

FILED

JUN 16 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

No. Ct. App. No. 279499

Trial Ct. No. 04-1-00158-0

THE SUPREME COURT
OF THE STATE OF WASHINGTON

83219-4

STATE OF WASHINGTON, Respondent,

v.

RAYMOND MARTINEZ, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

RAYMOND MARTINEZ

[Name of petitioner]

#795914, LA-59

Airway Heights Corr. Ctr.

P.O. BOX 2049

Airway Heights, WA 99001

[Address]

A. Identity of Petitioner

Raymond Martinez, [Name] asks this court to accept review of the decision designated in Part B of this motion.

B. Decision

[Statement of the decision or parts of decision petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration.]

~~Please review Court of Appeals Statement of "Because the court does not have jurisdiction to consider this successive, untimely petition, it is dismissed." filed May 13, 2009. Order stating instructions for review of that Order may only be obtained by filing a "Motion for Discretionary Review" in the Washington Supreme Court in the above referenced case.~~

~~Also, please review statement of "under 10.73.140, this court lacks jurisdiction to consider a success petition that raises issues that were or could have been raised in a prior petition unless the petitioner shows good cause why he did not raise these issues before.~~

_____ A copy of the decision [and trial court memorandum opinion] is in the Appendix.

C. Issues Presented for Review

[Define the issues which the court is asked to decide if review is granted.]

~~Does Petitioner meet the requirements of RCW 10.73.100 (1)(2), and (4)?~~

~~Does Petitioner show good cause why he did not raise these issues before? The issue of deadly weapon that is.~~

~~Is Petitioner's Petition both untimely and successive?~~

D. Statement of the Case

[The statement should be brief and contain only material relevant to the motion.]

Petitioner, Raymond Martinez, moves this court for granting his motion for relief from judgment and sentence under CrR Rule 7.8(c)(2) and is not barred according to RCW 10.73.100, STATE v. GOLDEN, 112 Wn.App 68, 47 P.3d 587.

Further, Since Petitioner was not represented by an attorney for his first personal restraint petition, he could not be held to the successive petition rule while his second petition show good cause by newly discovered evidence that could not be raised in either direct appeal or the first Petition because the Petitioner is and has been untrained in the law and is not a lawyer. The issue now raise in this second Petition could not have been discovered even with diligent efforts sooner.

PERSONAL RESTRAINT OF PERKINS, 143 Wn.2d 261, 19 P.3d 1027 (2001)

E. Argument Why Review Should Be Accepted

[The argument should be short and concise and supported by authority.] (Please see PRP)

Petitioner's review should be accepted because he clearly meets the exception under RCW 10.73.100(1)(2)&(4). Starting with No. (1) In Petitioner's eye's, it is newly discovered evidence, that the definition of "armed with a deadly weapon" within first degree burglary has a standard requirement to meet in order to establish the true definition of the meaning to be a first degree burglary. (2) The conviction statute was unconstitution when the defendant was charged and tried by a jury that was never given any instruction at all-regarding the correct and true definition of "armed with a deadly weapon" as used in the first degree burglary charge he was dealt. This failure to instruction violated the Defendant's Right to Due Process. XIV Amendment, US CONST.

(3) The STATE'S failure to provide Defendant Due Process on this issue, essentially, and clearly establishes insufficient evidence by lack of proper information causing prejudice towards Defendant and consequently causing an unfair trial and verdict.

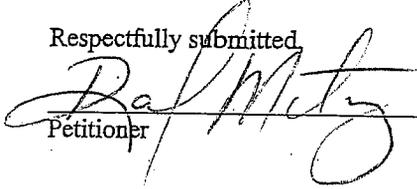
F. Conclusion

[State the relief sought if review is granted.]

I Raymond Martinez, Pro se Petitioner, pray that the wisdom of this Court will honor the relief respectfully due under all related statutes, rules, and laws of authority to do so, under the State of Washington, and/or the United States Constitution.

DATED this 11th day of JUNE, 20 09.

Respectfully submitted


Petitioner

APPENDIX

FILED



MAY 13 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

| | | |
|--|---|----------------------------------|
| In the Matter of the Personal Restraint |) | 27949-9-III |
| of: |) | |
| |) | |
| |) | 83219-6 |
| RAYMOND MARTINEZ, |) | ORDER DISMISSING PERSONAL |
| |) | RESTRAINT PETITION |
| Petitioner. |) | |
| |) | |

Raymond Martinez seeks relief from personal restraint imposed in his 2004 Grant County conviction of first degree burglary, third degree malicious mischief, obstructing a law enforcement officer, and resisting arrest. On appeal, this court affirmed on all counts except the third degree malicious mischief, which it reduced to a misdemeanor. *State v. Martinez*, 2006 WL 954047 (Wash. App. Div. 3). This court dismissed his first personal restraint petition in August 2007. *See In re Pers. Restraint of Martinez*, Order Dismissing Personal Restraint Petition, No. 25942-1-III (certificate of finality filed 9/10/07). Mr. Martinez filed a CrR 7.8 motion for relief from judgment in Grant County Superior Court on March 13, 2009. The motion was transferred to this court for consideration as a personal restraint petition. CrR 7.8(c)(2).

In this, his second personal restraint petition, Mr. Martinez contends the evidence is insufficient to show that he was armed with a deadly weapon as required in the charge of first degree burglary. His petition is both untimely and successive.

A petition filed more than one year after the judgment and sentence is untimely under RCW 10.73.090(1) unless the judgment and sentence is invalid on its face, the court lacked competent jurisdiction over the matter, or the petition is based solely on one or more of the exceptions set forth in RCW 10.73.100(1) – (6). These exceptions include: (1) the petitioner has newly discovered evidence; (2) the conviction statute was unconstitutional; (3) the conviction violated double jeopardy; (4) the petitioner pleaded not guilty and the evidence was insufficient to support conviction; (5) the sentence exceeded the court's jurisdiction; or (6) there was a significant intervening change in the law material to the conviction or sentence. RCW 10.73.100.

Mr. Martinez filed this petition more than one year after the certificate of finality on his prior petition. His judgment and sentence is valid on its face and he does not challenge the jurisdiction of the court or argue that any RCW 10.73.100 exceptions apply.

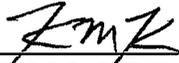
Moreover, under RCW 10.73.140, this court lacks jurisdiction to consider a successive petition that raises issues that were or could have been raised in a prior petition unless the petitioner shows good cause why he did not raise these issues before. *In re Pers. Restraint of VanDelft*, 158 Wn.2d 731, 737-38, 147 P.3d 573 (2006). To establish good cause, the petitioner must show that an objective impediment external to

No. 27949-9-III
PRP of Martinez

the defense prevented him from raising the issues earlier. *State v. Crumpton*, 90 Wn. App. 297, 302-03, 952 P.2d 1100 (1998) (analogizing to the definition of good cause in RCW 10.95.040(2)). Mr. Martinez offers no explanation why he did not raise the deadly weapon issue on appeal or in the first petition.

Because the court does not have jurisdiction to consider this successive, untimely petition, it is dismissed. *VanDelft*, 158 Wn.2d at 737-38; RCW 10.73.090; RAP 16.11(b). The court also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

DATED: May 13, 2009

KEVIN M. KORSMO
ACTING CHIEF JUDGE