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85358-4

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WA

2010 MAY -3 AM 9:03

FILED

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM PURSELY,

Defendant

Case No. 94-1-01390-9

DEFENDANTS RESPONSE TO STATES
MOTION TO TRANSFER OF CrR 7.8
INTO PERSONAL RESTRAINT
PETITION PURSUANT (RAP16.3)

Personal Restraint Petition

MOTION

COMES NOW, William Pursley defendant, Pro se and moves this court of the Honorable Judge Joseph P. Wilson to not transfer the defendant's CrR 7.8 motion to the court of appeals as a Personal Restraint Petition in the interests of justice.

STATEMENT

Defendant agrees with the prosecution that a factual hearing in this case is needless. Prosecution concurs that if crime is statutorily invalid then the time bar under RCW 10.73.090(1) would be inconsequential. This leaves the crux of the argument presented by the Deputy Prosecuting Attorney to statute interpretation.

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AUTHORITY

Defendant moves his honor to read the statutes under RCW 9A.32.030 (1) (c) and RCW (9A.32.050 (1) (b) as they state in part:

"A person is guilty of murder in the second degree when he commits or attempts to commit any felony other than those enumerated in RCW 9A.32.030 (1) (c) that statutes reads "when he or she commits or attempts to commit the crime of 1.) Robbery in the 1st or 2nd degree 2.) Rape in the 1st or 2nd degree 3.) Burglary in the 1st 4.) Arson in the 1st or 2nd degree 5.) Kidnapping in the 1st or 2nd degree".

A clear reading of the statute needs no interpretation. *The two distinct charges of 1st degree felony murder and 2nd degree felony murder exist because of the nature of the predicate felony, which is the basis of the probable cause for arrest, the subsequent charging of the crime and the related conviction where applicable. "Here the prosecution implies that a lesser crime can be charged regardless of the elements involved."* This argument is at odds with every ruling of our State Supreme Court, See State v. Tamalini, 134 Wn. 2d 725, 953 P. 2d 450 (1998) In part:

"We have developed a two-part test for determining when such an instruction is warranted: "First, each of the elements of the lesser offense must be a necessary Element of the offense charged [legal prong]. Second the evidence in the case must support an inference that the lesser crime was committed [factual prong]."

Also see State v. Frazier, 99 Wn. 2d 180, 661 P. 2d 126 at 191 in part:

"Put another way, if it is possible to commit the greater offense without Having committed the lesser offense, the latter is not an included crime.

The elements involved with first and second degree felony murder are based solely on the predicate felony. They are not ambiguous or open to interpretation. Stating "any felony other than those enumerated in RCW 9A.32.030 (1) (c).

TRIAL COURT DESCRETION

1
2 Defendant has made substantial showing of entitlement to relief. Motion is not
3 time barred. No factual hearing is necessary. Having satisfied CrR 7.8 (c) (2) (as
4 amended effective September 1st 2007) this Court is proper venue for review and
5 action.

6 Our Division one Court of Appeals recently decided in State v. Smith , 144 App.
7 860, 184 P. 3d 666 (2008) in part:

8
9 "That converting the wrongly decided CrR 7.8 motion to a personal
10 restraint petition could infringe on his right to choose whether he
11 wanted to pursue a personal restraint petition because he would
12 then be subject to the successive petition rule in RCW 10.73.140
13 as a result of our conversion of the motion".

14 See Castro v. United States, 540 U.S. 375, 383, 124 S. Ct. 786, 157 L. Ed. 2d

15 778 (2003) In part:

16 "(Recharacterizing pro se motion requires giving petitioner notice of intent
17 to recharacterize motion, a warning that the recharacterizing could subject
18 it to second or successive motion rule, and an opportunity to withdraw or
19 amend the motion before successive motion rule restrictions can apply)".

ARGUMENT

20 The prosecution surmises in subsection "B" of his argument in his motion to
21 transfer for relief from judgment that because the "charging Document charged 1st
22 degree felony murder by the predicate felony of robbery it shouldn't invalidate the
23 conviction." ***He fails to mention however, that the plea agreement and the
24 judgment and sentence also use the same information under the 1st degree
25 felony murder statute but have substituted the RCW of the 2nd degree felony
26 murder statute where it cannot statutorily apply.***

1 The motion to transfer would have us believe the legislature endowed the
2 courts with the right to splice and amalgamate statutes and RCW's where they see fit.
3 Although there is much discretion afforded prosecutors in terms of charging
4 defendants, defendants have rights that are not to be violated. See State v. Berlin, 133
5 Wn. 2d at 545 In part:

6 "The defendant must have notice of the offense of which he or she is
7 charged, the elements of any lesser included offense must necessarily
8 be included in the elements of the offense as charged. A defendant
thus implicitly receives constitutionally sufficient notice".

9 See also At 548 in part:

10 "To establish that an offense is a lesser included offense, the rule is:
11 first, each of the elements of the lesser offense must be a necessary
12 element of the offense *charged*; second, the evidence in the case must
support an inference that the lesser crime was committed.

13 Next the prosecution claims using State v. Markle, that a person can be
14 convicted of the same crime in a *lesser degree*. This case has no bearing on or
15 relation to the felony murder statutes. It cites a statutory rape trial in which charges
16 were allowed to be amended at the closing of the states case to indecent liberties. It
17 was later reversed on appeal in the Supreme Court on the grounds that an indecent
18 liberty is not a lesser included offense of statutory rape.
19

20 The prosecution attempts to relate State v. Ward to the felony murder statute by
21 means of their similar relations to corresponding crime. They do so by means of the
22 elements of the crime. Felony violation of a no-contact order has language excluding
23 1st and 2nd degree assaults. State v. Ward concludes the state is not responsible for
24 proving the assault is not in the 1st or 2nd degree where no additional charge is
25 charged. This case has no legitimate bearing either as all felony murder cases require
26

1 the predicate felony as an essential element of the crime. This information is not only
2 necessary to charge and convict, but is the sole relation to the accomplice liability
3 statute. Without the predicate felony there could be no accomplice liability, hence
4 without accomplice liability there could be no murder.

5 See also State v. Gamble, in regards to alternative charges for felony murder,
6 the same acts constituting two charges count I 1st degree felony murder predicated on
7 a robbery in the 1st degree and count II 2nd degree felony murder predicated on 2nd
8 degree assault.

9
10 The motion to transfer implies that a defendant may in fact be found guilty of 2nd
11 degree felony murder when he actually committed 1st degree felony murder. This may
12 be true for intentional murder by way of mental culpability, but not for felony murder by
13 way of the predicate felony, where the under lying charges do not support a conviction.

14 In the Snohomish county prosecutions assumption, in relation to State v.
15 Gamble, the alternative means by way of 2nd degree assault would be moot as a
16 lesser included could be second degree felony murder via 1st degree robbery. The
17 State Supreme Court explicitly rejects this claim in State v. Gamble citing State v.
18 Wanrow, 91 Wn. 2d 301, 311, 588 P. 2d 1320 (1978). In part:
19

20 ... (elements of the predicate felony are "necessary" elements
21 of felony murder). Because the state must prove the elements
22 of the predicate felony to prove the offense of felony murder, the
court of appeals properly considered those elements.

23 See also State v. Wanrow at page 311 in part:

24 "The intent necessary to prove the felony-murder is the intent
25 necessary to prove the underlying felony. That intent must be
26 proved by the State as a necessary element of the crime".

1 where the predicate felony does not concur with statute we cite State v. Hinton,
2 152 Wn. 2d 853, 100 P. 3d 801 in part:

3 "Petitioners have established actual and substantial prejudice resulting
4 from constitutional error. As they point out, the United States Supreme
5 Court has held that it is a fundamental due process violation to convict
6 and incarcerate a person for a crime without proof of all the elements
7 of the crime."

8 COMPELLING FACTS

9 One must consider all the extra curricular nuisances in regards to this case.
10 First, where the DPA and the attorney of record Mickey L. Krom failed to acknowledge
11 or respond to a letter filed with the court on the docket in June of 2009 for review and
12 possible action.

13 Secondly, the prosecutions motion to strike was granted by the court, the
14 honorable Thomas Wynne, for additional time to response when they had been
15 notified ten (10) months prior. The defendant was never made aware of the
16 continuance, written or otherwise.

17 Finally, DPA Seth A. Fine shows little compunction for a pro se defendant's
18 access to the courts, "*as he attempts to usurp the authority of his Honorable Thomas*
19 *Wynne's court in preference for another judge on the Snohomish County Superior*
20 *Court Bench, under the pretense that the defendant's aunt filed the initial motion*
21 *unlawfully". Alleging her signature of a calendar motion may constitute the*
22 *"unauthorized practice of law"*. His statement is not backed by any court rules. Briefly
23 put, I think he cited his belief system as his only authority (See attached letter to the
24 Honorable Ellen Fair).
25
26

1 The Honorable Thomas Wynne granted states motion to transfer defendant's
2 motion under CrR 7.8 (c) (2) to the court of appeals pursuant to RAP 16.3 in the
3 interests of justice by way of a Personal Restraint Petition, while admitting in open
4 court and on the record "that he had failed to read the defendants Motion entirely".
5 (See CP page 4 Line 13 dated April 9th).

6 What truly puzzles defendant and what must equally astound this Court is how
7 this order was made on the record on April 9th 2010 and yet was not filed with the
8 clerk. There is no written record of any ruling one way or another. Defendant has
9 received no mention of the proceedings of the court on April 9th or the 1st from the
10 Court. Since the copies of the court proceedings were ordered that day there seems to
11 have been an order to "stay" the ruling without actually issuing said order.
12

13 To date there can be found no record of any action to move this motion to
14 Judge Wilson's Court. DPA Seth Aaron Fine has now filed a calendar note for the 5th
15 day of May 2010 for hearing (without oral argument) in front of the Honorable Joseph
16 Wilson for states response to defendant's motion. Defendant wonders under what
17 authority does the DPA move this from one court to another?
18

19 CONCLUSION

20 In conclusion the defendant has not only made a substantial showing to justify
21 his entitlement to relief, he has done so in relation to a matter for which he has already
22 served the vast majority of the imposed sentence. The continued examination of a
23 predetermined unambiguous statute serves only to violate defendant's due process of
24 law and ensure he pays the tab on an order that is manifestly unjust. The defendant
25
26

1 asks the trial court to rule in favor of this motion and correct the judgment and
2 sentence.

3 RESPECTFULLY SUBMITTED, this 30th day of April, 2010



4
5 WILLIAM PURSELY
6 MCC/MSU
7 P.O. BOX 7001
8 MONROE, WA 98272

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**Snohomish County
Prosecuting Attorney
Mark K. Roe**

Criminal Division
Joan T. Cavagnaro, Chief Deputy
Mission Building, MS 504
3000 Rockefeller Ave.
Everett, WA 98201-4060
(425) 388-3333
Fax (425) 388-3572

April 5, 2010

Hon. Ellen Fair, Presiding Judge
Snohomish County Superior Court

Re: State v. William Pursley, no. 94-1-01390-6

Dear Judge Fair,

I request that the court assign a judge to hear motions in this case.

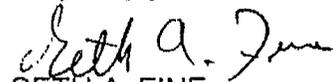
The defendant has filed a "Motion to Modify or Correct Judgement and Sentence." The original sentencing judge was Hon. Joseph Thibodeau. The charges against the defendant were filed in October, 1994.

This matter was set by the defendant on the criminal hearings calendar on April 1, before Hon. Thomas Wynne. The matter was stricken to allow the State additional time to respond.

A calendar note has been filed on behalf of the defendant setting the matter on the criminal motions calendar on April 9. This calendar is scheduled to be heard by Hon. Kenneth Cowser. The calendar note is signed on the defendant's behalf by Rebecca Bachart, acting pursuant to his power of attorney. The State does not believe that a power of attorney can authorize a non-lawyer to sign legal pleadings on a party's absence. Her signing of such pleadings may constitute the unauthorized practice of law. Consequently, the State believes that the calendar note is invalid.

The State intends to file a motion to the transfer the defendant's motion to the Court of Appeals. Under ordinary procedures, this would be noted for hearing without oral argument. But before doing so, we need to know which judge the matter should be set in front of.

Very truly yours,


SETH A. FINE

Deputy Prosecuting Attorney

cc: William Pursley
Rebecca Bachart

Administration
Robert G. Lenz, Operations Manager
Robert J. Drewel Bldg., 7th Floor
(425) 388-3772
Fax (425) 388-7172

Civil Division
Jason Cummings, Chief Deputy
Robert J. Drewel Bldg., 8th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Marie Turk, Chief Deputy
Robert J. Drewel Bldg., 6th Floor
(425) 388-7280
Fax (425) 388-7295

76	08-09-1995	ORBT JDG0009	Order Req Blood Tests Judge Joseph A Thibodeau	
75	08-11-1995	NTFC	Notification Of Felony Conviction Sent To Snohomish County Auditors	
77	05-01-1996	VRPRC	Verbatim Report Of Proceedings	
78	07-23-1996	ORARC COM0004	Order Author Removal Of Court File Commissioner Lester H. Stewart	
-	07-23-1996	EXWACT	Ex-parte Action With Order	
79	06-14-1999	CP	Copy /ltr Law Clerk/rebecca Bachart	
80	06-15-1999	CRRSP	Correspondence R. Bachart/ Jdg Thibodeau	
01	06-30-2009	CRRSP	Correspondence Dfdt/clerk/law Clerk	
82	10-20-2009	MND	Mandate From Court Of Appeals	
83	03-17-2010	MT	Motion To Modify Or Correct J&s W/attachments	
84	03-17-2010	NTC ACTION	Note For Calendar Motion To Modify Or Correct J&s	04-01- 2010RM
		ACTION	Set 10am Criminal Motions Calendar	
85	04-01-2010	MTHRG	Motion Hearing Mt To Modify Or Correct J&s: State Indicates They Are Aware Of The Issues And Are Working On Them	
		JDG0013	Judge Thomas J. Wynne	
-	04-01-2010	HSTKPA	Cancelled: Plaintiff/pros Requested	
86	04-01-2010	MT	Motion To Modify Or Correct J&s	
87	04-01-2010	NTC ACTION	Note For Calendar Mtn To Mod/correct J&s Confirmed/rebecca Bachart 10 Min	04-09- 2010RM
		ACTION	*dfdts Aunt (power Of Attorney)	
88	04-08-2010	LTR	Letter To Judge Fair From Seth Fine	
89	04-08-2010	MT	State's Motion To Transfer Motion For Relief From	

*Defendant was never
informed in writing
or otherwise
- EX PARTE -*

90	04-09-2010	MTHRG	Judgment Motion Hearing Mt To Modify/correct J&s: State's Mt To Send Mt To Crt Or Appeals For Post Conviction Relief: Granted;	} ruling never filed with clerk. nor was defendant ever notified.
		JDG0013	Judge Thomas J. Wynne Order To Enter	
91	04-19-2010	NTC	Note For Calendar Judge Wilson (time/dept Not Listed)	} 05-05- 2010JC } ordered by who?

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ATTACHMENT - 3

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

STATE OF WASHINGTON,
Plaintiff,
vs.
WILLIAM PURSLEY,
Defendant.

Cause No. 94-1-01390

ORIGINAL

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on April 9, 2010, the
above-entitled and numbered cause came on for hearing before
JUDGE THOMAS J. WYNNE, Snohomish County Superior Court,
Everett, Washington.

A P P E A R A N C E S

For the Plaintiff:

MR. THOMAS CURTIS
Deputy Prosecuting Attorney
3000 Rockefeller, MS 504
Everett, Washington 98201

For the Defendant:

NO APPEARANCE

Also in Attendance:

MS. REBECCA BACHART
Power of Attorney

MR. RICHARD PURSLEY
Father of the Defendant

1 April 9, 2010

2
3 THE COURT: State vs. William Pursley.

4 MR. CURTIS: Tom Curtis for the State. Your
5 Honor, this is a motion, a 7.8 motion. We have filed
6 yesterday a motion to transfer to the Court of Appeals a
7 Personal Restraint Petition.

8 MS. BACHART: Your Honor, I'm Power of Attorney.
9 I received the letter from the Prosecutor's Office.

10 THE COURT: Are you an attorney?

11 MS. BACHART: No, sir.

12 THE COURT: You can't represented Mr. Pursley.

13 MS. BACHART: No, I'm not. I'm representing
14 myself on the letter. It states here that --

15 THE COURT: How did you become a party to the
16 action?

17 MS. BACHART: He is incarcerated. In order to
18 file this motion, which he had sent to the Prosecuting
19 Attorney's Office last June, I had to sign as Power of
20 Attorney just to file, not as acting.

21 Here it states in the letter, it says, "we do not
22 believe" that I can, but there is no statute with this
23 letter stating that I could not be Power of Attorney, just
24 to file, not to represent.

25 THE COURT: Well, Power of Attorney would

1 certainly let you file a document on his behalf with the
2 clerk. That doesn't give you authority to argue anything
3 before the Court.

4 MS. BACHART: I'm sorry. I just have their
5 letter that they are going to turn it away because I
6 signed it. They said my signature as Power of Attorney is
7 unauthorized to file the motion.

8 THE COURT: Let's see what you have.

9 This is a letter from the Prosecutor's Office.

10 MS. BACHART: My concern is they are not going
11 to allow this to be filed because I signed as a Power of
12 Attorney just to file, not represent in any way, shape, or
13 form. He is filing this pro se. I don't see a statute on
14 there that says it's illegal.

15 THE COURT: I would agree that the legal
16 pleadings need to be signed by Mr. Pursley. You can
17 certainly file them on his behalf.

18 MS. BACHART: Right. He signed everything. I
19 just filed.

20 THE COURT: As long as he signed everything, I
21 have no problem with you filing them with the clerk.

22 MS. BACHART: He filed them actually last June.

23 THE COURT: What are we talking about?

24 MR. CURTIS: The State is asking to strike this
25 from the calendar. We are moving to transfer -- we are

1 moving the sentencing judge transfer this to the Court of
2 Appeals for consideration.

3 THE COURT: She is talking about filing
4 something. I don't know what she is talking about in
5 filing this letter.

6 MS. BACHART: I filed this motion on behalf of
7 him.

8 THE COURT: There is a calendar note --

9 MS. BACHART: Yes.

10 THE COURT: -- and a motion to modify or correct
11 the Judgment and Sentence --

12 MS. BACHART: Correct.

13 THE COURT: -- which I haven't yet totally read.

14 MS. BACHART: My understanding is the letter
15 that they sent stated that because I signed and filed it
16 for him as a Power of Attorney, that that was not legal.
17 Therefore, they want to send it to the Appellate Court,
18 and that's not where we want it.

19 THE COURT: Well, who filed it with the clerk
20 has no bearing on the motion to send this to the Court of
21 Appeals.

22 MS. BACHART: Right.

23 THE COURT: It's irrelevant.

24 MS. BACHART: Right.

25 THE COURT: It's my understanding this was a

1 murder conviction.

2 MS. BACHART: Yes.

3 MR. CURTIS: I believe that's correct, Your
4 Honor.

5 THE COURT: This is a motion to modify or
6 correct the Judgment and Sentence.. The sentencing judge
7 was Judge Thibodeau. Judge Thibodeau has long retired.
8 There was a successor judge that doesn't have any personal
9 knowledge of what happened at that time. So the State's
10 motion is this be considered as a Petition for
11 Post-Conviction Relief, which petitions are usually
12 reviewed by the Court of Appeals.

13 MR. RICHARD PURSLEY: Your Honor, if I may.

14 THE COURT: Who are you?

15 MR. RICHARD PURSLEY: I'm the defendant's
16 father.

17 In the motion --

18 THE COURT: I'm not going to allow you to argue
19 the motion.

20 MR. RICHARD PURSLEY: No, no, I don't want to
21 argue it. I want to tell you that what you stated is
22 addressed in that motion.

23 THE COURT: Looking at this, it appears
24 appropriate the Court of Appeals should hear it. It
25 doesn't mean it's not going to be heard, but the Court of

1 Appeals has to hear it.

2 MR. RICHARD PURSLEY: The concern is that the
3 responsibility for the error in this Court doesn't mean
4 that this Court corrects that error?

5 THE COURT: I think it's probably appropriate
6 the Court of Appeals determine whether or not there was an
7 error that needs to be corrected and all legal issues
8 surrounding that. I'm going to approve the petition for
9 transfer to the Court of Appeals.

10 MR. CURTIS: Thank you, Your Honor.

11 THE COURT: And let the Court of Appeals
12 consider it. That is consistent with what we normally do
13 in this Court, and what the Court of Appeals normally
14 does.

15 MR. RICHARD PURSLEY: So if they find it in
16 error, Your Honor, they will send it back down to this
17 Court?

18 THE COURT: Yes.

19 MS. BACHART: Thank you for letting me speak,
20 Your Honor.

21 THE COURT: I'm going to hand this letter back
22 down to you.

23 MS. BACHART: Please.

24 THE COURT: Do you have an order?

25 MR. CURTIS: No, Your Honor. We sent that

1 letter to Judge Fair asking she assign a judge to handle
2 it.

3 THE COURT: We just did it.

4 MR. CURTIS: I didn't bring an order with me.

5 THE COURT: Bring the order back up here.

6 MR. CURTIS: I will.

7

8 (Court in recess)

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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH**

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM PURSELY,

Defendant

Case No. 94-1-01390-9

MOTION TO APPOINT COUNSEL

FILED
COURT OF APPEALS DIV. 2
STATE OF WASHINGTON
2010 MAR 3 AM 9:48

A. IDENTITY OF PARTY.

COMES NOW, the defendant, William Pursely defendant, Pro se, who is an incarcerated Inmate, and seeks the relief in section B.

B. RELIEF REQUESTED.

Defendant asks this Court to Appoint Counsel at Public Expense for the purpose of a hearing requested for motions by the prosecution for the 5th day of May, 2010 for Oral Arguments on defendant's response to the states motion to transfer of CrR 7.8 into Personal Restraint Petition and any other proceedings that may require Counsel during the hearings of the defendant's motions in this action.

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C. REASONS FOR GRANTING.

Defendant states that he is illiterate in the law, and has been incarcerated since 1994 as a (juvenile) and needs *effective assistance* of counsel to help him present to the Court his Motions and Objections to the transfer of his CrR 7.8 into a Personal Restraint Petition in the interests of justice, and to present Oral Arguments to the court that are intelligent, and comprehensive.

Defendant asks for Counsel because he is indigent, and cannot afford Counsel, defendant was indigent when this Court originally handled this case, and defendant's status has not changed, it has only gotten worse with his Incarceration. The defendant also requires pro bono representation due to *ex parte* improprieties taking place between the prosecution and others residing on the bench.

Dated this 25th day of April, 2010

WILLIAM PURSLEY
PURSLEY #739493
MCC/MSU
P.O. BOX 7001
MONROE, WA 98272

CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true

And correct copy of the motion:

Motion for Appointment of Counsel

By U.S. Mail Postage Prepaid to The following addresses:

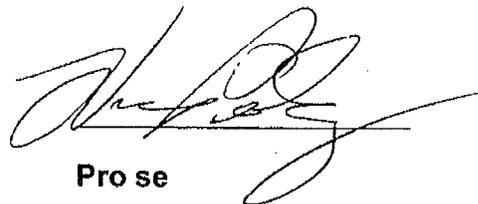
Superior Court for Snohomish County Clerk's Office at:

3000 Rockefeller Ave., MS-605

Everett, WA. 98201-4046

I certify under the penalty of perjury under the laws of the state
of Washington that the foregoing is true and correct.

DATED this 25th day of April, 2010, at Monroe, Washington.



Pro se

William Pursley # 739493

MCC/MSU

P.O. Box 7001

Monroe, WA 98272

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

The State of Washington,

Plaintiff,

v.

PURSLEY, William V.,

Defendant.

No. 94-1-01390-9

STATE'S MOTION TO TRANSFER
MOTION FOR RELIEF FROM JUDGMENT

I. MOTION

The State of Washington moves for an order transferring the defendant's Motion for Relief from Judgment to the Court of Appeals, for consideration as a personal restraint petition. This motion is based on CrR 7.8(c)(2) and the following memorandum.

II. FACTS

The facts surrounding the defendant's crimes are set out in the Affidavit of Probable Cause. In his plea statement, the defendant agreed that this document could be considered in deciding whether there was a factual basis for his guilty plea. Docket no. 61 at 5 ¶ 12. According to the affidavit, on June 17, 1994, the defendant and his accomplices met with Michael Killpack and Michael Conner for the purported purposes of buying marijuana. In fact, the defendant and the others

ORIGINAL

Snohomish County
Prosecuting Attorney - Criminal Division
3000 Rockefeller Ave., MS 504
Everett, Washington 98201-4046
(425) 388-3333 Fax: (425) 388-7172

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1 planned to rob Killpack and Conner. In the course of the robbery, one of the
2 robbers shot and killed Killpack. Another robber struck Conner on the head with a
3 baseball bat. Docket no. 2.

4 On October 17, 1994, the prosecutor filed an information charging the
5 defendant with first degree murder and second degree assault. Docket no. 1. The
6 second count was later increased to first degree assault. Docket no. 29. On June
7 2, 1995, the prosecutor filed a second amended information charging second
8 degree murder and first degree assault. With respect to the murder, the charging
9 language in the information was as follows:
10

11 That the defendant, on or about the 17TH day of June, 1994, while
12 committing the felony crime of First or Second Degree Robbery, and
13 in the course of or in furtherance of said crime or in immediate flight
14 therefrom, did cause the death of Michael Killpack, a human being,
15 not a participant in such crime, said death occurring on or about the
16 17th day of June, 1995, the defendant or an accomplice at said time
17 being armed with a deadly weapon, to-wit: a .25 automatic pistol; as
18 defined by RCW 9.94A.125 and 9.94A.310; proscribed by RCW
19 9A.32.050(1)(b), a felony.

20 Docket no. 59.

21 The same day, the defendant entered an Alford plea to this charge. His plea
22 statement said:

23 I have discussed this case with my lawyer and reviewed police
24 reports. I believe there is a substantial likelihood that I could be
25 convicted if this case went to trial. If I went to trial I would face a more
26 serious charge and a longer possible sentence. Rather than take that
risk, I wish to plead guilty. I believe this is in my best interest.

Docket no. 161 at 5 ¶ 11.

1 At a subsequent hearing, the defendant was advised of the elements of the
2 underlying felony of second degree robbery. He then re-affirmed his desire to plead
3 guilty "so that I can take advantage of the plea bargain." He acknowledged that he
4 was likely to be found guilty of the crime charged in the second amended
5 information. Docket no. 65.

6 On August 4, 1995, the defendant was sentenced to 147 months'
7 confinement for the murder and 117 months for the robbery. These were set to run
8 consecutively, for a total of 264 months. The judgment and sentence was filed the
9 same day. Docket no. 67. The defendant did not appeal.
10

11 The defendant now seeks to have his murder conviction set aside. He
12 claims that the information alleged a "non-existent crime."

13 **III. ISSUE**

14 Should this case be transferred to the Court of Appeals for consideration as a
15 personal restraint petition?
16

17 **IV. ARGUMENT**

18 Motions to vacate judgment can be either resolved by this court on the merits
19 or transferred to the Court of Appeals. The standards governing this choice are set
20 out in CrR 7.8(c)(2) (as amended effective September 1, 2007):

21 The court shall transfer a motion filed by a defendant to the Court of
22 Appeals for consideration as a personal restraint petition unless the
23 court determines that the motion is not barred by RCW 10.73.090 and
24 either (i) the defendant has made a substantial showing that he or she
25 is entitled to relief or (ii) resolution of the motion will require a factual
26 hearing.

1 Under this rule, this court should resolve three issues: (1) Is the motion
2 barred by RCW 10.73.090? (2) Has the defendant made a substantial showing that
3 he or she is entitled to relief? (3) Will resolution of the motion require a factual
4 hearing?

5 **A. THE DEFENDANT'S MOTION IS NOT TIME BARRED INSOFAR AS IT**
6 **CLAIMS THAT HE WAS CONVICTED OF A "NON-EXISTENT CRIME."**

7 RCW 10.73.090(1) sets a time limit on motions to vacate judgments and
8 other forms of "collateral attack." Such a motion must be filed within one year after
9 the judgment becomes final. Since the judgment in the present case was not
10 appealed, it became final on August 4, 1995, the day it was filed. RCW
11 10.73.090(3)(a). The present motion was filed in March, 2010. It was not filed
12 within the time limit.

13 Under RCW 10.73.090(1), the time limit only applies "if the judgment and
14 sentence is valid on its face." The defendant claims that the judgment here was
15 "invalid on its face." "[I]nvalid on its face' means the judgment and sentence
16 evidences the invalidity without further elaboration." In re Goodwin, 146 Wn.2d
17 861, 866, 50 P.3d 618 (2002). Under narrow circumstances, the court has been
18 willing to consider "documents signed as part of a plea agreement" in determining
19 "facial invalidity." This is allowed only if the documents disclose invalidity in the
20 judgment and sentence, not if they disclose invalidity in the plea. In re Hemenway,
21 147 Wn.2d 529, 533, 55 P.3d 615 (2002).
22
23
24
25

1 Here, the defendant claims that he plead guilty to a "non-existent crime." If
2 this claim is correct, it would render the judgment "invalid on its face," so the time
3 limit would be inapplicable. In re Hinton, 152 Wn.2d 853, 857-58, 100 P.3d 801
4 (2004). The defendant's claim must, however, be strictly limited to this. An
5 allegation of facial invalidity does not allow the defendant to challenge the validity of
6 his plea in other respects

7 **B. BECAUSE AN INFORMATION IS NOT RENDERED INVALID BY THE**
8 **INCLUSION OF ALLEGATIONS THAT COULD ESTABLISH A GREATER**
9 **CRIME, THE DEFENDANT HAS NOT MADE A SUBSTANTIAL SHOWING OF**
10 **ENTITLEMENT TO RELIEF.**

11 The information in this case alleged that the defendant committed second
12 degree felony murder in the course of first or second degree robbery. Under RCW
13 9A.32.020(1)(c), a killing committed in the course of robbery constitutes first degree
14 murder. The second degree murder statute covers murder committed in the course
15 of "any felony ... other than those enumerated in RCW 9A.32.030(1)(c)." RCW
16 9A.32.050(1)(b). The charging language in this case thus charged first degree
17 murder, not second degree murder.

18 This fact does not invalidate the resulting conviction of second degree
19 murder. A person who is charged with a crime can be convicted of the same crime
20 in a lesser degree. State v. Markle, 118 Wn.2d 424, 432, 823 P.2d 1101 (1992).
21 Thus, a person who is charged with first degree murder can be convicted of second
22 degree murder.
23

1 The allegations in the information were also consistent with a conviction for
2 second degree murder. When a person is charged with a lesser crime, it is not a
3 defense that the person was actually guilty of a greater crime. For example, under
4 former RCW 10.99.040(4), the crime of felony violation of a no-contact order could
5 be committed by an assault "that does not amount to assault in the first or second
6 degree." This language does not, however, establish an essential element of that
7 crime. The charging document can simply allege an "assault," without specifying
8 the degree. A defendant can be convicted of felony violation of a no-contact order
9 even if he committed a first or second degree assault. State v. Ward, 148 Wn.2d
10 803, 64 P.3d 640 (2003).
11

12 Similarly in the present case, the statutory reference to an felony "other than
13 those enumerated in RCW 9A.32.030(1)(c)" simply serves to distinguish between
14 the crimes of first and second degree murder. That language does not establish an
15 essential element of the crime of second degree murder. An information charging
16 second degree murder need not negate the possibility that the underlying felony
17 would constitute first degree murder. A defendant can be convicted of second
18 degree murder even if he actually committed first degree murder.
19

20 In short, the information here did not allege a "non-existent crime." Rather, it
21 set out elements that could establish a greater crime. The defendant could
22 nevertheless validly plead guilty to the lesser crime. Indeed, his belief that he could
23 be convicted of first degree murder was the very reason why he pled guilty to
24

1 second degree murder. He has therefore not made a substantial showing that he is
2 entitled to relief.

3 **C. THE DEFENDANT IS NOT ENTITLED TO A FACTUAL HEARING.**

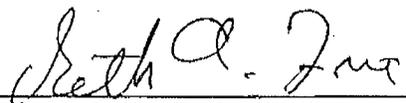
4 There do not appear to be any relevant factual disputes. The issues raised
5 by the motion are matters of law. Consequently, no hearing is necessary.

6 **V. CONCLUSION**

7 This motion is not time barred, insofar as it alleges that the defendant was
8 convicted of a "non-existent crime." The defendant has not made a substantial
9 showing of entitlement to relief. There is also no need for a factual hearing. Under
10 CrR 7.8(c)(2), the motion should be transferred to the Court of Appeals for
11 consideration as a personal restraint petition. .

12 Respectfully submitted on April 7, 2010.

13
14
15 MARK K. ROE
16 Snohomish County Prosecuting Attorney

17
18 By: 
19 _____
20 SETH A. FINE, WSBA # 10937
21 Deputy Prosecuting Attorney



**Snohomish County
Prosecuting Attorney
Mark K. Roe**

**CERTIFIED
COPY
FILED**

2010 APR -8 PM 3: 52

Criminal Division
Joan T. Cavagnaro, Chief Deputy
Mission Building, MS 504
3000 Rockefeller Ave.
Everett, WA 98201-4060
(425) 388-3333
Fax (425) 388-3572

SONYA KRASKI
COUNTY CLERK
SNAPRIL15 2010 WASH



CL14153225

Hon. Ellen Fair, Presiding Judge
Snohomish County Superior Court

Re: State v. William Pursely, no. 94-1-01390-8

Dear Judge Fair,

94-1-01390-9

FILED
2010 APR -8 PM 3:49
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO WASH

I request that the court assign a judge to hear motions in this case.

The defendant has filed a "Motion to Modify or Correct Judgement and Sentence." The original sentencing judge was Hon. Joseph Thibodeau. The charges against the defendant were filed in October, 1994.

This matter was set by the defendant on the criminal hearings calendar on April 1, before Hon. Thomas Wynne. The matter was stricken to allow the State additional time to respond.

A calendar note has been filed on behalf of the defendant setting the matter on the criminal motions calendar on April 9. This calendar is scheduled to be heard by Hon. Kenneth Cowser. The calendar note is signed on the defendant's behalf by Rebecca Bachart, acting pursuant to his power of attorney. The State does not believe that a power of attorney can authorize a non-lawyer to sign legal pleadings on a party's absence. Her signing of such pleadings may constitute the unauthorized practice of law. Consequently, the State believes that the calendar note is invalid.

The State intends to file a motion to the transfer the defendant's motion to the Court of Appeals. Under ordinary procedures, this would be noted for hearing without oral argument. But before doing so, we need to know which judge the matter should be set in front of.

Very truly yours,

Seth A. Fine
SETH A. FINE
Deputy Prosecuting Attorney

cc: William Pursley
Rebecca Bachart

Administration
Robert G. Lenz, Operations Manager
Robert J. Drewel Bldg., 7th Floor
(425) 388-3772
Fax (425) 388-7172

Civil Division
Jason Cummings, Chief Deputy
Robert J. Drewel Bldg., 8th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Marie Turk, Chief Deputy
Robert J. Drewel Bldg., 6th Floor
(425) 388-7280
Fax (425) 388-7295

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CERTIFIED
COPY

FILED

2010 APR -1 PM 3:09

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



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**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

STATE OF WASHINGTON

Plaintiff,

vs.

WILLIAM PURSLEY,

Defendant

Case No. 94-1-01390-9

**MOTION TO MODIFY OR CORRECT
JUDGEMENT AND SENTENCE**
(pursuant to CrR 7.8)(B)(4&5)&
CrR 4.2(d)

IDENTITY

COMES NOW, the Defendant, Pro se, currently being housed at the
Monroe Correctional Complex, and in the above captioned action, and moves this
Honorable Court for a remand without withdrawal of his guilty plea.

FACTS

- A. The defendant appeared before Judge Joseph A. Thibodeau.
- B. The State being represented by David F. Hiltner, of Snohomish
County Prosecutors Office.
- C. The defendant being represented by Mickey L. Krom Defense Attorney.
- D. The defendant plead guilty and received a sentence of 264 months.

2010 MAY 13 AM 10:47

COUNTY OF SNOHOMISH
CLERK OF SUPERIOR COURT

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JURISDICTION

This motion is made pursuant to CrR 7.8(c)(1) which provides in pertinent part:

“An application to the court shall be made by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement of the writing is fulfilled if the motion is stated in a written notice of the hearing of the motion”.

The defendant is entitled to relief as his sentence was imposed or entered in violation of the laws of the State of Washington. The Sentencing Court has the duty and the Authority to correct the error upon its discovery. See State v. Ford, 137 Wn. 2d 472 in part:

“This court has a duty and power to correct the error upon its discovery, even where the parties not only failed to object but agreed with the sentencing Judge...The error is unmistakable, evident and undisputable.”

See In re Greening, 142 Wn. 2d 687 & In re Personal Restraint of Hinton, 152 Wn. 2d 853 (2004).

“CrR 4.2(d) imposes a duty on the court to determine that the defendant is entering a plea with correct understanding of the consequences of his plea. That rule implements important constitutionally mandated principals. That duty was not met here.” In re Murillo, 134 Wash. App. At 531 (internal citation removed).

GROUND

Defendant had been charged, convicted and sentenced on August 4th 1995 of a ***non-existent statute of the Felony Index***. As a “15 year old Juvenile.” The Defendant ultimately plead guilty to two felony counts, Count I Second Degree Felony Murder pursuant to RCW 9A.32.050 (1)(b) predicated on a First Degree Robbery.

1 The defendant was sentenced to a term of imprisonment of 147 months on
2 count I and 117 Months on count II to be served consecutively; the defendant's total
3 confinement time served to date is 189 months.

4 STATUTE ERROR

5 The issue of error is in count I of the information, which specifically
6 alleges "*Second Degree Felony Murder*" As defined by RCW 9A.32.050 (1)(b)."A
7 person is guilty of Murder in the second degree when he commits or attempts to
8 commit any felony other than those enumerated in RCW 9A.32.030 (1)(c)". RCW
9 9A.32.030 (1)(c) Reads: "when he or she commits or attempts to commit the crime of
10 1) Robbery in the First or Second Degree".
11

12 *At the time of the commission of this offense there was no statutory scheme*
13 *under the SRA* which would allow the trial courts or the state to charge and convict a
14 defendant for this crime. (See defendant's Attachment "A" Judgment & Sentence and
15 Attachment "B" defendant's charging information's).
16

17 AUTHORITY

18 1. There is an error in the *Charging Document, Plea Agreement* and the
19 *Judgment and Sentence* which requires *remedy*, (Due Process Requires a factual
20 Basis for excepting guilty pleas,) *State v. Mendoza*, 157 Wn. 2d 582 (2006) See also
21 *State v. Cordiga*, 162 Wn 2d at 912 (2008) and Pers. *Restraint of West*, 154 Wn. 2d
22 209,110 P.3d 1122 (2005).
23

24 2. It is overtly direct and obvious that the charge in count I is at odds with
25 the Court Rules of Washington at CrR 4.2 (d) **Voluntariness**.
26

1 The court shall not accept a plea of guilty, without First determining
2 that it is made voluntarily, competently and with an understanding
3 of the nature of the charge and the consequences of the plea. The
court shall not enter a judgment upon a Plea of guilty unless it is
satisfied that there is a factual basis for the plea.

4 Since the defendant's conviction has been final for more than one year, he must
5 address the time bar issue-arguing first that his *Judgment* is facially invalid and then
6 moving to his guilty plea to show that it was based on a "manifest error" and is
7 unconstitutional.
8

9 3. RCW 10.73.090 establishes a one-year time limit for collateral attack on
10 a judgment. More than one year has elapsed since this conviction was final. However,
11 the one year time limit does not apply to a judgment invalid on its face pursuant to
12 RCW 10.73.090 and the provisions provided in RCW 10.73.100(2); "*when one year*
13 *time limit not applicable*" See also *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50
14 P.3d 618 (2002). In part:

15 "A judgment and sentence is invalid on its face if it evinces
16 the invalidity "without further elaboration". The phrase "on its
17 face includes documents signed as part of a plea agreement.

18 As our Supreme Court has explained:

19 "[T]he relevant question in a criminal case is whether the judgment and
20 sentence is valid on its face, not whether related documents, such as plea
21 agreements, are valid on their face. Such documents may be relevant to the question
22 whether a judgment is valid on its face, but only if they disclose facial invalidity in the
23 judgment and sentence itself."

24 See *In re Restraint of Turay*, 150 Wn. 2d 71, 82, 74 P.3d 1194 (2003). See also
25 *State v. Lewis*, __ Wn. App. __, __ P.3d __ (August 28, 2007).
26

1 Thus, the question then becomes whether this error in the *Judgment* identifies a
2 defect in the guilty plea that merits relief. Here it does.

3 4. The Washington State Supreme Court has clearly held that a person can
4 raise a challenge to a plea to a non-existent crime at any time, and the fact that the
5 person pled guilty or even admitted to the elements of a different, existing, crime, did
6 not save the conviction. *Id.* (holding (1) one year limitations on collateral attack did not
7 apply to convictions that were constitutionally invalid on it's face; (2) defendant did not
8 waive right to collaterally attack conviction on basis of facial invalidity by guilty plea; (3)
9 defendant was entitled to vacation of conviction of crime that was not yet enacted at
10 the time that the underlying conduct occurred.

11 5. Furthermore the trial court does not have the authority to alter the
12 statutory scheme of the SRA to conform to a Plea Agreement. The fixing of legal
13 punishments for criminal offenses is a legislative function. See *State v. Ammons*, 105
14 Wn. 2d at 175. And *State v. Monday*, 85 Wn. 2d at 906, And PRP of *West*, 154 WN.
15 2d.204.
16

17 6. Defendant had previously informed the court of the *fundamentally*
18 *defected information* by letter addressed to the Sentencing Judge in June 2009, of
19 which was filed by the clerk; (*see docket*) which was then forwarded to the Deputy
20 Prosecuting Attorney David F. Hiltner and to the attorney of record for the defendant,
21 for review and possible action.
22

23 To date neither aforementioned parties has contacted the defendant or
24 responded to numerous inquiries.
25
26

1 ARGUMENT

2 A. This is the Defendant's first collateral attack on this *Judgment*.

3 B. The defendant also address's with argument that his motion *should not*
4 *be transferred to the Court of Appeals pursuant to CrR 7.8(c)(2) as a Personal*
5 *Restraint Petition*, as though the transfer would serve "*the ends of Justice*", because it
6 denies the right to direct appeal under RAP 2.2(9) and shifts the burden of proof from
7 the state onto the inexperienced "in law" defendant, making it possible to continue
8 *confinement* under a clearly illegal Judgment and Sentence in violation of due process;
9 but,

10
11 Prejudice to the defendant may be overcome by this courts appointment
12 of counsel to properly present and argue this case.

13 C. Division Two rendered a decision in State v. Smith, 144 Wn. App. 860,
14 864 (2008) which expressed In relevant part:

15 "We agree with Smith that converting and transferring a CrR 7.8
16 motion to a personal restraint petition could infringe on his right
17 to choose whether he wanted to pursue a personal restraint
18 petition because he would then be subject to the successive
19 petition rule in RCW 10.73.140 as a result of the conversion on
20 the motion."

21 The court went on to cite federal authority to support this conclusion. See
22 Castro v. United States, 540 U.S. 375, 383. 124 S. Ct. 786, 157 L.Ed 2d 778 (2003).

23 See also State v. Hibdon, 140 Wn. App. 534 (2007).

24 The Washington Court of Appeals recently expressed a view in State v. Davis,
25 146 Wn. App. 714, 724 (2008) that, the best approach is, In part:

26 "we believe it is better for both the offender and the DOC to have
the trial court impose a sentence that is clear to all from the outset,
given the number of offenders and the complexity sentences imposed
under the SRA, a clear mandate from the trial court's sentence".

1 D. The defendant attributes the error to be upon the Snohomish County
2 Superior Court Judge, Joseph A. Thibodeau, the District Prosecuting Attorney, David
3 F. Hiltner and the Attorney of record Mickey L. Krom, for charging, convicting and
4 sentencing the defendant to a non-existent, Statutorily invalid crime.(The interests of
5 Justice would best be served by the trial Court Correcting its own Errors).

6
7 **RELIEF**

8 The defendant seeks to have the non-existent crime vacated without
9 withdrawal of the plea agreement. *The defendant does not seek to withdraw his plea*
10 *where he plead guilty to multiple charges and he has "fulfilled the terms of the plea*
11 *agreement". See PRP of West, 154 Wn. 2d 175 204. See State v. Ellts, 94 Wn. 2d*
12 *489, 495-96. (Citation omitted). See also Goodwin, 146 Wn. 2d at 877 ("Correcting an*
13 *erroneous sentence in excess of statutory authority does not affect the finality of that*
14 *portion of the judgment and sentence that was correct and valid when imposed.")*

15 Indivisibility of the plea has no bearing on the analysis that the crime was
16 non-existent.

17
18 See State v. Knight, 162 Wn.2d 813 (2008) In part:

19 "Knights guilty plea need not be withdrawn because guilty
20 pleas, like jury verdicts, do not violate double jeopardy...
21 Since the plea agreement has been fully satisfied here,
22 the indivisibility of the plea agreement has no bearing
23 on our analysis."

24
25 Furthermore, [see Knight at 812] In part:

26 "correctly understood, the plea agreement has no bearing
on the ability of the court to vacate a conviction entered
pursuant to the guilty plea itself, because the plea itself
need not be disturbed."

The Defendant should be remanded for imposition of the predicate felony of first
degree robbery upon vacation of the second degree felony murder that does not exist

1 in the felony index. Based on the analysis of the evidence supporting the plea
2 agreement and the subsequent plea to first degree robbery, this supports the remedy
3 and as it applies to the "workman Standard" 90 Wn.2d at 433.

4 See State v. Hughes, 118 Wn. APP. 713 (2003). In part:

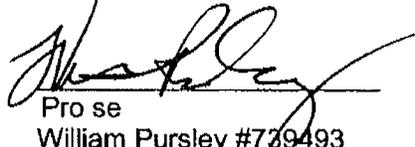
5 "Remand for second degree Assault, because facts for
6 that crime were Proven as part of higher crime..."

7
8 **AFFIDAVIT**

9 STATE OF WASHINGTON)
10) ss:
11 COUNTY OF SNOHOMISH)

12 I, William Pursley, declare under penalty of perjury, that the statements within
13 this Motion are true and correct to the best of my knowledge and have been executed
14 on this 15th day of March, 2010 under the laws of the State of Washington, and to the
15 laws of the United States of America, that the foregoing is true and correct pursuant to:
16 RCW 9A.72.085, and 28 U.S.C. 1746.

17 Respectfully submitted this 15th day of March, 2010

18
19 
20 Pro se
21 William Pursley #739493
22 MCC/MSU
23 P.O. 7001
24 MONROE, WA 98272

25 **Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright, 626 F.2d 1184**
26 **(1980); Affidavit sworn as true and correct under penalty of perjury and has full**
force of law and does not have to be verified by Notary Public.

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

STATE OF WASHINGTON,)
) Plaintiff,)
))
) v.)
))
WILLIAM PURSLEY,)
) Defendant.)

No. 94-1-01390-9

NOTE FOR MOTION TO DOCKET

**Court Calendar
(CLERK'S ACTION REQUESTED)**

TO: Snohomish County Superior Court Clerk and David F. Hiltner of the Prosecutors Office.

PLEASE TAKE NOTICE that the litigant, Mr. William Pursley, acting Pro Se, moves this court on the 1st day of April, 2010 at 10:00 am. for a hearing without oral argument, and that the undersigned will bring on for a hearing a motion, for:

**MODIFICATION OR CORECTION OF JUDGMENT & SENTENCE
PURSUANT TO CrR 7.8(b)(4&5) and CrR 4.2(d)**

Nature of the case: Criminal

Or as soon thereafter as the motion can be heard.

The address of the place of the hearing is:

County Courthouse, 3000 Rockefeller Ave., MS 502, Everett, WA 98201-4046

DATED this day of March, 2010



William Pursley #739493
MCC/MSU
P.O. BOX 7001
MONROE, WA 98272

SENTENCING DATA:

	Offender Seriousness		Range	Maximum Term
	Score	Level		
Count No. I	0	XIII	135-178-123-164 months	Life
Count No. II	0	XII	105-135 months	Life

() Additional current offense sentencing data is attached in Appendix C.

4. EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above)(below) the standard range for Count(s) _____. The reasons are set forth in Appendix D.

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:

- (a) () \$ WAIVED, Court costs, including reimbursement for costs of extradition, if incurred; plus any costs determined after this date as established by separate order of this court;
- (b) (x) \$100.00, Victim assessment;
- (c) (X) \$ _____, Total amount restitution (with credit for amounts paid by co-defendants; the amount and recipient(s) of the restitution are as established by separate order of this court;
- (d) () \$631/\$691, Recoupment for attorney's fees; WAIVED
- (e) () \$ _____, Fine;
- (f) () \$ _____, _____ Dep't, Drug enforcement fund;
- (g) () \$ _____, Other costs;

2. () The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms: () Not less than \$ _____ per month, (X) on a schedule established by the defendant's community corrections officer, to be paid within 120 months of () this date (X) release from confinement.

3. The defendant shall remain under the Court's jurisdiction and the supervision of the State Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.

4. (X) The defendant shall be prohibited from having any contact, directly or indirectly, with Michael Killpack or Michael Connors for a period of 10 years after release. Family

5. () The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.

6. The Court, upon motion of the State, DISMISSES Count(s) _____.

7. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the State Department of Corrections as follows commencing () immediately () no later than _____

147 months for Count No. I
117 months for Count No. II

() The terms in Counts No. 1+2 are (~~concurrent~~) (consecutive).

() The sentence herein shall run (~~concurrently~~) (~~consecutively~~) with the sentence in cause number(s) _____.

() Credit is given for 412 days served solely in regard to this offense.

8. () The defendant shall serve a two year term of community placement, or up to the period of earned early release, whichever is longer, during which term the mandatory conditions set forth below shall be followed:

(a) The defendant shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The defendant shall work at department of corrections-approved education, employment, and/or community service;

(c) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The defendant in community custody shall not unlawfully possess controlled substances; and

(e) The defendant shall pay community placement fees as determined by the department; and, in addition, the following conditions shall also be followed:

(f) () The defendant shall remain () within () outside of the following geographical area: _____

(g) () The defendant shall not have direct or indirect contact with: Michael Killpack's Family or Michael Connor

(h) () The defendant shall participate in crime-related treatment or counseling services as directed by the department.

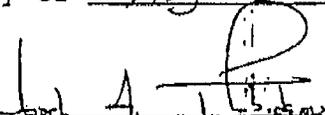
(i) () The defendant shall not consume alcohol.

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

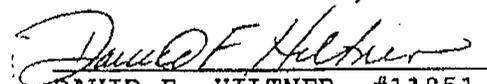
The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

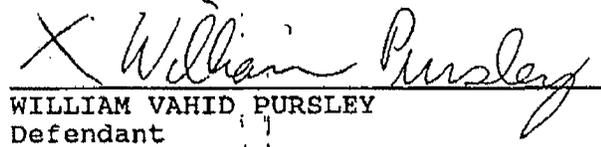
- () Appendix A, Additional Current Offenses;
- () Appendix B, Additional Criminal History;
- () Appendix C, Current Offense(s) Sentencing Data; and
- () Appendix D, Reasons for an Exceptional Sentence.
- () Appendix E, Additional Conditions of Sentence.
- () Appendix F, Notification of Registration Requirement.
- () Order for Blood Testing.
- () No Contact Order.

DONE IN OPEN COURT this 4 day of August, 1995.

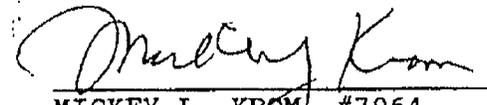

JUDGE JOSEPH A. THIBODEAU

Presented by:


DAVID F. HILTNER, #11851
Deputy Prosecuting Attorney


WILLIAM VAHID PURSLEY
Defendant

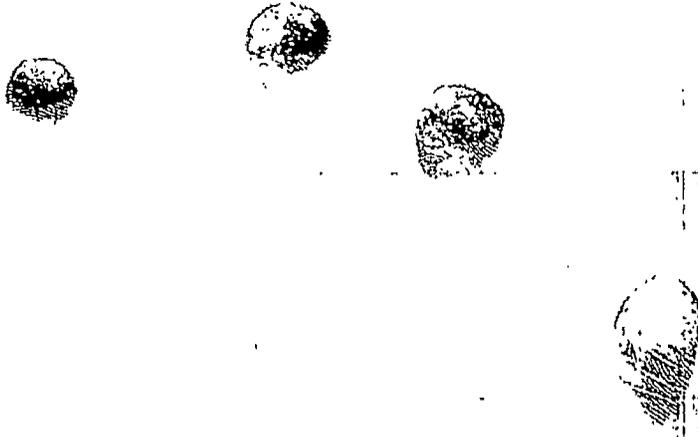
Approved as to form:


MICKEY L. KROM, #7064
Attorney for Defendant

Defendant's current address

Telephone # _____

FINGERPRINTS



Right Hand
Fingerprints of:
WILLIAM VAHID PURSLEY

* William Pursley
(Defendant's Signature)

Dated: 8/4/95

Attested by:
Kay D. Anderson, Snohomish Co Clerk

By: K.A. Anderson
(Deputy Clerk)

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____
Kay D. Anderson, Snohomish Co. Clerk

By: _____
(Deputy Clerk)

OFFENDER IDENTIFICATION

S.I.D. No. WA
Date of Birth 10/03/78
Sex M
Race White
ORI WA0310000
OCA 109147
OIN 04940512904
DOA 10/14/94

FILED

95 AUG -4 PH 3:00

ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington, GREETINGS:

KAY D. ANDERSON
COUNTY CLERK
SNOHOMISH CO. WASH.

WHEREAS, WILLIAM VAHID PURSLEY, has been duly convicted of the crime(s) of Count 1 Second Degree Murder, Count 2 First Degree Assault, as charged in the Second Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution, under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term of _____ months all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable JOSEPH A. THIBODEAU, Judge of the said Superior Court and the seal thereof, this 4 day of August 1995.

KAY D. ANDERSON
CLERK OF THE SUPERIOR COURT

By: K. Anderson
Deputy Clerk

ATTACHMENT - B

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

No. 94-1-01390-9

v.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

PURSLEY, WILLIAM VAHID,

Defendant.

1. My true name is WILLIAM VAHID PURSLEY.

2. My age is 16. 3. I went through the 9th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is MICKEY L. KROM.

(b) I am charged with the crimes of Count 1: Second Degree Murder, RCW 9A.32.030(1)(c); Count 2: First Degree Assault, RCW 9A.36.011(1)(a).

The elements of the crimes are:

COUNT I: That the defendant, 1) in Snohomish County, Washington, 2) on or about the 17th day of June, 1994, 3) while committing or attempting to commit the felony crime of First or Second Degree Robbery, 4) and in the course of or in furtherance of said crime or in immediate flight therefrom, 5) did cause the death of Michael Killpack, 6) a human being, 7) not a participant in such crime, 8) said death occurring on or about the 17th day of June, 1995; 9) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a .25 automatic pistol.

COUNT II: That the defendant, 1) in Snohomish County, 2) on or about the 17th day of June, 1994, 3) with intent to inflict great bodily harm, 4) did assault another person, to-wit: Michael Conner, 5) with a deadly weapon and by any force or means likely to produce great bodily harm or death, to-wit: a baseball bat; 6) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a baseball bat.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
- (b) The right to remain silent before and during trial, and I need not testify against myself.
- (c) The right at trial to hear and question witnesses who testify against me.
- (d) The right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
- (f) The right to appeal a determination of guilty after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
(a) The crime with which I am charged carries a maximum sentence of:
Count I: Life imprisonment and a \$50,000 fine. Count II: Life imprisonment
and a \$50,000 fine.

The standard sentence range is/are: 135 to 178 months as to Count
I; 105 to 135 months as to Count II, based on the prosecuting attorney's
understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my
criminal history. Criminal history includes prior convictions, whether in
this state, in federal court, or elsewhere. Criminal history also always
includes convictions in juvenile court for sex offenses, whatever my age
was when the sex offense was committed, or is now. Criminal history also
includes convictions in juvenile court for other felonies or serious
traffic offenses that were committed when I was 15 years of age or older.
However, if I was 23 years of age or older when I committed the crime to
which I am now pleading guilty, the juvenile conviction only counts if it
was for a class A felony, or a sex offense.

(c) The prosecuting attorney's statement of my criminal history is
attached to this agreement. Unless I have attached a different statement,
I agree that the prosecuting attorney's statement is correct and complete.
If I have attached my own statement, I assert that it is correct and
complete. If I am convicted of any additional crimes between now and the
time I am sentenced, I am obligated to tell the sentencing judge about
those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any
additional criminal history is discovered, both the standard sentence and
the prosecuting attorney's recommendations may increase. Even so, my plea
of guilty to this charge is binding on me. I cannot change my mind if
additional criminal history is discovered even though the standard
sentencing range and the prosecuting attorney's recommendations increase.

(e) In addition to sentencing me to confinement for the standard
range, the judge will order me to pay \$ 700.00 as a victim's
compensation fund assessment. If this crime resulted in injury to any
person or damage to or loss of property, the judge will order me to make
restitution, unless extraordinary circumstances exist which make
restitution inappropriate. The judge may also order that I pay a fine,
court costs, and attorney fees. Furthermore, the judge may place me on
community supervision, impose restrictions on my activities, and order me
to perform community service.

(f) The prosecuting attorney will make the recommendation to the
judge as stated on the attached plea agreement form.

(g) The judge does not have to follow anyone's recommendation as to
sentence. The judge must impose a sentence within the standard range
unless the judge finds substantial and compelling reasons not to do so. If
the judge goes outside the standard range, either I or the State can appeal
that sentence. If the sentence is within the standard range, no one can
appeal the sentence.

(h) The crime of ASSAULT 1st has a mandatory minimum sentence of
at least 5 years of total confinement. The law does not allow any
reduction of this sentence. (If not applicable, this paragraph should be
stricken and initialed by the defendant and the judge.)

(i) The sentence imposed on Counts 1-2 will run
consecutively unless the judge finds substantial and compelling reasons to
do otherwise. (If not applicable, this paragraph should be stricken and
initialed by the defendant and the judge.)

(j) In addition to confinement, the judge will sentence me to

community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days confinement plus all of the conditions described in paragraph (a). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

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

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the State of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

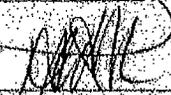
(q) If the crime charged herein is a "crime of violence" as defined by RCW 9.41.010(11); a "serious offense" as defined by RCW 9.41.010(12); a domestic violence offense enumerated in RCW 10.99.010(2); a harassment offense enumerated in RCW 9A.46.060; a felony in which a firearm was used or displayed; a felony violation under RCW 89.50; or is a conviction under RCW 46.61.602 or RCW 88.12.100 (and this is at least my fourth conviction under either of these statutes within the five years preceding the date of my guilty plea), the court has informed me orally and in writing that this plea of guilty will make me ineligible to possess a firearm pursuant to RCW 9.41.040. (If not applicable, this paragraph should be stricken and

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check appropriate box):

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her;
- * (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

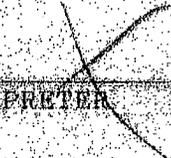
Dated this 24 day of June, 1995.



JUDGE

*I am fluent in the _____ language and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 1995.



INTERPRETER

CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true
and correct copy of the motion:

Motion to Correct Judgment & Sentence Pursuant to CrR 7.8(B)(4&5)

And CrR 4.2(d)

by U.S. Mail Postage Prepaid to

The following addresses:

Snohomish County Superior Court Clerk at:

County Courthouse, 3000 Rockefeller Ave.

MS 502, Everett, WA 98201-4046

I certify under the penalty of perjury under the laws of the state
of Washington that the foregoing is true and correct.

DATED this 15 day of March, 2010, at Monroe, Washington.



Pro se

William Pursley #739493

MCC/MSU

P.O. Box 7001

Monroe, WA 98272

CERTIFIED
COPY

FILED *AS*

3-17-2010
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.



IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

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STATE OF WASHINGTON
Plaintiff,
vs.
WILLIAM PURSLEY,
Defendant

Case No. 94-1-01390-9

MOTION TO MODIFY OR CORRECT
JUDGEMENT AND SENTENCE
(pursuant to CrR 7.8)(B)(4&5)&
CrR 4.2(d)

IDENTITY

COMES NOW, the Defendant, Pro se, currently being housed at the
Monroe Correctional Complex, and in the above captioned action, and moves this
Honorable Court for a remand without withdrawal of his guilty plea.

FACTS

- A. The defendant appeared before Judge Joseph A. Thibodeau.
- B. The State being represented by David F. Hiltner, of Snohomish
County Prosecutors Office.
- C. The defendant being represented by Mickey L. Krom Defense Attorney.
- D. The defendant plead guilty and received a sentence of 264 months.

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COURT OF SUPERIOR COURT
STATE OF WASHINGTON
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1 The defendant was sentenced to a term of imprisonment of 147 months on
2 count I and 117 Months on count II to be served consecutively; the defendant's total
3 confinement time served to date is 189 months.

4 **STATUTE ERROR**

5 The issue of error is in count I of the information, which specifically
6 alleges "*Second Degree Felony Murder*" As defined by RCW 9A.32.050 (1)(b)."A
7 person is guilty of Murder in the second degree when he commits or attempts to
8 commit any felony other than those enumerated in RCW 9A.32.030 (1)(c)". RCW
9 9A.32.030 (1)(c) Reads: "when he or she commits or attempts to commit the crime of
10 1) Robbery in the First or Second Degree".

11 *At the time of the commission of this offense there was no statutory scheme*
12 *under the SRA* which would allow the trial courts or the state to charge and convict a
13 defendant for this crime. (See defendant's Attachment "A" Judgment& Sentence and
14 Attachment "B" defendant's charging information's).

15 **AUTHORITY**

16
17
18 1. There is an error in the *Charging Document, Plea Agreement* and the
19 *Judgment and Sentence* which requires *remedy*, (Due Process Requires a factual
20 Basis for excepting guilty pleas,) *State v. Mendoza*, 157 Wn. 2d 582 (2006) See also
21 *State v. Cordiga*, 162 Wn 2d at 912 (2008) and Pers. *Restraint of West*, 154 Wn. 2d
22 209,110 P.3d 1122 (2005).

23
24
25 2. It is overtly direct and obvious that the charge in count I is at odds with
26 the Court Rules of Washington at CrR 4.2 (d) **Voluntariness**.

1 The court shall not accept a plea of guilty, without First determining
2 that it is made voluntarily, competently and with an understanding
3 of the nature of the charge and the consequences of the plea. The
4 court shall not enter a judgment upon a Plea of guilty unless it is
5 satisfied that there is a factual basis for the plea.

6 Since the defendant's conviction has been final for more than one year, he must
7 address the time bar issue-arguing first that his *Judgment* is facially invalid and then
8 moving to his guilty plea to show that it was based on a "manifest error" and is
9 unconstitutional.

10 3. RCW 10.73.090 establishes a one-year time limit for collateral attack on
11 a judgment. More than one year has elapsed since this conviction was final. However,
12 the one year time limit does not apply to a judgment invalid on its face pursuant to
13 RCW 10.73.090 and the provisions provided in RCW 10.73.100(2); "*when one year
14 time limit not applicable*" See also *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50
15 P.3d 618 (2002). In part:

16 "A judgment and sentence is invalid on its face if it evinces
17 the invalidity "without further elaboration". The phrase "on its
18 face includes documents signed as part of a plea agreement.

19 As our Supreme Court has explained:

20 "[T]he relevant question in a criminal case is whether the judgment and
21 sentence is valid on its face, not whether related documents, such as plea
22 agreements, are valid on their face. Such documents may be relevant to the question
23 whether a judgment is valid on its face, but only if they disclose facial invalidity in the
24 judgment and sentence itself."

25 See *In re Restraint of Turay*, 150 Wn. 2d 71, 82, 74 P.3d 1194 (2003). See also
26 *State v. Lewis*, ___ Wn. App. ___, ___ P.3d ___ (August 28, 2007).

1 Thus, the question then becomes whether this error in the *Judgment* identifies a
2 defect in the guilty plea that merits relief. Here it does.

3 4. The Washington State Supreme Court has clearly held that a person can
4 raise a challenge to a plea to a non-existent crime at any time, and the fact that the
5 person pled guilty or even admitted to the elements of a different, existing, crime, did
6 not save the conviction. *Id.* (holding (1) one year limitations on collateral attack did not
7 apply to convictions that were constitutionally invalid on it's face; (2) defendant did not
8 waive right to collaterally attack conviction on basis of facial invalidity by guilty plea; (3)
9 defendant was entitled to vacation of conviction of crime that was not yet enacted at
10 the time that the underlying conduct occurred.

11 5. Furthermore the trial court does not have the authority to alter the
12 statutory scheme of the SRA to conform to a Plea Agreement. The fixing of legal
13 punishments for criminal offenses is a legislative function. See *State v. Ammons*, 105
14 Wn. 2d at 175. And *State v. Monday*, 85 Wn. 2d at 906, And PRP of *West*, 154 WN.
15 2d.204.
16

17 6. Defendant had previously informed the court of the *fundamentally*
18 *defected information* by letter addressed to the Sentencing Judge in June 2009, of
19 which was filed by the clerk; (*see docket*) which was then forwarded to the Deputy
20 Prosecuting Attorney David F. Hiltner and to the attorney of record for the defendant,
21 for review and possible action.

22 To date neither aforementioned parties has contacted the defendant or
23 responded to numerous inquiries.
24
25
26

1 **ARGUMENT**

2 A. This is the Defendant's first collateral attack on this *Judgment*.

3 B. The defendant also address's with argument that his motion *should not*
4 *be transferred to the Court of Appeals pursuant to CrR 7.8(c)(2) as a Personal*
5 *Restraint Petition*, as though the transfer would serve "*the ends of Justice*", because it
6 denies the right to direct appeal under RAP 2.2(9) and shifts the burden of proof from
7 the state onto the inexperienced "in law" defendant, making it possible to continue
8 *confinement* under a clearly illegal Judgment and Sentence in violation of due process;
9 *but,*

10
11 Prejudice to the defendant may be overcome by this courts appointment
12 of counsel to properly present and argue this case.

13 C. Division Two rendered a decision in State v. Smith, 144 Wn. App. 860,
14 864 (2008) which expressed In relevant part:

15 "We agree with Smith that converting and transferring a CrR 7.8
16 motion to a personal restraint petition could infringe on his right
17 to choose whether he wanted to pursue a personal restraint
18 petition because he would then be subject to the successive
19 petition rule in RCW 10.73.140 as a result of the conversion on
20 the motion."

21 The court went on to cite federal authority to support this conclusion. See
22 Castro v. United States, 540 U.S. 375, 383. 124 S. Ct. 786, 157 L.Ed 2d 778 (2003).

23 *See also State v. Hibdon*, 140 Wn. App. 534 (2007).

24 The Washington Court of Appeals recently expressed a view in State v. Davis,
25 146 Wn. App. 714, 724 (2008) that, the best approach is, In part:

26 "we believe it is better for both the offender and the DOC to have
the trial court impose a sentence that is clear to all from the outset,
given the number of offenders and the complexity sentences imposed
under the SRA, a clear mandate from the trial court's sentence".

1 D. The defendant attributes the error to be upon the Snohomish County
2 Superior Court Judge, Joseph A. Thibodeau, the District Prosecuting Attorney, David
3 F. Hiltner and the Attorney of record Mickey L. Krom, for charging, convicting and
4 sentencing the defendant to a non-existent, Statutorily invalid crime.(The interests of
5 Justice would best be served by the trial Court Correcting its own Errors).

6
7 **RELIEF**

8 The defendant seeks to have the non-existent crime vacated without
9 withdrawal of the plea agreement. *The defendant does not seek to withdraw his plea*
10 *where he plead guilty to multiple charges and he has "fulfilled the terms of the plea*
11 *agreement". See PRP of West, 154 Wn. 2d 175 204. See State v. Elits, 94 Wn. 2d*
12 *489, 495-96. (Citation omitted).See also Goodwin, 146 Wn. 2d at 877 ("Correcting an*
13 *erroneous sentence in excess of statutory authority does not affect the finality of that*
14 *portion of the judgment and sentence that was correct and valid when imposed.")*

15 Indivisibility of the plea has no bearing on the analysis that the crime was
16 non-existent.

17
18 See State v. Knight, 162 Wn.2d 813 (2008) In part:

19 "Knights guilty plea need not be withdrawn because guilty
20 pleas, like jury verdicts, do not violate double jeopardy...
21 Since the plea agreement has been fully satisfied here,
22 the indivisibility of the plea agreement has no bearing
23 on our analysis."

24 Furthermore, [see Knight at 812] In part:

25 "correctly understood, the plea agreement has no bearing
26 on the ability of the court to vacate a conviction entered
pursuant to the guilty plea itself, because the plea itself
need not be disturbed."

The Defendant should be remanded for imposition of the predicate felony of first
degree robbery upon vacation of the second degree felony murder that does not exist

1 In the felony index. Based on the analysis of the evidence supporting the plea
2 agreement and the subsequent plea to first degree robbery, this supports the remedy
3 and as it applies to the "workman Standard" 90 Wn.2d at 433.

4 See State v. Hughes, 118 Wn. APP. 713 (2003). In part:

5 "Remand for second degree Assault, because facts for
6 that crime were Proven as part of higher crime..."

7
8 **AFFIDAVIT**

9 STATE OF WASHINGTON)
10) ss:
11 COUNTY OF SNOHOMISH)

12 I, William Pursley, declare under penalty of perjury, that the statements within
13 this Motion are true and correct to the best of my knowledge and have been executed
14 on this 15th day of March, 2010 under the laws of the State of Washington, and to the
15 laws of the United States of America, that the foregoing is true and correct pursuant to:
16 RCW 9A.72.085, and 28 U.S.C. 1746.

17 Respectfully submitted this 15th day of March, 2010

18
19 
20 Pro se
21 William Pursley #789493
22 MCC/MSU
23 P.O. 7001
24 MONROE, WA 98272

25 **Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright, 626 F.2d 1184**
26 **(1980); Affidavit sworn as true and correct under penalty of perjury and has full**
force of law and does not have to be verified by Notary Public.

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

STATE OF WASHINGTON,)
) Plaintiff,)
))
) v.)
))
WILLIAM PURSLEY,)
) Defendant.)

No. 94-1-01390-9

NOTE FOR MOTION TO DOCKET

**Court Calendar
(CLERK'S ACTION REQUESTED)**

TO: Snohomish County Superior Court Clerk and David F. Hiltner of the Prosecutors Office.

PLEASE TAKE NOTICE that the litigant, Mr. William Pursley, acting Pro Se, moves this court on the 1st day of April, 2010 at 10:00 am. for a hearing without oral argument, and that the undersigned will bring on for a hearing a motion, for:

**MODIFICATION OR CORECTION OF JUDGMENT & SENTENCE
PURSUANT TO CrR 7.8(b)(4&5) and CrR 4.2(d)**

Nature of the case: Criminal

Or as soon thereafter as the motion can be heard.

The address of the place of the hearing is:

County Courthouse, 3000 Rockefeller Ave., MS 502, Everett, WA 98201-4046

DATED this day of March, 2010



William Pursley # 739493
MCC/MSU
P.O. BOX 7001
MONROE, WA 98272

**IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

STATE OF WASHINGTON,
Plaintiff,

v.

WILLIAM PURSLEY,
Defendant.

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No. 94-1-01390-9

MOTION TO DOCKET

TO THE CLERK OF THE SUPERIOR COURT:

WILLIAM PURSLEY
MCC/MSU
P.O. Box 7001
Monroe, WA 98272

Pro se,

Please take note that the undersigned will bring on for hearing a motion for:

**Modification or Correction of Judgment 7 Sentence Pursuant to CrR 7.8
(B)(4&5) and CrR 4.2(d)**

The Hearing is requested to be held during the regular motion calendar on:

<p>DATE AND TIME REQUESTED FOR THE HEARING MOTION MOTION DAY: THURSDAY APRIL 1ST AT 10:00AM OR AS SOON THERAFTER AS THE MOTION CAN BE HEARD</p>

Please take note defendant is incarcerated and cannot confirm hearing date.

Nature of the case: Criminal

Dated this day of March, 2010.



WILLIAM PURSLEY # 739493
MCC/MSU
P.O. Box 7001
Monroe, WA 98272

(360)794-2600

CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true
and correct copy of the motion:
Motion to Correct Judgment & Sentence Pursuant to CrR 7.8(B)(4&5)

And CrR 4.2(d)

by U.S. Mail Postage Prepaid to

The following addresses:

Prosecuting Attorney's Office at:
County Courthouse, 3000 Rockefeller Ave.
MS 502, Everett, WA 98201-4046

I certify under the penalty of perjury under the laws of the state
of Washington that the foregoing is true and correct.

DATED this day of March, 2010, at Monroe, Washington.


Pro se
William Pursley #739493
MCC/MSU
P.O. Box 7001
Monroe, WA 98272

CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true
and correct copy of the motion:

Motion to Correct Judgment & Sentence Pursuant to CrR 7.8(B)(4&5)

And CrR 4.2(d)

by U.S. Mail Postage Prepaid to

The following addresses:

Snohomish County Superior Court Clerk at:

County Courthouse, 3000 Rockefeller Ave.

MS 502, Everett, WA 98201-4046

I certify under the penalty of perjury under the laws of the state
of Washington that the foregoing is true and correct.

DATED this 15th day of March, 2010, at Monroe, Washington.

Pro se
William Pursley #739493
MCC/MSU
P.O. Box 7001
Monroe, WA 98272

CERTIFIED COPY

ATTACHMENT - A

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

FILED

95 AUG -4 PM 3:00

KAY D. ANDERSON COUNTY CLERK SNOHOMISH CO. WASH.

THE STATE OF WASHINGTON,)
Plaintiff,)
v.)
PURSLEY, WILLIAM VAHID,)
Defendant.)

No. 94-1-01390-9

JUDGMENT AND SENTENCE

Aliases:

I. FINDINGS

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

1. CURRENT OFFENSE(S): The defendant was found guilty on 06/02/95 by plea of:

- Count No.: I Crime: SECOND DEGREE MURDER WITH DEADLY WEAPON ALLEGATION RCW 9A.32.050(1)(b)
Count No.: II Crime: FIRST DEGREE ASSAULT WITH DEADLY WEAPON ALLEGATION RCW 9.94A.125, 9.94A.310, 9A.36.011(1)(a)

- () Additional current offenses are attached in Appendix A.
() With a special verdict/finding for use of deadly weapon on Count(s)

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

- () 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:

2. CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are:

Table with columns: Crime, Sentencing Date, Adult or Juv. Crime, Date of Crime, Crime Class

- () Additional criminal history is attached in Appendix B.
() Prior convictions counted as one offense in determining the offender score are:

3 Jail/ky

67

EXHIBIT 3

SENTENCING DATA:

	Offender Seriousness			Maximum
	Score	Level	Range	Term
Count No. I	0	XIII	135-178-123-164 months	Life
Count No. II	0	XII	105-135 months	Life

() Additional current offense sentencing data is attached in Appendix C.

4. EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above)(below) the standard range for Count(s) _____. The reasons are set forth in Appendix D.

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:

(a) () \$ WAIVED, Court costs, including reimbursement for costs of extradition, if incurred; plus any costs determined after this date as established by separate order of this court;

(b) (x) \$100.00, Victim assessment;

(c) (X) \$ _____, Total amount restitution (with credit for amounts paid by co-defendants; the amount and recipient(s) of the restitution are as established by separate order of this court;

(d) () \$631/\$691, Recoupment for attorney's fees; WAIVED

(e) () \$ _____, Fine;

(f) () \$ _____, _____ Dep't, Drug enforcement fund;

(g) () \$ _____, Other costs;

2. () The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms: () Not less than \$ _____ per month, (X) on a schedule established by the defendant's community corrections officer, to be paid within 120 months of () this date (X) release from confinement.

3. The defendant shall remain under the Court's jurisdiction and the supervision of the State Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.

4. (X) The defendant shall be prohibited from having any contact, directly or indirectly, with Michael Killpack or Michael Connors for a period of 10 years after release. Family

5. () The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.

6. The Court, upon motion of the State, DISMISSES Count(s) _____.

7. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the State Department of Corrections as follows commencing () immediately () no later than _____.

147 months for Count No. I
117 months for Count No. II

() The terms in Counts No. 1+2 are (~~concurrent~~) (consecutive).

() The sentence herein shall run (~~concurrently~~) (~~consecutively~~) with the sentence in cause number(s) _____.

() Credit is given for 412 days served solely in regard to this offense.

8. () The defendant shall serve a two year term of community placement, or up to the period of earned early release, whichever is longer, during which term the mandatory conditions set forth below shall be followed:

(a) The defendant shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The defendant shall work at department of corrections-approved education, employment, and/or community service;

(c) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The defendant in community custody shall not unlawfully possess controlled substances; and

(e) The defendant shall pay community placement fees as determined by the department; and, in addition, the following conditions shall also be followed:

(f) () The defendant shall remain () within () outside of the following geographical area: _____

(g) () The defendant shall not have direct or indirect contact with: Michael Killpack's Family or Michael Connor

(h) () The defendant shall participate in crime-related treatment or counseling services as directed by the department.

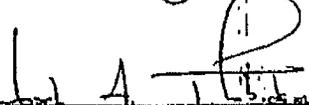
(i) () The defendant shall not consume alcohol.

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

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

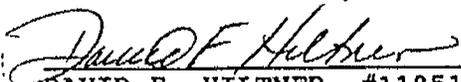
- () Appendix A, Additional Current Offenses;
- () Appendix B, Additional Criminal History;
- () Appendix C, Current Offense(s) Sentencing Data; and
- () Appendix D, Reasons for an Exceptional Sentence.
- () Appendix E, Additional Conditions of Sentence.
- () Appendix F, Notification of Registration Requirement.
- () Order for Blood Testing.
- () No Contact Order.

DONE IN OPEN COURT this 4 day of August, 1995.

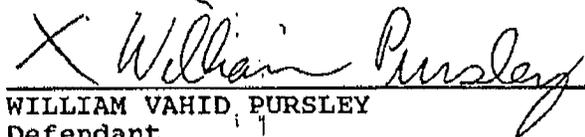


JUDGE JOSEPH A. THIBODEAU

Presented by:



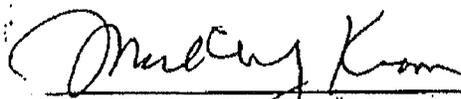
DAVID F. HILTNER, #11851
Deputy Prosecuting Attorney



WILLIAM VAHID PURSLEY
Defendant

DOC

Approved as to form:

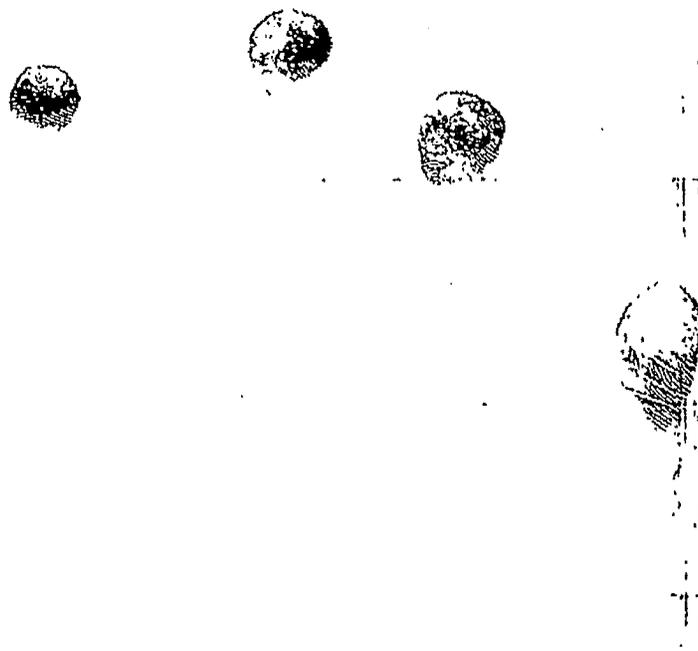


MICKEY L. KROM, #7064
Attorney for Defendant

Defendant's current address

Telephone #

FINGERPRINTS



Right Hand
Fingerprints of:
WILLIAM VAHID PURSLEY

* William Pursley
(Defendant's Signature)

Dated: 8/4/95

Attested by:
Kay D. Anderson, Snohomish Co Clerk

By: K.A. Brown
(Deputy Clerk)

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____
Kay D. Anderson, Snohomish Co. Clerk

By: _____
(Deputy Clerk)

OFFENDER IDENTIFICATION

S.I.D. No. WA
Date of Birth 10/03/78
Sex M
Race White
ORI WA0310000
OCA 109147
OIN 04940512904
DOA 10/14/94

FILED

95 AUG -4 PM 3:00

ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington, GREETINGS:

WHEREAS, WILLIAM VAHID PURSLEY, has been duly convicted of the crime(s) of Count 1 Second Degree Murder, Count 2 First Degree Assault, as charged in the Second Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution, under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term of _____ months all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof, Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff, to detain the said defendant until called for by the officer authorized to conduct him to the Washington Corrections Center at Shelton, Washington, in Mason County, and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections.

And these presents shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable JOSEPH A. THIBODEAU, Judge of the said Superior Court and the seal thereof, this 4 day of August 1995.

KAY D. ANDERSON
CLERK OF THE SUPERIOR COURT

By: [Signature]
Deputy Clerk

ATTACHMENT - B

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,)

Plaintiff,)

No. 94-1-01390-9

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

PURSLEY, WILLIAM VAHID,)

Defendant.)

- 1. My true name is WILLIAM VAHID PURSLEY.
- 2. My age is 16.
- 3. I went through the 9th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is MICKEY L. KROM.

(b) I am charged with the crimes of Count 1: Second Degree Murder, RCW 9A.32.030(1)(c), Count 2: First Degree Assault, RCW 9A.36.011(1)(a).

The elements of the crimes are:

COUNT I: That the defendant, 1) in Snohomish County, Washington, 2) on or about the 17TH day of June, 1994, 3) while committing or attempting to commit the felony crime of First or Second Degree Robbery, 4) and in the course of or in furtherance of said crime or in immediate flight therefrom, 5) did cause the death of Michael Killpack, 6) a human being, 7) not a participant in such crime, 8) said death occurring on or about the 17th day of June, 1995; 9) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a .25 automatic pistol.

COUNT II: That the defendant, 1) in Snohomish County, 2) on or about the 17th day of June, 1994, 3) with intent to inflict great bodily harm, 4) did assault another person, to-wit: Michael Conner, 5) with a deadly weapon and by any force or means likely to produce great bodily harm or death, to-wit: a baseball bat; 6) the defendant or an accomplice at said time being armed with a deadly weapon, to-wit: a baseball bat.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
 - (b) The right to remain silent before and during trial, and I need not testify against myself.
 - (c) The right at trial to hear and question witnesses who testify against me.
 - (d) The right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
 - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
 - (f) The right to appeal a determination of guilty after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
(a) The crime with which I am charged carries a maximum sentence of:
Count I: Life imprisonment and a \$50,000 fine. Count II: Life imprisonment
and a \$50,000 fine.

The standard sentence range is/are: 135 to 178 months as to Count I; 105 to 135 months as to Count II, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also always includes convictions in juvenile court for sex offenses, whatever my age was when the sex offense was committed, or is now. Criminal history also includes convictions in juvenile court for other felonies or serious traffic offenses that were committed when I was 15 years of age or older. However, if I was 23 years of age or older when I committed the crime to which I am now pleading guilty, the juvenile conviction only counts if it was for a class A felony, or a sex offense.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendations increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 1000 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the recommendation to the judge as stated on the attached plea agreement form.

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) The crime of Assault 1st has a mandatory minimum sentence of at least 5 years of total confinement. The law does not allow any reduction of this sentence. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(i) The sentence imposed on Counts 1+2 will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(j) In addition to confinement, the judge will sentence me to

community placement for at least 3 years. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

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

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the State of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

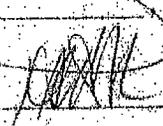
(q) If the crime charged herein is a "crime of violence" as defined by RCW 9.41.010(11); a "serious offense" as defined by RCW 9.41.010(12); a domestic violence offense enumerated in RCW 10.99.010(2); a harassment offense enumerated in RCW 9A.46.060; a felony in which a firearm was used or displayed; a felony violation under RCW 69.50; or is a conviction under RCW 46.61.502 or RCW 88.12.100 (and this is at least my fourth conviction under either of these statutes within the five years preceding the date of my guilty plea), the court has informed me orally and in writing that this plea of guilty will make me ineligible to possess a firearm pursuant to RCW 9.41.040. (If not applicable, this paragraph should be stricken and

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that (check appropriate box):

- (a) The defendant had previously read; or
 (b) The defendant's lawyer had previously read to him or her;
* (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 22 day of June, 1995.



JUDGE

*I am fluent in the _____ language and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 1995.



INTERPRETER



Snohomish County Clerk

and Ex-Officio Clerk of Superior Court

May 12, 2010

Sonya Kraski
County Clerk
M/S #605
3000 Rockefeller Avenue
Everett, WA 98201
(425) 388-3466
FAX (425) 388-3806

Richard D. Johnson
Court Administrator/Clerk
Court of Appeals - Division One
One Union Square
600 University St.
Seattle, WA 98101-4170

RE: State of Washington vs. William Pursley
Snohomish County No. 94-1-01390-9

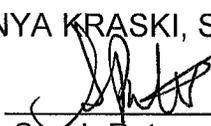
Dear Mr. Johnson:

Enclosed please find certified copies of the following documents in the above-referenced case on consideration as a personal restraint petition:

1. Motion filed March 17, 2010;
2. Motion filed April 1, 2010;
3. Letter filed April 8, 2010;
4. State's Motion filed April 8, 2010;
5. Motion to Appoint filed April 29, 2010;
6. Defendant's Response filed May 3, 2010; and
7. Order filed May 11, 2010.

Sincerely,

SONYA KRASKI, Snohomish County Clerk

By: 

Sarah Patrenets, Deputy Clerk

FILED
COURT OF APPEALS
STATE OF WASHINGTON
MAY 13 2010