, 2008.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Jeff Ellis", written over a horizontal line.

Jeff Ellis #17139
Attorney for Mr. Jackson

Law Offices of Ellis, Holmes
& Witchley, PLLC
705 Second Ave., Ste. 401
Seattle, WA 98104
(206) 262-0300 (*ph*)
(206) 262-0335 (*fax*)

Appendix A ~
Orders Dismissing Prior PRPs



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the
 Personal Restraint Petition of

 RONNIE JACKSON, JR.,

 Petitioner.

FILED
 DIVISION II
 IN COUNTY CLERK'S OFFICE

A.M. JUL 15 2003 P.M.

PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY _____ Deputy

No. 29058-8-II

ORDER DISMISSING PETITION

96-1-04688-6

FILED
 COURT OF APPEALS
 DIVISION II
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 STATE OF WASHINGTON

Ronnie Jackson, Jr. seeks relief from personal restraint imposed following his 1998 convictions of first-degree attempted murder, second-degree assault, and first-degree robbery. He claims that his restraint is unlawful because of ineffective assistance of counsel and because of newly-discovered evidence.

INEFFECTIVE ASSISTANCE

Jackson first argues that he was denied his right to effective assistance of counsel when he did not testify because counsel informed him that were he to testify, the State could impeach him with a prior felony drug conviction. He argues that this was not true, that the conviction would not have been admissible, and that had he testified, he would have admitted assaulting one victim (Grace) but denied taking money or property and he would have denied that another victim (Manning) was assaulted.

A defendant has a constitutional right to testify under the 5th, 6th, and 14th Amendments to the U.S. Constitution, *Rock v. Arkansas*, 483 U.S. 44, 49, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987), and under Article I, section 22, of the Washington Constitution. A defendant may waive this right, provided that it is a knowing, voluntary,

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and intelligent waiver. *State v. Thomas*, 128 Wn.2d 553, 558, 910 P.2d 475 (1996). Such waiver need not be on the record and the trial judge may assume a knowing waiver from the defendant's conduct of not taking the stand. *Thomas*, at 559. In post-trial proceedings, a defendant may assert that counsel prevented him from testifying but he must "produce more than a bare assertion that the right was violated; the defendant must present substantial, factual evidence in order to merit an evidentiary hearing or other action." *Thomas*, at 561.

In *Thomas*, the Court rejected Thomas's claim because he was present in court when the court questioned defense counsel about whether he would testify and counsel explained that he had discussed the choice with Thomas and that it was Thomas's decision. Further, the Court noted, "There is no indication that he attempted to assert his right to testify or disagreed with his attorney. Thus, no evidentiary hearing was required in response to his claim." *Thomas*, at 561.

Counsel violates a defendant's right to testify if the decision not to testify is made against the defendant's will. *Jordan v. Hargett*, 34 F.3d 310, 312 (5th Cir. 1994). But in a post-trial assertion of such a violation, the defendant has the burden of showing involuntariness: "In the absence of evidence in the state court record of the defendant's wish to testify, we think it appropriate for the habeas court to presume that the defendant acquiesced in his counsel's advice or otherwise made a voluntary choice not to testify." *Jordan*, at 315. In *State v. Robinson*, the Court expounded on this evidentiary burden:

We therefore conclude that in order to prove that an attorney actually prevented the defendant from testifying, the defendant must prove that the attorney refused to allow him to testify in the face of the defendant's unequivocal demands that he be allowed to do so. In the absence of such demands by the defendant, however, we will presume that the defendant elected not to take the stand upon the advice of counsel. If a

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defendant is able to prove by a preponderance of the evidence that his attorney actually prevented him from testifying, he will have established that the waiver of his constitutional right to testify was not knowing and voluntary.

State v. Robinson, 138 Wn.2d 753, 765, 982 P.2d 590 (1999) (court evaluates claim as one of ineffective assistance of counsel requiring defendant to show both ineffective representation and actual prejudice).

Jackson claims that without counsel's incorrect advice, he would have been able to tell his side of the story without the threat of impeachment. He claims that the jury would have acquitted him of assaulting Manning; acquitted him of robbing Grace; and thus would not have found that he acted with premeditation and would have found him guilty only of first-degree assault.

To support his claim, petitioner presents two affidavits. In the first, Tyler Williams avers:

In 1997, I was tried together with co-defendant Ronnie Jackson and Donna Santiago. Case Number 97-1-00-223-02, 96-1-04688-6, and 96-1-04719-0. During the course of the trial I was able to observe and hear conversations between Ronnie Jackson and his attorney, Eric Bauer.

Ronnie made it clear that he wanted to testify but was told by Mr. Bauer that his prior convictions would be admitted into evidence if he did.

Based on the information provided to him by his attorney, Ronnie chose not to testify in fear of the jury, learning of his convictions, would judge him on them instead of the charge at hand.

Exhibit A.

In the second, Tracy Lassere avers:

I retained Attorney Eric Bauer to represent Ronnie Jackson, Jr. in case number 96-1-04688-6.

During my meetings with Mr. Bauer I discussed whether or not Ronnie would testify at trial, at the time Mr. Bauer told me if Ronnie testified the prosecutors would use his prior convictions to prejudice him in front of the jury.

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Over the course of the proceedings Ronnie and I talked everyday, it was clear that he wanted to testify, but ultimately he didn't testify because his attorney told him if he did his prior convictions would be admitted into evidence.

Exhibit B. Notably absent is an affidavit from trial counsel, the one person who would have personal knowledge of what transpired. See *State v. Robinson, supra* (affidavit from attorney stating that he did not allow defendant to testify); *State v. West*, 139 Wn.2d 37, 983 P.2d 617 (1999) (counsel made it clear on the record that defendant would not testify because he did not want prior murder and assault convictions admitted for impeachment purposes; counsel never sought an in limine ruling excluding them); and *State v. Thomas, supra* (affidavit from counsel stating that defendant made decision not to testify).

The record below does not support petitioner's claim. First, the trial record is silent on whether Jackson wanted to testify and thus this court presumes that Jackson decided not to testify. Second, the record does not support the assertion that counsel told Jackson that if he testified, the State could impeach him with his felony drug offense. To the contrary, following an extensive pretrial hearing on the admissibility of the victims' prior convictions, defense counsel asked the court to reserve ruling on whether Jackson's prior conviction would be admitted until they had decided whether Jackson would testify. When it reached that point during the trial, counsel informed the court:

Thank you, Your Honor. Mr. Jackson and I are comfortable with our case at this point in time and will not be presenting any additional testimony. And we, therefore, rest our case.

RP at 4691.

Clearly, the decision about whether Jackson would testify was not made until the State rested its case. Neither affiant claims to have overheard any discussion between Jackson and counsel at this point in the trial. Neither affiant claims to have overheard

29058-8-II/5

Jackson make an unequivocal demand to testify at this point in the trial. And both affiants' statements, that Jackson did not testify out of fear that the jury would hear of his prior convictions, are inadmissible because they are not personal knowledge. The record and affidavits presented are not substantial factual evidence credibly demonstrating that counsel prevented Jackson from testifying. As such, he is not entitled to an evidentiary hearing.

NEWLY DISCOVERED EVIDENCE

Jackson next claims that he has newly discovered evidence in the form of an affidavit from his co-defendant, Tyler Williams, in which Williams states that he, Williams, never pointed his gun at Manning, tried to shoot him, or engaged in a struggle with him. The State alleged that during the carjacking, Jackson shot and robbed Grace and while struggling with Grace, Williams approached Manning, knocked him to the ground, and pointed a gun at his head. He argues that this proffered testimony would have changed the trial outcome, considering that (1) Williams did not testify at trial; (2) Manning never mentioned during three police interviews that Williams pointed a gun at him; (3) none of three eyewitnesses testified that Williams pointed a gun at Manning; and (4) Manning did not claim that Williams pointed a gun at him until several months after the incident. He argues that the evidence was material because it corroborated Manning's original story, it was not available during trial because Williams did not testify, and it was not cumulative because the jury heard only the victim's side of the story.

The party asserting that newly discovered evidence justifies a new trial must demonstrate five things:

- (1) The evidence must be such that the results will probably change if a new trial were granted;
- (2) the evidence must have been



96-1-04688-6 25871234 CPPRP 06-21-06

IN COUNTY CLERK'S OFFICE

A.M. JUN 20 2006

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BY VIN STOKER, COUNTY CLERK
DEPUTY

DIVISION II

STATE OF WASHINGTON
BY DEPUTY
JUN 16 AM 9:48
COURT OF APPEALS
DIVISION II

In re the
Personal Restraint Petition of

RONNIE JACKSON, JR.,

Petitioner.

No. 33831-9-II

ORDER DISMISSING PETITION

96-1-04688-6

Ronnie Jackson, Jr. seeks relief from personal restraint imposed following his jury convictions of attempted first degree murder, first degree robbery, and second degree assault in Pierce County cause 96-1-04688-6. The jury returned special verdicts for each count reciting that Petitioner was armed with an unspecified "deadly weapon"; the sentencing court then imposed firearm sentence enhancements. Petitioner therefore contends that the trial court necessarily made a finding of fact that increased his sentence beyond the applicable maximum, violating his Sixth Amendment right to a jury trial under *Blakely v Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (June 24, 2004), and *State v. Recuenco*, 154 Wn.2d 156, 110 P.3d 188, cert. granted, 74 U.S.L.W. 3246 (2005). His petition is untimely, however, and must be dismissed without reaching the merits of his claim.

The superior court first sentenced Petitioner on May 18, 1998, imposing consecutive firearm enhancements. Petitioner appealed; this court affirmed his conviction but remanded for re-sentencing with concurrent enhancements. The superior court re-sentenced Petitioner on October 4, 2002. Petitioner did not appeal from that re-

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sentencing, so his conviction became final when the superior court filed it on October 4, 2002. See RCW 10.73.090(3)(a). Petitioner filed the current petition, his second,¹ on August 26, 2005, more than one year after the judgment became final. A personal restraint petition is a form of collateral attack. RCW 10.73.090(2). Restrained persons are barred from filing petitions or other collateral attacks more than a year after the judgment becomes final. RCW 10.73.090(1), RAP 16.4(d). Thus, this petition is time-barred unless it falls within an exception to the one year time limit.

The statutory exceptions are based upon the nature of the underlying judgment or court and upon the nature of the issues raised in the petition. RCW 10.73.090(1), .100. Noting that *Recuenco* overruled prior appellate cases that had allowed judges to make the finding that a weapon was a firearm and to impose the longer firearm enhancement rather than the non-firearm deadly weapon enhancement, 154 Wn.2d at 162 n.2, Petitioner argues that his petition meets the exception for a "significant change in the law . . . material to the conviction [or] sentence." RCW 10.73.100(6). The *Recuenco* holding, however, is simply an application of the principles announced in *Blakely* to a defendant entitled to application of that decision. *Recuenco*, 154 Wn.2d at 161-63, 164.

And the "significant change in the law" exception to the one year time limit specifies that a petition is still time-barred unless the change in the law is to be applied retroactively. RCW 10.73.100(6). The Washington State Supreme Court has now ruled that "neither *Apprendi*^[2] nor *Blakely* applies retroactively on collateral review to convictions that were final when *Blakely* was announced." *State v. Evans*, 154 W.2d 438,

¹ Because this petition is dismissed as untimely, this order does not decide whether it is also impermissibly successive under RCW 10.73.140. See *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 86-87, 74 P.3d 1194 (2003) (*Turay II*).

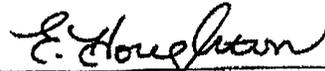
² *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

33831-9-II/3

442, 114 P.3d 627 (2005). Petitioner's case became final when the superior court filed his judgment in October 2002, pre-dating the Blakely decision.³ Therefore, his petition is untimely.⁴ Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 16th day of June, 2006.



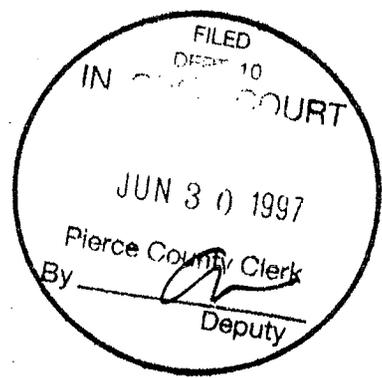
Acting Chief Judge, Pro Tem

cc: Ronnie Jackson, Jr.
Pierce County Clerk
County Cause No(s). 96-1-04688-6
Michelle Luna-Green

³ The *Recuenco* defendant was petitioning for review of his direct appeal in the Washington State Supreme Court when *Blakely* was filed; his case was thus not yet final. See *Recuenco*, 154 Wn.2d at 161.

⁴ This court notes that if the petition were timely, the State would not have met its obligation under RAP 16.9 to provide "a record of another proceeding" to answer Petitioner's allegation, specifically the complete jury instructions regarding the special verdicts. Without them, this court could not properly resolve Petitioner's claim. See *State v. Pharr*, 131 Wn. App. 119, 123-25, 126 P.3d 66 (2006) (affirming firearm enhancement despite special verdict form reciting that defendant armed with a "deadly weapon" because the court also instructed the jury that it could return that special verdict only if it found beyond a reasonable doubt that the defendant was armed with a firearm).

**Appendix B ~
Information**



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

STATE OF WASHINGTON,

Plaintiff,

vs.

RONNIE JACKSON, JR.,

Defendant.

CAUSE NO. 96-1-04688-6
AMENDED INFORMATION

JUL 0 1997

JUL 0 1997

CO-DEF: DONNA MARIE SANTIAGO
TYLER FREEMAN WILLIAMS

I, JOHN W. LADENBURG, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE SANTIAGO, of the crime of ATTEMPTED MURDER IN THE FIRST DEGREE, committed as follows:

That RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE SANTIAGO, as principles and/or accomplices pursuant to RCW 9A.08.020, in Pierce County, Washington, on or about the 22ND day of October, 1996, did unlawfully and feloniously with premeditated intent to cause the death of another person, did repeatedly shoot with a semi-automatic handgun at Darrell Grace, a human being, on or about the 22nd day of October, 1996, contrary to RCW 9A.28.020 and RCW

ORIGINAL

Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (206) 591-7400

1 9A.32.030(1)(a), and in the commission thereof, or in immediate flight
2 therefrom, the defendant or an accomplice was armed with a deadly
3 weapon, to wit: a handgun, that being a firearm as defined in RCW
4 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding
5 additional time to the presumptive sentence as provided in RCW
6 9.94A.370, and against the peace and dignity of the State of
7 Washington.

8
9 OR IN THE ALTERNATIVE

10 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
11 accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
12 SANTIAGO of the crime of ASSAULT IN THE FIRST DEGREE, a crime of the
13 same or similar character, and/or so closely connected in respect to
14 time, place and occasion that it would be difficult to separate proof
15 of one charge from proof of the others, committed as follows:

16 That RONNIE JACKSON, JR, TYLER FREEMAN WILLIAMS, and DONNA MARIE
17 SANTIAGO, as principals and/or accomplices pursuant to RCW 9A.08.020,
18 in Pierce County, Washington, on or about the 22nd day of October,
19 1996, did unlawfully and feloniously with intent to inflict great
20 bodily harm, assault Darrell Grace with a firearm or deadly weapon or
21 by any force or means likely to produce great bodily harm or death,
22 contrary to RCW 9A.36.011(1)(a), that being a firearm as defined in
23 RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding
24 additional time to the presumptive sentence as provided in RCW
25 9.94A.370, and against the peace and dignity of the State of
26 Washington.

27
28 AMENDED INFORMATION - 2

COUNT II

1
2
3 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
4 accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
5 SANTIAGO, of the crime of ATTEMPTED MURDER IN THE FIRST DEGREE, a
6 crime of the same or similar character, and/or so closely connected in
7 respect to time, place and occasion that it would be difficult to
8 separate proof of one charge from proof of the others, committed as
9 follows:

10 That RONNIE JACKSON, R., TYLER FREEMAN WILLIAMS, and DONNA MARIE
11 SANTIAGO, as principals and/or accomplices pursuant to RCW
12 9A.08.020, in Pierce County, Washington, on or about the 22nd day of
13 October, 1996, did unlawfully and feloniously with premeditated intent
14 to cause the death of another person, did attempt to shoot at Andre
15 Manning with a firearm, a human being, on or about the 22nd day of
16 October, 1996, contrary to RCW 9A.28.020 and RCW 9A.32.030(1)(a), and
17 in the commission thereof, or in immediate flight therefrom, the
18 defendant or an accomplice was armed with a deadly weapon, to wit: a
19 handgun, that being a firearm as defined in RCW 9.41.010, and invoking
20 the provisions of RCW 9.94A.310 and adding additional time to the
21 presumptive sentence as provided in RCW 9.94A.370, and against the
22 peace and dignity of the State of Washington.

OR IN THE ALTERNATIVE

24 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
25 accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
26 SANTIAGO of the crime of ASSAULT IN THE FIRST DEGREE, a crime of the
27

1
2 same or similar character, and/or so closely connected in respect to
3 time, place and occasion that it would be difficult to separate proof
4 of one charge from proof of the others, committed as follows:

5 That RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, DONNA MARIE
6 SANTIAGO, as principals and/or accomplices pursuant to RCW 9A.08.020,
7 in Pierce County, Washington, on or about the 22nd day of October,
8 1996, did unlawfully and feloniously with intent to inflict great
9 bodily harm, assault Andre Manning with a firearm or deadly weapon or
10 by any force or means likely to produce great bodily harm or death,
11 contrary to RCW 9A.36.011(1)(a), that being a firearm as defined in
12 RCW 9.41.010, and invoking the provisions of RCW 9.94A.310 and adding
13 additional time to the presumptive sentence as provided in RCW
14 9.94A.370, and against the peace and dignity of the State of
15 Washington.

16
17 COUNT III

18 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
19 accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
20 SANTIAGO, of the crime of ROBBERY IN THE FIRST DEGREE, a crime of the
21 same or similar character, and/or so closely connected in respect to
22 time, place and occasion that it would be difficult to separate proof
23 of one charge from proof of the others, committed as follows:

24 That RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
25 SANTIAGO, as principals and/or accomplices pursuant to RCW 9A.08.020
26 in Pierce County, Washington, on or about the 22nd day of October,
27 1996, did unlawfully and feloniously take personal property with

1
 2 intent to steal from the person or in the presence of Darrell Grace
 3 and/or Andre Manning, against such person's will by use or threatened
 4 use of immediate force, violence, or fear of injury to Darrell Grace
 5 and/or Andre Manning, and in the commission thereof, or in immediate
 6 flight therefrom, RONNIE JACKSON, JR. and/or TYLER FREEMAN WILLIAMS or
 7 an accomplice were/was armed with a deadly weapon, to-wit: semi-
 8 automatic handgun, contrary to RCW 9A.56.190 and 9A.56.200(1)(a), that
 9 being a firearm as defined in RCW 9.41.010, and invoking the
 10 provisions of RCW 9.94A.310 and adding additional time to the
 11 presumptive sentence as provided in RCW 9.94A.370, and against the
 12 peace and dignity of the State of Washington.

COUNT IV

13
 14 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
 15 accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
 16 SANTIAGO of the crime of RECKLESS ENDANGERMENT IN THE FIRST DEGREE, a
 17 crime of the same or similar character, and/or so closely connected in
 18 respect to time, place and occasion that it would be difficult to
 19 separate proof of one charge from proof of the others, committed as
 20 follows:

21 That RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
 22 SANTIAGO, as principals and/or accomplices pursuant to RCW 9A.08.020,
 23 in Pierce County, Washington, on or about the 22nd day of October,
 24 1996, did unlawfully and feloniously recklessly discharge a firearm,
 25 thereby creating a substantial risk of death or serious physical
 26 injury to S.S., a human being, and the firearm was discharged from a
 27

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2 motor vehicle or from the immediate vicinity of a motor vehicle that
3 was used to transport RONNIE JACKSON, JR. and/or TYLER FREEMAN
4 WILLIAMS, or the firearm to the scene of the discharge, contrary to
5 RCW 9A.36.045(1), and against the peace and dignity of the State of
6 Washington.

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COUNT V.

And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
SANTIAGO of the crime of RECKLESS ENDANGERMENT IN THE FIRST DEGREE, a
crime of the same or similar character, and/or so closely connected in
respect to time, place and occasion that it would be difficult to
separate proof of one charge from proof of the others, committed as
follows:

That RONNIE JACKSON, JR. TYLER FREEMAN, and DONNA MARIE SANTIAGO,
as principals and/or accomplices pursuant to RCW 9A.08.020, in Pierce
County, Washington, on or about the 22nd day of October, 1996, did
unlawfully and feloniously recklessly discharge a firearm, thereby
creating a substantial risk of death or serious physical injury to
J.D., a human being, and the firearm was discharged from a motor
vehicle or from the immediate vicinity of a motor vehicle that was
used to transport RONNIE JACKSON, JR. and/or TYLER FREEMAN WILLIAMS or
the firearm to the scene of the discharge, contrary to RCW
9A.36.045(1), and against the peace and dignity of the State of
Washington.

COUNT VI.

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2
3 And I, JOHN W. LADENBURG, Prosecuting Attorney aforesaid, do
4 accuse RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
5 SANTIAGO of the crime of RECKLESS ENDANGERMENT IN THE FIRST DEGREE, a
6 crime of the same or similar character, and/or so closely connected in
7 respect to time, place and occasion that it would be difficult to
8 separate proof of one charge from proof of the others, committed as
9 follows:

10 That RONNIE JACKSON, JR., TYLER FREEMAN WILLIAMS, and DONNA MARIE
11 SANTIAGO, as principals and/or accomplices pursuant to RCW 9A.08.020
12 in Pierce County, Washington, on or about the 22nd day of October,
13 1996, did unlawfully and feloniously recklessly discharge a firearm,
14 thereby creating a substantial risk of death or serious physical
15 injury to D.B., a human being, and the firearm was discharged from a
16 motor vehicle or from the immediate vicinity of a motor vehicle that
17 was used to transport RONNIE JACKSON, JR. and/or TYLER FREEMAN
18 WILLIAMS or the firearm to the scene of the discharge, contrary to RCW
19 9A.36.045(1), and against the peace and dignity of the State of
20 Washington.

21 DATED this 9th day of June, 1997.

22
23 JOHN W. LADENBURG
24 Prosecuting Attorney in and for
25 said County and State.

26 By: Kawyne A. Lund
27 KAWYNE A. LUND
28 Deputy Prosecuting Attorney
WSB #19614

**Appendix C ~
Special Verdict Forms**

INSTRUCTION NO. 44

You will also be furnished with special verdict forms for the following counts: Count I - attempted murder in the first degree, or alternatively, assault in the first degree; Count II - attempted murder in the first degree, or alternatively, assault in the first degree; and Count III - robbery in the first degree. If you find the defendant(s) not guilty on any of those counts do not use the special verdict forms pertaining to that count. If you find the defendant(s) guilty of any of those counts, you will then use the special verdict form pertaining to that count and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict form[s] "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no".

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 96-1-04688-6
)	
vs.)	
)	SPECIAL VERDICT FORM
RONNIE JACKSON, JR.,)	COUNT I
)	(Darrell Grace)
)	
Defendant.)	

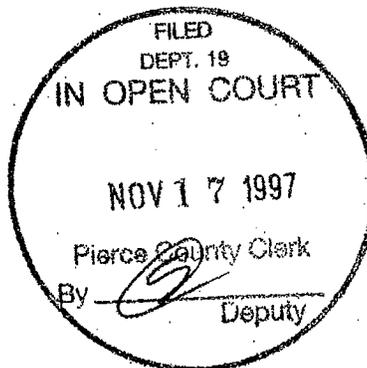
NOV 7 9 1997

We, the jury, return a special verdict by answering as follows:

Was the defendant RONNIE JACKSON, JR. armed with a deadly weapon at the time of the commission of the crime of attempted murder in the first degree as charged in Count I?

ANSWER: yes (Yes or No)

[Signature]
PRESIDING JUROR



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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 96-1-04688-6
)	
vs.)	
)	SPECIAL VERDICT FORM
RONNIE JACKSON, JR.,)	COUNT II
)	(LESSER INCLUDED)
)	
Defendant.)	(Andre Manning)
)	

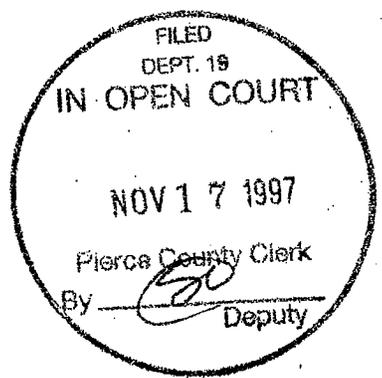
NOV 25 1997

We, the jury, return a special verdict by answering as follows:

Was the defendant RONNIE JACKSON, JR. armed with a deadly weapon at the time of the commission of the lesser included crime of assault in the second degree in Count II?

ANSWER: Yes (Yes or No)

Steven Mulla
PRESIDING JUROR



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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 RONNIE JACKSON, JR,)
)
 Defendant.)

NO. 96-1-04688-6

SPECIAL VERDICT FORM
COUNT III
(Darrell Grace and/or
Andre Manning)

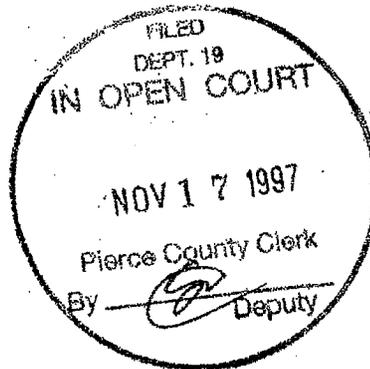
NOV 15 1997

We, the jury, return a special verdict by answering as follows:

Was the defendant RONNIE JACKSON, JR. armed with a deadly weapon at the time of the commission of the crime of robbery in the first degree as charged in Count III?

ANSWER: yes (Yes or No)

John Miller
PRESIDING JUROR



**Appendix D ~
Current Judgment and Sentence**



96-1-04688-6 17392150 JDSWCD 10-07-02

FILED
DEPT. 19
IN OPEN COURT

OCT 04 2002
Pierce County Clerk
By *[Signature]*
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

RONNIE JACKSON, JR.,

Defendant.

CAUSE NO. 96-1-04688-6

WARRANT OF COMMITMENT

Upon Re-Sentencing

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other - Custody

OCT - 7 2002

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:
WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF COMMITMENT - 1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

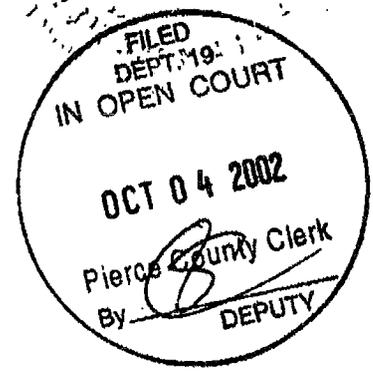
Dated: Oct. 4, 2002

By direction of the Honorable
Marywanne Van Der
JUDGE

BOB SAN SOUCIE
CLERK
By: Chris Hutton
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date OCT - 7 BY Chris Hutton Deputy



STATE OF WASHINGTON, County of Pierce
ss: I, Bob San Soucie, Clerk of the above
entitled Court, do hereby certify that
this foregoing instrument is a true and
correct copy of the original now on file
in my office.

IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this
_____ day of _____, 19 ____.

BOB SAN SOUCIE, Clerk
By: _____ Deputy

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96-1-04688-6

plea jury-verdict bench trial of:

Count No.: I
Crime: ATTEMPTED MURDER IN THE FIRST DEGREE/DWSE, Charge Code: (D1DW-A)
RCW: 9.94A.125, 9.94A.310, 9.94A.370, 9A.32.030(1)(a), 9A.28.020
Date of Crime: 10/22/96
Incident No.: 96-2961024

Count No.: II
Crime: ROBBERY IN THE FIRST DEGREE/FASE, Charge Code: (AAA1)
RCW: 9A.56.190, 9A.56.200(1)(a)
Date of Crime: 10/22/96
Incident No.: 96-2961024

Count No.: III
Crime: ASSAULT IN THE SECOND DEGREE/FASE, Charge Code: (E28)
RCW: 9A.36.021(1)(c)
Date of Crime: 10/22/96
Incident No.: 96-2961024

- Additional current offenses are attached in Appendix 2.1.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s).
- A special verdict/finding for use of a firearm was returned on Counts I, II, + III.
- A special verdict/finding of sexual motivation was returned on Count(s) _____.
- A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

Counts: Attempted Murder 1^o and Robbery 1^o.

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 2

96-1-04688-6

CRIME	DATE OF SENTENCING	SENTENCING COUNTY/STATE	DATE OF CRIME	ADULT OR JUV	CRIME TYPE	CRIME ENHANCEMENT
ATT ROB 2	2/15/91		11/21/90	J	V	
ESC 1	2/12/92		7/10/91	J	NV	
CON UDCS		KITSAP		A	NV	
ROB1/FASE	CURRENT			A		5YR
ASLT2/FASE	CURRENT			A		3 YR

- Additional criminal history is attached in Appendix 2.2.
- Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(5)(a)):

2.3 SENTENCING DATA:

	Offender Score	Serious Level	Standard Range(SR)	Enhancement	Maximum Term
Count I:	Att Mur (5)	XIV	218.25-291	Yes - FA	LIFE
Count II:	Aslt 2 (5)	IV	22-29	Yes - FA	10YRS/\$20,000
Count III:	Rob 1 (5)	IX	57-75	Yes - FA	LIFE

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify an exceptional sentence

above within below the standard range for Count(s) _____.
 Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 RECOMMENDED AGREEMENTS:

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 3

96-1-04688-6

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For violent offenses, serious violent offenses, most serious offenses, or any felony with a deadly weapon special verdict under RCW 9.94A.125; any felony with any deadly weapon enhancements under RCW 9.94A.310(3) or (4) or both; and/or felony crimes of possession of a machine gun, possessing a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first or second degree, and/or use of a machine gun, the recommended sentencing agreements or plea agreements are [] attached [✓] as follows:

2.6 RESTITUTION:

High end, (after same criminal conduct finding) ⊕ exceptional sent.

- [] Restitution will not be ordered because the felony did not result in injury to any person or damage to or loss of property.
- [] Restitution should be ordered. A hearing is set for _____.
- [] Extraordinary circumstances exist that make restitution inappropriate. The extraordinary circumstances are set forth in Appendix 2.5.
- [] Restitution is ordered as set out in Section 4.1, LEGAL FINANCIAL OBLIGATIONS.
- [✓] Restitution was previously ordered and is unchanged.

2.7 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS: The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability to pay:

- [] no legal financial obligations.
- [✓] the following legal financial obligations:
 - [✓] crime victim's compensation fees.
 - [✓] court costs (filing fee, jury demand fee, witness costs, sheriff services fees, etc.)
 - [] county or inter-local drug funds.
 - [] court appointed attorney's fees and cost of defense.
 - [] fines.
 - [] other financial obligations assessed as a result of the felony conviction.

A notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 [] The court DISMISSES.

JUDGMENT AND SENTENCE
FELONY / OVER ONE YEAR - 4

96-1-04688-6

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of this Court:

\$ → Restitution to: See previous order.

\$ 110.- Court costs (filing fee, jury demand fee, witness costs, sheriff service fees, etc.);

\$ 500.- Victim assessment;

\$ _____ Fine; [] VUCSA additional fine waived due to indigency (RCW 69.50.430);

\$ _____ Fees for court appointed attorney;

\$ _____ Washington State Patrol Crime Lab costs;

\$ _____ Drug enforcement fund of _____;

\$ _____ Other costs for: _____;

\$ 610.- TOTAL legal financial obligations [] including restitution [✓] not including restitution.

[] Minimum payments shall be not less than \$ _____ per month. Payments shall commence on _____

[✓] The Department of Corrections shall set a payment schedule.

[✓] Restitution ordered above shall be paid jointly and severally with:

<u>Name</u>	<u>Cause Number</u>
<u>Tyler Williams</u>	<u>97-1-00223-2</u>
<u>Donna Santiago</u>	<u>96-1-04719-0</u>

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The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement to assure payment of the above monetary obligations.

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Defendant must contact the Department of Corrections at 755 Tacoma Avenue South, Tacoma upon release or by _____.

[] Bond is hereby exonerated.

4.2 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: (Standard Range) RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

<u>264</u>	months on Count No. <u>I</u> (Att Murder)	<input checked="" type="checkbox"/> concurrent	<input type="checkbox"/> consecutive
<u>29</u>	months on Count No. <u>II</u> (A20)	<input checked="" type="checkbox"/> concurrent	<input type="checkbox"/> consecutive
<u>75</u>	months on Count No. <u>III</u> (Rob D)	<input checked="" type="checkbox"/> concurrent	<input type="checkbox"/> consecutive
_____	months on Count No. _____	<input type="checkbox"/> concurrent	<input type="checkbox"/> consecutive

(b) CONFINEMENT (Sentence Enhancement): A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>60</u>	MONTHS ON COUNT	<u>I</u>
<u>36</u>	MONTHS ON COUNT	<u>II</u>
<u>60</u>	MONTHS ON COUNT	<u>III</u>
_____	MONTHS ON COUNT	_____

TOTAL MONTHS CONFINEMENT ORDERED: 264 + 60 Flat Time

Sentence enhancements in Counts I, II, + III shall run concurrent consecutive to each other.

Sentence enhancements in Counts I, II, + III shall be served flat time subject to earned good time credit.

Standard range sentence shall be concurrent consecutive with the sentence imposed in Cause Nos.: _____

Credit is given for previous PCT certification days served; plus all time served since prior sentencing of May 18, 1998.

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96-1-04688-6

4.3 **COMMUNITY PLACEMENT (RCW 9.94A.120).** The defendant is sentenced to community placement for one year two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.

COMMUNITY CUSTODY (RCW 9.94A.120(1)). Because this was a sex offense that occurred after June 6, 1996, the defendant is sentenced to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.

While on community placement or community custody, the defendant shall: 1) report to and be available for contact with the assigned community corrections officer as directed; 2) work at Department of Corrections-approved education, employment and/or community service; 3) not consume controlled substances except pursuant to lawfully issued prescriptions; 4) not unlawfully possess controlled substances while in community custody; 5) pay supervision fees as determined by the Department of Corrections; 6) residence location and living arrangements are subject to the approval of the department of corrections during the period of community placement.

(a) The offender shall not consume any alcohol;

(b) The offender shall have no contact with:

victims or their immediate families.

(c) The offender shall remain within or outside of a specified geographical boundary, to-wit:

(d) The offender shall participate in the following crime related treatment or counseling services:

(e) The defendant shall comply with the following crime-related prohibitions:

(f) **OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS:**

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- (g) HIV TESTING. The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. (RCW 70.24.340)
- (h) DNA TESTING. The defendant shall have a blood sample drawn for purpose of DNA identification analysis. The Department of Corrections shall be responsible for obtaining the sample prior to the defendant's release from confinement. (RCW 43.43.754)

PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND REINCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.200(2)).

FIREARMS: PURSUANT TO RCW 9.41.040, YOU MAY NOT OWN, USE OR POSSESS ANY FIREARM UNLESS YOUR RIGHT TO DO SO IS RESTORED BY A COURT OF RECORD.

ANY DEFENDANT CONVICTED OF A SEX OFFENSE MUST REGISTER WITH THE COUNTY SHERIFF FOR THE COUNTY OF THE DEFENDANT'S RESIDENCE WITHIN 24 HOURS OF DEFENDANT'S RELEASE FROM CUSTODY. RCW 9A.44.130.

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PURSUANT TO RCW 10.73.090 AND 10.73.100, THE DEFENDANT'S RIGHT TO FILE ANY KIND OF POST SENTENCE CHALLENGE TO THE CONVICTION OR THE SENTENCE MAY BE LIMITED TO ONE YEAR.

Date: Oct. 4, 2002

Maryanne Van Der
JUDGE

Presented by:

Approved as to form:

Kawyne A. Lund
KAWYNE A. LUND, WSB# 19614
Deputy Prosecuting Attorney

Erik Bauer
ERIK BAUER, WSB# 14937
Lawyer for Defendant

lw

FILED
DEPT. 19
IN OPEN COURT

OCT 04 2002
Pierce County Clerk
By [Signature]
DEPUTY

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APPENDIX F

Cause No. 96-1-04688-6

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary:

- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: or their families
immediate
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol;
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: _____

APPENDIX F

VERIFICATION BY PETITIONER

I, Ronnie Jackson, declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

10-22-08

Date and Place

Ronnie Jackson
Ronnie Jackson

